

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RTB ENTERPRISES, INC.,
also d/b/a Allied Data Corporation, and

RAYMOND T. BLAIR, individually and as an
officer of RTB ENTERPRISES, INC.,

Defendants.

Case No.
JUDGE

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“Commission”), for its Complaint alleges:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l, to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. § 1692 *et seq.*, in connection with their abusive and deceptive debt collection practices.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1692I(a).

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)-(2), (c)(1)-(2), and (d), and 1395(a), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the FDCPA, 15 U.S.C. § 1692 *et seq.*, which prohibits deceptive, abusive, and unfair debt collection practices.

5. The Commission is authorized to initiate federal district court proceedings by its own attorneys, to enjoin violations of the FTC Act and the FDCPA, and to secure such equitable relief as may be appropriate in each case, including rescission of contracts, restitution, the refund of moneys paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57(b), and 1629I(a). Section 814 of the FDCPA further authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA, including the power to enforce provisions of the FDCPA in the same manner as if the violations were violations of an FTC trade regulation rule. 15 U.S.C. § 1692d.

DEFENDANTS

6. Defendant RTB Enterprises, Inc., also doing business as Allied Data Corporation, (“Allied”) is a Texas corporation with its principal place of business at 13111 Westheimer Road,

Suite 400, Houston, Texas 77077. Allied, in connection with the matters alleged here, transacts or has transacted business in this district and throughout the United States. Allied is a “debt collector” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

7. Defendant Raymond T. Blair is the sole shareholder and President of Allied. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Allied, including the acts and practices set forth in this Complaint. Defendant Blair resides or resided in this district and, in connection with the matters alleged here, transacts or has transacted business in this district and throughout the United States.

8. After years in the debt collection business, Blair formed Allied in 1993. He often works more than 40 hours a week at Allied and plays an active role in the management and supervision of the company’s debt collection activities. He often participates in decisions to hire and fire collectors and collection managers. He talks daily with his collection managers. He knows or should have known of the violations described in this Complaint. Blair professes to recognize the requirements of the FDCPA, but failed to recognize the requirements that the FTC Act places on debt collectors.

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

10. At least since 1993, Allied has engaged in third-party debt collection activities throughout the United States. Allied's creditor clients include direct marketing companies, retail stores, retail websites, and hospitals. Allied collects on approximately one million accounts a year.

11. Allied collects debts in English and Spanish. Approximately 10 percent of Allied's collectors collect debts in Spanish. All of Allied's collection units employ collectors who speak Spanish. However, none of the unit managers who supervise Allied's Spanish-speaking collectors speak Spanish themselves. In numerous instances, Allied's collectors use more abusive debt collection tactics against Spanish-speaking consumers than against English-speaking consumers.

12. Defendants regularly attempt to collect debts by contacting consumers by telephone, U.S. Mail, and other instrumentalities of interstate commerce.

False Claims that Calls Are on Behalf of an Attorney

13. In numerous instances, Defendants call consumers to collect debts and claim or imply they are calling on behalf of an attorney. Defendants' collectors frequently claim that they are working with, or referring matters to Allied's Litigation Department, Pre-Litigation Department, Legal Department, or Corporate Counsel. Sometimes collectors claim they are actually calling *from* Allied's Legal Department or that they work with the Harris County District Attorney's Office. In other instances, collectors claim to be an attorney when they collect debts in Spanish from Spanish-speaking consumers.

14. Defendants also frequently use legal-sounding terms that leave consumers with the impression that the communication is from or on behalf of an attorney, such as “breach of contract,” “affidavit signed against you,” and “due to the legal nature” of the call.

15. However, Defendants do not have a Litigation Department or a Pre-Litigation Department, and none of Defendants’ collectors are attorneys or work for Allied’s one-person Legal Department. Nor do Defendants’ collectors work with, on behalf of, or refer matters to, any Litigation Department, Pre-Litigation Department, Legal Department, Corporate Counsel, the Harris County District Attorney’s Office, or any other attorneys.

False Litigation Threats

16. In numerous instances, Defendants expressly threaten litigation. For example, collectors claim that if a consumer does not return a telephone call by a specific deadline, then Defendants’ attorney will file a case and the consumer would need to hire an attorney for court proceedings.

17. In other instances, Defendants claim legal proceedings have already begun against consumers, by stating, for example, “I am calling you basically because this morning in Harris County Court an affidavit was signed against you as a refusal to pay against my client,” or “a complaint has been filed against you by the merchant,” or similar language. At other times, Defendants use a case style and file number to imply that a case has been filed and inform the consumer that further action can only be avoided by prompt payment of the debt.

18. Moreover, Allied’s collection script instructs collectors to state:

(Mr./Mrs. Debtor) if you we [sic] are unable to come up with a solution today, you will leave me no choice but to mark the file as a refusal to pay. I will place your file in legal status and my Corporate Counsel may review your account.

Defendants' collection script is attached as **Exhibit A**.

19. Defendants' collectors often claim that they will forward the consumer's file to the Legal Department or that Allied's attorney will make a decision about the matter unless the debt is paid by a set time. Other times, collectors tell consumers that "if you refuse to pay, I have to forward it on over to our Legal Department for processing," or that "the attorneys are now wanting to move this account over to Legal."

20. Defendants also advise consumers that they need to pay the debt to avoid hundreds or even thousands of dollars of court fees.

21. In virtually every instance in which Defendants threaten litigation, they have no intention of suing the consumer or even recommending that their creditor client sue the consumer. Defendants' collectors do not turn over consumers' files to any Litigation Department, Pre-Litigation Department, Legal Department, or Corporate Counsel, or to any attorney for any purpose. Further, in the past 12 years, except for three instances involving debts in excess of \$50,000 each, Defendants have made no litigation recommendations to their creditor clients.

22. Defendants never sue consumers for failing to pay Allied. Defendants have no authority to sue consumers without seeking and receiving approval from Allied's creditor clients and have never sought approval to directly file suit against consumers. Moreover, threats to impose court costs on consumers are false because Defendants lack the legal authority to unilaterally impose court costs and have never tried to do so.

Deceptive Schemes to Entice Settlement or Obtain Consumer Information

23. Defendants also use deceptive schemes to collect or attempt to collect debts and to obtain consumer information.

24. Defendants' "Hard-Ship Program" is a deceptive scheme used to entice settlement through a partial payment plan and to obtain personal information about consumers for future collection efforts. Defendants' Hard-Ship Program script instructs collectors to tell consumers that the consumers need to provide personal financial information in order to qualify for a program to assist debtors. Defendants' Hard-Ship Program script instructs collectors to obtain information about the consumer, including employment and salary; financial accounts; home ownership and monthly mortgage payment; marital status and spouse's income; vehicle ownership; and monthly expenses.

25. Regardless of the consumer's financial situation, the Hard-Ship Program script instructs collectors to inform the consumer that "based on the information that you have given me, you qualify for my clients [sic] program" and that the consumer is therefore "eligible" to pay off the debt over a number of months.

26. In fact, Defendants have no Hard-Ship Program, and Defendants do not use the information collected to determine if consumers qualify for the fictitious program. Defendants' Hard-Ship Program states that the true purpose of obtaining the consumers' information is to assist Allied in future collection attempts, not to "qualify" consumers. Defendants' Hard-Ship Program script candidly explains this to collectors:

What is the hardship [sic] program? Anything you want it to be, SIF [Settlement in Full] offer, PPA [Partial Payment Arrangement]. **Our main goal is to make the debtor believe they have been qualified for the program and the information given to us has helped them qualify.**

This just gives us more information [to use in collecting the debt].
(Emphasis added.)

Defendants' Hard-Ship Program script is attached as **Exhibit B**.

27. Defendants' training manual for debt collectors contains other deceptive tricks to get consumers to pay quickly. For example, the training manual instructs collectors to obtain information about the consumer's mortgage and work history before making a settlement offer, then "pause for a moment and act like you are computing something."

28. Defendants' training manual instructs collectors to tell consumers that, because the collector is required to make a recommendation to the consumer's creditor by the next day, the consumer must immediately pay Allied by Western Union Quick Collect. The manual directs collectors to tell the consumer that a payment is necessary so that a "cease action" can be placed on the consumer's account.

29. In fact, Defendants' collectors do not compute anything; Defendants do not have to make recommendations to their creditor clients the next day or any day; and consumers do not have to immediately send money to Defendants via Western Union. These deceptive tactics are merely used to trick and manipulate consumers.

Transaction and Convenience Fees

30. After pressuring consumers to pay immediately, Defendants deceive consumers into paying transaction and convenience fees for payments authorized by telephone. Allied charges consumers a \$15.00 "transaction fee" for credit card or debit card transactions authorized by phone or a \$10.00 "convenience fee" for check-by-phone transactions.

31. Collectors expressly claim transaction and convenience fees are required or cannot be avoided.

32. Defendants' training manual warns collectors that a consumer's request to send payment by regular mail is a "stall tactic." Defendants' collection script instructs collectors to offer consumers just four ways to pay Allied, each of which includes one of Defendants' fees or other added costs to the consumer: (1) by credit or debit card by phone; (2) by check-by-phone; (3) by Western Union; or (4) by sending payment through Express or Priority Mail.

33. In many instances, collectors tell consumers that Allied does not accept checks or money orders sent by regular U.S. Mail.

34. In other instances, collectors fail to disclose transaction and convenience fees to consumers or fail to disclose that Allied charges a separate fee on each payment made under a payment plan.

35. In fact, these transaction and convenience fees are not required because Allied accepts checks or money orders sent by regular U.S. Mail. Consumers are not required to send payment by Western Union, Express Mail, or Priority Mail. Indeed, consumers who send in payments by regular mail suffer no adverse financial consequences.

36. When consumers challenge the basis for, or amount of, the transaction fees or convenience fees, Defendants' collectors claim the fees merely reimburse Allied for the processing charges incurred for accepting payments by credit card, debit card, or check authorized over the phone ("out-of-pocket costs").

37. In fact, Defendants' transaction fees and convenience fees are significantly more than their out-of-pocket costs. Defendants make substantial profits from these deceptively

charged fees. Since January 2010, Defendants have collected more than \$1.3 million in these fees through more than 160,000 consumer transactions. Further, Defendants do not forward any of the profits from transaction fees and convenience fees to their creditor clients. Instead, Defendants keep these profits.

VIOLATIONS OF THE FTC ACT

38. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

39. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT ONE

Deceptive Attorney and Litigation Representations in Violation of Section 5 of the FTC Act

40. In numerous instances, in connection with the collection of debts, Defendants represent, directly or indirectly, expressly or by implication, that:

- a. collectors are calling on behalf of an attorney, such as by claiming to work in or with Corporate Counsel, a Litigation Department, a Pre-Litigation Department, a Legal Department, or the Harris County District Attorney’s Office; and
- b. suit will be filed against consumers who fail to pay.

41. In truth and in fact, in numerous instances in which Defendants make the representations set forth in Paragraph 40 of this Complaint:

- a. collectors are not calling on behalf of an attorney, and collectors do not work in or with Corporate Counsel, a Litigation Department, a Pre-

Litigation Department, a Legal Department, or the Harris County District Attorney's Office; and

b. suit will not be filed against consumers who fail to pay.

42. Therefore, Defendants' representations as set forth in Paragraph 40 of this Complaint 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 TWO
Deceptive Transaction Fee and Convenience Fee Representations
in Violation of Section 5 of the FTC Act

43. In numerous instances, in connection with the collection of debts, Defendants represent, directly or indirectly, expressly or by implication, that:

- a. transaction fees and convenience fees are required, unavoidable fees;
- b. consumers cannot send checks by regular U.S. mail to avoid paying transaction fees and convenience fees, but instead are required to use costly alternatives such as Western Union, Express Mail, or Priority Mail;
or
- c. transaction fees and convenience fees account only for Defendants' out-of-pocket costs for these transactions;

44. In truth and in fact, in numerous instances in which Defendants make the representations set forth in Paragraph 43 of this Complaint:

- a. transaction fees and convenience fees are not required, unavoidable fees;

- b. Consumers can send checks by regular U.S. mail to avoid paying transaction fees and convenience fees and are not required to use costly alternatives such as Western Union, Express Mail, or Priority Mail; and
- c. transaction fees and convenience fees account for significantly more than Defendants' out-of-pocket costs for these transactions;

45. Therefore, Defendants' representations as set forth in Paragraph 43 of this Complaint 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).

VIOLATIONS OF THE FDCPA

46. 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 ever since that date. Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act, and further authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA by any debt collector. 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.

47. Defendants are "debt collectors" as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

48. A "consumer," as defined in Section 803(3) of the FDCPA, 15 U.S.C. § 1692a(3), "means any natural person obligated or allegedly obligated to pay any debt."

49. A “debt,” as defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5), “means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”

50. Section 807 of the FDCPA, 15 U.S.C. § 1692e, prohibits debt collectors from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. Section 807(3), 15 U.S.C. § 1692e(3), specifically prohibits the false representation or implication that any individual is an attorney or that any communication is from an attorney. Section 807(5), 15 U.S.C. § 1692e(5), specifically prohibits threats to take any action that cannot legally be taken or that is not intended to be taken. Section 807(10), 15 U.S.C. § 1692(e)(10), prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

COUNT THREE

False or Misleading Representations in Violation of Section 807 of the FDCPA

51. In numerous instances, in connection with the collection of debts, Defendants use false, deceptive, or misleading representations or means in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including:

- a. falsely representing or implying that Defendants are attorneys or that a communication is from an attorney, in violation of Section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3);

- b. threatening to take action that cannot be legally taken or that is not intended to be taken, including, but not limited to, falsely threatening to file a lawsuit, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5); and
- c. using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, including, but not limited to, falsely claiming that: (1) transaction fees and convenience fees are required, unavoidable fees; (2) consumers cannot send checks by regular U.S. Mail to avoid paying transaction fees and convenience fees, but instead are required to use costly alternatives, such as Western Union, Express Mail, or Priority Mail; (3) transaction fees and convenience fees account only for Defendants' out-of-pocket costs for these transactions; (4) recommendations to creditor clients have to be made by specific times or dates; and (5) potentially qualifying for a fictitious Hard-Ship Program is the reason collectors obtain information from consumers, all in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10).

CONSUMER INJURY

52. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the FDCPA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this

Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**INJUNCTIVE AND EQUITABLE RELIEF FOR VIOLATIONS OF THE
FTC ACT AND THE FAIR DEBT COLLECTION PRACTICES ACT**

53. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

54. Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FDCPA, including the rescission or reformation of contracts and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Sections 807 and 814(a) of the FDCPA, 15 U.S.C. §§ 1692e and 1692l(a), and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act and the FDCPA by Defendants;
- B. Award such equitable monetary relief as the Court finds necessary to redress injury to consumers resulting from Defendants' 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; and,

- C. 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.

DATED: June 17, 2014

Respectfully submitted,

Jonathan E. Nuechterlein
General Counsel

A handwritten signature in blue ink that reads "Eric Roberson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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