

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RUTHA SMITH, EXECUTRIX OF THE
ESTATE OF FRANKLIN SMITH, on behalf of
herself and all others similarly situated,

Plaintiff(s),

-against-

HERITAGE FINANCIAL RECOVERY
SERVICES; and NNJCAB, INC.; and JOHN
DOES 1-25

Defendants.

Civil Case No: 2:10-cv-03922 SDW-MCA

CIVIL ACTION

**FIRST AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff, RUTHA SMITH, EXECUTRIX OF THE ESTATE OF FRANKLIN SMITH, on behalf of herself and all others similarly situated (hereinafter "Plaintiff") by and through her undersigned attorney, alleges against the above-named Defendants, Heritage Financial Recovery Services, (hereinafter "HFRS"), NNJCAB, and JOHN DOES 1-25, collectively ("Defendants") and their employees, agents, and successors the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from the Defendant's violation of 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331. This is an action for violations of 15 U.S.C. § 1692 *et seq.*

3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because the acts and transactions that give rise to this action occurred, in substantial part, in this district.

DEFINITIONS

4. As used in reference to the FDCPA, the terms “creditor,” “consumer,” “debt,” and “debt collector” are defined in § 803 of the FDCPA and 15 U.S.C. § 1692a.

PARTIES

5. The FDCPA, 15 U.S.C. § 1692 *et seq.*, which prohibits certain debt collection practices provides for the initiation of court proceedings to enjoin violations of the FDCPA and to secure such equitable relief as may be appropriate in each case.

6. Rutha Smith is a natural person and a resident of the City of Newark, County of Essex, State of New Jersey, and is a “Consumer” as defined by 15 U.S.C. § 1692a(3). Ms. Smith is the Executrix of the Estate of Franklin Smith.

7. Heritage Financial Recovery Services domestic business with its executive offices located at 600 East Crescent Avenue, Suite 304, Upper Saddle River, New Jersey 07458. Defendant is primarily in the business of collecting debt allegedly due to another and is therefore a “Debt Collector” as that term is defined by 15 U.S.C. §1692a(6).

8. NNJCAB domestic business with its executive offices located at 600 East Crescent Avenue, Suite 304, Upper Saddle River, New Jersey 07458. Defendant is primarily in the business of collecting debt allegedly due to another and is therefore a “Debt Collector” as that term is defined by 15 U.S.C. §1692a(6).

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter “FRCP”), on behalf of himself and all New Jersey

consumers and their successors in interest (the "Class"), who have received debt collection letters and/or notices from Defendants which are in violation of the FDCPA, as described in this Complaint.

10. This Action is properly maintained as a class action. The Class consists of:

- All New Jersey consumers who received collection letters and/or notices from the Defendants that contained at least one of the alleged violations arising from the Defendants' violation of 15 U.S.C. § 1692 *et seq.*
- The Class period begins one year to the filing of this Action.

11. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from the Defendants that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons;
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
 - a. Whether the Defendants violated various provisions of the FDCPA including but not limited to: 15 U.S.C. §§1692g *et seq.*
 - b. Whether Plaintiff and the Class have been injured by the Defendants' conduct;

- c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendants' wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
- d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendants' conduct is allowed to proceed without

remedy they will continue to reap and retain the proceeds of their ill-gotten gains.

- Defendants have acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

12. On or about June 24, 2010, Defendants caused to be delivered to Plaintiff a collection letter addressed to Plaintiff. Upon receipt Plaintiff read said letter. The letter demanded payment of a debt allegedly owed by Plaintiff to Northern NJ Anesthesia Associates. A copy of said letter is annexed hereto as **Exhibit A**.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 VIOLATION OF 15 U.S.C. § 1692g(a)(3)

13. Plaintiff repeats the allegations contained in paragraphs 1 through 12 as if the same were set forth at length.

14. Collection letters and/or notices such as those sent by Defendants are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

15. Section 1692g of the FDCPA requires the debt collector to give what is commonly referred to as a thirty-day (30) notice within five (5) days of its communication with the consumer.

16. Section 1692g(a)(3),(4),(5) of the FDCPA requires the debt collector to provide the consumer with the following validation notice:

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 --- 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 --- 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 --- 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.

17. Defendants violated Section 1692g(a),(3)(4),(5) of the FDCPA by including directly below the required validation notice the statement: "If you have filed for bankruptcy please provide us with your Attorney's name and number so that we can close our files and return them to your creditor so that they may do the same."

18. The least sophisticated consumer would be confused and unsure as to her rights with respect to disputing the alleged debt.

19. The least sophisticated consumer would be lead to believe that she just because she may have filed bankruptcy at anytime in the past, she would not be required to dispute the alleged debt in order to prevent the debt collector from assuming it was valid and that the alleged debt would no longer be due because the debt collector and the creditor would close their files.

20. The additional language in the letter overshadows and stands in sharp contrast to the required language in the validation notice.

21. By reason thereof, Plaintiff has sustained damages when Defendants mailed an initial collection letter that contained language that was confusing and overshadowed the required validation notice.

22. By reason thereof, Defendants is liable to Plaintiff for declaratory judgment that Defendants' conduct violated the FDCPA, actual damages, statutory damages, costs and attorneys' fees

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and, Joseph K. Jones, Esq., as Class Counsel;

(b) Issuing a preliminary and/or permanent injunction restraining Defendants, their employees, agents and successors from, *inter alia*, engaging in conduct and practices that are in violation of the FDCPA;

(c) Issuing a declaratory Order requiring Defendants to make corrective disclosures;

(d) Awarding Plaintiff and the Class statutory damages;

(e) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses; and

(f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: Fairfield, New Jersey
October 21, 2010

s/ Joseph K. Jones
Joseph K. Jones (JJ5509)
Law Offices of Joseph K. Jones, LLC
375 Passaic Avenue, Suite 100
Fairfield, New Jersey 07004
(973) 227-5900 telephone
(973) 244-0019 facsimile
jkj@legaljones.com

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

s/ Joseph K. Jones _____
Joseph K. Jones

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I, Joseph K. Jones, the undersigned attorney of record for Plaintiff, do hereby certify to my own knowledge and based upon information available to me at my office, that the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: October 21, 2010

s/ Joseph K. Jones _____
Joseph K. Jones

Exhibit

A



Division of NNJCAB - Incorporated 1961
100 East Crescent Ave., Suite 304, Upper Saddle River, NJ 07458
300.325.3440 - 201.818.6168 - Fax: 201.818.6166
E-Mail: info@hfrs1.com

If paying by DEBIT or CREDIT card please complete this section		
<input type="checkbox"/> DEBIT	<input type="checkbox"/> VISA	<input type="checkbox"/> M/C
CARD NUMBER	EXP. DATE	
SIGNATURE		
CARDHOLDER NAME (Please Print)		
Date	Agency Number	PAY THIS AMOUNT
6/24/2010	469579	\$28.40
MAKE CHECKS PAYABLE TO: HERITAGE FINANCIAL RECOVERY SERVICES		AMOUNT ENCLOSED \$

DETACH AND RETURN COUPON WITH PAYMENT TO ENSURE PROPER CREDIT

DATE: 6/24/2010
RE: NORTHERN NJ ANESTHESIA ASSOCIATES
ACCOUNT: FRANKLIN SMITH
ACCOUNT NUMBER: NNJ000129536001
CURRENT BALANCE: \$28.40
YOUR REPRESENTATIVE: BILL PAGAR

AGENCY NUMBER: 469579

Dear Franklin Smith,
This is to inform you that the above named creditor has placed your account with this Agency with the full intention of settling this debt. You may not have intentionally neglected this obligation, but it is seriously past due and demands your immediate attention.

- o Remit payment in full to the address listed above, or
- o Contact this office in person or by telephone to arrange settlement

Important notification:

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

If you have filed for bankruptcy please provide us with your Attorney's name and number so that we can close our files and return them to your creditor so that they may do the same.

Thank you,

HERITAGE FINANCIAL RECOVERY SERVICES

This is a communication from a Debt Collector.
This is an attempt to collect a debt and any information obtained will be used for this purpose

HERITAGE FINANCIAL RECOVERY SERVICES 600 E CRESCENT AVE STE 304 UPPER SADDLE RIVER NJ 07458-1899
PHONE: 800.325.3440 OR 201.818.6168 FAX: 201.818.6166

24-HOUR PAYMENT OPTIONS
CALL OUR TOLL-FREE AUTOMATED LINE 877.301.8889
PAY ONLINE @ www.hfrs1.com