

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

Graciano Velez, <i>on behalf of himself and</i>	)	<b><u>CIVIL ACTION NO. 1:16-CV-377</u></b>
<i>all others similarly situated</i>	)	
	)	<b><u>COMPLAINT -- CLASS ACTION</u></b>
Plaintiff,	)	
	)	
vs.	)	<b><u>JURY TRIAL DEMAND</u></b>
	)	
Healthcare Revenue Recovery Group,	)	
LLC, d/b/a ARS Account Resolution	)	
Services	)	
	)	
Defendant.	)	
_____	)	

**NATURE OF ACTION**

1. Plaintiff, Graciano Velez (“Plaintiff”) brings this action against Defendant, Healthcare Revenue Recovery Group, LLC, d/b/a ARS Account Resolution Services (“Defendant”) pursuant to the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* and the North Carolina Collection Agency Act (“NCCAA”), N.C. Gen. Stat. § 58-70-90 *et seq.*, or alternatively, the North Carolina Debt Collection Act (“NCDCA”), N.C. Gen. Stat. § 75-50 *et seq.*, on behalf of himself and all others similarly situated.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this district, and where Plaintiff resides in this district, and where Defendant transacts business in this district.

### **THE FAIR DEBT COLLECTION PRACTICES ACT**

4. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

5. “To effectuate this purpose, the FDCPA regulates interactions between consumers and debt collectors by imposing affirmative statutory obligations upon debt collectors and proscribing certain abusive conduct.” *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 388 (4th Cir. 2014) (quoting 15 U.S.C. § 1692(e)).

6. “The FDCPA is a strict liability statute and a consumer has only to prove one violation in order to trigger liability.” *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719, 725 (D. Md. 2011); *See* 15 U.S.C. § 1692k(a).

7. The FDCPA “forbids the use of ‘any false, deceptive, or misleading representation or means’ in debt collection, and provides a non-exhaustive list of prohibited conduct.” *United States v. Nat’l Fin. Servs., Inc.*, 98 F.3d 131, 135 (4th Cir. 1996) (quoting 15 U.S.C. § 1692e).

8. Among the conduct specifically proscribed by § 1692e of the FDCPA is: “The use of any business, company, or organization name other than the true name of the debt collector’s business, company, or organization.” 15 U.S.C. § 1692(e)(14).

9. It also prohibits debt collectors from using “unfair or unconscionable means to collect or attempt to collect any debt.” *See* 15 U.S.C. § 1692f.

10. Whether a collection letter violates the FDCPA is assessed under the least sophisticated consumer standard, “to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.” *United States v. Nat’l Fin. Servs., Inc.*, 98 F.3d 131, 136 (4th Cir. 1996) (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993)).

11. “This standard is consistent with the norms that courts have traditionally applied in consumer-protection law . . . [t]he fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” *Id.*

### **THE NORTH CAROLINA COLLECTION AGENCY ACT**

12. The NCCAA regulates the activities of “collection agencies” including includes debt buyers who are “engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes . . . .” N.C. Gen. Stat. § 58-70-15.

13. “No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection agency business . . . until he or it shall have secured a permit therefor as provided in this Article. Any person, firm, corporation or association conducting or operating a collection agency or doing a collection agency business without the permit shall be guilty of a Class I felony.” N.C. Gen. Stat. § 58-70-1.

14. “No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation.” N.C. Gen. Stat. § 58-70-110.

15. Within that provision, the NCCAA specifically forbids, “[c]ommunicating with the consumer other than in the name of the person making the communication, the collection agency and the person or business on whose behalf the collection agency is acting or to whom the debt is owed.” N.C. Gen. Stat. § 58-70-110(1).

16. The NCCAA also requires that all collection agencies within the state of North Carolina, “shall in all correspondence with debtors use stationary and forms which contain the permit number and the true name and address of such collection agency.” N.C. Gen. Stat. § 58-70-50.

17. In addition to actual damages, collection agencies shall “be liable to the debtor for a penalty in such amount as the court may allow, which shall not be less than five hundred dollars (\$500.00) for each violation nor greater than four thousand dollars (\$4,000) for each violation.” N.C. Gen. Stat. § 58-70-130(b).

18. “While a party may typically recover only once for his injuries, ‘[d]amages under the FDCPA do not preclude damages under relevant state law,’ here the NCCAA.” *Leto v. World Recovery Serv., LLC*, No. 3:14-CV-00489-FDW, 2015 WL 1897060, at \*3 (W.D.N.C. Apr. 27, 2015) (quoting *Baie v. Prime West Mgmt. Recovery, LLC*, 2011 WL 1257148, at \*9 (E.D.N.C.2011)).

### **THE NORTH CAROLINA DEBT COLLECTION ACT**

19. “The NCDCA prohibits a “debt collector” from using unfair debt collection practices, including the use of threats, coercion, harassment, unreasonable publications of the consumer's debt, deceptive representations, or other unconscionable means to collect a “debt” from a “consumer.” *Ross v. Washington Mut. Bank*, 566 F. Supp. 2d 468, 479 (E.D.N.C. 2008).

20. Among the provisions of the NCDCA is N.C. Gen. Stat. § 75-54 which states: “No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation.”

21. Within that provision, the NCDCA specifically forbids “[c]ommunicating with the consumer other than in the name (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.” N.C. Gen. Stat. § 75-54(1).

22. “Any debt collector who fails to comply with any provision of this Article with respect to any person is liable to such person in a private action in an amount equal to the sum of (i) any actual damage sustained by such person as a

result of such failure and (ii) civil penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than four thousand dollars (\$4,000) for each violation.” N.C. Gen. Stat. § 75-56(b).

### **PARTIES**

23. Plaintiff is a natural person who at all relevant times resided in the State of North Carolina, County of Alamance, and City of Burlington.

24. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

25. Plaintiff is a “consumer” as defined by N.C. Gen. Stat. § 58-70-90(2), and N.C. Gen. Stat. § 75-50(1).

26. Defendant is an entity which at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5), N.C. Gen. Stat. § 58-70-90(3), and N.C. Gen. Stat. § 75-50(2).

27. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

28. Defendant is a “collection agency” as defined by N.C. Gen. Stat. § 58-70-90(1).

29. In the alternative, Defendant is a “debt collector” as defined by N.C. Gen. Stat. § 75-50(3).

### **FACTUAL ALLEGATIONS**

30. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

31. Plaintiff's obligation, or alleged obligation, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, medical expenses (the “Debt”).

32. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

33. On April 23, 2015, Defendant sent Plaintiff a letter in connection with the collection of the Debt.

34. A true and accurate copy of the April 23, 2015 letter is attached to this complaint as Exhibit A.

35. In the April 23, 2015 letter, Defendant refers to itself as ARS or Account Resolution Services. Exhibit A.

36. ARS or Account Resolution Services, is not registered as a fictitious name for Defendant in the State of North Carolina.

37. ARS or Account Resolution Services, is also not licensed as a collection agency in the State of North Carolina.

38. Using a name that is not registered with the state where Defendant is attempting to collect is false, deceptive, or misleading as Plaintiff would be unable to confirm the identity of the supposed collection agency.

39. N.C. Gen. Stat. § 58-70-50 requires that all collection agencies within the state of North Carolina, “shall in all correspondence with debtors use stationary and forms which contain the permit number and the true name and address of such collection agency.”

40. Defendant’s April 23, 2015 letter neither contains its permit number nor does it contain the true name of Defendant.

### **CLASS ACTION ALLEGATIONS**

41. Plaintiff repeats and re-alleges all factual allegations above.

42. The April 23, 2015 letter is based on a form or template (the “Template”) where Defendant refers to itself by ARS or Account Resolution Services.

43. Defendant has used the Template to send collection notices to at least 40 individuals in the State of North Carolina within one year prior to the filing of this complaint.

44. Plaintiff brings this action on behalf of himself and all others similarly situated. Specifically, Plaintiff seeks to represent the following class of individuals:

All persons located in the State of North Carolina to whom Defendant sent, within one year before the date of this complaint and in connection with the collection of a debt, a collection letter based upon the Template.

45. The proposed class specifically excludes the United States of America, the State of North Carolina, counsel for the parties, the presiding United States District Court Judge, the Judges of the United States Court of Appeals for



the Fourth Circuit, and the Justices of the United States Supreme Court, all officers and agents of Defendant, and all persons related to within the third degree of consanguinity or affection to any of the foregoing persons.

46. The class is averred to be so numerous that joinder of members is impracticable.

47. The exact number of class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery.

48. The class is ascertainable in that the names and addresses of all class members can be identified in business records maintained by Defendant.

49. There exists a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to: (a) the existence of Defendant's identical conduct particular to the matters at issue; (b) Defendant's violations of 15 U.S.C. § 1692 *et seq.* and North Carolina laws; (c) the availability of statutory penalties; and (d) attorney's fees and costs.

50. The claims of Plaintiff are typical of the claims of the class he seeks to represent.

51. The claims of Plaintiff and of the class originate from the same conduct, practice, and procedure on the part of Defendant. Thus, if brought and prosecuted individually, the claims of each class member would require proof of the same material and substantive facts.

52. Plaintiff possesses the same interests and has suffered the same injuries as each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of the unnamed class members.

53. Plaintiff will fairly and adequately protect the interests of the class and has no interest adverse to or which directly and irrevocably conflicts with the interests of other class members.

54. Plaintiff is willing and prepared to serve this Court and the proposed class.

55. The interests of Plaintiff are co-extensive with and not antagonistic to those of the absent class members.

56. Plaintiff has retained the services of counsel who are experienced in consumer protection claims, as well as complex class action litigation, will adequately prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent class members.

57. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B). The prosecution of separate actions by individual members of the classes would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action or could substantially impair or impede their ability to protect their interests.

58. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the classes, which would establish incompatible standards of

conduct for the parties opposing the class. Such incompatible standards of conduct and varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow the existence of inconsistent and incompatible rights within the class.

59. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that Defendant has acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

60. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the questions of law and fact that are common to members of the class predominates over any questions affecting only individual members.

61. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint in that: (a) individual claims by the class members will be impracticable as the costs of pursuit would far exceed what any one plaintiff or class member has at stake; (b) as a result, very little litigation has been commenced over the controversies alleged in this Complaint and individual members are unlikely to have an interest in prosecuting and controlling separate individual actions; and (c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy.

**COUNT I**  
**VIOLATION OF 15 U.S.C. § 1692e**

62. Plaintiff repeats and re-alleges each factual allegation above.

63. “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e.

64. Defendant’s April 23, 2015 letter violates § 1692e because the use of ARS or Account Resolution Services would mislead consumers, for example by preventing Plaintiff from researching Defendant and finding out information about its debt collection activities.

65. The FDCPA forbids the “use of any business, company, or organization name other than the true name of the debt collector’s business, company, or organization.” 15 U.S.C. § 1692e(14).

66. Defendant violated 15 U.S.C. § 1692e(14) by using the name ARS or Account Resolution Services, when those names are not registered in the state of North Carolina and are not the true names of Defendant’s business.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e with respect to Plaintiff and the class he seeks to represent;
- c) Awarding Plaintiff and the class he seeks to represent actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

- d) Awarding Plaintiff such additional damages as the court may allow, but not exceeding \$1,000, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the court may allow for, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class he seeks to represent reasonable attorneys' fees and costs incurred in this action, pursuant to 15 U.S.C. § 1692k(a)(3);
- g) Awarding Plaintiff and the class he seeks to represent, any pre-judgment and post-judgment interest as may be allowed under the law;
- h) Awarding such other relief as the Court may deem just and proper.

**COUNT II**  
**VIOLATION OF 15 U.S.C. § 1692f**

67. Plaintiff repeats and re-alleges each factual allegation above.

68. Without limitation, the FDCPA prohibits a debt collector from using any "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

69. By requiring collection agencies to list their actual name, among other requirements contained in Chapter 58, Article 70, N.C. Gen. Stat., North Carolina has taken action consistent with the FDCPA's purpose of protecting consumers.

70. Defendant's conduct is unfair, not only to the victims of the debt collector's illegal collection activity, but to other collection agencies who refrain from using illegal collection methods, who are thus competitively disadvantaged. *See* 15 U.S.C. § 1692(e).

71. Defendant violated 15 U.S.C. § 1692f by engaging in unfair or unconscionable means to collect or attempt to collect any debt from Plaintiff, for example by attempting to collect a debt without complying with North Carolina's requirement to use the name of a registered collection agency within North Carolina and identifying their permit number.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692f with respect to Plaintiff and the class he seeks to represent;
- c) Awarding Plaintiff and the class he seeks to represent actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the court may allow, but not exceeding \$1,000, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the court may allow for, without regard to a minimum individual recovery, not to exceed

the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);

f) Awarding Plaintiff and the class he seeks to represent reasonable attorneys' fees and costs incurred in this action, pursuant to 15 U.S.C. § 1692k(a)(3);

g) Awarding Plaintiff and the class he seeks to represent, any pre-judgment and post-judgment interest as may be allowed under the law;

h) Awarding such other relief as the Court may deem just and proper.

**COUNT III**  
**VIOLATION OF N.C. GEN. STAT. § 58-70-110**

72. Plaintiff repeats and re-alleges each factual allegation above.

73. "No collection agency shall collect or attempt to collect a debt . . . by any fraudulent, deceptive, or misleading representation" including "[c]ommunicating with the consumer other than in the name of the person making the communication, the collection agency and the person or business on whose behalf the collection agency is acting or to whom the debt is owed." N.C. Gen. Stat. § 58-70-110(1).

74. Defendant violated N.C. Gen. Stat. § 58-70-110(1) by using the name ARS or Account Resolution Services, when those names are neither registered fictitious names nor registered collection agencies in the State of North Carolina.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated N.C. Gen. Stat. § 58-70-110(1) with respect to Plaintiff and the class he seeks to represent;
- c) Awarding Plaintiff and the class he seeks to represent actual damages, pursuant to N.C. Gen. Stat. § 58-70-130(a);
- d) Awarding Plaintiff and the class he seeks to represent statutory damages per violation, pursuant to N.C. Gen. Stat. § 58-70-130(b);
- e) Awarding Plaintiff and the class he seeks to represent reasonable attorneys' fees and costs incurred in this action, pursuant to N.C. Gen. Stat. § 75-16.1;
- f) Awarding Plaintiff and the class he seeks to represent any pre-judgment and post-judgment interest as permissible by law; and
- g) Awarding such other relief as the Court may deem just and proper.

**COUNT III**  
**VIOLATION OF N.C. GEN. STAT. § 75-54**

75. Plaintiff repeats each and every factual allegation above.

76. “No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation” including “[c]ommunicating with the consumer other than in the



name (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.” N.C. Gen. Stat. § 75-54(1).

77. If Defendant is not a “collection agency,” then Defendant violated N.C. Gen. Stat. § 75-54(1) by using the name ARS or Account Resolution Services, when those names are neither a registered fictitious name nor a registered debt collector in the State of North Carolina.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated N.C. Gen. Stat. § 75-54 with respect to Plaintiff and the class he seeks to represent;
- c) Awarding Plaintiff and the class he seeks to represent actual damages, pursuant to N.C. Gen. Stat. § 75-56(b);
- d) Awarding Plaintiff and the class he seeks to represent statutory damages per violation, pursuant to N.C. Gen. Stat. § 75-56(b);
- e) Awarding Plaintiff and the class he seeks to represent reasonable attorneys’ fees and costs incurred in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

- f) Awarding Plaintiff and the class he seeks to represent any pre-judgment and post-judgment interest as permissible by law; and
- g) Awarding such other and further relief as the Court may deem proper.

**TRIAL BY JURY**

78. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: April 25, 2016

Respectfully submitted,

/s/ Holly E. Dowd  
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