

In the Circuit Court of the County of X
State of Y
Associate Judge Division

HEARTLESS DEBT COLLECTOR, LLC)
)
Plaintiff,)
) Case No. 010101
vs.) Division No. 010101
)
JOE CONSUMER,)
)
Defendant.)

**PLAINTIFF HEARLESS DEBT COLLECTOR'S MOTION TO DISMISS DEFENDANT'S
CONTERCLAIM FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE
GRANTED**

COMES NOW Plaintiff, Heartless Debt Collector, LLC, (hereinafter referred to as “Heartless” or “Plaintiff”), by and through its attorneys, and for its Motion to Dismiss Defendant's Counterclaim for Failure to State a Claim Upon Which Relief can be Granted states as follows.

1. On or about Date, Plaintiff filed its Petition alleging that Joe Consumer (hereinafter referred to as “Defendant” or “Good Guy”) is indebted to Plaintiff in reference to his failure to comply with the terms of the parties's agreement. Plaintiff brought its claim against Defendant as the assignee for Scam Gym.
2. On or about Date, Defendant filed his Amended Answer and Counterclaim against Plaintiff for alleged violations of Title 15 U.S.C. Sec. 1692, the Fair Debt Collection Practices Act (FDCPA)
3. Defendant's counterclaim fails to comply with the X State Rules of Civil Procedure because it fails to state a claim upon which relief can be granted in that the basis of Defendant's allegations, the filing of a Petition, is not a “communication” under Section 1692(a) of the FDCPA. Additionally, construing the FDCPA as regulating statements made in the course of state judicial proceedings violates the 10th Amendment and exceeds Congress's power under the Commerce Clause.

4. Furthermore, Defendant's Count II of his Counterclaim fails to state a claim upon which relief can be granted in that the basis of Defendant's allegations, the filing of Plaintiff's Petition, is not a "means" under the FDCPA and is not false, deceptive or misleading under the terms of the FDCPA.
5. Defendant's Count I and II of his counterclaim fail to allege the necessary elements of a claim and fail to allege in a concise and understandable manner the specific action of Plaintiff that is the grounds for defendant's counterclaim.

WHEREFORE, Plaintiff requests this Court grant Plaintiff's Motion to Dismiss Defendant's Counterclaim for failure to state claims upon which relief can be granted and for such further relief as the court deems just and proper in the premises.