

Michael Fuller, Oregon Bar No. 09357
Trial Attorney for Plaintiff
Eric Olsen, Oregon Bar No. 783261
Of Attorneys for Plaintiff
OlsenDaines, PC
9415 SE Stark St., Suite 207
Portland, Oregon 97216
Email: mfuller@olsendaines.com
Office: (503) 274-4252
Fax: (503) 362-1375
Cell: (503) 201-4570

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LELA R. CHRISTENSEN,

Case No. 3:12-cv-2191

Plaintiff,

v.

DISCOVER BANK, a foreign entity, and
ZWICKER & ASSOCIATES, P.C., a
foreign professional corporation.

Defendants.

**COMPLAINT FOR VIOLATIONS OF
THE FAIR DEBT COLLECTION
PRACTICES ACT AND THE OREGON
UNLAWFUL DEBT COLLECTION
PRACTICES ACT**

JURY TRIAL DEMANDED

**15 U.S.C. § 1692 *et seq.*
ORS 646.639 *et seq.***

1.

Lela R. Christensen (“plaintiff”) alleges that at all times material:

///

///

///

COMPLAINT - Page 1

OlsenDaines, PC
9415 SE Stark St., Ste 207
Portland, Oregon 97216
Telephone (503)274-4252
Facsimile (503) 362-1375

2.

JURISDICTION AND THE PARTIES

This is a civil action brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* and the Oregon Unlawful Debt Collection Practices Act (“OUDCPA”), ORS 646.639 *et seq.*

3.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1367 because the FDCPA is federal law, diversity of parties exists and the amount in controversy is met, and because the state law claims are so related to the FDCPA claims that they form part of the same case and controversy.

4.

Venue is proper in this district because the majority of the acts and transactions occurred here, plaintiff resides here, and defendants transact business here.

5.

Plaintiff resided in Clackamas County, Oregon during all times material and is a “person” and a “consumer” as defined by the OUDCPA at ORS 646.639(1)(h) and (a).

6.

Plaintiff is also a “consumer” as defined by the FDCPA at 15 U.S.C. § 1692a(3).

///

///

///

7.

Discover Bank (“creditor”) engages in consumer loan transactions with Oregonians and is a “person” and a “commercial creditor” as defined by the OUDCPA at ORS 646.639(1)(h) and (c).

8.

Creditor directly, and indirectly through its agent, attorney, and debt collector, Zwicker & Associates, P.C. (“debt collector”), attempts to enforce its consumer loan obligations and is a “debt collector” as defined by the OUDCPA at ORS 646.639(1)(g).

9.

Debt collector collects debt in Oregon and files various collection-related legal papers in Oregon courts, and is a “person” as defined by the OUDCPA at ORS 646.639(1)(h).

10.

Debt collector regularly collects creditor’s consumer loan debts and is a “debt collector” as defined by the OUDCPA at ORS 646.639(1)(g) and the FDCPA at 15 U.S.C. § 1692a(6).

11.

Creditor and debt collector attempt to collect plaintiff’s alleged obligation to creditor constituting a “debt” as defined by the OUDCPA at ORS 646.639(1)(e).

///

///

///

///

12.

FACTUAL ALLEGATIONS

Plaintiff is a 68 year old widow living in an assisted care facility in Tualatin.

13.

She is retired and suffers from severe MS.

14.

Before being diagnosed with MS, she was the regional vice president of a corporation and experienced in dealing with stress.

15.

Now she survives solely on the few basic exempt belongings she owns and her exempt monthly social security and pension benefits.

16.

Between her disability and the passing of her husband, she became unable to pay her debts.

17.

She retained an attorney to deal with her debt collectors and advise her regarding her debts.

18.

In or around September 2011, defendant, acting through its debt collector, sued plaintiff in Clackamas County Circuit Court.

///

19.

The lawsuit was legitimate; plaintiff owed creditor a debt she just could not pay.

20.

In October 2011 plaintiff sent her attorney a copy of the lawsuit.

21.

In November 2011 plaintiff's attorney wrote a letter to creditor, addressed to its debt collector.

22.

The letter explained that plaintiff would not be filing a response to the lawsuit.

23.

The letter explained that plaintiff had no non-exempt belongings and that her only income was exempt social security and pension.

24.

The letter informed creditor and debt collector that plaintiff's bank account only contained exempt benefits and warned against garnishing it.

25.

The letter offered plaintiff's attendance at a debtor's examination if creditor wished to verify her assets or income.

26.

Attached to the letter was an EFT proof of deposit slip, verifying plaintiff's pension benefits.

27.

Hand written on the slip was a note from plaintiff saying, “I have no other assets or income – had to live in assisted living – can’t walk...”

28.

Upon information and belief, neither creditor nor debt collector had any reason to believe plaintiff’s bank account contained anything other than social security and pension benefits.

29.

Upon information and belief, neither creditor nor debt collector had any reason to believe plaintiff’s bank account contained any funds legally subject to garnishment.

30.

Neither creditor nor debt collector ever conducted a debtor’s exam as plaintiff had offered.

31.

Instead, creditor and debt collector waited a year until November 2012 and garnished all the social security and pension benefits from plaintiff’s bank account.

32.

Creditor and debt collector knew and had reason to know plaintiff’s bank account contains only exempt benefits, none of which were legally subject to garnishment.

///

///

///

33.

As a direct and proximate result of creditor and debt collector's malicious and unlawful debt collection and harassment, plaintiff cried hysterically and required emergency medical attention upon learning of the garnishment. She displayed visible signs of shock and began to shake and become nauseous. Plaintiff required medication to stabilize her.

34.

As a direct and proximate result of creditor and its debt collector's malicious and unlawful debt collection and harassment, plaintiff suffers fear of the unknown and whether the loss of benefits will impact her ability to stay at her care facility in the future.

35.

Plaintiff is entitled to and so demands a trial by jury.

///

///

///

///

///

///

///

///

///

///

36.

CAUSES OF ACTION

**FIRST CLAIM FOR RELIEF AGAINST
CREDITOR AND ITS DEBT COLLECTOR**

(OUDCPA)

(ORS 646.641)

37.

Plaintiff re-alleges the above by reference.

38.

Creditor and its debt collector injured plaintiff through their willful and malicious use of unlawful collection practices as detailed above, violating the OUDCPA, specifically ORS 646.639(2)(k).

39.

As a result of creditor and its debt collector's willful and malicious use of unlawful collection practices, plaintiff is entitled to the greater of actual damages or \$200, punitive damages, reasonable attorneys fees and costs, injunctive relief and declaratory relief pursuant to ORS 646.641.

///

///

///

///

40.

SECOND CLAIM FOR RELIEF AGAINST

DEBT COLLECTOR

(FDCPA)

(15 U.S.C. § 1692k)

41.

Plaintiff re-alleges the above by reference.

42.

The debt collector injured plaintiff through its willful unlawful collection practices as detailed above, violating the FDCPA, specifically 15 U.S.C. § 1692d, e, and f.

43.

As a result of debt collector's willful unlawful collection practices, plaintiff is entitled to the greater of actual damages or \$1,000 and reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k.

///

///

///

///

///

///

///

WHEREFORE, plaintiff seeks judgment against defendants as follows:

- a. An order enjoining defendants from further garnishing plaintiff's bank account unless defendants have any reason to believe the account contains non-exempt funds legally subject to garnishment;
- b. An award of actual damages, statutory damages, punitive damages, and reimbursement of plaintiff's reasonable attorneys fees and costs against defendants; and
- c. For other such relief as this Honorable Court deems just and proper.

DATED: December 4, 2012

s/ Michael Fuller
Michael Fuller, Oregon Bar No. 09357
Trial Attorney for Plaintiff
Eric Olsen, Oregon Bar No. 783261
Of Attorneys for Plaintiff
OlsenDaines, PC
9415 SE Stark St., Suite 207
Portland, Oregon 97216
Email: mfuller@olsendaines.com
Office: (503) 274-4252
Fax: (503) 362-1375
Cell: (503) 201-4570