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U.S. DISTRICT COURT
2005 MAY 27 A 9 19

The Law Firm of
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Attorneys for Plaintiff

ROBERT A. JONES, on behalf of
himself and all others similarly situated,

Plaintiff

v.

PRESSLER & PRESSLER, LLP

Defendant

: UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

: CIVIL ACTION NO. 05-2763 (068)

: CLASS ACTION COMPLAINT

: JURY TRIAL DEMANDED

INTRODUCTION

1. This class action for statutory monetary damages, injunctive and declaratory relief is brought pursuant to Fed.R.Civ.P. 23, to redress violations by defendant of rights secured to plaintiff and the class by the Fair Debt Collection Practices Act (hereinafter "FDCPA"), 15 U.S.C. §1692, et seq. and N.J.S.A. 2A:38A-3 and 5.

2. Plaintiff and the class challenge defendant's unconscionable and patently unlawful practice of purchasing and/or using unlawfully obtained bank account numbers, bank balances and other private banking information, in its attempt to collect consumer debts.

3. This practice has resulted in the derogation of the class's statutory rights under, inter alia, 15 U.S.C. §1692f, 15 U.S.C. §1692e(10) and N.J.S.A. 2A:38A-3.

JURISDICTION AND VENUE

4. Federal jurisdiction exists under 28 U.S.C. §1337 in that this action arises under 15 U.S.C. §1692. Jurisdiction is also conferred by 15 U.S.C. §1692 k(d).

5. Venue is proper in this District in that plaintiff resides within the District, defendant does business within the District and a number of the violations of the FDCPA by defendant, including those directed at plaintiff, occurred within the District of New Jersey.

THE PARTIES

6. Plaintiff Robert A. Jones is an individual residing in Camden County, New Jersey.

7. Like all class members, plaintiff was the victim of defendant's unlawful debt collection practice as described herein.

8. Specifically, upon information and belief, defendant used plaintiff's bank account number, account balance and other confidential banking information, in an effort to collect a debt, with knowledge that this banking information had been unlawfully obtained, or in willful disregard of facts that would have informed a reasonable person that it had been unlawfully obtained.

9. At all relevant times, plaintiff and the class were "consumers" as defined by §1692 a(3) of the FDCPA.

10. Defendant Pressler & Pressler LLP (hereafter "Pressler") is a limited liability partnership organized under the laws of the State of New Jersey, with its principal place of business located at 12 Wing Drive, Cedar Knolls, New Jersey, 07927.

11. At all relevant times, defendant Pressler was acting as a "debt collector" within the meaning of 15 U.S.C. §1692a(6).

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of a class defined as:

All persons in the United States whose bank account number and/or bank account balance was obtained by Orazio Lembo, Jr. (either individually or doing business as "DRL & Associates") and thereafter acquired and used by defendant in the collection of alleged consumer debts.

13. 15 U.S.C. §1692k(a)(2)(B) specifically recognizes the use of class actions to remedy violations of the FDCPA.

14. The class of consumers for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

15. Plaintiff is unable to state the exact number of class members without discovery of defendant's books and records.

16. Upon information and belief, however, it is alleged that the number of class members will exceed 1,000.

17. There are numerous common questions of law and fact affecting the rights of all class members arising from the debt collection practice described herein, including the following:

(a) whether the class may obtain injunctive relief under N.J.S.A. 2A:38A-5: (i) prohibiting defendant from using any bank account numbers, account balances and other confidential banking information that it obtained, directly or indirectly, from Orazio Lembo, Jr. and/or DRL & Associates; (ii) requiring it to destroy all such records and to advise each class member of the identity of all persons or entities with whom it has shared this information;

(b) whether defendant's use of unlawfully obtained bank account numbers and account balances for debt collection purposes violated 15 U.S.C. §1692f;

(c) whether defendant's use of unlawfully obtained bank account numbers and account balances for debt collection purposes violated 15 U.S.C. §1692c(10);

(d) whether defendant knew or should have known that the bank account numbers and account balances it obtained from Orazio Lembo, Jr. and/or DRL & Associates had been obtained unlawfully;

(e) whether defendant had adequate and reasonable safeguards in place for complying with its duties under the FDCPA;

(f) whether the class is entitled to a declaratory judgment under 28 U.S.C. §2201, declaring that defendant's practice as alleged herein violates the FDCPA.

18. Each of these enumerated common questions of law and fact is identical for each and every member of the class.

19. Plaintiff is a member of the class which he seeks to represent and his claims arise from the same factual and legal basis as those of the class.

20. All members of the class have been injured by the same actions, in the same manner and are entitled to the same relief.

21. Plaintiff is typical of the class. His claims arise from the same debt collection practice, and will rely on the same legal theories, as the claims of all other class members.

22. Plaintiff will thoroughly and adequately protect the interests of the class, having obtained qualified and competent legal counsel to represent himself and those similarly situated.

23. The prosecution of separate actions by individual class members would create a risk of inconsistent adjudications and would cause needless expenditure of judicial resources.

24. Defendant has acted on grounds generally applicable to the class by refusing to comply with 15 U.S.C. §1692f and e(10).

25. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANT'S UNLAWFUL DEBT COLLECTION PRACTICE

26. Beginning at a time unknown and continuing until his arrest in April of 2005, a self-described "collection agent" named Orazio Lembo, Jr. unlawfully purchased customer banking records of approximately 670,000 customers of Commerce Bank, PNC Bank, Wachovia Bank and Bank of America, including bank account numbers and account balances.

27. According to published information taken from police reports and bulletins, Lembo unlawfully purchased this banking information from bank employees for up to \$10 per account number.

28. Upon information and belief, the information unlawfully sold to Lembo was taken from the banks' computer data bases without authorization of the account holders, any court or other legal authority.

29. Lembo then sold this information to various debt collection agencies and law firms who regularly engage in the collection of consumer debts.

30. Lembo did so under the name "DRL & Associates," which was advertised as a deadbeat-locator service and collection agency, but which was not properly licensed for those activities by the state, according to police.

31. Upon information and belief, defendant Pressler & Pressler obtained bank account numbers, account information and other confidential banking information for use in its debt collection activities directly or indirectly from Lembo/DRL.

32. Under the circumstances in which Lembo/DRL conducted business, any reasonable

person or entity with even a cursory knowledge of collection laws and practices would be aware that the information being sold by Lembo was obtained in a unlawful manner.

33. According to a recently published statement by Hackensack Police Captain Frank Lomie, police investigation indicates that Lembo's "clients" fully understood what they were buying.

34. Pressler & Pressler, as a law firm specializing in debt collection, would have been fully aware of the steps needed to lawfully obtain bank account numbers, account balances and other confidential banking information of alleged debtors and that such steps had not been taken in the case of the information obtained and provided by Lembo/DRL.

35. Despite this, upon information and belief, defendant Pressler & Pressler utilized the bank account numbers and/or account balances of plaintiff and other class members, which had been unlawfully obtained by Lembo/DRL, in defendant's attempts to collect consumer debts.

FACTS AS THEY RELATE TO PLAINTIFF

36. Plaintiff has been notified by Commerce Bank that his private banking information was unlawfully viewed and misused by bank employees.

37. Upon information and belief, that information was sold by bank employees to Lembo/DRL and later provided to Pressler & Pressler.

38. Pressler & Pressler has levied upon and seized plaintiff's bank account.

39. Prior to this action, the location of plaintiff's account, the account number and balance had not been provided by plaintiff to Pressler & Pressler or any other entities which could have lawfully conveyed this information to Pressler & Pressler.

40. To the best of plaintiff's knowledge, defendant did not utilize any lawful method of

obtaining the location of this bank account, such as a subpoena, interrogatories or a deposition in furtherance of litigant's rights.

COUNT I

Declaratory Judgment

28 U.S.C. §2201

41. Plaintiff incorporates all preceding paragraphs of the complaint as if fully set forth herein.

42. Upon information and belief, defendant continues to have possession of confidential banking information, including bank account numbers and account balances, which were unlawfully obtained from various bank employees by Orazio Lembo, Jr. and/or DRL & Associates.

43. A justiciable controversy exists between the class and defendant with respect to the legality of defendant's purchase of this information and its continued right to hold and use such information.

44. A decree by this court with respect to these issues is reasonably calculated to prevent needless additional litigation between the class and defendant.

COUNT II

15 U.S.C. §1692f

45. Plaintiff incorporates all preceding paragraphs of the complaint as if fully set forth herein.

46. By the acts alleged herein, defendant used unfair or unconscionable means to

collect or attempt to collect debts from plaintiff and the class, in violation of 15 U.S.C. §1692f.

COUNT III

15 U.S.C. §1692e

47. Plaintiff incorporates all preceding paragraphs of the complaint as if fully set forth herein.

48. By the acts alleged herein, defendant used deceptive means to collect or attempt to collect a debt from plaintiff and the class or to obtain information concerning alleged debtors such as plaintiff and the class, in violation of 15 U.S.C. §1692e(10).

COUNT IV

N.J.S.A. 2A:38A-3

49. Plaintiff incorporates all preceding paragraphs of the complaint as if fully set forth herein.

50. By the acts alleged herein, plaintiff and the class have been damaged as a result of:

- a. The purposeful or knowing unlawful and unauthorized taking of data from a computer, computer data base or computer network in violation of N.J.S.A. 2A:38A-3(a);
- b. The purposeful or knowing and unauthorized accessing of a computer, computer system, or data base in violation of N.J.S.A. 2A:38A-3(c); and/or
- c. The purposeful or knowing accessing and reckless obtaining of data from a computer, computer system, or data base in violation of N.J.S.A. 2A:38A-3(e).

COUNT V

N.J.S.A. 2A:38A-5

51. Plaintiff incorporates all preceding paragraphs of the complaint as if fully set forth herein.

52. By the acts alleged herein, plaintiff and the class are entitled to injunctive relief under N.J.S.A. 2A:38A-5, in the form of an order:

- a. prohibiting defendant from using any confidential banking information, including account numbers, balances and location, obtained by Lembo/DRL;
- b. directing defendant to destroy all such information; and
- c. directing defendant to notify each class member of any persons or entities with whom this information has been shared.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests of this court the following relief:

- a. Certification of this matter as a class action under Fed.R.Civ.P. 23;
- b. Judgment in favor of plaintiff and against defendant in each count;
- c. Injunctive relief under N.J.S.A. 2A:38A-5 as described herein;
- d. An order awarding statutory damages to plaintiff and the class as provided by §1692k(a)(2)(B);
- e. compensatory and punitive damages and the costs of investigation, as provided by N.J.S.A. 2A:38A-3; and

f. An award to plaintiff of the costs of filing, costs of litigation, interest and reasonable attorney's fees, as provided for in 15 U.S.C. §1692k(a)(3) and N.J.S.A. 2A:38A-3.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

The Law Firm of
PHILIP STEPHEN QUOCO

BY: _____
Philip Stephen Quoco
Joseph A. Osefchen

Date: May 26, 2005