

Appendix D Sample Complaints

This Appendix contains two sample complaints. The first complaint is annotated, and alleges violations of the Fair Debt Collection Practices Act and a state cause of action under federal supplemental jurisdiction. The second complaint is the FDCPA complaint form devised by the UAW Legal Services Plan some years ago, and is not annotated. Both of these complaints are available on this volume's companion CD-Rom.

Six other FDCPA complaints are available in other NCLC manuals, and on those volumes' companion disks, and currently on *Consumer Law in a Box*. These other complaints are drafted by some of the country's most experienced FDCPA litigators and represent a wide array of FDCPA cases. National Consumer Law Center, *Consumer Class Actions: A Practical Litigation Guide* Appx. D.1 (4th ed. 1999) and National Consumer Law Center, *Consumer Law Pleadings With Disk, Number Two* § 11.2.1 (1995) contain two different FDCPA class complaints. National Consumer Law Center, *Consumer Bankruptcy Law and Practice* Appx. G.10 (Litigation) (5th ed. 1996) contains an FDCPA complaint in bankruptcy court, and National Consumer Law Center, *Consumer Law Pleadings With Disk, Number Two* § 11.1.1 (1995) contains an individual FDCPA complaint in federal district court. National Consumer Law Center, *Consumer Law Pleadings With Disk, Number Two* §§ 12.1 and 14.1 (1995) contain FDCPA complaints against, respectively, an attorney seizing exempt bank account funds and against a collection agency hired by the United States to collect on a student loan.

D.1 Complaint Including Both Federal and State Causes of Action¹

UNITED STATES DISTRICT COURT²
FOR THE [name district] DISTRICT OF [name state]

[name of plaintiff] ³	}	Civil Action No. _____
Plaintiff,	}	COMPLAINT AND
v.	}	DEMAND FOR JURY
[name of defendant] ⁴	}	TRIAL ⁵
Defendant.	}	(Unlawful Debt
	}	Collection Practices)

- 1 This form is intended solely for purposes of demonstration. It must be adapted by a competent professional to meet actual needs and local practice.
- 2 See §§ 2.3.2, 6.11.1, *supra* (choice of forums).
- 3 See § 6.2.2, *supra* (parties plaintiff).
- 4 See §§ 2.3.6, 6.2.4, *supra* (juries); §§ 2.6, 2.7, 6.2.3, *supra* (parties defendant).
- 5 See 5 Moore's Federal Practice chs. 38, 40 (1996); 3 M. Bender Federal Practice Forms, Form No. 38:1 (1996) (form for demand for jury trial).

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA") and the [state] Unlawful Debt Collection Practices Act, __ § __ *et seq.* (hereinafter, "state Act"),⁶ which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the defendants transact business here and the conduct complained of occurred here.⁷

III. PARTIES

3. Plaintiff, _____, is a natural person⁸ residing in _____.

4. Defendant, _____, is a _____ corporation engaged in the business of collecting debts in this state with its principal place of business located at _____. The principal purpose of Defendant _____ is the collection of debts using the mails and telephone, and Defendant _____ regularly attempts to collect debts alleged to be due another.⁹

5. Defendant, John Doe,¹⁰ also known as _____, is a natural person employed by Defendant _____ as a collector at all times relevant to this complaint.

6. Defendants are "debt collectors" as defined by the FD-CPA, 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

7. On or about _____, 19____, Defendant _____, while employed as a collector by Defendant _____, contacted _____, Plaintiff's employer, and requested Plaintiff's employer to speak to Plaintiff regarding the importance of paying an alleged debt of \$_____ allegedly owed

⁶ See § 6.11.3, *supra* (joinder of supplemental state claims); § 11.2 (state debt collection statutes). Note that pendent jurisdiction has been codified as supplemental jurisdiction at 28 U.S.C. § 1367.

⁷ See § 6.11.2.3, *supra*.

⁸ See §§ 4.4, 4.5, *supra* (persons and transactions protected by the Act).

⁹ See Ch. 4, *supra* (persons who must comply with the FD-CPA).

¹⁰ See § 5.4.7, *supra* (use of an alias by debt collection employees), § 6.2.3, *supra* (joinder of employees as defendants).

to _____ for medical services.¹¹ Plaintiff's employer informed Plaintiff of this contact the next day.

8. On or about _____, 19__ Plaintiff wrote requesting Defendants not to contact Plaintiff's employer or Plaintiff since the alleged debt was to be paid by Plaintiff's health insurance.¹² A copy is attached as EXHIBIT A.

9. On or about _____, Defendants mailed a letter to Plaintiff which threatened legal action if payment was not received in 5 days and which is attached hereto as Plaintiff's EXHIBIT B and by this reference incorporated herein. No payment was made by Plaintiff and no suit was filed by Defendants against Plaintiff within 5 days of Plaintiff's receipt of EXHIBIT B.

10. As a result of the acts alleged above, Plaintiff suffered headaches, nausea, embarrassment, and lost weight and incurred sick leave and expenses for medication and day care for dependents.¹³

V. FIRST CLAIM FOR RELIEF

11. Plaintiff repeats and realleges and incorporates by reference paragraphs one through nine above.

12. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, the following:

- (a) The Defendants violated 15 U.S.C. § 1692c(b) by contacting a third party, the Plaintiff's employer, without the Plaintiff's prior consent.¹⁴
- (b) The Defendants violated 15 U.S.C. § 1692e(2)(A), (5) and (10) by misrepresenting the imminence of legal action by Defendants.¹⁵
- (c) The Defendants violated 15 U.S.C. § 1692c(c) by contacting the Plaintiff after the Plaintiff had requested the Defendants cease communication with the Plaintiff.¹⁶
- (d) The Defendants violated 15 U.S.C. § 1692g by making a threat of suit during the debt validation request period in a manner that overshadowed the notice of validation rights and would create confusion for a least sophisticated consumer about his rights.
- (e) The Defendants violated 15 U.S.C. § 1692g(b) by failing to provide verification of the debt and continuing its debt collection efforts after the plaintiff had disputed

the debt in writing within thirty days of receiving notice of the 15 U.S.C. § 1692g debt validation rights.

(f) [Add other allegations of FDCPA violations]

13. As a result of the above violations of the FDCPA, the Defendants are liable to the Plaintiff for declaratory judgment that defendants' conduct violated the FDCPA, and Plaintiff's actual damages,¹⁷ statutory damages,¹⁸ and costs and attorney's fees.¹⁹

VI. SECOND CLAIM FOR RELIEF

14. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.

15. Defendants violated the state Act. Defendants' violations of the state Act²⁰ include, but are not limited to, the following:

- (a) The Defendants violated _____ § _____ by contacting a third party, the Plaintiff's employer.
- (b) The Defendants violated _____ § _____ by engaging in the business of collecting debts and by attempting to collect an alleged debt from Plaintiff without a valid license.

16. Defendants' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

17. As a result of the above violations of the state Act, the Defendants are liable to the Plaintiff for injunctive and declaratory relief and for actual damages, statutory damages,²¹ and attorney's fees and costs.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

A. Declaratory judgment that defendants' conduct violated the FDCPA, and declaratory and injunctive relief for the defendants' violations of the state Act;

B. Actual damages;

C. Statutory damages pursuant to 15 U.S.C. § 1692k.

D. Statutory damages pursuant to _____ § _____.

E. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k and _____ § _____.

F. For such other and further relief as may be just and proper.

Respectfully submitted,
Attorney for Plaintiff
[Address]

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands trial by jury in this action.

Attorney for Plaintiff

¹¹ See § 4.4, *supra* (transactions covered by the Act). See also *Gammon v. Belzer*, 1997 WL 189291 (N.D. Ill. 1997) (failure to plead that debt was for personal, family, or household purposes resulted in dismissal of complaint with leave to amend within fifteen days).

¹² A bona fide dispute of the underlying debt is not necessary but may enhance the Plaintiff's position in the eyes of the fact finder. Unless there is an independent jurisdictional basis for doing so, it is unlikely that most federal courts will assume jurisdiction over issues involving the underlying debt. See §§ 6.11.3, 7.3, *supra*. If the consumer's legal defense to the underlying claim is not clear, it is to the consumer's advantage for the court not to assume jurisdiction over the underlying debt. See §§ 4.3, 6.11.3, *supra*.

¹³ See §§ 2.4, 6.3, *supra* (actual damages).

¹⁴ See § 5.3.5, *supra* (prohibited third party contacts).

¹⁵ See §§ 5.5.3, 5.5.7, 5.5.12, *supra* (false threats of legal action).

¹⁶ See §§ 5.3.8, 6.2.1, *supra* (right to obtain cessation of collection efforts).

¹⁷ See §§ 2.4, 6.3, *supra* (actual damages).

¹⁸ See § 6.4, *supra* (statutory damages).

¹⁹ See § 6.8, *supra* (attorney fees).

²⁰ See § 6.11.3, *supra* (supplemental state claims); § 15.2 (state debt collection statutes).

²¹ See *Carrigan v. Central Adjustment Bureau, Inc.*, 502 F. Supp. 468 (N.D. Ga. 1980) (\$100 statutory damages under the FDCPA and \$500 statutory damages on pendent state claim were awarded to consumer).

D.2 Complaint Under Fair Debt Collection Practices Act

UNITED STATES DISTRICT COURT
FOR THE [name district] DISTRICT OF [name state]

_____))
[name of plaintiff])
Plaintiff,)
))
v.) Civil Action No. _____
))
[name of defendant])
Defendant.)
_____))

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff [name], an individual consumer, against Defendants [names] for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the defendants transact business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff, [name of plaintiff], is a natural person residing in [City], [County], [State].

4. Defendant, [name of defendant], is a [state] corporation engaged in the business of collecting debt in this state with its principal place of business located at [address]. The principal purpose of Defendant is the collection of debts in this state and defendant regularly attempts to collect debts alleged to be due another.

5. Defendant [name], also known as _____, is a natural person employed by Defendant [name] as a collector at all times relevant to this complaint.

6. Defendants are engaged in the collection of debts from consumers using the mail and telephone. Defendants regularly attempt to collect consumer debts alleged to be due to another. Defendants are “debt collectors” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

7. By correspondence on the letterhead of [name], dated _____, defendant [name] mailed a collection letter over the typewritten name of [name] to [plaintiff name] demanding payment of a debt in the amount of _____ allegedly due [creditor]. A copy is attached hereto as Exhibit A.

8. Exhibit A was received by Mr. or Ms [name] at his/her residence in [City, State].

9. The alleged debt of Mr. or Ms [name] claimed in Exhibit A was incurred for personal, family, or household services, i.e.

10. Exhibit A stated:
[Quote the offensive language]

11. [Describe any other relevant facts]

12. As a result of the acts alleged above, Plaintiff suffered headaches, nausea, embarrassment, and lost weight and incurred sick leave and expenses for medication and day care for dependents.

V. CLAIM FOR RELIEF

13. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

14. Defendants violated the FDCPA. Defendants’ violations include, but are not limited to, the following:

(a) [Set forth the alleged violations of the FDCPA]

15. As a result of the foregoing violations of the FDCPA, defendants are liable to the plaintiff [name] for declaratory judgment that defendants’ conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney’s fees.

WHEREFORE, plaintiff [name] respectfully requests that judgment be entered against defendants [name] for the following:

A. Declaratory judgment that defendants’ conduct violated the FDCPA;

B. Actual damages;

C. Statutory damages pursuant to 15 U.S.C. § 1692k;

D. Costs and reasonable attorney’s fees pursuant to 15 U.S.C. §§ 1692k and _____, § _____; and

E. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,
Attorney for Plaintiff
Address

DEMAND FOR JURY TRIAL

Please take notice that plaintiff [name] demands trial by jury in this action.

Attorney for Plaintiff

VERIFICATION

I [name] hereby certify that the facts contained in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

[name of client]