

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Nicole Green,)	
)	
Plaintiff,)	Civil Action File No.:
)	
vs.)	
)	
InDebted USA, Inc.,)	COMPLAINT WITH
)	<u>JURY TRIAL DEMAND</u>
Defendant)	
)	

PRELIMINARY STATEMENT

This action for damages is based upon the Defendant’s overt and intentional, unlawful conduct in the furtherance of its efforts to collect a consumer debt. The Defendant’s conduct is in violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq. and the Georgia Fair Business Practices Act, (GFBPA) O.C.G.A. 10-1-390 et seq.

PARTIES

1. Plaintiff, Nicole Green, is a natural person who resides in Rockdale County, Georgia.

2. Defendant, InDebted USA, Inc., is a corporation registered to do business in Georgia and may be served with process via its registered agent,

Corporation Service Company at 2 Sun Court, Suite 400, Peachtree Corners, Georgia 30092.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over Plaintiff's Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq., claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Defendant because, inter alia, Defendants frequently and routinely conducts business in the State of Georgia, including the conduct complained of herein.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because a substantial part of the events or omissions giving rise to the claims occurred in this district.

6. Venue is proper in the Atlanta Division because the conduct complained of herein occurred in Rockdale County which is in the Atlanta Division.

FACTUAL ALLEGATIONS

7. Plaintiff is a 46-year-old woman with deteriorating health. She is disabled, unable to engage in competitive employment, and is in the process of obtaining disability insurance benefits through the Social Security Administration.

8. The Plaintiff is indebted to Afterpay Limited, d/b/a “Afterpay.” Afterpay provides financing to consumers for internet-based purchases allowing consumers to purchase goods in real time and pay the balance over four equal installments.

9. The Plaintiff utilized an account for the purchase of ordinary consumer goods and is, therefore, a “consumer”, as that term is defined by 15 U.S.C. § 1692a(3).

10. Defendant is a collection agency specializing in the collection of consumer debt.

11. Defendant uses interstate commerce and/or mail in its business in the collection of consumer debts.

12. The Defendant markets itself on its website as “... a different kind of debt collection solution. Our intelligent digital platform focuses on customer experience to deliver increased recoveries ...” www.indebted.co/en-us/business

13. Defendant manages, and collects upon, thousands of consumer debt accounts annually.

14. Defendant is, therefore, a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

15. As a result of her disability and inability to maintain employment, the Plaintiff defaulted on her Afterpay account.

16. The Defendant was engaged to pursue the face value of the debt from the Plaintiff.

17. In keeping with its business model, the Defendant sent an email to Plaintiff of March 16, 2022 seeking payment of the Afterpay debt. A reproduction of this email is set forth here:

From: InDebted <customersupport-us+ga@indebted.co>
Sent: Saturday, February 26, 2022 12:16 PM
To: Nicole Green <[REDACTED].com>
Subject: Your Afterpay account has been outsourced to InDebted USA

Dear Nicole,

Our client, Afterpay, has placed your account(s) with us to assist you in resolving your below noted outstanding balance. We are a collection agency hired by Afterpay to work on their behalf to help resolve your Amount Due.

Please find below a summary of your account(s) and balance:

- Customer Ref: 10025483086
- Company: Afterpay
- **Outstanding Balance: USD 116.00**
- Original Balance: USD 100.00
- Interest: USD 0.00
- Late Fees: USD 16.00
- Order Numbers:
 - 100239102010
 - 100231380945
 - 100231865609

- 100239299282

Please reply to this email to contact us to make payment arrangements or you may also contact us at the below noted telephone number.

Kind Regards,
Russell Cummings

InDebted USA Inc.

P.O. Box 1210 O'Fallon, MO 63366

customersupport-us+ga@indebted.co

Toll-Free Telephone Number: +1 888 306 3160

www.indebted.co

[FAQ](#)

Click [here](#) to opt out of further emails for this account

This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Please read below for important disclosures.

Unless you notify us within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume this debt is valid. If you notify us in writing within 30 days from receiving this notice that you dispute all or any portion of this debt, we will obtain verification of the debt or obtain a copy of a judgment and send you a copy of such verification or judgment. You may also request in writing within 30 days of receiving this notice that we provide you with the name and address of the original creditor, if different from the original creditor.

You can view your Privacy Rights and State Disclosures by visiting these URLs: <https://www.indebted.co/en-us/policies/privacy-policy>, <https://www.indebted.co/en-us/policies/state-disclosures>.

Should you have any questions or would like further information regarding your outstanding balance please email customersupport-us@indebted.co or call us at +1 888 306 3160.

Our operating hours are Monday – Friday: 9 am ET to 6 pm ET.

18. On November 30, 2021, the Consumer Financial Protection Bureau (CFPB) published amendments to 12 C.F.R. Part § 1006 (hereinafter referred to as Regulation F).

19. Regulation F was issued by the Bureau of Consumer Financial Protection pursuant to sections 814(d) and 817 of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692b, 1692o; Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank act); 12 U.S.C. § 5481 et seq.; and paragraph (b)(1) of § 104 of the Electronic Signatures in Global and National Commerce Act (E-sign Act), 15 U.S.C. § 7004.

20. The Fair Debt Collection Practices Act and, specifically, regulation F apply to the Defendant at all times relevant hereto.

21. As of the date of enactment for Regulation F, where a debt collector communicates with a consumer electronically in connection with a collection of a debt using a specific email address, it must include in such communication “*a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt-out of further electronic communications by the debt collector to that email address.*” See, Regulation F, 12 C.F.R. § 1006.6(e); (emphasis added).

22. The Defendant’s email of March 16th does not contain “a clear and conspicuous statement” describing a reasonable and simple method by which the Plaintiff could opt-out of future email communications.

23. As a result of the Defendant failing to comply with the Act and Regulations, the Plaintiff was, and continues to be, hindered in her ability to cease email communications from the Defendant.

INJURIES-IN-FACT

19. Defendants acts and omissions caused particularized harm to the Plaintiff in that she was denied the simple method required by the Act to allow her to opt-out of future email communications.

DAMAGES

20. As a result of the Defendant's actions and/or omissions, Plaintiff has suffered actual damages, including but not limited to the following:

- a.) Being subjected to unfair debt collection practices;
- b.) The Defendant's failure to abide by the Act and regulations hindered and obscured the Plaintiff's ability to opt out of electronic communications as is her statutorily granted right. This resulted in Plaintiff receiving additional unwanted emails from the Defendant.
- c.) Uncompensated time expended away from activities of daily living, to confer with counsel regarding the Defendant's collection efforts;
- d.) Disturbance of the Plaintiff's peace and her right to be free of unwanted email communications; and

e.) Anxiety and worry caused by concern that Defendant was going to continue emailing unwanted collection communications.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 et. seq.

Violations of Regulation F, 12 C.F.R. § 1006.6(e)

21. The emails described here in represent violations of Regulation F, 12 C.F.R. § 1006.6(e).

COUNT II

VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT O.C.G.A. § 10-1-390, et seq.

22. Plaintiff incorporates by reference paragraphs 1 through 21 as though fully stated herein.

23. O.C.G.A. § 10-1-390 et seq is commonly known as the "Fair Business Practices Act of 1975" (the "GFBPA").

24. The purpose of the GFBPA, is to protect consumers from unfair and/or deceptive practices in the conduct of any trade or commerce in part or wholly in the state. O.C.G.A. § 10-1-391.

25. O.C.G.A. § 10-1-391 directs that the GFPBA is to be interpreted and applied liberally and in harmony with the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which implements the FDCPA.

26. O.C.G.A. § 10-1-393(a) of the GFBPA broadly prohibits unfair and/or deceptive business practices.

27. Defendant intentionally engaged in unfair and deceptive business practices, as set forth herein, in an effort to collect a consumer debt.

28. Defendant's conduct has implications for the consuming public in general.

29. Defendant's conduct negatively impacts the consumer marketplace.

30. Upon information and belief, Defendant does not maintain a place of business in Georgia and has no assets in Georgia, thus relieving Plaintiffs of the Notice and Demand requirements of O.C.G.A. § 10-1-399(b).

31. As a result of Defendant's violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover general damages pursuant to O.C.G.A. § 10-1-399(a).

32. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover exemplary damages pursuant to O.C.G.A. § 10-1-399(a).

33. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover treble damages pursuant to O.C.G.A. § 10-1-399(c).

34. Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation pursuant to O.C.G.A. § 10-1-399(d).

24.

TRIAL BY JURY

25. Plaintiff is entitled to and hereby requests a trial by jury.

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

- a.) Plaintiff's actual damages;
- b.) Statutory damages pursuant to 15 U.S.C. § 1692k;
- c.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k
- d.) General, exemplary, and treble damages pursuant to O.C.G.A. § 10-1-399(a) & (c);
- e.) Reasonable attorney's fees and costs pursuant to O.C.G.A. § 10-1-399(d); and
- f.) Such other and further relief as may be just and proper.

Respectfully submitted this 14th day of April, 2022.

BERRY & ASSOCIATES

/s/ Matthew T. Berry

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