

No. D-1-GV-11-001919

THE STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS,

FIRST INTEGRAL RECOVERY, LLC,
Defendant.

126th JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of FIRST INTEGRAL RECOVERY, LLC; Defendant, and for cause of action would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. RULES CIV.PROC., 190.3.

II. JURISDICTION

2.1 This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division in the name of the State of Texas and in the public interest under the authority granted to him by TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41 *et seq.* ("DTPA"¹) upon the grounds that Defendant has engaged in false, misleading and deceptive acts and practices in the conduct of trade and commerce as defined and

¹Citations to a particular section of the DTPA are in the form "DTPA § 17.XX" with the section number being the number of the section of the Business and Commerce Code.

declared unlawful by DTPA § 17.46, and have violated the terms of the TEXAS DEBT COLLECTION PRACTICES ACT, TEX. FIN. CODE § 392.001 *et seq.* (“TDCPA”²).

III.

DEFENDANT AND SERVICE

3.1 Defendant FIRST INTEGRAL RECOVERY, LLC (“First Integral”) is a Texas limited liability company. It may be served by serving its registered agent, O. J. Lawal, at its registered office: 8700 Commerce Park Drive, Suite 202, Houston, Harris County, Texas 77036-7430 or at the company’s office at 10300 Bissonnet, Suite 305, Houston, Harris County, Texas.

IV.

VENUE

4.1 Pursuant to DTPA § 17.47(b), venue of this suit lies in Travis County, Texas because Defendant has done business in Travis County, Texas; it has telephoned consumers in Travis County in the course of its third-party debt collection business.

V.

PUBLIC INTEREST

5.1 Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney

²Citations to a particular section of the TDCPA are in the form “TDCPA § 392.XXX” with the section number being the number of the section of the Finance Code.

General of Texas (“the Consumer Protection Division”) believes and is of the opinion that these proceedings are in the public interest. The Consumer Protection Division has contacted Defendant at least seven days prior to the institution of this action and informed it in general of the unlawful conduct alleged herein.

VI.

TRADE AND COMMERCE

6.1 Defendant engaged in trade and commerce as that term is defined by DTPA § 17.45(6).

VII.

ACTS OF AGENTS

- 7.1 Whenever in this Petition it is alleged that Defendant did any act, it is meant that:
- A. Defendant performed or participated in the act; or
 - B. Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

VIII.

NATURE OF DEFENDANT’S OPERATIONS AND STATEMENT OF FACTS

8.1 Defendant is a third-party debt collector, as defined in TDCPA § 392.001(7). It has offices in Houston, Harris County, Texas and attempts to collect debts from consumers residing all over the United States including Travis County, Texas.

8.2 Defendant is in the business of collecting debts, primarily internet “payday” loans, small high interest short-term loans made by lenders who advertise on the internet and do not have physical offices in the state in which they are lending.

8.3 Defendant often refers to itself as “1st IRS,” leading consumers to believe that they are being contacted by the Internal Revenue Service. Its telephone lines are set up so that its collectors’ calls show up on the recipients’ caller identification as “First IRS.”

8.4 Defendant makes numerous false representations to consumers including that Defendant is a law office or that they themselves are lawyers and that the employee contacting the consumer is a prosecutor or other law enforcement official.

8.5 Defendant frequently tells consumers that they will refer their case to a lawyer or that they will initiate legal proceedings against the consumer when, in fact, they have no intention of doing so.

8.6 Defendant also frequently threatens consumers with arrest, criminal prosecution, or imprisonment if they do not pay their alleged debt.

8.7 Defendant frequently uses profane or obscene language during collection calls with consumers.

8.8 Defendant frequently continues to attempt to collect a debt, without attempting to verify the debt, after the consumer has denied ever owing the debt, represented that the debt has been paid, discharged in bankruptcy, or otherwise requested that the debt be verified.

8.9 Defendant frequently fails or refuses to identify the creditor for whom it claims to be collecting in its communications with consumers.

8.10 Defendant frequently fails to identify itself as a debt collector when making collection calls.

8.11 Defendant frequently makes repeated telephone calls to consumers with intent to

harass the recipient of the telephone calls.

8.12 Defendant also threatens consumers with physical harm if they do not pay their alleged debt.

8.13 Defendant charges consumers a “decline fee” of \$150 if the consumer attempts to pay the debt with a credit card that is declined, despite the fact that there is no provision in the underlying debt contract authorizing this charge.

8.14 As a third-party debt collector doing business in Texas, Defendant is required to obtain and maintain a surety bond and file a copy of that bond with the Texas Secretary of State. On January 22, 2010 the Hartford Casualty Insurance Company gave notice that effective April 29, 2010, it was cancelling Defendant’s bond. Between April 29, 2010 and December 6, 2010 Defendant continued to operate as a third-party debt collector in Texas without obtaining a bond. A true and correct copy of Hartford’s notice of cancellation is attached as Exhibit A.

8.15 The Better Business Bureau of Houston, Texas, which is where the Defendant bases its business operations, has given Defendant an “F” rating, and has received 168 complaints against Defendant in the last three years. Moreover, at least four default judgments have been entered against Defendant in state and federal actions alleging illegal collection practices on its part.

IX.

VIOLATIONS OF THE TEXAS DEBT COLLECTION PRACTICES ACT

9.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

9.2 Defendant, as alleged and detailed above, has violated the TDCPA by:

- A. Threatening to use violence or other criminal means to cause harm to a person or property of a person, in violation of TDCPA § 392.301(a)(1);
- B. Threatening to accuse falsely a person of fraud or any other crime, in violation of TDCPA § 392.301(a)(2);
- C. Threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings, in violation of TDCPA § 392.301(a)(5);
- D. Threatening to take an action prohibited by law, in violation of TDCPA § 392.301(a)(8);
- E. Using profane or obscene language or language intended to abuse unreasonably the hearer, in violation of TDCPA § 392.302(1);
- F. Causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number, in violation of TDCPA § 392.302(4);
- G. Using a name other than the true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection, in violation of TDCPA § 392.304(a)(1)(A);
- H. Failing to disclose that a communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and the debtor, in violation of TDCPA § 392.304(a)(5)(A);
- I. Failing to disclose that a communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and the debtor, in violation of TDCPA § 392.304(a)(5)(B);
- J. Misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding, in violation of TDCPA § 392.304(a)(8);
- K. Representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government, in violation of TDCPA § 392.304(a)(9);
- L. Representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute

does not authorize the additional fees or charges, in violation of TDCPA § 392.304(a)(12);

- M. Representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business, in violation of TDCPA § 392.304(a)(14);
- N. Using a communication that purports to be from an attorney or law firm if it is not, in violation of TDCPA § 392.304(a)(16);
- O. Representing that a consumer debt is being collected by an attorney if it is not, in violation of TDCPA § 392.304(a)(17);
- P. Using false representations or deceptive means to collect a debt or obtain information concerning a consumer, in violation of TDCPA § 392.304(a)(19);
- Q. Engaging in the business of debt collection as a third-party debt collector without having a valid surety bond in effect in violation of TDCPA § 392.101(a), and
- R. Engaging in the business of debt collection as a third-party debt collector without having a copy of a valid surety bond on file with the Secretary of State in violation of TDCPA § 392.101(a).

X.

VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES ACT

10.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

10.2 Defendant, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices as declared unlawful in DTPA § 17.46(a).

10.3 Defendant, as alleged and detailed above, has in the course of trade and commerce violated DTPA § 17.46(b) by:

- A. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA § 17.46(b)(3);

- B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of DTPA § 17.46(b)(5), and
- C. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12).

10.4 Each violation of the TDCPA alleged in Paragraph 9.2 also constitutes a violation of the DTPA pursuant to TDCPA § 392.404(a).

XI.

TRIAL BY JURY

11.1 Plaintiff herein requests a jury trial and will tender the jury fee to the Travis County District Clerk's office pursuant to Texas Rules of Civil Procedure 216 and Texas Government Code § 51.604.

XII.

PRAYER

Application for Permanent Injunction

12.1 Plaintiff further prays that a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their agents, servants, employees, and representatives from engaging in any of the following acts or practices:

- A. Engaging in the business of debt collection without having a surety bond on file with the Texas Secretary of State which bond complies with the requirements of TDCPA § 392.101;
- B. Using the name "First IRS," "1st IRS," "IRS," or any other name suggesting that Defendant is affiliated with the Internal Revenue Service or any other federal, state, or local governmental agency;

- C. Representing that a consumer debt may be increased by the addition of a “decline fee,” attorney’s fees, investigation fees, service fees, or other charges if the addition of such charge is not authorized by the contract underlying the debt being collected;
- D. Threatening to use violence or other criminal means to cause harm to a person or property of a person;
- E. Threatening to accuse falsely a person of fraud or any other crime;
- F. Threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings;
- G. Threatening to take an action prohibited by law;
- H. Using profane or obscene language or language intended to abuse unreasonably the hearer, in violation of TDCPA § 392.302(1);
- I. Causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number;
- J. Using a name other than the true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection;
- K. Failing to disclose that a communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the Defendant and the debtor;
- L. Failing to disclose that a communication is from a debt collector, if the communication is a subsequent written or oral communication between Defendant and the debtor;
- M. Misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt’s status in a judicial or governmental proceeding;
- N. Representing falsely the status or nature of the services rendered by the debt collector or the debt collector’s business;
- O. Using a communication that purports to be from an attorney or law firm if it is not;
- P. Representing that a consumer debt is being collected by an attorney if it is not;
- Q. Using false representations or deceptive means to collect a debt or obtain information

concerning a consumer;

- R. Continuing to attempt to collect a debt, without verifying the debt, after the consumer has denied ever owing the debt, represented that the debt has been paid, or otherwise requested that the debt be verified, and
- S. Engaging in any false, misleading, or deceptive act in commerce.

Monetary Relief

- 12.2 Plaintiff further prays that this Court order Defendant First Integral:
- A. To pay liquidated damages of \$100 per incident for each time that Defendant engaged in debt collection without having a valid surety bond filed with the Secretary of State, as authorized by TDCPA § 392.403(e);
 - B. To pay civil penalties of up to \$20,000 per violation for each and every violation of the DTPA, as authorized by DTPA § 17.47(c)(1);
 - C. To restore all money or other property acquired by means of unlawful acts or practices, or, in the alternative, to compensate identifiable persons for actual damages, and
 - D. To pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006 (c).

General Relief

- 12.3 Plaintiff prays for such other relief as it may show itself entitled to receive.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection &
Public Health Division



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Assistant Attorney General
Consumer Protection & Public Health Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: 512-475-4184
Facsimile: 512-322-0578

ATTORNEYS FOR PLAINTIFF

Exhibit A

20070216

Hartford Casualty Insurance Company
Bond Center
Bond Department
400 International Parkway, Ste. 425
Heathrow, FL 32746

NOTICE OF CANCELLATION OF BOND

January 19, 2010

SECRETARY OF STATE
STATUTORY DOCUMENTS SECTION
P.O. BOX 12887
AUSTIN, TX 78711

RE: First Integral Recovery, LLC

Bond Number: 34BSBET2067

WHEREAS, on or about 09/05/2007 the Hartford Casualty Insurance Company, as Surety, executed its Collection Agencies in the penalty of Ten Thousand Dollars (\$10,000) on behalf of First Integral Recovery, LLC, of Houston, TX 77036 as Principal and in favor of SECRETARY OF STATE as Obligee.

WHEREAS, said bond, by its terms, provides that the said Surety shall have the right to terminate its suretyship thereunder by serving notice of its election so to do upon the said Obligee, and

WHEREAS, the Surety desires to take advantage of the terms of said bond and does hereby elect to terminate its liability in accordance with the provisions thereof.

NOW, therefore, be it known that the Hartford Casualty Insurance Company shall,

- At the expiration of _____ days after receipt of this notice
- Effective 04/29/2010

Consider itself released from all liability by reason of any default committed thereafter by the said Principal.

SIGNED and DATED this 19th day of January, 2010.

By: Jennifer O'Brien
Jennifer O'Brien, Attorney-in-Fact

CC: POULTON ASSOCIATES INC
3785 SOUTH 700 EAST 2ND FLOOR
SALT LAKE CITY, UT 84106

CC: First Integral Recovery, LLC
10039 Bissonnet St. Ste #305
Houston, TX 77036

RECEIVED
SECRETARY OF STATE
JAN 22 2010
LEGAL SUPPORT UNIT