



AlaFile E-Notice

63-CV-2008-900105.00

To: JOHN WATTS
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

CONNIE J SHIELDS v. PORTFOLIO RECOVERY ASSOC., LLC
63-CV-2008-900105.00

The following complaint was FILED on 2/26/2008 8:00:09 PM

Notice Date: 2/26/2008 8:00:09 PM

MAGARIA HAMNER BOBO
CIRCUIT COURT CLERK
TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL 35401

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**COVER SHEET
CIRCUIT COURT - CIVIL CASE**

(Not For Domestic Relations Cases)

Case Number:
63-CV-200

Date of Filing:
02/26/2008



ELECTRONICALLY FILED
2/26/2008 8:00 PM
CV-2008-900105.00
CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

GENERAL INFORMATION

**IN THE CIRCUIT OF TUSCALOOSA COUNTY, ALABAMA
CONNIE J SHIELDS v. PORTFOLIO RECOVERY ASSOC., LLC**

First Plaintiff: Business Individual
 Government Other

First Defendant: Business Individual
 Government Other

NATURE OF SUIT:

TORTS: PERSONAL INJURY

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonnes
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: VIOLATION OF FDCPA

OTHER CIVIL FILINGS (cont'd)

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture
Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP-Contempt of Court
- CONT-Contract/Ejectment/Writ of Seizure
- TOCN - Conversion
- EQND- Equity Non-Damages Actions/Declaratory
Judgment/Injunction Election Contest/Quiet Title/Sale For
Division
- CVUD-Eviction Appeal/Unlawful Detainer
- FORJ-Foreign Judgment
- FORF-Fruits of Crime Forfeiture
- MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB-Protection From Abuse
- FELA-Railroad/Seaman (FELA)
- RPRO-Real Property
- WTEG-Will/Trust/Estate/Guardianship/Conservatorship
- COMP-Workers' Compensation
- CVXX-Miscellaneous Circuit Civil Case

TORTS: PERSONAL INJURY

- TOPE - Personal Property
- TORE - Real Property

OTHER CIVIL FILINGS

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Services

ORIGIN: F INITIAL FILING

A APPEAL FROM
DISTRICT COURT

O OTHER

R REMANDED

T TRANSFERRED FROM
OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED? Yes No

RELIEF REQUESTED: MONETARY AWARD REQUESTED NO MONETARY AWARD REQUESTED

ATTORNEY CODE: WAT056

2/26/2008 7:57:08 PM

/s JOHN WATTS

MEDIATION REQUESTED: Yes No Undecided



IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

CONNIE J. SHIELDS)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	
PORTFOLIO RECOVERY)	
ASSOCIATES LLC,)	
)	
Defendant.)	

COMPLAINT

COMES NOW the Plaintiff, by and through counsel, in the above styled cause, and for his Complaint against the Defendant, Portfolio Recovery Associates, LLC, states as follows:

Jurisdiction & Venue

1. This is an action brought by a consumer for violations of the Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq. [hereinafter “FDCPA”]).
2. Venue is proper in this Court as the events took place in this county, Plaintiff lives in this county and Portfolio is subject to personal jurisdiction in this county.

Parties

3. The Plaintiff, Connie J. Shields [“Plaintiff” or “Shields”], is a natural person who resides within this county.
4. Defendant PORTFOLIO RECOVERY ASSOCIATES, LLC¹ [“Defendant” or “Portfolio”] is a foreign company that engages in the business of collecting on

¹ Portfolio Recovery Associates claims on its website that it is committed to the goal of "... giving debt collection a good name." <http://www.portfoliorecovery.com/>

consumer debts (i.e. a debt collector under the FDCPA) and it does business in this county. Its principle place of business is outside the State of Alabama.

Factual Allegations

5. In May 2007 Plaintiff sent a letter, via certified mail, to Defendant disputing a debt which appeared on Plaintiff's credit report.
6. In May 2007 Defendant received this dispute letter.
7. Plaintiff does not owe Defendant any money for this account.
8. Defendant has updated Plaintiff's credit report but has intentionally, willfully, maliciously, recklessly, and/or negligently refused to mark the account as being "disputed" as required by the FDCPA.
9. The conduct of Portfolio has proximately caused Plaintiff past and future monetary loss, past and future damage to Plaintiff's credit and credit worthiness, past and future mental distress and emotional anguish, and other damages that will be presented to the trier of fact.
10. It is a practice of Portfolio to maliciously, willfully, recklessly, wantonly and/or negligently ignore and refuse to follow the requirements of the FDCPA and state law.
11. All actions taken by employees, agents, servants, or representatives of any type for Portfolio were taken in the line and scope of such individuals' (or entities') employment, agency or representation.
12. All actions taken by Portfolio were done with malice, were done willfully, and were done with either the desire to harm Plaintiff and/or with the knowledge that their actions would very likely harm Plaintiff and/or that their actions were taken

in violation of the FDCPA and state law and/or that they knew or should have known that their actions were in reckless disregard of the FDCPA and state law.

13. Portfolio has engaged in a pattern and practice of wrongful and unlawful behavior with respect to collection activities and the handling of the account as set forth in this Complaint and as such Portfolio is subject to punitive damages and statutory damages and all other appropriate measures to punish and deter similar future conduct by this Defendant and similar companies.

FIRST CLAIM FOR RELIEF
Violations of the Fair Debt Collection Practices Act

14. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
15. Portfolio, which is a debt collector under the FDCPA, violated the FDCPA in numerous ways, including, but not limited to the following:
 - a. Refusing to mark the account as being “disputed” when it has been disputed; and
 - b. Taking other improper collection actions against Plaintiff.
16. Plaintiff has been damaged as a direct result of these violations of the FDCPA as set forth in this Complaint.

SECOND CLAIM FOR RELIEF
Defamation

17. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.

18. Defendant published false information about Plaintiff by reporting to one or more of the Consumer Reporting Agencies (CRAs) the Defendant's account without showing it as being "disputed".
19. Each time the credit reports of Plaintiff were accessed, a new publication occurred, which was the result intended by the Defendant.
20. Plaintiff alleges that the publications and defamations were done maliciously, without privilege, and with a willful intent to injure Plaintiff.
21. Plaintiff has been damaged as a proximate result of Defendant's wrongful conduct as set forth in this Complaint.

THIRD CLAIM FOR RELIEF
Negligent, Reckless, and Wanton Conduct

22. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
23. Defendant assumed a duty, through the subscriber agreement with the CRAs and other actions, to accurately report the account of Defendant's account of Plaintiff.
24. Defendant has agreed to follow and understands it must follow the requirements of the FCRA including:

- 15 U.S.C. § 1681(a)(1)(a) which states:

"A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate."

- 15 U.S.C. § 1681(a)(1)(B) which states:

"A person shall not furnish information relating to a consumer to any consumer reporting agency if –

- (i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.”

- 15 U.S.C. § 1681(a)(2) which states:

“ A person who –

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.”

[Emphasis added].

25. Defendant has a duty under Alabama law to act reasonably under the circumstances.

26. Defendant has violated this duty under Alabama law by failing to act reasonably under the circumstances which include, but are not limited² to, the following:

- Defendant previously reported a balance owed by Plaintiff;
- Defendant routinely updates credit reports;
- Defendant received notice of the Plaintiff’s dispute of the account;
- Defendant knows that failing to note the account as disputed will harm the Plaintiff, Plaintiff’s credit worthiness, and/or Plaintiff’s credit score;
- Defendant knows and has agreed it must follow the FCRA which requires inaccurate information to be updated and corrected;
- Defendant has chosen to not properly update the account; and

² Until discovery is completed, Plaintiff cannot know all the circumstances for the Defendant.

- Defendant knows its actions will harm the Plaintiff, Plaintiff's credit worthiness, and/or Plaintiff's credit score.
27. Defendant violated all of the duties the Defendant had and such violations were made recklessly, wantonly, and negligently as Defendant refused to comply with all of the duties Defendant had.
 28. It was foreseeable, and the Defendant did in fact foresee it, that refusing to properly update would cause the exact type of harm suffered by the Plaintiff.
 29. Defendant acted with negligence, wantonness, and/or recklessness conduct in its dealings with and about Plaintiff as set forth in this Complaint. This includes the initial reporting of Defendant's account; the refusal to properly update the account; and all other aspects as set forth in this Complaint.
 30. Plaintiff has been damaged as a proximate result Defendant's wrongful conduct as set forth in this Complaint.

FOURTH CLAIM FOR RELIEF
Malicious, Intentional³ and Willful Conduct

31. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
32. Defendant assumed a duty, through the subscriber agreement with the CRAs and other actions, to accurately report the account of Plaintiff.

³ Even though this is in a different "Claim For Relief", a recent U.S. Supreme Court opinion dealing with the FCRA has held that there is no distinction between wanton (reckless) conduct and intentional (willful) conduct. *See Safeco Ins. Co. v. Burr*, 127 S.Ct. 2201, 2207-10 (2007)(citing *Prosser's Law of Torts* "Although efforts have been made to distinguish the terms 'willful,' 'wanton,' and 'reckless,' such distinctions have consistently been ignored, and the three terms have been treated as meaning the same thing, or at least as coming out at the same legal exit").

33. Defendant has agreed to follow and understands it must follow the requirements of the FCRA including:

- 15 U.S.C. § 1681(a)(1)(a) which states:

“A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.”

- 15 U.S.C. § 1681(a)(1)(B) which states:

“A person shall not furnish information relating to a consumer to any consumer reporting agency if –

- (iii) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and
- (iv) the information is, in fact, inaccurate.”

- 15 U.S.C. § 1681(a)(2) which states:

“ A person who –

- (C) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer; and
- (D) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.”

[Emphasis added].

34. Defendant has a duty under Alabama law to act reasonably under the circumstances.

35. Defendant has violated this duty under Alabama law by failing to act reasonably under the circumstances which include, but are not limited⁴ to, the following:

⁴ Until discovery is completed, Plaintiff cannot know all the circumstances for the Defendant.

- Defendant previously reported a balance owed by Plaintiff;
 - Defendant routinely updates credit reports;
 - Defendant received notice of the Plaintiff's dispute of the account;
 - Defendant knows that failing to note the account as disputed will harm the Plaintiff, Plaintiff's credit worthiness, and/or Plaintiff's credit score;
 - Defendant knows and has agreed it must follow the FCRA which requires inaccurate information to be updated and corrected;
 - Defendant has chosen to not properly update the account; and
 - Defendant knows its actions will harm the Plaintiff, Plaintiff's credit worthiness, and/or Plaintiff's credit score.
36. Defendant violated all of the duties the Defendant had and such violations were made intentionally, willfully, and maliciously as Defendant refused to comply with all of the duties Defendant had.
37. Defendant has acted in utter disregard for the rights of the Plaintiff and has decided to take (or fail to take) action which Defendant knows or is substantially certain will result in harm to Plaintiff. The Defendant has acted wrongfully without just cause or excuse as Defendant has and had an intent to harm the Plaintiff and/or acted with an evil intent.
38. It was foreseeable, and the Defendant did in fact foresee it, that refusing to properly update would cause the exact type of harm suffered by the Plaintiff.
39. Defendant acted with malice and/or intentional (willful) conduct in its dealings with and about Plaintiff as set forth in this Complaint. This includes the initial

reporting of Defendant's account; the intentional refusal to properly update the account; and all other aspects as set forth in this Complaint.

40. Plaintiff has been damaged as a proximate result of Defendant's wrongful conduct as set forth in this Complaint.

FIFTH CLAIM FOR RELIEF
Invasion of Privacy

41. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
42. Defendant recklessly, intentionally, and/or willfully invaded the privacy of Plaintiff as set forth in Alabama law, including publishing false information about Plaintiff's personal financial obligations and refusing to properly update the credit reports as described in this Complaint.
43. Plaintiff has been damaged as a proximate result of each Defendant's wrongful conduct as set forth in this Complaint.

SIXTH CLAIM FOR RELIEF
Misrepresentation and/or Suppression

44. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
45. Defendant intentionally, maliciously, recklessly and/or negligently has committed misrepresentations of material facts in that the Defendant has falsely represented that Plaintiff owes money to the Defendant and has suppressed the truth that the account is disputed.
46. Defendant has intended that the CRAs and all who review the credit reports of Plaintiff will rely upon the misrepresentations and suppressions of material facts

related to the balance owed and the lack of indication that the account was and is disputed.

47. Defendant has intended that the justifiable and reasonable reliance by others would adversely affect the Plaintiff and that has been the result.
48. Such negligence, malice, wantonness, recklessness, willfulness, and/or intentional conduct related to the misrepresentations and suppressions of material facts has proximately caused the damages set forth in this complaint.

RELIEF SOUGHT

49. An award of statutory, actual, compensatory and punitive damages, and costs of the action including expenses, together with reasonable attorney's fees.
50. Plaintiff also requests all further relief to which Plaintiff is entitled under Federal or State law, whether of a legal or equitable nature.

Respectfully Submitted,

/s/ John G. Watts

John G. Watts ASB-5819-T82J
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Serve Defendant via certified mail at the following address:

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