

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

EDDIE DEAN COX,
LAWRENCE CHRISTIAN and
DENNY LARGE on behalf of themselves
and all others similarly situated,

PLAINTIFFS

V.

CIVIL ACTION NO. 5:18-cv- 00436

AMERICAN RECOVERY SERVICE
INCORPORATED,

DEFENDANT

INDIVIDUAL AND CLASS ACTION COMPLAINT

INTRODUCTION

1. This is an action brought on behalf of three individual consumers and the class of West Virginia consumers they represent, seeking statutory penalties and damages pursuant to the *Fair Debt Collection Practices Act*, FDCPA, 15 U.S.C. §1692, against an unlicensed, un-bonded debt collector not authorized to do business in West Virginia. The Plaintiffs and the class they represent also assert claims arising under the *West Virginia Consumer Credit and Protection Act*, WVCCPA, *West Virginia Code* §46A-1-101, *et seq.*, and the Common Law arising from the same acts of the Defendant.

JURISDICTION AND VENUE

2. This is an action for damages brought by individual consumers for violations of the *Fair Debt Collection Practices Act*, 15 U.S.C. §1692, *et seq.*, this Court has jurisdiction pursuant to 15 U.S.C. §1692k(d), and 28 U.S.C. §1331. The Court has supplemental jurisdiction over the Plaintiffs' state law claims pursuant to 28 U.S.C. §1367(a).

3. Venue in this District is proper in that Defendant transacts business here and the conduct complained of is alleged to have occurred here.

PARTIES

4. Plaintiff, Eddie Dean Cox, is and was at all times relevant, a resident of Arnett, West Virginia.

5. Plaintiff, Lawrence Christian, is and was at all times relevant, a resident of Mabscott, West Virginia.

6. Plaintiff, Denny Large, is and was at all times relevant, a resident of Oak Hill, West Virginia.

7. Defendant, American Recovery Service Incorporated, is collectively referred to herein as “Defendant or ARSI” and its principal office address: 555 Saint Charles Drive, Suite 100, Thousand Oaks, CA 91360.

8. Defendant, ARSI, does business within this judicial district.

9. Plaintiffs bring their individual claims herein and as representatives of a class of persons with West Virginia addresses whose claims are more particularly described herein below.

FACT ALLEGATIONS

10. Plaintiffs are each a “consumer” as defined by the *West Virginia Consumer Credit and Protection Act* (WVCCPA) *West Virginia Code* §46A-1-101, *et seq.*, as they are allegedly obligated to pay debts or claims to the Defendant.

11. Plaintiffs are each a “consumer” as defined by 15 U.S.C. §1692a(3) as they are natural persons obligated or allegedly obligated upon a debt.

12. Defendant ARSI is a “debt collector” as defined by 15 U.S.C. §1692a(6) attempting to collect debt or alleged debt or obligation for money, goods, insurance, or services were primarily personal, family or household purposes within the meaning of 15 U.S.C. §1692a(5).

13. Defendant ARSI is a “debt collector” engaged in “debt collection” of “claim[s]” as defined by *West Virginia Code* §46A-2-122(b), (c) and (d).

14. Defendant ARSI caused a collection letter to be mailed to Plaintiffs, Mr. Cox, Mr. Christian and Mr. Large, respectively, on December 8, 2015, January 30, 2014 and July 18, 2017, as well as other times better known to Defendant. Exhibit 1. Moreover, Defendant ARSI caused collection letters to be mailed to other West Virginia consumers. Exhibit 2.

15. At all times relevant, Defendant ARSI did not have a Business Registration Certificate issued by the West Virginia State Tax Department to collect debt in West Virginia.

16. At all times relevant, Defendant ARSI was not registered to do business in West Virginia as a corporation with the Secretary of State of West Virginia.

17. At all times relevant, Defendant ARSI was utilizing a tradename to collect debt in West Virginia without proper registration of such tradename.

18. On August 2, 2017, in response to a *Freedom of Information Act* request, the West Virginia State Tax Department certified that American Recovery Services Incorporated, ARSI did not have a current Business Registration Certificate to collect debt in West Virginia. Exhibit 3.

19. On August 8, 2017 counsel for Plaintiffs sent a certified letter to Defendant ARSI informing ARSI that it was collecting debt in West Virginia without a Business Registration Certificate issued by the West Virginia State tax Department; was not bonded to collect debt in West Virginia; was operating under a tradename not properly registered in West Virginia and that ARSI was not properly registered to do business in West Virginia with the West Virginia Secretary of State. Exhibit 4.

20. On August 22, 2017, Defendant ARSI, after receipt of Plaintiffs' counsel's letter of August 8, 2017, became registered to do business with the Secretary of State of West Virginia. Exhibit 5.

21. By letter dated September 19, 2017, ARSI acknowledged receipt of the August 8, 2017 letter counsel for the Plaintiffs and asserted that ARSI was properly licensed to collect debt in West Virginia. Exhibit 6.

22. On February 28, 2018, Defendant ARSI obtained a Business Registration Certificate from the West Virginia State Tax Department and became licensed as a Collection Agency in West Virginia after posting the Collection Agency Bond required by *West Virginia Code* §11-12-3. Exhibit 7.

23. On February 28, 2018, in response to a *Freedom of Information Act* inquiry, the West Virginia State Tax Department certified that Defendant ARSI was issued a Business Registration Certificate on February 28, 2018. Exhibit 8.

(DOING BUSINESS IN VIOLATION OF *THE BUSINESS REGISTRATION TAX ACT*)

24. Defendant is engaged in “purposeful revenue-generating activity” directly or indirectly in the state of West Virginia within the meaning of the *West Virginia Business Registration Tax Act*, *West Virginia Code* §11-12-1, *et seq.*, by collecting and attempting to collect debt from the Plaintiffs herein and as such are required by *West Virginia Code* §11-12-3(a) to obtain a Business Registration Certificate.

25. Defendant, at all times relevant, did not, and has not, obtained the required Business Registration Certificate to engage in purposeful revenue-generating activity in the State of West Virginia in violation of the *Business Registration Tax Act*.

26. At all relevant times, Defendant did not apply for nor pay the tax required to obtain a Business Registration Certificate pursuant to the *Business Registration Tax* statute.

(DOING BUSINESS IN VIOLATION OF *THE COLLECTION AGENCY ACT OF 1973*)

27. The *West Virginia Business Tax Registration Act* statute, *West Virginia Code* §11-12-3(a)(2) also requires Defendant to comply with the *Collection Agency Act of 1973*, *West Virginia Code* § 47-16-1, *et seq.*

28. Defendant, at all times relevant, did not, and has not, complied with *Collection Agency Act of 1973* to obtain the necessary Business Registration Certificate

nor did Defendant post the requisite surety bond required by the *Collection Agency Act of 1973* while collecting or attempting to collect debts from Plaintiffs in West Virginia.

29. The failure of Defendant to comply with the aforesaid provisions of the *Collection Agency Act* subjects the Defendant to criminal and civil liability as set forth in *West Virginia Code* § 47-16-5 which states:

- (a) Any person, firm, corporation or association violating any of the provisions of this article **shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.**
- (b) Any person, firm, corporation or association violating any of the provisions of this article shall, **in addition to any civil liability arising by virtue of such violation, also be civilly liable as otherwise provided by law.** (emphasis added).

(DOING BUSINESS IN VIOLATION OF *THE FOREIGN CORPORATIONS ACT*)

30. The Defendant is a “foreign corporation” and are “conducting affairs” in West Virginia within the meaning of the *West Virginia Foreign Corporations Act*, *West Virginia Code* §31D-15-1501, *et seq.*, while collecting or attempting to collect debts from Plaintiffs in West Virginia.

31. Pursuant to the *Foreign Corporations Act*, the Defendant is and was required, before conducting affairs in the State of West Virginia, to obtain a Certificate of Authority from the Secretary of State of West Virginia as required by *West Virginia Code* §31D-15-1501(a).

32. The Defendant did not obtain a Certificate of Authority from the Secretary of State of West Virginia as required by *West Virginia Code* §31D-15-1501(a) before conducting affairs in the state of West Virginia as foreign corporations.

33. Defendant ARSI did not obtain a valid Business Registration Certificate and post the appropriate bonds with the West Virginia State Tax Department to collect debt in West Virginia until February 28, 2018.

(DOING BUSINESS IN VIOLATION OF THE TRADE NAMES ACT)

34. Pursuant to the *Trade Names Act, West Virginia Code* §47-8-4, the Defendant was required to register its trade name with the West Virginia Secretary of State before conducting business affairs in the state of West Virginia.

35. At all times relevant, Defendant conducted business affairs in the State of West Virginia using the trade names of “American Recovery Service Incorporated; ARSI” and/or “ARSI” and used those trade names in communications with Plaintiffs and the class they represent without first registering such trade names and obtaining a Certificate of Registration for such trade names from the West Virginia Secretary of State in violation of *West Virginia Code* §47-8-4(a) and §31D-15-1506.

36. Defendant’s failure to register its tradename with the Secretary of State of West Virginia as required by *West Virginia Code* §47-8-4 subjects Defendant to the criminal penalty of fine and/or imprisonment imposed by *West Virginia Code* §47-8-5.

CLASS ALLEGATIONS

37. The Plaintiffs are representatives of that class of persons with West Virginia addresses from whom Defendant ARSI was attempting to collect an alleged debt within the four-year period preceding the filing of this action, insofar as Defendant violated the *West Virginia Consumer Credit and Protection Act*, *West Virginia Code* §46A-1-101, *et seq.*, and the Plaintiffs are representatives of that class of persons with West Virginia addresses from whom Defendant ARSI attempting to collect an alleged debt within the one-year period preceding the filing of this action, insofar as Defendant violated the *Fair Debt Collection Practices Act*, 15 U.S.C. §1692.

38. The class can be readily identified by collection activity logs, claim records, probate court filings, and computer storage devices or databases, maintained by the Defendant and/or its employees, representatives or agents.

39. The class is so numerous that joinder of all class members is impracticable. The precise number of class members and their addresses are unknown to the Plaintiffs; however, they are readily available from the Defendant's records. Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

40. This action involves questions of law and fact common to the class which predominate over questions affecting individual class members.

41. Plaintiffs' claims are typical of the claims of the class because, among other things, Plaintiffs like the other members of the class, were subjected to attempts by the Defendant to collect debt in West Virginia.

42. The Plaintiffs have displayed an interest in vindicating the rights of the class members, will fairly and adequately protect and represent the interest of the class, and are represented by skillful and knowledgeable counsel. Plaintiffs' interests do not conflict with those of the class and the relief sought by the named Plaintiffs will inure to the benefit of the class generally.

43. The questions of law and fact that are common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy between the class members and Defendant.

44. The actions of the Defendant are generally applicable to the class as a whole and to Plaintiffs. For example, the class members can prove the elements of their claims against Defendant for violations of the WVCCPA on a class-wide basis using the same evidence that Plaintiffs and individual class members would use to prove those claims in individual civil actions.

45. Additionally, the damages or other financial detriment suffered by individual class members is relatively small compared to the burden and expense that would be required to individually litigate each of the class member's claims against Defendant and

it would be impracticable for the class members to individually seek redress for the Defendant's wrongful conduct.

46. Even if the members of the class could afford individual litigation, given the expected size of the class, separate litigation of each class member's claims against Defendant would create the potential for inconsistent and/or contradictory judgments, and cause delay and increase the expenses for the parties and the Court in adjudicating the claims against Defendant. Conversely, a class action will prevent far fewer management difficulties, provide the benefits of a single adjudication, conserve time, effort and expense, employ comprehensive and cohesive supervision by a single court, and provide a forum for small claimants.

47. The prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for the Defendant. Moreover, the likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

48. Defendant has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the members of the class as a whole.

49. Any difficulties in management of this case as a class action are outweighed by the benefits that a class action has to offer with respect to disposing of common issues of law and fact on issues affecting a large number of litigants.

50. The damages in this case are set by statute and generally preclude the necessity of a case-by-case assessment of damages by the Court. To the extent case-by-case assessment is necessary, the Defendant maintains computerized individual account information, and that information can easily be reviewed and assessed electronically.

COUNT I

VIOLATION OF THE FDCPA

Plaintiffs incorporate and restate all the above and further pleads:

51. The *Fair Debt Protection Practices Act*, FDCPA, 15 U.S.C. §1692a safeguards consumers from abusive and deceptive debt collection practices by debt collectors.

52. The FDCPA prohibits the use of any “false deceptive, or misleading representations or means in connection with the collection of any debt,” 15 U.S.C. §1692e and provides a non-exhaustive list of conduct that violates the FDCPA, including “the threat to take any action that cannot legally be taken.” 15 U.S.C. §1692a(5)

53. The FDCPA is a strict liability statute in a consumer has only to prove one violation in order to trigger liability. *See* 15 U.S.C. §1692k(a); *see also Spencer v. Henderson-Webb, Inc.*, 80 F. Supp. 2d 582, 590-591(D. MD. 1999).

54. Defendant ARSI by sending debt collection letters to the Plaintiffs and the class they represent without first obtaining a license and posting a bond to collect debt in West Virginia, is a threat to take action that cannot legally be taken and is a *per se* in violation of 15 U.S.C. §§1692e, 1692e(2), 1692e(5) and 1692e(10).

COUNT II

VIOLATION OF THE WVCCPA

Plaintiffs incorporate and restate all the above and further pleads:

55. At all times relevant, while the Defendant was in violation of the *Business Registration Tax Act*, the *Collection Agency Act*, the *Foreign Corporations Act* and the *Trade Names Act*, the Defendant, by or through its employees, agents, representatives, co-conspirators or related entities, contacted, attempted to contact or otherwise communicate with the Plaintiffs in attempts to collect alleged debt on multiple occasions, each of which constitutes a separate violation of the *West Virginia Consumer Credit and Protection Act* (WVCCPA), *West Virginia Code* § 46A-1-101, *et seq.*

56. Defendant's acts of attempting to collect a debt while in violation of the *Business Registration Tax Act*, the *Collection Agency Act*, the *Foreign Corporations Act* and the *Trade Names Act*, as set forth herein constitute express or implied representations that Defendant was authorized by West Virginia law to act as a collection agency and/or debt collector to conduct this type of business in this State and that the defendant had in place a bond, required by statute to protect consumers.

57. The Defendant's violations of the aforesaid provisions of the *Business Registration Tax Act*, the *Collection Agency Act*, the *Foreign Corporations Act* and the *Trade Names Act* while attempting to collect an alleged debt constitutes a fraudulent, deceptive, or misleading representation under the provisions of *West Virginia Code* §46A-2-127, an unfair or unconscionable means under the provisions of *West Virginia Code*

§46A-2-128, oppression and abuse under the provisions of *West Virginia Code* §46A-2-125, illegal threats or coercion under the provisions of *West Virginia Code* §46A-2-124, and unfair or deceptive acts or practices under *West Virginia Code* §46A-6-104.

58. The Defendant's violation of *West Virginia Code* §§46A-2-124, 125, 127 and 128 were willful violations which give rise to criminal penalties pursuant to *West Virginia Code* §46A-5-103(4) and debt cancelation pursuant to § 46A-5-105.

59. As a proximate result of these violations, Defendant caused the Plaintiffs to suffer damages, including but not limited to annoyance, aggravation, inconvenience, consternation, fear, embarrassment, humiliation, confusion, anguish, and fear of litigation.

60. Under the provisions of the aforesaid acts, Plaintiffs are entitled to recover actual damages, statutory damages adjusted for inflation, cancellation of the alleged debt, and attorneys' fees and costs from Defendant for the aforesaid violations.

COUNT III

(NEGLIGENCE)

Plaintiffs incorporate and restate all of the above and further pleads:

61. Defendant owed a duty to Plaintiffs to not violate the WVCCPA and other statutes in attempts to collect a debt from Defendant.

62. Defendant's conduct as set forth herein constitutes a breach of duties owed to Plaintiffs under the *Business Registration Tax Act*, the *Collection Agency Act*, the *Foreign Corporations Act*, the *Trade Names Act*, and the *West Virginia Consumer Credit and Protection Act*.

63. As a proximate cause of Defendant's conduct, Plaintiffs have suffered damages as set forth herein including but not limited to annoyance, aggravation, inconvenience, consternation, fear, embarrassment, humiliation, confusion, anguish, and fear of litigation.

64. Defendant's actions were intentional, willful, wanton, reckless, and/or otherwise sufficiently reprehensible to justify an award of punitive damages.

WHEREFORE, Plaintiffs pray that the Court enter judgment against the Defendant for the following:

1. Compensatory damages for the Plaintiffs 'and the class they represent, general and special damages set forth above for the Defendant's undue and unreasonable harassment, oppression, abuse, aggravation, annoyance, and inconvenience;

2. Statutory damages adjusted for inflation provided in the WVCCPA and statutory damages provided by the FDCPA;

3. Punitive damages for the intentional, willful, wanton, oppressive, malicious and/or reckless conduct of the Defendant; and

4. An award of interest, costs, and attorney fees.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

**EDDIE DEAN COX
LAWRENCE CHRISTIAN
DENNY LARGE, on behalf of themselves
and all others similarly situated**

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [American Recovery Service Accused of Illegal Debt Collection Activity in West Virginia](#)
