

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

**Civil Action No. \_\_\_\_\_**

**ROBERT E. KING, JR**, Individually and  
on Behalf of all Others Similarly Situated,

Plaintiff,

v.

**CHECK RECOVERY BUREAU, INC.,**

Defendant.

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

ROBERT E. KING, JR (“Plaintiff”) brings this Class Action Complaint for damages and any other available legal or equitable remedies, resulting from the illegal actions of CHECK RECOVERY BUREAU, INC. (“Defendant”) with regard to attempts by Defendant, a third party debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, in violation of Federal debt collection laws.

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over Plaintiff’s FDCPA cause of action pursuant to 28 U.S.C. §1331.
2. Venue is proper in the District of South Carolina pursuant to 18 U.S.C. § 1391(b) because Defendant does business within the District of South Carolina, and because Plaintiff is a resident of Greenville County, South Carolina, which is within the District of South Carolina.

### **NATURE OF THE ACTION**

3. Plaintiff brings this class action on behalf of South Carolina consumers seeking redress for Defendant's action of using an unfair and unconscionable means to collect a debt.
4. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq, to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
5. In particular, Plaintiff alleges that within the year preceding the filing of this Complaint, Defendant attempted to collect debts from him and other consumers and debtors by systematically sending them mail based collection correspondence that failed to advise the consumers and debtors that the statutes of limitations for filing legal claims to collect on those debts ("time-barred debts") had expired, and thus, that legal claims cannot be brought against them past of the statute of limitations and that making even the smallest of payments renews the expired statutes of limitations.
6. The Federal Trade Commission ("FTC") has found that nondisclosure of the fact that a debt is time-barred might deceive a consumer in at least the following ways: 1) since most consumers do not know or understand their legal rights regarding the collection of time-barred debts, efforts to collect on such debts may create a misleading impression that the consumer has no defense to a lawsuit; and 2) consumers often do not know that in many states, making even the smallest of payments on a time-barred debt actually renews statute of limitations on that debt. Given the potential for confusion, and to avoid creating a

misleading impression, the FTC recommended that if a collector knows or should know that it is collecting on a time-barred debt, it must inform the consumer that (1) the collector cannot sue to collect the debt, and (2) providing partial payment would revive the collector's ability to sue to collect the remaining balance. *Fed. Trade Comm'n, The Structure and Practice of the Debt Buying Industry*, 47(2013) (FTC Report 2013).

7. Reflective of the importance of advising consumers and debtors when their debt is past the statute of limitations is the consent decree between the FTC and Asset Acceptance, LLC requiring it to disclose to consumers *whether it knows or believes that a debt was incurred outside the limitations period*, the following: “The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it.” *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182-T-27EAJ (M.D.Fla.2012).
8. Such conduct is inherently deceptive and misleads the least-sophisticated consumer, as it is plausible that an unsophisticated consumer would believe that offers to “settle” a debt implies that the debt is legally enforceable. *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010 (2014). After all, most consumers do not understand their rights with regards to time-barred debts. *Fed. Trade Comm’n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* 26-27 (2010).
9. Defendant’s acts and omissions were intentional, and resulted from Defendant’s desire to mislead debtors and consumers into making payments, which would renew expired statutes of limitations, thereby allowing Defendant to subsequently file legal claims against those same consumers and debtors who had available to them, the affirmative defense of “statute of limitations,” prior to making such falsely and unfairly induced payments.
10. Thus, Plaintiff brings class action claims against Defendant, under the Federal Fair Debt Collection Practices Act (“FDCPA”), which was enacted to “eliminate abusive debt collection practices by debt collectors,” 15 U.S.C. 1692(e).

**THE PARTIES**

11. Plaintiff is a natural person residing in Greenville County, State of South Carolina who is obligated or allegedly obligated to pay any debt, and from whom a debt collector seeks to collect a consumer debt which is due and owing or alleged to be due and owing, thereby rendering him a “consumer,” under the FDCPA, 15 U.S.C. §1692a(3).
12. Defendant is a company that uses any instrumentality of interstate commerce or the mails in its business, the principal purpose of which is the collection of any debts; it also regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Thus, Defendant is a “debt collector,” under the FDCPA, 15 U.S.C. §1692(a)6.
13. The debts Defendant attempted to collect from Plaintiff and the putative class members qualify as “debt(s),” under the FDCPA, 15 U.S.C. §1692a(5).
14. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a “debt” as that term is defined by 15 U.S.C. §1692a(5).

**FACTUAL ALLEGATIONS**

15. Some time prior to May 7, 2009, an obligation was allegedly incurred to BI-LO, L.L.C. (“Bi-Lo”) for Plaintiff’s groceries as well as “Ingles #29.”
16. These obligations arose out of a transaction in which money, property, insurance or services, which are subject of the transaction, are primarily for personal, family, or household purposes.
17. The alleged obligation is a “debt” as defined by 15 U.S.C. § 1692a(5).
18. Bi-Lo; and, Ingles #29 are each a “creditor” as defined by 15 U.S.C. § 1692a(4).

19. At some point prior to May 7, 2009, Bi-Lo; and, Ingles #29 sold, consigned, or otherwise transferred the alleged obligation to Defendant.
20. Within one (1) year preceding the filing of this class action lawsuit, sometime in or about August 2016, Defendant mailed Plaintiff a collection letter regarding Plaintiff's debt.
21. The letter is a "communication" as defined by 15 U.S.C. §1692a(2).
22. At issue therein was a debt that Plaintiff incurred in or about 2008.
23. On the cover letter, Defendant states in part, "FRAUDULENT CHECK WARRANTS HAVE BEEN ISSUED."
24. By the date of receipt, over eight years had elapsed since the last payment or activity on the account.
25. Under Title 15 of the South Carolina Code of Laws, the statute of limitations is three (3) years for suing to collect on a debt.
26. In addition, under the relevant fraudulent check provisions upon which Defendant referenced, "[n]o warrant...may be obtained more than one hundred and eighty days after the date the check was uttered." *See* SC Code § 34-11-60(e).
27. The collection letter further stated that "pursuant to STATE LAW," Plaintiff had 10 days from the date of postmark to make payment on the dishonored checks or an "ARREST WARRANT" for the Plaintiff would be issued "and turned over to the appropriate Law Enforcement Agency for Criminal Prosecution."
28. Notably absent from Defendant's written communication was a disclosure that Plaintiff's debt was past the applicable Statute of Limitations; that even partial payment would revive this Statute of Limitations; and that the deadline for criminal prosecution of any kind had also lapsed.

29. Upon reading Defendant's written communication, the Plaintiff believed, as would the unsophisticated debtor, that he had a legal obligation to pay the alleged debt as Defendant was offering to settle and that the Defendant was threatening criminal prosecution a time-barred debt.
30. Through this conduct, Defendant violated 15 U.S.C. § 1692d by engaging in conduct the natural consequence of which was to harass, oppress and abuse Plaintiff in connection with the collection of Plaintiff's debt.
31. Through this conduct, Defendant violated 15 U.S.C. § 1692e by using false, deceptive and misleading representations to collect Plaintiff's debt.
32. Through this conduct, Defendant violated 15 U.S.C. § 1692e(2)(A) by misrepresenting the character, amount and legal status of Plaintiff's debt as one that was within the statute of limitations.
33. Through this conduct, Defendant violated 15 U.S.C. § 1692e(4) by representing that nonpayment of Plaintiff's debt would result in arrest or imprisonment of Plaintiff.
34. Through this conduct, Defendant violated 15 U.S.C. § 1692e(5) by threatening to take action that Defendant could not legally take.
35. Through this conduct, Defendant violated 15 U.S.C. § 1692f by using unfair and unconscionable means to collect Plaintiff's debt.
36. Following receipt of Defendant's written communication, Plaintiff placed a call to Defendant, and spoke with Melinda Carter, the owner/operator of Check Recovery Bureau.
37. During this telephonic communication, Plaintiff asked if there was an arrest warrant for Plaintiff as stated in Defendant's written communication.

38. To the contrary, Defendant stated that there was no arrest warrant yet but Plaintiff's failure to make a payment in August 2016 would result in the arrest warrant being "activated" through the NCIC under "the concealed weapons law, background check, and passports."
39. For the reasons discussed above, Defendant's oral statements violated 15 U.S.C. §§ 1692d; 1692e; 1692e(2)(A); 1692e(4); 1692e(5); and, 1692f.

**CLASS ALLEGATIONS**

40. Plaintiff brings this class action individually and on behalf of all others similarly situated ("the Class").
41. Plaintiff represents, and is a member of the following classes:
- (i) all persons within the United States of America (ii) who were sent a written communication by Defendant (iii) substantially similar to the written communication attached hereto as Exhibit 1 (v) which was not returned undelivered by the United States Postal Service; (vi) within one year prior to the filing of the Complaint in this action.
42. As a result of Defendant's conduct, Plaintiff and members of the putative class have been deprived of accurate and valid information regarding the legal status of time-barred debts that Defendant sought to collect from them. Defendant mislead Plaintiff and the Class into believing that making payments on time-barred debts is legally inconsequential. Plaintiff has also been mislead into believing that there were pending legal – including criminal - actions against him, despite the fact that these debts were time-barred from legal action.
43. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number to be in the thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

44. This lawsuit seeks statutory damages, actual damages, and injunctive relief for recovery of economic injury on behalf of the Class and is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.
45. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records or Defendant's agents' records.
46. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:
  - a. Whether, within the one (1) year preceding the filing of this Complaint, Defendant sent collection letters to debtors and consumers on time-barred debts that:
    - i. Failed to disclose the particular statute of limitations for the debt, and that the debt was time-barred;
    - ii. Failed to disclose that Defendant cannot bring legal action against the debtor or consumer because the debt is time-barred;
    - iii. Failed to disclose that the consumer or debtor making payment to Defendant renews the statute of limitations on the time-barred debt;
    - iv. Failed to disclose that no legal action was pending against the particular consumer or debtor.



- v. Stated or implied that criminal prosecution was possible where more than 180 days had elapsed since the uttering of the check.
  - b. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation;
  - c. Whether Defendant should be enjoined from engaging in such conduct in the future.
  - d. Whether Defendant's written communication violated the FDCPA; and,
  - e. Whether Defendant can satisfy the bona fide error affirmative defense.
47. As a person that received the grossly inadequate and misleading collection letter from Defendant, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.
48. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct, resulting in numerous debtors and consumers unknowingly making themselves susceptible to legal action on previously time-barred debts.
49. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.
50. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the FDCPA.

51. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action under the FDCPA are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.
52. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

**FIRST CAUSE OF ACTION:**  
**VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

53. Plaintiff incorporates by reference, the preceding paragraphs of this Complaint.
54. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. §§ 1692 et seq.
55. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each Defendant individually.

**PRAYER FOR DAMAGES**

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members

the following relief against Defendant:

- a. That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;
- b. For statutory damages of \$1,000.00 for Plaintiff and each member of The Class pursuant to 15 U.S.C. §1692k(a)(1)
- c. For actual damages according to proof;
- d. For reasonable attorneys' fees and costs of suit;
- e. For prejudgment interest at the legal rate; and
- f. For such further relief as this Court deems necessary, just, and proper.

**DEMAND FOR JURY TRIAL**

56. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

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