

IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

FILED

2015 OCT 23 P 1:45

MAUREEN G. KELLY  
LAKE CO. CLERK OF COURT

TERRY YORTY. Individually and  
on behalf of a Class of Individuals  
described herein,  
Named Plaintiff,  
-vs-

CASE NO:

15CV001865  
VINCENT A CULOTTA

DELRAY CAPITAL, LLC  
% Incorp Services, Inc.  
9435 Waterstone Blvd., Suite 140  
Cincinnati, OH 45249

and

COOPER FINANCIAL, LLC  
% Incorp Services, Inc.  
9435 Waterstone Blvd., Suite 140  
Cincinnati, OH 45249

and

DELAWARE SOLUTIONS, LLC  
300 Delaware Avenue Suite 210  
Wilmington, DE 19803

and

MARK GRAY  
2373 Clydes Crossing  
Cincinnati, OH 45244

and

KELLY BRACE  
370 Huntington Ave  
Buffalo, NY 14214

and

NATIONAL CREDIT ADJUSTERS  
% CSC Lawyers Incorporating Service  
50 West Broad Street 1800  
Columbus, OH 43215

and

John Does I-X,  
Defendants.

**CLASS ACTION COMPLAINT**

Jury Demand Endorsed Hereon

## **I. INTRODUCTION**

1. This is an action for damages brought against debt collectors for violating the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.

2. Defendants are involved in an ongoing scheme whereby they extort the payment of money from consumers across the country who allegedly have failed to repay payday loans. Defendants, individually and through entities they control, attempt to collect delinquent accounts and other debts through the use of a script whereby Defendants pretend to be a local process server, and insinuate that they work for the local court. The individual posing as a process server informs the consumer that he or she has a court order to come to his/her home and place of employment to serve a summons that will require the consumer to appear in court within a short period of time. The "process server" tells the consumer he must call the "filing party's" attorney for more information, and if the consumer fails to sign the paperwork, the court will take legal action, including pressing criminal charges. When the consumer calls the number provided, it is answered by another of Defendants' employees, who pretends that the office being called is that of a law firm. The "paralegal" who answers the phone at the faux law firm reiterates that the consumer's case is being sent to court immediately.

## **II. JURISDICTION**

3. This Court has jurisdiction under 15 U.S.C. § 1692k(d).

4. Venue in this judicial district is proper because the pertinent events took place here.

## **III. PARTIES**

5. Plaintiff Terry Yorty is a resident of Madison, Lake County, Ohio. Named Plaintiff is a "consumer" and "person" as the terms are defined and used in the FDCPA.

6. The proposed Class consists of all individuals who whom any Defendant has contacted by any means with the intent of collecting a consumer debt within the year preceding the filing of this Complaint, while that individual was residing in Ohio. The

identities of class members can be discovered from Defendants' own records.

7. Defendant Delray Capital, LLC ("Delray"), is an Ohio limited liability company with its principal place of business in Cincinnati and Boca Raton, Florida. Delray purports to specialize in the purchase, resale and liquidation of charged off consumer debt. The Company purchases defaulted payday loans, then uses various shell corporations, including Defendant Delaware Solutions, LLC, to collect those accounts. Delray uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. Delray regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Delray is a "debt collector" as the term is defined and used in the FDCPA. Delray directly and indirectly participated in the unlawful debt collection practices to collect an alleged debt from Named Plaintiff and Class Members as described in this complaint.

8. Defendant Cooper Financial, LLC ("Cooper"), is an Ohio limited liability company with its principal place of business in Cincinnati and Boca Raton. Cooper is in the business of buying, selling, and collecting through third parties charged off or aged payday loans and credit card accounts receivable. Cooper uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. Cooper regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Cooper is a "debt collector" as the term is defined and used in the FDCPA. Cooper controls the activities of Delray and Defendant Delaware Solutions, LLC, and directly and indirectly participated in the unlawful debt collection practices to collect an alleged debt from Named Plaintiff and Class Members as described in this complaint.

9. Cooper collects and processes the payments that defendants extort from consumers in the course of their unlawful debt collection scheme that is described in this Complaint.

10. Defendant Mark Wendell Gray ("Gray") is a resident of Cincinnati, Ohio and Boca Raton, Florida. Gray is an officer and/or director and/or member and/or controlling person of defendant Delray Capital, LLC. Gray is also an officer and/or director and/or member and/or controlling person of defendant Cooper Financial, LLC. Gray uses interstate commerce and the mails in a business the principal purpose of

which is the collection of debts. Gray regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Gray is a “debt collector” as the term is defined and used in the FDCPA. Gray directly and indirectly participated in the unlawful debt collection practices to collect an alleged debt from Named Plaintiff and Class Members as described in this complaint.

11. Defendant Delaware Solutions, LLC (“Delaware Solutions”) is one of several shell corporations created by Defendants Delray, Cooper and Gray to extort money from consumers. Delaware Solutions, LLC was incorporated in New York in 2013 and voluntarily dissolved in August, 2015, prior to its contact with Named Plaintiff, as described below. It purports to have its main office in Delaware.

12. Defendant Kelly Brace (“Brace”) is a resident of Buffalo, New York. Brace is an officer and/or director and/or member and/or controlling person of several of the sham entities created by Defendants to carry out their scheme of extortion, including Defendant Delaware Solutions LLC. Brace uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. Brace regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Brace is a “debt collector” as the term is defined and used in the FDCPA. Brace directly and indirectly participated in the unlawful debt collection practices to collect an alleged debt from Named Plaintiff and Class Members as described in this complaint.

13. Defendant National Credit Adjustors (“NCA”) is a collection agency headquartered in Hutchinson, Kansas. NCA uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts. NCA regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. NCA is a “debt collector” as the term is defined and used in the FDCPA. NCA directly and indirectly participated in the unlawful debt collection practices to collect an alleged debt from Named Plaintiff and Class Members as described in this complaint.

14. Defendants Gray and Brace create and dissolve shell entities such as Delaware Solutions, LLC for the purpose of evading civil and criminal liability for the acts described herein. Delaware Solutions, LLC was dissolved shortly after it defaulted

in two separate lawsuits filed in federal courts in California and Connecticut. The allegations made in those lawsuits were substantially the same as those made here.

15. Defendants John Does I-X are individuals or corporate entities who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Each is a “debt collector” as the term is defined and used in the FDCPA, and each directly and indirectly participated in the unlawful debt collection practices to collect an alleged debt from Named Plaintiff as described in this complaint.

16. Defendants have operated as a common enterprise while engaging in the unlawful acts and practices alleged herein. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, and that have commingled funds. Because these Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants NCA, Kelly Brace, Mark Gray and John Does I-X have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

#### **IV. ALLEGATIONS OF FACT**

17. On or about January, 2014, Named Plaintiff obtained a payday loan from Ace Cash Express. Named Plaintiff used the borrowed money to obtain goods and/or services for personal, family or household purposes. Any resulting obligation to pay money was a “debt” as the term is defined and/or used in the FDCPA.

18. Named Plaintiff failed to repay the debt in full.

19. Ace Cash Express charged off the account and sold it to NCA

20. NCA sold the charged-off account to Defendant Delray.

21. Delray placed the charged-off account for collection with defendant Delaware Solutions, LLC.

22. On or about August 10, 2015, Defendants’ employee and/or agent placed a call to Named Plaintiff’s cellular telephone and left the following message on Named Plaintiff’s voice mail:

Ah yes, good afternoon this message is being left for a Terry Yorty with the last four digits of a Social Security Number of (redacted). Ah my name is Steve Johnson I'm a independent processing server for Crawford County District Court. Ah, the reason I'm calling this morning is I have a court order to come to your home and into your place of employment to serve you a summons for you to appear in court next week and I'm calling as a courtesy because I'm scheduled to be in your area tomorrow afternoon between the hours of three and five pm and I will be escorted on the property by the local authority. Now if you have any questions about what this is regarding or you will not be available and sign for your summons tomorrow you must contact the filing parties attorney immediately. Tell them you were called by a processing server and you need to reschedule. Because if you fail to reschedule and we come to your home or job and you do not sign the summons for any reason, the courts. Named Plaintiff will proceed with further legal action against you. So if you need to discuss this with their attorney; their attorneys' number is 1-844-326-7725. Ah give em your case number US-789496. Now if you do reschedule, sir. they will call and tell us when to send a processing server to meet you. They put you down here for the attorney's office; however well see you tomorrow afternoon. Have a good day sir.

23. On August 11, 2015, Mr. Yorty responded to defendants' message by placing a call to telephone number 844-326-7725.

24. The call was answered by Defendants' employee and/or agent, who identified himself as "Tom Wilson". "Mr. Wilson" answered the phone by saying "Law Offices", and indicated he was a legal assistant. He informed Mr. Yorty that "your case, this is actually going over to to the courts so they can serve you" and that process servers in both Crawford County, Pennsylvania (where Named Plaintiff resided at the time the payday loan was taken out) and Lake County, Ohio (Named Plaintiff's current residence) would be serving him with court papers. "Tom Wilson" also represented to Named Plaintiff that "[t]his is a law firm, this is not a bill collection agency. This is not an attempt to collect a debt."

25. On or about August 12, 2015, Named Plaintiff again placed a call to Defendants at 844-326-7725 in an attempt to gain more information about the debt and the upcoming court date. He initially spoke with an individual who indicated the summons had been "sent out" and Named Plaintiff should have already been served. Defendants' employee then said he would have Named Plaintiff speak with "one of the attorneys or one of the owners". The call was then transferred to another employee

who identified himself as “Steven Wells, Director for Delaware Solutions”. During this conversation, “Mr. Wells”:

- denied that Delaware Solutions was a debt collector;
- claimed that he stopped service of the summons on Named Plaintiff the day before, but had reissued it that day;
- represented that any payment made to him would be “going into an escrow account that I have 35 attorneys that use.”

26. These representations are part of a standard script used by Defendants to extort money from Named Plaintiff and Class Members.

27. The above-described messages and representations left and made by Defendants and their agents and/or employees falsely represented and falsely implied that a lawsuit had been or would be filed against Named Plaintiff. Similarly false representations were made to Class Members according to the script developed by Defendants.

28. The above-described messages and representations left and made by Defendants and their agents and/or employees misrepresented and/or concealed the identity of the caller. Similarly false representations were made to Class Members according to the script developed by Defendants.

29. The above-described messages and representations left and made by defendants and their agents and/or employees misrepresented the authority of the caller. Similarly false representations were made to Class Members according to the script developed by Defendants.

30. The above-described messages and representations left and made by defendants and their agents and/or employees falsely represented and falsely implied that a law firm was involved in the efforts to collect the alleged debt. Similarly false representations were made to Class Members according to the script developed by Defendants.

31. The above-described messages and representations left and made by defendants and their agents and/or employees falsely represented and falsely implied that Named Plaintiff and Class Members were about to be served with a summons and complaint at their home and/or place of employment. Similarly false representations

were made to Class Members according to the script developed by Defendants.

32. The above-described threats and representations made by defendants' employees and agents were false and part of a scripted and unlawful debt collection practice that is ongoing and is currently being perpetrated by defendants to coerce the payment of money from consumers through the use of false threats, intimidation, criminal extortion, and unlawful harassment of the consumers and their relatives and other third parties. Similarly false representations were made to Class Members according to the script developed by Defendants.

33. Defendants and their employees and agents in the described communications failed to meaningfully identify themselves and their companies, and falsely represented to Named Plaintiff and Class Members that they were calling a law firm to discuss their debt.

34. Defendants and their employees and agents in the described communications falsely represented and falsely implied to Named Plaintiff and Class Members that there were legal claims pending against them.

35. Defendants and their employees and agents in the described communications falsely represented and falsely implied to Named Plaintiff and Class Members that a lawsuit had been filed to collect the alleged debt.

36. Defendants and their employees and agents in the described communications falsely represented and falsely implied to Named Plaintiff and Class Members that a lawsuit would be filed to collect the alleged debt.

37. Defendants and their employees and agents in the described communications falsely represented and falsely implied to Named Plaintiff and Class Members that lawyers were involved in the efforts to collect the alleged debt.

38. Defendants and their employees and agents in the described communications falsely represented and falsely implied to Named Plaintiff and Class Members they were scheduled to be served with a summons and complaint.

39. Defendants did not intend to file a lawsuit against Named Plaintiff or Class Members.

40. Defendants did not contact Named Plaintiff or Class Members in writing within the time prescribed by 15 U.S.C. §1692g, and did not inform Named Plaintiffs or



Class Members that they have the right to request validation of the debt.

41. The FDCPA prohibits a debt collector from using or threatening to use criminal means to harm the reputation or property of any person. 15 U.S.C. § 1692d(1).

42. The FDCPA prohibits a debt collector from placing a telephone call without meaningful disclosure of the caller's identity. 15 U.S.C. § 1692d(6).

43. The FDCPA prohibits a debt collector from falsely representing or falsely implying that the debt collector is affiliated with the United States or any State. 15 U.S.C. § 1692e(1).

44. The FDCPA prohibits a debt collector from making any false representation regarding the character, amount, or legal status of any debt. 15 U.S.C. § 1692e(2)(A).

45. The FDCPA prohibits a debt collector from falsely representing or implying that any individual is an attorney or that any communication is from any attorney. 15 U.S.C. § 1692e(3).

46. The FDCPA prohibits a debt collector from threatening to take any action that cannot legally be taken or that is not intended to be taken. 15 U.S.C. § 1692e(5).

47. The FDCPA prohibits a debt collector from using any false representation or deceptive means to collect or attempt to collect any debt. 15 U.S.C. § 1692e(10).

48. The FDCPA requires a debt collector to disclose in an oral communication with the consumer that the communication is from a debt collector and that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. 15 U.S.C. § 1692e(11).

49. The FDCPA prohibits a debt collector from falsely representing or implying that documents are legal process. 15 U.S.C. § 1692e(13).

50. The FDCPA prohibits a debt collector from using any business, company, or organization name other than the true name of the debt collector's business, company, or organization. 15 U.S.C. § 1692e(14).

51. The FDCPA prohibits a debt collector from using unfair or unconscionable means to collect or attempt to collect any debt. 15 U.S.C. § 1692f.

52. The FDCPA requires a debt collector to, within five days after the initial communication with a consumer in connection with the collection of any debt, send the consumer a written notice containing (1) the amount of the debt; (2) the name of the

creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

53. Defendants, by the actions described herein, have violated the FDCPA.

## **V. CLASS ALLEGATIONS**

54. Plaintiff incorporates the foregoing paragraphs by reference as if fully rewritten herein.

55. Named Plaintiff brings this action pursuant to Ohio Rule of Civil Procedure 23(b)(3) on behalf of himself and a class (the "Class") defined as "all individuals whom any Defendant has contacted by any means with the intent of collecting a consumer debt within the year preceding the filing of this Complaint, while that individual was residing in Ohio."

56. Upon information and belief, there are thousands of members of the Class such that joinder of all members is impracticable.

57. Named Plaintiff will fairly and adequately represent and protect the interest of the members of the Class. Named Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Named Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the class. Neither Named Plaintiff nor his counsel have any interest adverse to those of the other members of the class.

58. Absent a class action, most members of the class would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. Class treatment of common questions of law and fact is also superior to multiple individual actions in that it conserves the resources of the Court and the litigants, and promotes

consistency and efficiency of adjudication.

59. Defendants' acts and omissions as described herein forms the factual and legal basis of Defendants' liability to Named Plaintiff and to the other members of the Class.

60. This conduct was the same toward all members of the Class, and resulted in injury to the Named Plaintiff and to all of the other members of the Class.

61. There are many questions of law and fact common to the claims of Named Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions include, but are not limited to the following:

- a) Whether Defendants instructed their employees to falsely identify themselves as process servers affiliated with a local court;
- b) Whether Defendants instructed their employees to falsely identify their offices as a "law office" when answering the phone;
- c) Whether Defendants provided the written notice required by the FDCPA after making initial contacts with class members.

## **VI. CLAIM FOR RELIEF**

### **Count 1**

#### **Fair Debt Collection Practices Act**

62. Plaintiff incorporates the foregoing paragraphs by reference as if fully rewritten herein.

63. Defendants, by the acts and omissions described above and otherwise, have violated the FDCPA.

64. Wherefore, Named Plaintiff seeks judgment, on his behalf and on behalf of the Class defined herein, against defendants for:

- a) Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
  - b) Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
- and
- c) Such further relief as the court deems just and proper.

Dated: October 15, 2015

Respectfully submitted,

  
Barbara Quinn Smith (0055328)

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**JURY DEMAND**

Named Plaintiff hereby demands a trial by the maximum number of jurors permitted by law.

