

1 person allegedly obligated to pay a debt.

2 4. At all relevant times, Defendant, Capital One, acted as a "creditor" within the
3 meaning of 73 Pa.C.S.A. § 2270.3, in that, it conducted business under the name of a creditor
4 and within this Commonwealth, to whom a debt is owed or alleged to be owed.
5

6 5. On information and belief, Defendant is a credit company with its principal place
7 of business located at P.O. Box 30285 in Salt Lake City, Utah, 84130-0285.
8

9 **BACKGROUND OF THE PaFCEUA, 73 Pa.C.S.A. § 2270 et seq.**

10 6. The Pennsylvania Fair Credit Extension Uniformity Act ("PaFCEUA") is a
11 comprehensive statute which prohibits a catalog of activities in connection with the collection of
12 debts by creditors. See 73 Pa.C.S.A. § 2270 et seq. The PaFCEUA imposes civil liability on any
13 person or entity that violates its provisions, and establishes general standards of creditor conduct,
14 defines abuse, and provides for specific consumer rights. See 73 Pa.C.S.A. §§ 2270.4 and
15 2270.5. The operative provisions of the PaFCEUA declare certain rights to be provided to or
16 claimed by customers, forbid deceitful and misleading practices, prohibit harassing and abusive
17 tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of
18 disapproved practices. See 73 Pa.C.S.A. § 2270.4.
19

20 7. In particular, the PaFCEUA broadly enumerates several practices considered
21 contrary to its stated purpose, and forbids creditors from taking such action. The substantive
22 heart of the FDCPA lies in three broad prohibitions. First, a "creditor may not engage in any
23 conduct the natural consequence of which is to harass, oppress, or abuse any person in
24 connection with the collection of a debt." 73 Pa.C.S.A. § 2270.4(b)(4). Second, a "creditor may
25 not use any false, deceptive, or misleading representation or means in connection with the
26 collection of any debt." 73 Pa.C.S.A. § 2270.4(b)(5). And third, a "creditor may not use unfair
27
28

1 or unconscionable means to collect or attempt to collect any debt.” 73 Pa.C.S.A. § 2270.4(b)(6).
2 Simply, designed to protect consumers from unscrupulous creditors, whether or not there exists a
3 valid debt, the PaFCEUA broadly prohibits unfair or unconscionable collection methods,
4 conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading
5 statements, in connection with the collection of a debt.
6

7 8. Pennsylvania enacted the PaFCEUA to regulate the collection of consumer debts
8 by debt collectors and creditors. The express purpose of the PaFCEUA is to “establish what
9 shall be considered unfair methods of competition and unfair or deceptive acts or practices with
10 regard to the collection of debts.” 73 Pa.C.S.A. § 2270.2.
11

12 FACTUAL ALLEGATIONS

13
14 9. At all pertinent times hereto, Defendant, Capital One, was attempting to collect a
15 debt that it was allegedly owed.
16

17 11. The alleged debt at issue arose out of transactions, which were primarily for
18 personal, family or household, purposes.

19 12. Beginning on or around May of 2009, Defendant, its agents, employees, and
20 servants, engaged in debt collection activities seeking payment from Plaintiff.
21

22 13. Defendant and its employee identified as “Tina Madison” harassed Plaintiff in an
23 attempt to collect the alleged debt, identified as a Capital One account ending in 3345.

24 14. Defendant, its employees, agents and servants harassed Plaintiff by making
25 continuous calls to her home telephone number and work telephone number.

26 15. Defendant has even called Plaintiff’s family and co-workers looking for Plaintiff
27 in attempt to collect the alleged debt.
28

1 16. On May 8, 2009, Defendant sent a letter to Plaintiff seeking payment \$3,845.90
2 on a claim for 4,807.36, regarding a charged off Capital One account. The letter was signed by
3 "Tina Madison, Recoveries Specialist". A true and correct copy is attached hereto as Exhibit
4 "A". Upon information and belief, no such person actually exists at Capital One.
5

6 17. On June 1, 2009, Attorney Gerald Baldino, Jr. advised in writing of his
7 representation and instructed Defendant to direct all correspondence and contact to his attention
8 only. A true and correct copy of the June 1, 2009 letter is attached hereto as Exhibit "B".
9

10 18. Immediately thereafter, Defendant and its employee/agent calling herself "Tina
11 Madison", disregarded the instructions and continued to harass Plaintiff by telephone, stating that
12 that because Plaintiff's attorney had not made a substantial settlement offer, Defendant would
13 not honor his representation and would continue to communicate with Plaintiff.
14

15 19. In response, Plaintiff stated that all communication must be addressed to her then-
16 attorney Gerald Baldino.
17

18 20. Again disregarding clear and specific instructions, on or about July 2, 2009,
19 Defendant sent a letter to Plaintiff seeking \$3,579.96 on an account value stated as \$4,695.93.
20 Again, the letter was signed by "Tina Madison". A true and correct copy of the July 2, 2009
21 letter is attached hereto as Exhibit "C".
22

23 21. The first letter claims more from Plaintiff than the second, and the first seeks
24 more in settlement than the second.
25

26 22. Plaintiff could not determine how the stated account balance diminished without
27 payments having been made, and was confused by the manner with which Defendant had offered
28 to settle the alleged debt, which appeared quite counter-intuitive and arbitrary.

1 23. On July 29, 2009, Plaintiff's acting legal counsel; Gerald Baldino sent a second
2 letter to Defendant, inquiring as to what aspect of his June 1, 2009 letter was not understood
3 about not contacting his client, again instructing Defendant to send all correspondence and
4 contact to his attention only. A true and correct copy of the July 29, 2009 letter is attached hereto
5 as Exhibit "D".
6

7 24. Defendant sent a third letter to Plaintiff dated August 11, 2009, indicating that
8 Plaintiff a balance of \$4,820.12 on the account ending in 3345, a figure \$124.19 more than the
9 prior letter and \$13.00 more than the balance indicated in the first letter. A true and correct copy
10 of the August 11, 2009 letter is attached hereto as Exhibit "E".
11

12 25. Defendant's August 11, 2009 letter fails furnish any description detailing interest,
13 late fees and other charges included, making it impossible for Plaintiff to determine whether or
14 not she owes the alleged debt and whether the alleged debt was correctly calculated.
15

16 26. Apparently believing that Plaintiff, her then-counsel and debt collection in general
17 to be some sort of fanciful and humorous endeavor, Defendant sent its next letter dated August
18 25, 2009, giving Plaintiff the shock of her life.

19 27. Defendant's letter dated August 25, 2009 indicated a balance and demanded
20 payment of **TWO HUNDRED EIGHTY-SIX MILLION, SIX HUNDRED AND FIFTY-**
21 **ONE THOUSAND, TWO HUNDRED AND THIRTY-SEVEN DOLLARS**
22 **(\$286,651,237.00)** on the Capital One account ending in 3345!! A true and correct copy of the
23 August 25, 2009 letter is attached hereto as Exhibit "F".
24

25 28. First paragraph of the letter referred to as Exhibit "F", begins with "You currently
26 have an outstanding balance of \$286,651,237.00 on your Capital One account. You have not paid
27 this amount as we agreed."
28

1 29. The next paragraph of Exhibit "F" states: Call us by 09/04/09 to make
2 arrangements to pay this debt. Otherwise, legal action may be initiated without further notice.
3 Should this happen, you may also be responsible for legal costs incurred during the litigation."
4

5 30. The next paragraph of Exhibit "F" states: "If we pursue legal action, this will also
6 be reflected in your credit report, as will any judgments obtained against you. Lawsuits are a
7 matter of public record and could potential be viewed by landlords, employers and other
8 creditors."
9

10 31. The next paragraph of Exhibit "F" states: "Capital One would like to resolve this
11 situation without litigation. We urge you to call now to settle this debt. If we do not hear from
12 you, we plan to file suit against you for your entire balance."
13

14 32. The final paragraph of Exhibit "F" states: "Please send your payment of
15 \$286,651,237.00 in the enclosed envelope...."
16

17 33. Plaintiff avers that that Defendant intentionally and with malicious intent, sent the
18 correspondence to: (1) shock and intimidate Plaintiff; (2) interfere with Plaintiff's representation
19 by legal counsel; (3) demand payment that Defendant knew could not possibly be owed; (4)
20 threaten Plaintiff to either pay or face a lawsuit; (5) publicly embarrass Plaintiff if she did not
21 pay the \$286 Million Dollars; (6) threaten that Plaintiff would be required to pay legal fees and
22 costs without belief in the accuracy of such a statement; (7) destroy Plaintiff's credit standing by
23 reporting a \$286 Million Dollar debt; (8) cause Plaintiff's creditors to become insecure and/or
24 call loan(s) and/or cancel credit accounts, as is standard industry response to adverse credit
25 reporting; (9) harm Plaintiff's current and future employment prospects; (10) harm Plaintiffs
26 ability to secure current and future housing; (11) extort a settlement; (12) to compel Plaintiff to
27 place \$286 Million in an envelope, and mail that amount immediately to "satisfy the debt".
28

1 34. Capital One's advertising slogan "what's in your wallet?" is promoted across the
2 media, including television, radio and internet, trumping the value of its product.

3 35. Capital One apparently wanted to know not only what was in Plaintiff's wallet, but
4 intended to empty her wallet as well.

5 36. Capital One never placed \$286,651,237.00 in Plaintiff's wallet, pocketbook or,
6 bank account.

7 37. So shocking is the amount demanded, a nine digit number, that it is too large to
8 input into a conventional calculator, for which only 8 digits are permitted.

9 38. When Plaintiff read the letter referred to, she went into a near panic.

10 39. The communications, by letter and telephone calls were neither isolated, nor
11 inadvertent, but rather an intentional series of acts and misdeeds calculated to injure Plaintiff.

12 40. Defendant went to great lengths to abuse, threaten, intimidate and harass Plaintiff
13 over a substantial period of time, first by falsely demanding varying amounts, and when that
14 failed, by demanding a payment so extreme as to be tortuous, especially when viewed in the
15 context of events.

16 41. Upon information and belief no computer program at Capital One could have
17 possibly contained an algorithm allowing for a 9 digit debt to be printed on a letter seeking
18 payment without human intervention, further revealing that Defendant sent the letter with intent
19 to injure Plaintiff.

20 42. Upon information and belief, the person or persons posing as the (likely) fictitious
21 "Tina Madison" endorsed the sending of such a blatant instrument of harassment and
22 intimidation, to scare the Plaintiff into paying her entire life savings to keep Capital One from
23 doing harm to her in the ways it had threatened.

- 1 c) Using false, deceptive or misleading representation or means in connection with
2 the collection of any debt, in violation of 73 Pa.C.S.A. § 2270.4(b)(5);
3
4 d) Falsely representing the character, amount or legal status of a debt, in violation of
5 73 Pa.C.S.A. § 2270.4(b)(5)(ii);
6
7 e) The use of false representations or deceptive means to collect or attempt to collect
8 any debt, in violation of 73 Pa.C.S.A. § 2270.4(b)(5)(x);
9
10 f) Using unfair or unconscionable means to collect or attempt to collect any debt, in
11 violation of 73 Pa.C.S.A. § 2270.4(b)(6); and
12
13 g) Collecting any amount, including interest, fee, charge or expense incidental to the
14 principle obligation without express authorization by the agreement creating the
15 debt in violation of 73 Pa.C.S.A. § 2270.4(b)(6)(i);
16
17 h) Acting in an otherwise deceptive, unfair and unconscionable manner and failed to
18 comply with the PaFCEUA.

19
20
21
22
23
24
25
26
27
28

COUNT II:
VIOLATION OF THE PENNSYLVANIA
UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

47. Plaintiff hereby incorporates all facts and allegations specified in all preceding paragraphs, by reference as if fully set forth at length.

48. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

49. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

50. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family household purposes."

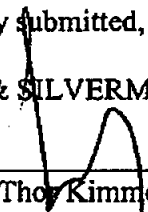
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- B. Actual damages;
- C. Damages equal to amounts sought by Defendant from Plaintiff;
- D. Damages for Defamation;
- E. Costs and reasonable attorney's fees; and,
- F. For such other and further relief as may be just and proper.

Respectfully submitted,

KIMMEL & SILVERMAN, P.C

Date: 12-8-10

By: 
Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (215) 540-8817
Email: kimmel@creditlaw.com