

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:17cv60634

ANITA JAIRAM, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

COMPLAINT – CLASS ACTION

RETRIEVAL-MASTERS CREDITORS
BUREAU, INC., d/b/a AMERICAN
MEDICAL COLLECTION AGENCY,

Defendant.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

On behalf of the putative class, Plaintiff ANITA JAIRAM (“Plaintiff” or “Ms. Jairam”), on behalf of herself and all others similarly situated, alleges that Defendant RETRIEVAL-MASTERS CREDITORS BUREAU, INC., d/b/a AMERICAN MEDICAL COLLECTION AGENCY (“RETRIEVAL-MASTER”) has illegally profited and otherwise unlawfully collected millions of dollars from Florida consumers in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and as a result, Plaintiff now seeks to recover all funds unlawfully collected by RETRIEVAL-MASTER.

THE FAIR DEBT COLLECTION PRACTICES ACT

1. The Fair Debt Collection Practices Act (the “FDCPA”) is a series of statutes which prohibits a catalog of activities in connection with the collection of debts by third parties. *See* 15 U.S.C. §1692. Congress enacted the FDCPA to regulate the collection of consumer debts by debt collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection practices by debt collectors, to insure [sic] that 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.” 15 U.S.C. §1692(e).

2. In enacting the FDCPA, the United States Congress found that “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. §1692(a). Congress additionally found existing laws and procedures for redressing debt collection injuries to be inadequate to protect consumers. 15 U.S.C. §1692(b).

3. The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collection and provides for specific consumer rights. 15 U.S.C. §1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

4. Section 1692f of the FDCPA states “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §1692f. *See LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1200 (11th Cir. 2010) (“[a]n act or practice is deceptive or unfair if it has the tendency or capacity to deceive.”). The eight subsections of §1692f set forth a non-exhaustive list of practices that fall within this ban, including, but not limited to: “[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. §1692f(1).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 18 U.S.C. § 1332(d), because: (1) at least one member of the putative class is a citizen of a state different from Defendant; (2) the amount in controversy exceeds \$5,000,000, exclusive of costs and interest, and (3) none of the exceptions of § 1332(d) apply to this action.

6. This Court also has jurisdiction under 15 U.S.C. § 1692k, 28 U.S.C. § 1337, and 28 U.S.C. § 1331.

7. Venue in this District is proper under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred here, and under 18 U.S.C. § 1965(a) because Defendant transacts its affairs here.

PARTIES

8. Plaintiff is a natural person, and a citizen of the State of Florida, residing in Broward County, Florida.

9. RETRIEVAL-MASTER is a New York corporation, with its principal place of business located in Elmsford, New York.

10. RETRIEVAL-MASTER engages in interstate commerce by regularly using telephone and mail in a business whose principal purpose is the collection of debts.

11. At all times material, Defendant was acting as a debt collector in respect to the collection of Plaintiff’s debts.

FACTUAL ALLEGATIONS AS TO MS. JAIRAM

12. The debt at issue (the “Consumer Debt”) is a financial obligation Plaintiff incurred primarily for personal, family, or household purposes. Specifically, the Consumer Debt represents an allegedly unpaid debt which Plaintiff had agreed to be responsible for the repayment thereof,

whereby such debt was the result of the provision of medical services rendered for the benefit of Plaintiff, her family, and/or her household.

13. The Consumer Debt is a “debt” governed by the FDCPA. *See* 15 U.S.C §1692a(5).

14. Plaintiff is a “consumer” as defined by the FDCPA. *See* 15 U.S.C §1692a(3).

15. On a date better known by RETRIEVAL-MASTER, it began attempting collect the Consumer Debt from Plaintiff.

16. On or about February 14, 2017, RETRIEVAL-MASTER sent a collection letter to Plaintiff (the “Collection Letter”) in an attempt to collect the Consumer Debt. A copy of the Collection Letter is attached hereto as Exhibit “A.”

17. RETRIEVAL-MASTER identifies itself as a “debt collector” on the reverse side of the Collection Letter. *See* Collection Letter.

18. Defendant is a “debt collector” as defined by the FDCPA *See* 15 U.S.C §1692a(6).

19. RETRIEVAL-MASTER directed Plaintiff to use the website “pay.amcaonline.com” (the “Online Payment Portal”) to make online payments. *Id.*

20. On or about March 3, 2017, Plaintiff made a \$20 payment towards the Consumer Debt using the Online Payment Portal and was assessed a so-called “Convenience Fee” of \$4.95 for the privilege of making a payment using a credit card or debit card.

21. RETRIEVAL-MASTER charges a \$4.95 “Convenience Fee” to all credit card and debit card payments made through the Online Payment Portal.

22. The Convenience Fee is explicitly prohibited by, including but not limited to, §1692f(1) of FDCPA.

23. To lawfully collect the Convenience Fee from credit card payments made by Floridians, RETRIEVAL-MASTER must have either: (1) *express contractual right* to assess such

fee; or (2) the *express statutory right* to collect such fee. *See* 15 U.S.C §1692f(1) (prohibiting “[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”).

24. Plaintiff maintains that RETRIEVAL-MASTER’S assessment of the Convenience Fee as being a direct violation of the FDCPA, as the Convenience Fee *was not*, and *is not*, expressly permitted by law, nor was/is the Convenience Fee expressly permitted by the contractual agreement that serves as the basis for the Consumer Debt.

25. Upon information and belief, Plaintiffs contend that RETRIEVAL-MASTER has illegally collected millions of dollars across the State of Florida, as RETRIEVAL-MASTER unlawfully charged Floridians the Convenience Fee for credit card payments made using the Online Payment Portal.

26. Any potential *bona fide* error defense which relies upon RETRIEVAL-MASTER’S mistaken interpretation of the legal duties imposed upon them by the FDCPA would fail as a matter of law. Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A., 130 S.Ct. 1605, 176 L. Ed. 2d 519 (2010).

CLASS ALLEGATION

27. This action is brought on behalf of a class defined as follows:

(i) all persons within the state of Florida addresses (ii) who were directly or indirectly subject to any debt collection activity (iii) by RETRIEVAL-MASTER, or by any party on behalf of RETRIEVAL-MASTER, (iv) between April 3, 2016 and April 2, 2017 (v) in an attempt to collect a debt incurred for personal, family, or household purposes (vi) originally owed to a credit grantor with a business presence in Florida (vii) that were directed to use its online payment services, i.e., the Online Payment Portal (viii) and were assessed a fee (xi) for having chosen to pay by credit card or debit card.

28. Plaintiff alleges on information and belief that the class is so numerous that joinder of all members of the class is impractical.

29. There are questions of law or fact common to the class, which common issues predominate over any issues involving only individual class members. The principal factual issue common to each class member is whether the Convenience Fee assessed by Defendant was a fee, charge, or expense incidental to the principal obligation. The principal legal issue common to each class member is whether the assessment of the Convenience Fee violates § 1692f(1) of the FDCPA.

30. Plaintiff's claim is typical of those of the class members. All claims are based on the same facts and legal theories

31. Plaintiff will fairly and adequately protect the interests of the class. She has retained counsel experienced in handling actions involving consumer protection, and in particular, FDCPA violations. Neither Plaintiff nor her counsel have any interest that might cause Plaintiff and/or her counsel to not vigorously pursue this action.

32. Certification of the Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:

- (a) The questions of law or fact common to the members of the class predominate over any questions affecting an individual member; and
- (b) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

33. Certification of a class under Rule 23(b)(2) of the Federal rules of Civil Procedure is also appropriate because Defendant has acted on grounds generally applicable to the class, thereby making appropriate relief with respect to the class as a whole. Injunctive relief is appropriate and necessary to cause the illegal surcharges to stop.

COUNT I.
VIOLATION OF THE FDCPA

34. Plaintiff incorporates by reference paragraphs 12-33 of this Class Action Complaint as though fully stated herein.

35. Defendant violated § 1692f(1) of the FDCPA by attempting to collect a fee, to wit, the Convenience Fee, whereby such fee was not expressly authorized by the agreement creating the debt and not expressly permitted by law. *See Townsend v. Quantum3 Group, LLC*, 535 B.R. 415, 426 (M.D. Fla. 2015) (“[l]ooking to the plain language of 1692f(1), the court interprets the section to permit the collection of a fee in addition to the principal obligation if such fee is expressly authorized by the agreement creating the debt or is otherwise permitted by state law.” (quoting *West v. Costen*, 558 F.Supp. 564, 582 (W.D.Va.1983))).

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in both her favor, as well as in favor of this class, against Defendant RETRIEVAL-MASTER, for:

- (a) An order certifying this case to proceed as a class action;
- (b) Statutory damages as provided under 15 U.S.C. §1692k;
- (c) Actual damages as provided under 15 U.S.C. §1692k;
- (d) Costs and reasonable attorneys’ fees as provided by 15 U.S.C. §1692k;
- (e) An injunction precluding Defendant from collecting or attempting to collect illegal fees and
- (f) Such further relief as this Court may deem appropriate.

JURY DEMAND

36. Plaintiff respectfully demands jury trial on all issues so triable.

DATED: April 2, 2017

Respectfully Submitted,

/s/ Jibrael S. Hindi

JIBRAEL S. HINDI, ESQ.

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AND

/s/ Thomas J. Patti

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Fort Lauderdale, Florida 33301

Phone: 954-543-1325

Fax: 954-507-9975

COUNSEL FOR PLAINTIFF

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS ANITA JAIRAM, on behalf of herself and all others similarly situated

DEFENDANTS RETRIEVAL-MASTERS CREDITORS BUREAU, INC., d/b/a AMERICAN

(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) The Law Office of Jibrael S. Hindi, PLLC, 610 SE 6th St., Suite 1744 Fort Lauderdale FL, 33301. (954)907-1136

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF 1 DEF 1 Incorporated or Principal Place of Business In This State PTF 4 DEF 4 Citizen of Another State PTF 2 DEF 2 Incorporated and Principal Place of Business In Another State PTF 5 DEF 5 Citizen or Subject of a Foreign Country PTF 3 DEF 3 Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal claims like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692, et seq. LENGTH OF TRIAL via 2-3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE 04/2/2017

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of the attorney.

FOR OFFICE USE ONLY RECEIPT #

AMOUNT IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ANITA JAIRAM, on behalf of herself and all others
similarly situated

Plaintiff(s)

v.

RETRIEVAL-MASTERS CREDITORS
BUREAU, INC., d/b/a AMERICAN
MEDICAL COLLECTION AGENCY

Defendant(s)

Civil Action No. 0:17-cv-60634

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) RETRIEVAL-MASTERS CREDITORS BUREAU, INC., d/b/a AMERICAN MEDICAL
COLLECTION AGENCY
R/A:C T CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: The Law Offices of Jibrael S. Hindi, PLLC. 110 SE 6th St., Suite 1744, Fort
Lauderdale, FL 33301. Phone: (844)542-7235 Email: jibrael@jibraellaw.com Fax:
(855)529-9540

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 0:17-cv-60634

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Retrieval-Masters Creditors Bureau Hit with Debt Collection Lawsuit](#)
