

THE CLASS ACTION FOR DEBTORS HAVING THEIR CREDIT THREATENED

I used to do more class actions back in the day.

The only one I have right now is hopefully going to change the law in Florida for the better. Getting a lot of opposition to our desire to enforce the law. Thought I would tell you about my experiences.

A class action is one or a couple of Plaintiffs called class reps bring an action on behalf of a larger group that will hopefully be identified as a “class.” It is really hundreds or thousands of similar actions all having their claims litigated by a few Plaintiffs in one case.

Little known fact. Once a class action is filed it is forever called a “class action” but the fact is, it is not a class action until after the case is “certified” by the Court or agreement of the parties to be a class action.

So, if you don’t like attorneys profiting off class actions, here is my funny and sad story on a Class Action I did not file.

So, like, love and subscribe to make up for the loss of money in that case.

EDITOR:

Here are the Elements that make up the Class Action

1. **Commonality of Claims**

All members of the class must share common legal or factual questions against a defendant or their actions that harmed everyone (potential class members) in a similar way or manner (e.g., a defective product, misleading advertising, discriminatory policy, etc.).

2. **Representatives (Lead Plaintiffs)**

“Class” is litigated by a small group of plaintiffs (often referred to as “named plaintiffs” or “class representatives”) their claims and damages must be similar to all class members and they must adequately represent the interests of all class members.

3. **Certification by the Court**

It is not a “Class Action” until the judge says it is. Judge will look at factors like commonality, adequacy of representation, numerosity (there are enough individuals in the class to warrant a single combined case), and typicality of the class representatives’ claims. 25 is the lowest membership I am familiar with.

4. **Notice to Class Members**

This is where it gets expensive. When court certifies the class, it requires that the potential class members be given notice of the lawsuit. This notice usually explains the nature of the suit, outlines class members’ rights, and details their ability to opt out (decide not to be part of the action).

5. **Snooze or Lose or Gain**

If the class action is successful (or settles), the result typically binds all class members who did not opt out. This means they are entitled to a share of any damages or settlement, but they also waive their right to sue the defendant individually for the same claim in the future.

6. **Settlement or Trial**

Class actions can be resolved through a settlement or by going to trial. If there is a settlement, it must be approved by the court as fair, reasonable, and adequate for the class. **Best and most common approach.**

A. Things to Watch out for When doing a Class Action:

Professional Objectors

Attacks on the Class Counsel

Attacks on similarity of claims. In *Wal-Mart Stores, Inc. v. Dukes, et al.*, No. 10-277, 564 U.S. ___ (June 20, 2010). According to the Court, commonality requires the plaintiffs to demonstrate that the class members have suffered the same injury, which does not mean merely that they have all suffered a violation of the same provision of law. Goes to Damages.

So, with the above in mind, here are the facts of my latest class action.

On a Federal Level, Class Actions are governed by Federal Rule 23. I have filed all of my FDCPA class actions under Rule 23.

This is filed in Florida.

Background: Unlike the federal FDCPA, Florida Consumer Collection Practices Act or "FCCPA" is a state law that regulates creditors and debt collectors. With few exceptions, the FDCPA only protects against debt collectors. Creditors are immune. Also, the statute has a two year statute of limitations while the FDCPA only has one year to file a case. Unlike the FDCPA, you can obtain punitive damages to punish the bad guy beyond statutory and actual damages.

In Florida the statute has greater protections where both Creditors and Debt collectors must abide by the FCCPA.

If a class action lawsuit is brought, the business can be liable for additional statutory damages of up to \$1,000.00 for each named plaintiff and an aggregate

award of additional statutory damages up to the lesser of \$500,000.00 or 1 percent of the *defendant's net worth* for all remaining class members.

With the FDCPA, it is the same but the 1 percent is against the net work of the *debt collector* rather than the creditor-generally a lot larger bottom line. **No Creditor.**

In my client's case, he went to a local clinic to get some bloodwork done through LabCorp. He had the tests done, paid for the service and waited for the results.

Soon after the testing, he started receiving calls for the payment he had already made. My client returned the calls and asked why he kept getting calls when he had already paid. He asked them to stop. My client is an attorney but was trying to resolve it without making waves.

My client then started to receive letters from the Defendant seeking the debt he already paid. Here is the warning from the first letter:

EDITOR PUT UP NOTICE:

WEST
Immediate Payment Required

We are contacting you because:

- Your account is past due. Our records indicate your debt to Labcorp has not been satisfied and is seriously past due.
- At this time your account has not been placed with a Third Party Collection Agency.
- Failure to pay the past due amount will result in referral to a Third Party Collection Agency and potentially affect your credit score.
- Labcorp reserves the right to refuse laboratory services for failure to pay past due balances.

Please Note:

- This bill is for laboratory work requested by your physician.
- These charges were not included in your physician's bill.
- If you have questions regarding how your insurance processed your claim, you need to contact your insurer.

To pay or if you have any questions about this bill:

- Call LabCorp Customer Service at 1-800-845-6167 (between 8am - 5pm, Monday - Friday).
- Web payment and insurance filing options are available at labcorp.com/billing.

So my client mailed a certified dispute letter to LabCorp that again disputed Defendant's claim and explicitly put Defendant on notice of its obligations under 559.72 and that Plaintiff feared the imminent financial and physical harm that Plaintiff would suffer as a result of LabCorp's false disclosures.

EDITOR PUT UP LETTER LARGE:

Dear Labcorp:

I am in receipt of your collection letter saying that I owe a balance. Your records are in error and no amount is due from me at this time. I paid in person and in full for services received. I have attempted to assist you in reconciling your records, however, my numerous telephone contact attempts have done nothing but raise my blood pressure. I hereby demand that you cease and desist your unwarranted payment demands pursuant to Fl. St. 559.72(9).

Please make certain that you are targeting the right person for your money demand? I would appreciate your immediate cooperation. Also, you are hereby advised of this dispute for purposes of contacting any credit reporting agency pursuant to Fl. St. 559.72(6).

My client assumed that would do it and the letters and calls would cease and desist.

LabCorp ignored Plaintiff's Dispute and Cease and Desist letter sent my client a "FINAL NOTICE, PROTECT YOUR CREDIT" billing demand that made threats to disclose information "within 20 days" to a third-party collections agency "...your account will be referred to an outside collections agency. We will authorize the agency to report any delinquent balance to the credit bureaus."

EDITOR

PUT

UP

NOTICE

FINAL NOTICE PROTECT YOUR CREDIT

~~This communication will serve as a FINAL DEMAND for payment. As previously stated, we provided lab work at your physician's request. The balance due on this account remains unpaid.~~

Unless Labcorp receives full payment within 20 days, your account will be referred to an outside collections agency. We will authorize the agency to report any delinquent balance to the credit bureaus.

When your physician requested our services, we did not ignore the request or question your credit. However, you have ignored our request for payment of the service. You have had ample time to pay this bill or to file and recover from your insurance company. **YOUR PAYMENT IS DUE NOW. IT IS IMPORTANT THAT YOU CALL 1-800-845-6167 TO RESOLVE YOUR ACCOUNT.**

PROTECT YOUR CREDIT HISTORY AND ACT IMMEDIATELY.

EDITOR EMPHASIZE THE FOLLOWING:

Unless Labcorp receives full payment within 20 days, your account will be referred to an outside collections agency. We will authorize the agency to report any delinquent balance to the credit bureaus.

There is no statute or law allowing or requiring the Creditor to report negative trade lines on a debt within 20 days. The only thing I could figure out about why they

choose 20 days is in Florida, you have 20 days to Answer a lawsuit that is personally served.

So, we use the above to information to show the basis of a common class action.

Florida Statute 559.72(3) prohibits debt collectors from telling a debtor that they will share information about the debtor's creditworthiness without also disclosing the dispute. The statute is:

This applies to both oral and written disclosures.

So the statute read:

EDITOR:

559.72 Prohibited practices generally.—In collecting consumer debts, no person shall:

(3) Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness *without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6).*

What that says in a nutshell is that if you threaten a person or consumer with reporting his debt and delinquency to a third-party, you must also report any dispute that the consumer made regarding the debt. That makes sense. The Court of Appeals in Florida agreed with me recently in overturning the dismissal of my case by LabCorp.

So, look at the Letter again:

EDITOR LARGE:

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PROTECT YOUR CREDIT HISTORY AND ACT IMMEDIATELY.

EDITOR EMPHASIS:

Unless Labcorp receives full payment within 20 days, your account will be referred to an outside collections agency. We will authorize the agency to report any delinquent balance to the credit bureaus.

That does not advise the consumer he has a right to dispute and/or have any dispute sent with the credit reporting as the laws requires:

...without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6)

So we knew Labcorp had thousands of customers in the State of Florida and this was a form letter so that meant the law was being broken thousands of ways with low amounts being sought. **Yet, a listing on your credit report with no dispute will drop your credit score in ways that will cost you greater amounts than the nominal collection sought.**

So, we had Commonality:

Thousands of Labcorp Customers receiving collection letters threatening the credit in violation of Florida collection law. In class actions, you have to create a proposed class action showing the group of plaintiffs and the law that was violated against those consumers: Here is our current proposed class:

EDITOR PUT UP:

- FCCPA NOTICE PROVISION VIOLATION STATUTORY AND ACTUAL DAMAGES CLASS: All persons that received a violative collection communication from Laboratory Corporation of America that threatens direct or indirect, written or oral disclosure of information affecting that person's reputation for creditworthiness *without also* providing notice that the collection dispute would be disclosed under 559.72 (3) and 559.72 (6) to third-parties and credit reporting agencies and suffered *prospective fear of imminent financial and reputational and informational harm* and consequential damages such as the costs and expense of disputing the debt with Defendant after it illegally threatened the reporting of the debt delinquencies related to the above letter threats of credit disclosure, hereinafter referred as the FCCPA Statutory and Actual Damages Class.

We have one Class Representative, my client who now represents the interest of all Florida consumers *similarly situated*.

We have done some class action discovery seeking the big number all plaintiff attorneys want. How big is the class. Defendant is fighting that.

Some words on how Class Actions get worked out or settled:

EDITOR:

It is all about the Motion to Certify for the Plaintiff and the Defendant

Class actions rules in the states I have filed in have a tight calendar with the Motion to Certify. While the time to seek certification can be extended, the court rules want you to put up or shut up.

If after discovery it is clear on liability and the class is numerous and large, parties will work it out with a stipulated class action agreement to create a pool paying everyone with does not object to being a class member.

This is preferable and can be a good way to get the other side to pay the cost of mailing out all of the Class Action Notices. That is very expensive.

My friend I told you about at the beginning finances all of his class actions because of the costs of notice.

I set up two things:

OPT IN OPT OUT

So the Class Action rules require you find the best most practical way to notify class that they are part of a class action settlement.

Generally, you must affirmatively opt out of the class action in favor of your own individual action to not be part of the class. People do this for hope of more money.

The notice of settlement must also give the class members instructions on how they can object to the settlement. In federal court, class members may only send their objections directly to the court in most instances, and it's not possible to ask the court to change the terms of the proposed settlement (increase the amount, for example); objecting class members can only ask the court to deny the settlement.

I make it that the pot of money gets distributed after the date of opt in and then everyone gets an equal share based on still being in the pool of eligible recipients. That increases the amount to each member.

Cy Press: to only those that send in their card or opt in notification. I always like to include a cy press provision

EDITOR:

Cy Pres Distributions: In such cases, the court may approve cy pres distributions, allocating leftover settlement money to nonprofits, charities, or other entities whose work is deemed to benefit or align with the class's interests.

I always have a CyPress provision for Two Reasons:

I want all the money from the pot to be used up and not given back to the defendant is unclaimed.

Secondly, ultimately if you have a Motion for Certification of a Class or a Stipulated Class Agreement, the class has to be approved by a Court. If you show the court it is not all about the attorney fees or the money and that you are doing good for the individuals not in the class but being hurt in similar ways in other

areas and you award a non-profit or charity money as part of the settlement, it is more likely to get approved. **It is also going to avoid bad objections:**

A word on Objections and Professional Objectors. Lots of Work, then derailed by one person.

The Federal Rules (Rule 23), members of a class can file an objection to any class action settlement. They then present their reasons to the Court why they object and whether it applies to them or several members. The court must rule on their objections when deciding if the class settlement as a whole is fair and reasonable for the whole class.

Objection can come in the substantive and procedural forms or from some people that know they can make a deal with the Plaintiff for great amounts if they don't object. It is called "parking." Waiting for the class settlement. All that work and you are now at the mercy of this one person.

Some attorneys represent professional objectors or are ones themselves in trying to extract settlements to go away and let the class action get settled. Just telling you, not saying I know anyone that does that.

I will attached the lawsuit

I will attach the show notes.

I will attached the discovery requests for class discovery of how many people in the class.

The Opinion from the Florida Court of Appeals agreeing with our interpretation of the Statute.