

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ERIN VOGEL,
on behalf of plaintiff and a class,

Plaintiff,

vs.

MCCARTHY, BURGESS & WOLFF, INC.,

Defendant.

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COMPLAINT – CLASS ACTION

INTRODUCTION

1. Plaintiff Erin Vogel brings this action to secure redress from unlawful credit and collection practices engaged in by defendant McCarthy, Burgess & Wolff, Inc. (“MBW”). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”).

2. The FDCPA broadly prohibits unfair or unconscionable collection methods, conduct which harasses or abuses any debtor, and the use of any false or deceptive statements in connection with debt collection attempts. It also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

3. In enacting the FDCPA, Congress found that: “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. §1692(a).

4. Because of this, courts have held that “the FDCPA’s legislative intent emphasizes the need to construe the statute broadly, so that we may protect consumers against debt collectors’ harassing conduct.” and that “[t]his intent cannot be underestimated.” *Ramirez v. Apex Financial Management LLC*, 567 F.Supp.2d 1035, 1042 (N.D.Ill. 2008).

5. The FDCPA encourages consumers to act as "private attorneys general" to enforce the public policies and protect the civil rights expressed therein. *Crabill v. Trans Union, LLC*, 259 F.3d 662, 666 (7th Cir. 2001).

6. Plaintiff seeks to enforce those policies and civil rights which are expressed through the FDCPA, 15 U.S.C. §1692 *et seq.*

VENUE AND JURISDICTION

7. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1337.

8. Venue and personal jurisdiction in this District are proper because:

- a. Defendant's collection communications were received by plaintiff within this District;
- b. Defendant does or transacts business within this District.

PARTIES

9. Plaintiff Erin Vogel is an individual who resides in the Northern District of Illinois.

10. Defendant MBW is an Ohio corporation with offices at 26000 Cannon Road, Cleveland, Ohio 44146. It does business in Illinois. Its registered agent and office is National Registered Agents, 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

11. MBW states on its web site that it "has grown to be one of the largest collection agencies in the U.S., having collected more than (\$1 Billion) for our clients over the last decade."

(<http://www.mbandw.com/index.php/about/>)

12. MBW uses the mails and telephone system to collect debts for others.

13. MBW's clients include the Budget, Avis and Payless rental car chains.

14. MBW holds a collection agency license from the state of Illinois.

15. MBW is a debt collector as defined in the FDCPA.

FACTS

16. Defendant has been attempting to collect from plaintiff an alleged debt consisting of charges for a car rental from Payless Car Rental, for personal, family or household purposes.

17. On or about June 2, 2017, defendant sent plaintiff the initial collection letter attached as Exhibit A.

18. Plaintiff timely disputed the debt.

19. On or about July 20, 2017, defendant sent plaintiff the letter and enclosure attached as Exhibit B.

20. Exhibit B includes an invoice showing that much of the claimed debt in Exhibit A consists of add-on charges, including “miscellaneous charges,” “late fee,” and “optional services.”

21. The inclusion of add-on charges in Exhibit A, without identifying them or even indicating that the debt included such items, is a deceptive practice. *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004).

22. As a result of the attempt to recover an apparently inflated bill, plaintiff was required to spend time and money, and ultimately to retain counsel, to deal with the issue.

COUNT I – FDCPA

23. Plaintiff incorporates paragraphs 1-22.

24. Defendant violated 15 U.S.C. §1692e by sending an initial collection letter seeking a gross amount of \$3,036.83 without disclosing that the debt included “miscellaneous charges,” “late fee,” and “optional services.”

25. Section 1692e provides:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .

CLASS ALLEGATIONS

26. Plaintiff brings this claim on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3).

27. The class consists of (a) all individuals (b) to whom MBW sent a collection letter (c) to a residential address (d) to collect a debt arising from a car rental (e) that included charges for “miscellaneous charges”, “late fee,” or “optional services” (f) which letter was sent during a period beginning one year prior to the filing of this action and ending 20 days after the filing of this action.

28. On information and belief, the class is so numerous that joinder of all members is not practicable.

29. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are whether defendant’s failure to identify add-on charges violates the FDCPA.

30. Plaintiff’s claim is typical of the claims of the class members. All are based on the same factual and legal theories.

31. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

32. A class action is superior for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights;

c. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

- i. Statutory damages;
- ii. Attorney's fees, litigation expenses and costs of suit;
- iii. Such other and further relief as the Court deems proper.

/s/Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Cathleen M. Combs
James O. Lattuner
Cassandra P. Miller
Corey J. Varma
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 South Clark Street, Suite 1500
Chicago, IL 60603-1824
(312) 739-4200
(312) 419-0379 (FAX)
Email address for service: courtecl@edcombs.com

NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

/s/Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

EXHIBIT A

26000 CANNON ROAD
CLEVELAND, OH 44146

McCARTHY, BURGESS & WOLFF
A Collection Agency

THE MB&W BUILDING
26000 Cannon Road
Cleveland, Ohio 44146
Phone 888-817-1750

06/02/17

Date: 06/02/17
Creditor: Payless Car Rental, Inc
Account #: 1381
Reference #: 5478
Amount: \$3,036.83



ERIN VOGEL

MCARJ7V00U 70505688062 698X000000333/000000002

Dear ERIN VOGEL.

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

Payless Car Rental, Inc. has placed the above referenced account with our office for collection activity. Our office hours are Monday through Thursday 8:30am to 9:00pm and Fridays 8:30am to 5:00pm. Please be aware that a notice of rights is set forth below. If you want to resolve this debt, please contact your account representative at 1 (888) 817-1750.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this 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 that you dispute the validity of this debt, or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. Upon your written request made within 30 days after receiving this notice, this office will provide you the name and address of the original creditor, if different from the current creditor.

PLEASE SEE REVERSE FOR IMPORTANT CONSUMER RIGHTS INFORMATION.

Regards,

Nicholas Evans

Nicholas Evans
844-838-4046 EXT 4224
customerservice@mbandw.com
www.mbandw.com

This communication is from a debt collector.

This is an attempt to collect a debt and any information obtained will be used for those purposes.

PLEASE INCLUDE REMIT SECTION WITH YOUR PAYMENT.

DATE	ACCOUNT #	REFERENCE #	TOTAL DUE
06/02/17	1381	5478	\$3,036.83

For your convenience, an automated attendant is available to process ACH/Check payments over the phone by dialing 800-669-2900.

Payment should be made payable to Payless Car Rental, Inc.. Please send payment and correspondence to:

When you provide a check as payment, you authorize us to use the information from your check to make a one time electronic transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction. If you wish to opt out, you may send payment in the form of a money order, certified check or by writing to us.

McCarthy, Burgess & Wolff, Inc.
26000 CANNON ROAD
CLEVELAND, OH 44146

We are required to provide the following information under state law for the states indicated. This is not a complete list of your rights by state. If you do not reside in one of these states, you may have the same or similar rights under state or federal law.

CALIFORNIA:

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8am or after 9pm. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov. Cal. Civ. Code § 1812.700

Nonprofit credit counseling services may be available in the area.

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

COLORADO:

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COAG.GOV/CAR

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

MAINE:

Our hours of operation are Mon - Fri 8:00am to 5:00pm EST.

MASSACHUSETTS:

NOTICE OF IMPORTANT RIGHTS.

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE COLLECTION AGENCY.

Hours of operation are Mon - Fri 8:00am to 5:00pm EST.

MINNESOTA: This collection agency is licensed by the Minnesota Department of Commerce.

NEW YORK CITY: New York City Department of Consumer Affairs license number 1463527.

NEW YORK:

In accordance with the Fair Debt Collection Practices, Act, 15 U.S.C. § 1692 et seq., debt collectors are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to: the use or threat of violence; the use of obscene or profane language; and repeated phone calls made with the intent to annoy, abuse or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt: supplemental security income (SSI); social security; public assistance (welfare); spousal support, maintenance (alimony) or child support; unemployment benefits; disability benefits; workers' compensation benefits; public or private pensions; veterans' benefits; federal student loans, federal student grants, and federal work study funds; and ninety percent of your wages or salary earned in the last sixty days.

NORTH CAROLINA: North Carolina Department of Insurance permit number 3914.

TENNESSEE:

This collection agency is licensed by the Collection Services Board, State Department of Commerce and Insurance. 500 James Robertson Parkway, Nashville, TN 37243.

WISCONSIN:

This collection agency is licensed by the Division of Banking in the Wisconsin Department of Financial Institutions, www.wdfi.org.

EXHIBIT B

McCARTHY, BURGESS & WOLFF
A Collection Agency *Nemina Exigere*

THE MB&W BUILDING
26000 Cannon Road
Cleveland, Ohio 44146
Phone 888.397.1538

Erin Vogel
Erin Vogel
[REDACTED]

Date	Our File #	Total Due
07/20/2017	[REDACTED] 5478	\$3,036.83

DEBT VERIFICATION NOTICE

Erin Vogel:

We are writing in response to your request for verification of the amount we are attempting to collect for our client, Payless Car Rental, Inc.. We have confirmed the following information with our client:


Debt Amount:	\$3,036.83
Creditor's Account #:	[REDACTED] 1381
Current Creditor:	Payless Car Rental, Inc.
Delinquent Customer Name:	Erin Vogel
Delinquent Customer Address:	[REDACTED]

See Attached Documents

Nicholas Evans
(888) 817-1750 ext.

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

Notice: See Following Page for Important Consumer Rights Information.

		<i>We are proud to feature a 100% smoke-free fleet!</i>	
RENTAL AGREEMENT NUMBER. 1381		RECEIPT	

Your Information		Your Vehicle Information	
Customer Name	FRINVOGFI	Vehicle Number	86005532
Method of Payment	DIRECT	Vehicle Group Rented	Subcompact
Cost Control Number	INVESTREES*	Vehicle Group Charges	Subcompact
		Vehicle Description	BLK TOYO
		License Plate Number	VAL FWD
		Odometer Out	TXFLS1388
		Odometer In	33778
		Total Driven	34000
		Fuel Gauge Reading	222

Your Rental		Your Vehicle Information	
Pickup Date/Time	NOV 06 2016 @ 3:56PM	Return Date/Time	DEC 13 2016 @ 10:30AM
Pickup Location	2424 EAST 38TH STREET DALLAS FORT WORTH INTL APO DALLAS TX 75261 US 872-456-7839	Return Location	2424 EAST 38TH STREET DALLAS FORT WORTH INTL APO DALLAS TX 75261 US 872-456-7839
		Additional fees may apply if changes are made to your return date, time and/or location.	

Your Vehicle Charges (RNT 28 DAY / MAX 69 DAY)				Your Optional Products/Services	
Rate Chart	Free Miles:	Time and Mileage:		SLI	15.75
Miles: UNLIMITED		Your Discount		Optional Services Total	582.75
Hourly: 18.51		6 DY @ 24.85	149.10		
Daily: 33.00		1 MO @ 605.88	605.88		
Ad'l day: 24.85					
Weekly: 191.00		Time and Mileage	644.58		
Monthly: 685.88					

Your Taxable Fees	
Misc Charges	789.00
11.11% Concession Recovery Fee	287.27
CUSTOMER FACILITY CHG 4.00/DY	148.00
TRANSPORTATION FEE 2.60/DY	92.60
VEHICLE RECOUP 2.00/DY	74.00
LATE FEE 385.00/DY	385.00
Sub-total Charges	2630.75
TAX 15.000%	394.61

Your Non-Taxable Products/Services	
Fuel Service	109.77
Optional Services Total Non Taxable	582.75

Your Total Charges:	3717.88
Payment:	(-) 681.06
Net Charges:	
Your Total Due:	USD 3717.88
	3036.83

Thank you for renting with Payless.
 For all inquiries, please contact us at +1-800-726-5377 or paylesscar.com.
 Your vehicle was rented to you by 408520 Your vehicle was checked in by REBECCA.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [McCarthy, Burgess & Wolff Pegged with Debt Collection Class Action](#)