

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

Alayna Smith, individually and on )  
behalf of all others similarly situated, )

Plaintiff, )

Civil Action File No. )

v. )

Total Card, Inc., a South Dakota )  
corporation, )

Complaint – Class Action )

Defendant. )

**JURY TRIAL DEMANDED** )

**COMPLAINT – CLASS ACTION**

Plaintiff, Alayna Smith, individually and on behalf of all others similarly situated, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), for a finding that Defendant's form debt collection letter violated the FDCPA, and to recover damages for those violations and alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.

2. Venue is proper in this District because: a) the acts and transactions occurred here; b) Plaintiff resides here; and, c) Defendant Total Card transacts business here.

## **PARTIES**

3. Plaintiff, Alayna Smith ("Smith"), is a citizen of the State of Georgia, from whom Defendant attempted to collect a defaulted consumer debt, which she allegedly owed for a Citibank credit card account.

4. Defendant, Total Card, Inc. ("Total Card"), is a South Dakota corporation that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, defaulted consumer debts. Defendant Total Card operates a nationwide debt collection business and attempts to collect defaulted debts from consumers in virtually every state. In fact, Defendant Total Card was acting as a debt collector as to the defaulted consumer debt it attempted to collect from Plaintiff.

## **FACTUAL ALLEGATIONS**

5. Ms. Smith fell behind on paying her bills, including a debt she allegedly owed for a Citibank credit card account. On October 6, 2018, Defendant Total Card sent Ms. Smith an initial form collection letter demanding payment of this debt. This collection letter repeatedly asked her to resolve/satisfy the debt, and offered various settlement plans. The letter then stated:

\* \* \*

The law limits how long you can be sued on a debt. Because of the age of your debt, UNIFUND CCR, LLC cannot sue you for it. If you do not pay the debt, UNIFUND CCR, LLC may report or continue to

report it to the credit reporting agencies as unpaid. Total Card, Inc. cannot sue you on this debt, and Total Card, Inc. will not credit report this debt.

\* \* \*

A copy of this letter is attached as Exhibit A.

6. Defendant's letter, however, was false – the debt at issue was not time-barred. In fact, Unifund CCR thereafter sued Ms. Smith to collect the debt at issue.

7. Violations of the FDCPA which would lead a consumer to alter his or her course of action as to whether to pay a debt, or which would be a factor in the consumer's decision making process, are material. Telling Ms. Smith that the debt was time-barred and that she could not be sued on it, when, in fact, it was not time-barred and she could be sued to collect the debt, was a material violation of the FDCPA.

8. Defendant's collection actions complained of herein occurred within one year of the date of this Complaint.

9. Defendant's collection communications are to be interpreted under the "least sophisticated consumer" standard, see, see, Jeter v. Credit Bureau, 760 F.2d 1168, 1176 (11th Cir. 1985); LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1193-1194 (11th Cir. 2010).

**COUNT I**  
**Violation Of § 1692e Of The FDCPA –**  
**False, Deceptive Or Misleading Collection Actions**

10. Plaintiff adopts and realleges ¶¶ 1-9.

11. Section 1692e of the FDCPA prohibits a debt collector from using any false and/or any deceptive or misleading representation or means in connection with the collection of a debt, including, but not limited to, the false representation of the character, amount or legal status of any debt, *see* 15 U.S.C. § 1692e(2)(A).

12. Defendant's letter was false, deceptive and misleading because Defendant stated that, because of the age of the debt, Ms. Smith could not be sued to collect the debt, when, in fact, the debt was not time-barred and she could, and in fact was, sued to collection the debt. Defendant's false statement as to the character and legal status of the debt violated § 1692e of the FDCPA.

13. Defendant's violation of § 1692e of the FDCPA renders it liable for actual and statutory damages, and attorneys' fees and costs, *see*, 15 U.S.C. § 1692k.

**COUNT II**  
**Violation Of § 1692f Of The FDCPA --**  
**Unfair Or Unconscionable Collection Actions**

14. Plaintiff adopts and realleges ¶¶ 1-9.

15. Section 1692f of the FDCPA prohibits a debt collector from using any unfair or unconscionable means to collect or attempt to collect a debt, see, 15 U.S.C. § 1692f.

16. Defendant's letter, falsely stating the debt was time-barred, when it was not, and that Ms. Smith could not be sued to collect the debt, when, in fact, she could be sued to collect the debt, used unfair and unconscionable means to collect the debt, in violation of § 1692f of the FDCPA.

17. Defendant's violation of § 1692f of the FDCPA renders it liable for actual and statutory damages, and attorneys' fees and costs, see, 15 U.S.C. § 1692k.

### **CLASS ALLEGATIONS**

18. Plaintiff, Alayna Smith, brings this action individually and as a class action on behalf of all persons similarly situated in the State of Georgia from whom Defendant attempted to collect a defaulted consumer debt allegedly owed to Unifund CCR, via the same form collection letter (Exhibit A), that Defendant sent to Plaintiff, from one year before the date of this Complaint to the present. This action seeks a finding that Defendant's form letter violates the FDCPA and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

19. Defendant regularly engages in debt collection, using the same form collection letter it sent Plaintiff Smith, in its attempts to collect defaulted consumer debts from other consumers.

20. The Class consists of more than 50 persons from whom Defendant attempted to collect defaulted consumer debts by sending other consumers the same form collection letter it sent Plaintiff Smith.

21. Plaintiff Smith's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues, namely whether the debts at issue were time-barred, whether the letter violates the FDCPA and the amount of damages due under the FDCPA. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

22. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their

interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

23. Plaintiff Smith will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff Smith has retained counsel experienced in class action litigation, including class actions brought under the FDCPA.

### **PRAYER FOR RELIEF**

Plaintiff, Alayna Smith, individually and on behalf of all others similarly situated, prays that this Court:

1. Certify this action as a class action;
2. Appoint Plaintiff Smith as Class Representative of the Class, and her attorneys as Class Counsel;
3. Find that Defendant's form collection letter violates the FDCPA;

4. Enter judgment in favor of Plaintiff Smith and the Class, and against Defendant, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,

5. Grant such further relief as deemed just.

### **JURY DEMAND**

Plaintiff, Alayna Smith, individually and on behalf of all others similarly situated, demands trial by jury.

Dated: September 27, 2019

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local R. 7.1(D), this is to certify that the foregoing complies with the font and point setting approved by the Court in Local R. 5.1(B). The foregoing COMPLAINT was prepared on a computer, using Times New Roman 14-point font.

Dated: September 27, 2019

**THE KOVAL FIRM, LLC**

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