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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, Clerk
[Signature]
Deputy Clerk

-ODE

UNITED STATES OF AMERICA,

Plaintiff,

v.

WEST ASSET MANAGEMENT, INC.,

Defendant.

Case No. 11-cv-0746

COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission”), for its Complaint alleges as follows:

JURISDICTION AND VENUE

1. This is an action arising under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, to obtain monetary civil penalties, a permanent injunction, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s violations of Section 5(a) of the FTC Act and the FDCPA.

2. This Court has jurisdiction over the matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 57b, and 1692l. This action arises under 15 U.S.C. §§ 45(a)(1) and 1692l.

3. Venue is proper in the United States District Court for the Northern District of Georgia under 28 U.S.C. §§ 1391(b) - (c) and § 1395(a) and 15 U.S.C. § 53(b).

PLAINTIFF

4. This action is brought by the United States on behalf of the Federal Trade Commission. The Commission is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, 15 U.S.C. §§ 41-58. The Commission is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce; and the FDCPA, 15 U.S.C. §§ 1692-1692p, which imposes duties upon debt collectors.

DEFENDANT

5. Defendant West Asset Management, Inc. ("WAM"), is a Delaware corporation with a principal place of business located within the Northern District of Georgia at 2253 Northwest Parkway SE, Suite 500, Marietta, Georgia 30067.

At all times relevant to this Complaint, WAM has transacted business in the Northern District of Georgia and throughout the United States.

6. Defendant WAM is a “debt collector” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

COMMERCE

7. At all times relevant to this Complaint, Defendant has maintained a substantial course of trade in the collection of debts, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S BUSINESS PRACTICES

8. Since August 2004, Defendant WAM has engaged in consumer debt collection activities in all 50 states. WAM has collected or attempted to collect more than 24 million accounts.

9. Defendant WAM performs debt collection services for clients in the healthcare, telecommunications, consumer credit, and government services industries. WAM employs approximately 1,500 debt collectors who work in offices in thirteen states and one offshore location. WAM regularly attempts to collect debts by contacting consumers by telephone.

10. In numerous instances, WAM collectors contact consumers and claim to be attorneys or claim that they work with attorneys. WAM is not a law firm and WAM collectors are not attorneys, nor do they work with attorneys.

11. In numerous instances, WAM collectors threaten or imply that WAM will seize or attach consumers' properties, garnish consumers' wages, or have consumers arrested if consumers fail to pay WAM. In many of the instances when WAM collectors make such threats, WAM does not have the authority or intent to attach consumers' properties, garnish consumers' wages, or have consumers arrested if consumers fail to pay WAM.

12. In numerous instances, WAM collectors threaten or imply that WAM will initiate lawsuits against consumers if consumers fail to pay WAM. In many of the instances when WAM collectors make such threats, WAM does not initiate lawsuits against consumers who fail to pay WAM and does not have the authority or the intent to do so.

13. In numerous instances, WAM collectors use other false or deceptive means to collect or attempt to collect debts, including, but not limited to, falsely promising to consumers to accept partial payment as settlement in full on accounts or deceptively telling consumers that negative credit information will remain on consumers' credit reports until the debt is paid.

14. In numerous instances, WAM collectors withdraw funds from consumers' bank accounts or charge consumers' credit cards without obtaining consumers' express informed consent for such withdrawals or charges. WAM collectors also deposit or threaten to deposit postdated checks prior to the date on such checks.

15. In numerous instances, WAM collectors disclose the existence of consumers' debts to third parties, including, but not limited to, consumers' parents, children, family members, employers, co-workers, and neighbors.

16. In numerous instances, WAM collectors call third parties repeatedly, even when the third party does not request additional calls and WAM lacks a reasonable belief that the third party previously provided erroneous or incomplete information and now has correct or complete information to provide. In many of these instances, WAM collectors continue to call, even after learning that the third party does not know the debtor or that the debtor is deceased and the third party is not the spouse, parent (if the debtor is a minor), guardian, executor, or administrator of the decedent-debtor's estate.

17. In numerous instances, WAM collectors call consumers before 8 a.m. or after 9 p.m., even when WAM collectors know or should know that it is

inconvenient for consumers to receive calls at these times.

18. In numerous instances, WAM collectors call consumers at their places of employment, even when WAM collectors know or should know that it is inconvenient for consumers to receive calls at their workplaces or that consumers' employers prohibit the consumers from receiving such calls at the workplace.

19. In numerous instances, WAM collectors communicate with third parties for reasons other than to obtain location information, without consumers' consent, express permission from a court of competent jurisdiction, or as reasonably necessary to effectuate postjudgment judicial remedies.

20. In numerous instances, WAM collectors continue to call consumers and demand payment, even after receiving written demand from consumers to cease communications.

21. In numerous instances, WAM collectors use harassing and abusive tactics, including, but not limited to, calling consumers multiple times per day, calling immediately back after consumers have terminated calls, and threatening to continue to call consumers until they have paid the debt. In addition, some WAM collectors use rude and abusive language when talking to consumers.

22. WAM's debt collection practices have generated thousands of complaints filed with the Federal Trade Commission, Better Business Bureaus, state regulatory agencies, and the company itself.

23. WAM's internal compliance programs regularly identify collectors who are violating the FTC Act and/or the FDCPA. However, even multiple egregious violations by individual collection employees do not result in serious punishment.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

24. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Misrepresentations of material fact constitute deceptive acts or practices prohibited by the FTC Act.

25. Under Section 5(n) of the FTC Act, 15 U.S.C. § 45(n), an act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by counter-veiling benefits to consumers or competition.

COUNT I

26. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, expressly or by implication, represents that:

- a. WAM is a law firm or WAM collectors are attorneys;
- b. Nonpayment of a debt will result in the seizure, garnishment, attachment, or sale of consumers' properties or wages, or the arrest or imprisonment of consumers;
- c. Nonpayment of a debt will result in WAM taking legal action or seeking criminal prosecution against consumers;
- d. Partial payments by consumers will be accepted as full settlement of the consumers' indebtedness; or
- e. Negative credit information will remain on consumers' credit reports until the debt is paid.

27. In truth and in fact, in numerous of those instances:

- a. WAM is not a law firm and WAM collectors are not attorneys;
- b. Nonpayment of a debt will not result in the seizure, garnishment, attachment, or sale of consumers' properties or wages, or the arrest or imprisonment of consumers;
- c. Nonpayment of a debt will not result in WAM taking legal action or seeking criminal prosecution against consumers;
- d. Partial payments by consumers are not accepted as full

settlement of the consumers' indebtedness; and

- e. Negative credit information will not remain on consumers' credit reports until the debt is paid.

28. Therefore, the representations set forth in Paragraph 26 were and are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

29. In numerous instances, in connection with the collection of debts, Defendant withdraws funds from consumers' bank accounts or charges consumers' credit cards without obtaining consumers' express informed consent.

30. Defendant's practice of withdrawing funds from consumers' bank accounts or charging consumers' credit cards without obtaining consumers' express informed consent causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.

31. Therefore, Defendant's practice as alleged in Paragraph 29 is unfair and in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

32. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692 *et seq.*, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l, provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act. Further, the Commission is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA. The authority of the Commission in this regard includes the power to enforce the provisions of the FDCPA in the same manner as if the violations of the FDCPA were violations of a Commission trade regulation rule.

33. The term “consumer,” as used in this Complaint, means any natural person obligated or allegedly obligated to pay any debt, as “debt” is defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5).

34. The term “location information,” as used in this Complaint, means a consumer’s place of abode and the consumer’s telephone number at such place, or the consumer’s place of employment, as defined in Section 803(7) of the FDCPA, 15 U.S.C. § 1692a(7).

COUNT III

35. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, uses false, deceptive, or misleading representations or means in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to:

- a. Falsely representing or implying that WAM collectors are attorneys or that communications from WAM are from an attorney, in violation of Section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3);
- b. Representing or implying that nonpayment of a debt will result in the seizure, garnishment, attachment, or sale of any property or wages of any person or the arrest or imprisonment of any person when such action is not lawful or when WAM or the creditor do not intend to take such action, in violation of Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4);
- c. Threatening to take action that cannot legally be taken or that is not intended to be taken, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5); and

- d. Using any false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10).

36. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 35 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

37. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, uses unfair or unconscionable means to collect or attempt to collect debts in violation of Section 808 of the FDCPA, 15 U.S.C. § 1692f, including, but not limited to:

- a. Withdrawing funds from consumers' bank accounts or charging consumers' credit cards without obtaining the consumers' express informed consent; and
- b. Depositing or threatening to deposit postdated checks or other postdated payment instruments prior to the date on such checks or instruments, in violation of Section 808(4) of the FDCPA, 15 U.S.C. § 1692f(4).

38. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 37 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

39. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, when communicating with persons other than the consumer for the alleged purpose of acquiring location information about the consumer, violates Section 804 of the FDCPA, 15 U.S.C. § 1692b, by engaging in conduct, including, but not limited to:

- a. Communicating to third parties that the consumer owes a debt, in violation of Section 804(2) of the FDCPA, 15 U.S.C. § 1692b(2); and
- b. Communicating with third parties, including third parties who do not know the debtor or who are related to a deceased debtor, but are not the spouse, parent (if the debtor was a minor), guardian, executor, or administrator of the debtor's estate, more than once when: (a) not requested to do so by such person, or (b) when the Defendant lacks a reasonable belief that the earlier

response of such person was erroneous or incomplete and that the person has correct or complete location information to provide, in violation of Section 804(3) of the FDCPA, 15 U.S.C. § 1692b(3).

40. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 39 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VI

41. In numerous instances, in connection with the collection of debts and without the prior consent of consumers given directly to WAM or the express permission of a court of competent jurisdiction, Defendant, directly or indirectly, communicates with consumers at times or places that Defendant knows or should know are inconvenient to consumers, including, but not limited to, (a) communicating with the consumer before 8:00 a.m. or after 9:00 p.m. at the consumer's location, or (b) communicating with the consumer at the consumer's place of employment, in violation of Section 805(a)(1) of the FDCPA, 15 U.S.C. § 1692c(a)(1).

42. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 41 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VII

43. In numerous instances, in connection with the collection of debts and without the prior consent of consumers given directly to WAM or the express permission of a court of competent jurisdiction, Defendant, directly or indirectly, communicates with consumers at their places of employment when Defendant knows or has reason to know that the consumers' employers prohibit the consumers from receiving such communications, in violation of Section 805(a)(3) of the FDCPA, 15 U.S.C. § 1692c(a)(3).

44. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 43 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT VIII

45. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, has communicated with persons other than the consumers, including parents, children, neighbors, employers, and co-workers, for

purposes other than acquiring location information about a consumer, without the prior consent of the consumer given directly to WAM or the express permission of a court of competent jurisdiction, and when such communication was not reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

46. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 45 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IX

47. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, communicates with consumers after receiving written notice from consumers that the consumers refuse to pay the debts or that consumers wish WAM to cease further communications, in violation of Section 805(c) of the FDCPA, 15 U.S.C. § 1692c(c).

48. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 47 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT X

49. In numerous instances, in connection with the collection of debts, Defendant, directly or indirectly, engages in conduct the natural consequence of which is to harass, oppress, or abuse persons, in violation of Section 806 of the FDCPA, 15 U.S.C. § 1692d, including, but not limited to:

- a. Using obscene or profane language or language the natural consequence of which is to abuse the hearer in violation of Section 806(2) of the FDCPA, 15 U.S.C. § 1692d(2); or
- b. Causing a telephone to ring or engaging persons in telephone conversations, repeatedly or continuously, with intent to annoy, abuse, or harass the persons at the called number, in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5).

50. Pursuant to Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), the acts and practices alleged in paragraph 49 also constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

INJUNCTION FOR VIOLATIONS OF THE FTC ACT AND THE FDCPA

51. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction to ensure that Defendant will not continue to violate the FTC Act and the FDCPA.

**EQUITABLE RELIEF FOR VIOLATIONS OF
THE FTC ACT AND THE FDCPA**

52. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue all equitable and ancillary relief as it may deem appropriate in the enforcement of the FTC Act and the FDCPA, including the ability to order rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement to deprive a wrongdoer of ill-gotten gains.

CIVIL PENALTIES FOR VIOLATIONS OF THE FDCPA

53. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2009), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the FDCPA that occurred on or before February 9, 2009 and civil penalties of not more than \$16,000 for each violation that occurred on or after February 10, 2009.

54. Defendant WAM has violated the FDCPA as described above, with actual knowledge or knowledge fairly implied on the basis of objective circumstances, as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

55. Each instance within five (5) years preceding the filing of this Complaint, in which Defendant WAM has failed to comply with the FDCPA in one or more of the ways described above, constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America, pursuant to 15 U.S.C. §§ 45(m)(1)(A), 53(b), 57b, and 1692f and the Court's own equitable powers, respectfully requests that the Court:

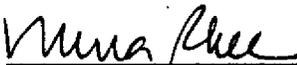
1. Enter judgment against Defendant and in favor of Plaintiff for each law violation alleged in this Complaint;
2. Enter a permanent injunction to prevent future violations of the FTC Act and the FDCPA by Defendant;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act and the FDCPA, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

4. Award Plaintiff monetary civil penalties against Defendant WAM for each violation of the FDCPA occurring within five (5) years preceding the filing of this Complaint; and
5. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

FOR THE UNITED STATES OF
AMERICA:

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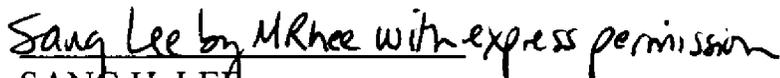
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