

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

LUSTIG, GLASER & WILSON, P.C.,
RONALD E. LUSTIG, individually, and
KENNETH C. WILSON, individually,

Defendants.



COMPLAINT

The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, brings this action against Lustig, Glaser & Wilson, P.C., Ronald E. Lustig (“Lustig”), and Kenneth C. Wilson (“Wilson”) (collectively, the “Lustig Firm” or the “Defendants”) for their violations of the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 2 and 4.

I. INTRODUCTION

1. Since 2011, the Lustig Firm has filed in excess of 100,000 lawsuits against Massachusetts residents and recovered in excess of \$110 million, acting primarily at the behest of national, publicly-traded corporate debt buyers (collectively, the “Debt Buyers”).

2. These Debt Buyers do not provide consumers with credit, or with any other goods or services. Instead, the Debt Buyers specialize in purchasing consumer debts that are in extreme default, where borrowers may not have made a payment for years, for as little as pennies on the dollar. In many instances, these defaulted debts have been bought and sold multiple times among

debt buyers. Ultimately, the Debt Buyers retained the Lustig Firm to pursue Massachusetts consumers and initiate litigation.

3. The Lustig Firm routinely sued consumers for alleged debt without first obtaining any account-level documentation of the debt, demonstrating how much a consumer owed or even that a consumer actually owed a debt in any amount to its client. Instead, the Lustig Firm routinely sued consumers based on nothing more than entries in a spreadsheet provided by the Debt Buyers. While this practice allowed the Lustig Firm to process hundreds and sometimes thousands of consumer accounts for collection in a single day, the Lustig Firm has sued the wrong person, sued for the wrong amount, or sued on the basis of a debt that was time-barred or otherwise legally invalid. Nevertheless, the Lustig Firm routinely and falsely represented to consumers that their accounts would be “reviewed by one of our firm’s attorneys to determine if legal action should be filed against you.”

4. The Lustig Firm relied on these spreadsheets and data files despite knowing that they were unreliable, incomplete, and inaccurate. The Lustig Firm often pursued consumers knowing that documentation of the alleged debt could not be retrieved because the Debt Buyer had no such documentation and could not obtain it.

5. The targets of these lawsuits were often desperately poor – so poor that their income, often consisting of no more than Social Security, other anti-poverty benefits, or poverty wages was exempt from any court-ordered payment under Massachusetts law. The Lustig Firm nevertheless used false threats of court payment orders as well as civil arrest warrants and court examinations to extract exempt income for the benefit of the Debt Buyers.

6. In sum, the Lustig Firm effectuated the unlawful transfer of millions of dollars from impoverished Massachusetts consumers to the Debt Buyers they represent.

II. JURISDICTION AND VENUE

7. The Attorney General brings this action pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, which prohibits unfair or deceptive acts or practices in trade or commerce, and the Attorney General's Debt Collection Regulations, which deems, "[a]ny false, deceptive, or misleading representation, communication, or means in connection with the collection of any debt" an unfair or deceptive act or practice. 940 C.M.R. 7.07(8).

8. The Attorney General is authorized to bring this action pursuant to G.L. c. 93A, § 4, and G.L. c. 12, § 10.

9. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4, G.L. c. 12, § 10, and G.L. c. 223A, § 3.

10. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4.

III. THE PARTIES

11. The Plaintiff is the Commonwealth of Massachusetts, represented by its Attorney General, Maura Healey, who brings this action in the public interest pursuant to G.L. c. 12, § 10 and G.L. c. 93A, § 4.

12. The Lustig Firm is headquartered and maintains its principal place of business at 245 Winter Street, #300, Waltham, MA 02451.

13. Wilson is the President and Director of The Lustig Firm.

14. Lustig is the Treasurer, Secretary, Director and Registered Agent of The Lustig Firm.

IV. FACTS

A. The Structure And Operation Of The Lustig Firm

15. Since at least January 1, 2011, the Defendants have been engaged in the business of collecting debts alleged to be owed by Massachusetts consumers.

16. During that time, the Lustig Firm has had two principal owners, Lustig and Wilson.

17. Both Lustig and Wilson have had managerial responsibility for the Lustig Firm and materially participated in the conduct of its affairs, including the development, creation, and revision of the collection and litigation policies and practices described in this complaint.

18. The primary business of the Lustig Firm has been the collection of consumer credit card debts on behalf of Debt Buyers corporations that purchase deeply discounted portfolios of tens of thousands or even hundreds of thousands of extremely delinquent debts.

19. Many debts placed with the Lustig Firm have been purchased and resold multiple times by one debt buyer to another before the debt was ultimately placed with the Lustig Firm for collection. In such instances, the Lustig Firm frequently lacked account-level documentation of which Debt Buyer previously owned the account, the dates of sale, and how much the previous Debt Buyer had collected or attempted to collect.

20. Since 2011, the Lustig Firm has attempted to collect alleged debts – by litigation or by other means – from more than 100,000 Massachusetts residents.

21. Since 2011, as a result of its collection lawsuits, the Lustig Firm has obtained judgments on alleged consumer debt totaling in excess of \$125 million and payments on those judgments in excess of \$70 million from Massachusetts residents.

22. To make this high-volume collection practice possible, the Lustig Firm regularly downloaded electronic information about alleged consumer debts from Debt Buyers in large batches, which sometimes contained more than 1,000 alleged consumer debts.

23. This information often consisted of little more than a summary electronic data file from the Debt Buyer. This summary data file was typically unaccompanied by meaningful account-level documentation – such as the original contract, monthly statements, a payment history, dispute history, and chain of title documentation – that would be necessary to establish the existence and accuracy of the debt.

24. The Lustig Firm did not reject an alleged debt for collection because the Debt Buyer lacked such account-level documentation.

25. Some of the accounts placed with the Lustig Firm had been purchased by the Debt Buyer pursuant to contracts explicitly stating that the consumers' account balances are “approximate” and “may not reflect credits for payments made by or on behalf of the [consumer] prior to the cut-off date.”

26. Despite knowing that the debts may have been sold from one debt buyer to another on multiple occasions and despite knowing that the bare data files provided by the Debt Buyers were frequently inaccurate, the Lustig Firm agreed to collect alleged consumer debts, routinely made payment demands, and ultimately filed collection lawsuits against consumers based solely on those files. The Lustig Firm routinely undertook all these action without first obtaining or reviewing any account-level documentation demonstrating the existence of the debt, the amount of the debt, the age of the debt, the true owner of the debt, or the dispute history of the debt.

27. In many instances, the Lustig Firm continued to collect and sue consumers for debts even after learning that the Debt Buyers did not possess and could not obtain account-level documentation of the alleged debt.

28. The Lustig Firm's collection efforts usually began within two or three days after receipt of a summary data file from a Debt Buyer, at which point the Lustig Firm's automated collection system sent the first in a series of letters demanding payments from the consumer.

29. All collection letters sent by the Lustig Firm contained the heading "Lustig, Glaser & Wilson P.C. Attorneys at Law" prominently at the top of the page.

30. During or shortly after the day the Defendants sent the first computer-generated demand letter, the automated collection system commenced computer-generated phone calls, often placing multiple phone calls to the consumer on a given day or week.

31. In many cases, the computer-generated letter mailed to the consumer informed the consumer that he or she owed money to a Debt Buyer whose name was completely unfamiliar to the consumer, and for an amount of money the consumer might not have recognized.

32. The Lustig Firm routinely pursued individual consumers for multiple debts at the same time, inundating the consumer with automated calls and computer-generated demand letters.

B. Defendants Obtained Consumers' Exempt Income By Falsely and Baselessly Threatening Court-Ordered Payments, Civil Arrest, and Court Examinations

33. Two weeks after sending the initial demand letter and initiating the call campaign, the Lustig Firm automatically generated a second collection letter to the consumer directing the consumer to disclose his or her income and propose a monthly payment amount.

34. The letter informed the consumer that it is “easy to propose a payment arrangement” and suggested that such payments can be set up over the phone or by completing the financial statement.

35. In this second letter, the Lustig Firm enclosed a financial statement form seeking a listing of all sources of the consumer’s income, including income from Social Security Benefits, Unemployment benefits, Supplementary Security Income (SSI), or Veterans Benefits, but did not disclose that these government benefits, other sources of income, and wages below a certain threshold are exempt from payment orders in debt collection actions.

36. The first entry space on the financial statement form provided to consumers stated in large letters near the top of the page “Proposed Monthly Payment” and “Proposed Start Date.”

37. Likewise, in telephone calls the Lustig Firm did not tell consumers that certain sources of income, such as Social Security Benefits, Unemployment benefits, Supplementary Security Income (SSI), or Veterans Benefits, are exempt from payment orders in debt collection actions.

38. Even when a consumer disclosed in writing that she only had income exempt by law from any court-ordered payment and proposed a zero dollar monthly payment, the Lustig Firm responded that “we have reviewed your communication indicating that your only source of income consists of [exempt income]” but nevertheless indicated that the consumer must “indicate your suggested . . . monthly installment payment amount [and] . . . payment begin date.”

39. When consumers informed the Lustig Firm that they had only exempt income, the representative from the Lustig Firm urged the consumer to agree to various proposed payment plans and sought to have the consumer sign an agreement for judgment. The Lustig Firm’s representatives did not disclose that exempt income cannot be obtained through court order.

40. If consumers did not enter into a payment plan or sign an agreement for judgment, the Lustig Firm routinely and knowingly sued and obtained default judgments against consumers receiving such exempt income, despite knowing that collection would be impossible through a court payment order.

41. The Lustig Firm's threat of a lawsuit, demands for payment on a debt, and failure to disclose that a consumer's exempt income cannot legally be obtained through a court order, had the tendency to mislead consumers to believe that the Lustig Firm intended to use legal process to obtain exempt income.

42. Upon obtaining judgments against consumers receiving only exempt income, the Lustig Firm knowingly threatened that "unless the amount of the judgment ... is paid to this office immediately," the Lustig Firm would undertake post-judgment proceedings that "may include a court order for payment, attachment of your assets and/or garnishment of your wages." The Lustig Firm made these false threats despite knowing that no court-ordered payment, attachment of assets, or garnishment of wages were possible against consumers receiving only exempt income. The Lustig Firm nevertheless made these threats in order to terrify, harass, and coerce consumers into making payments the Lustig Firm and the Debt Buyers had no right to collect.

43. After obtaining a default judgment in civil cases in District Court, the Lustig Firm knowingly commenced Supplementary Process actions against consumers receiving only exempt income, which required consumers to appear to "be examined regarding your property and your ability to pay the civil judgement." The summons for such a proceeding states "IF YOU FAIL TO APPEAR AS ORDERED, THE COURT MAY ISSUE A CAPIAS (WARRANT) FOR YOUR ARREST." The Lustig Firm served such summonses, despite knowing that at any

Supplementary Process examination the consumer would be adjudicated unable to pay any judgment.

44. After serving such summonses, the Lustig Firm knowingly warned consumers receiving only exempt income that they would be required “to submit to an examination, under oath regarding your income, assets, and expenses.” However, the Lustig Firm offered that “[i]f [the consumer] would prefer to avoid the necessity of an appearance ... for this examination,” the consumer could propose “a payment plan.” In these instances, the Lustig Firm knew that the consumer would be adjudicated unable to pay by the court, but used the threat of an examination, terrifying to an ordinary consumer, to coerce a payment to which the Lustig Firm and the Debt Buyers were not entitled.

45. After obtaining a default judgment in the small claims session of District Court, the Lustig Firm routinely sought a payment review hearing with regard to consumers receiving only exempt income, despite knowing that at any payment review hearing the consumers would be adjudicated unable to pay any judgment.

46. The Lustig Firm asked consumers receiving only exempt income to agree to a proposed payment order, despite knowing that the consumer’s income could not lawfully be subject to any such order.

47. When consumers receiving only exempt income did not attend Supplementary Process examinations or payment review hearings, the Lustig Firm arranged for a sheriff or constable to serve such consumers with Capias civil arrest warrants despite knowing that the consumer would be adjudicated unable to pay at any subsequent hearing. After arranging for service of the Capais arrest warrant, the Lustig Firm then informed consumers that the Court summons “has been sent to the Constable or Sheriff for service upon you” and that the Sheriff’s

office would soon contact the consumer. The Lustig Firm stated, however, that the consumer could “avoid the need for the further involvement of the Constable or Sheriff” if the consumer would make voluntary payment arrangements.

48. The Lustig Firm sought and served Capias civil arrest warrants, even when the Lustig Firm knew that the consumer was physically disabled or elderly. In at least one instance, the Lustig Firm caused a 90-year-old woman to be served with a Capias warrant.

49. Even after a court determined that consumers had no ability to pay the alleged debt, the Lustig Firm contacted consumers and demanded additional payments.

50. The Lustig Firm obtained payments from consumers whose total monthly income was as little as \$700 in disability benefits and attempted to set up automatic payment withdrawals from the consumer’s bank account.

51. Consumers receiving only exempt income often had no checking account and had to resort to purchasing money orders month after month to pay the Lustig Firm.

52. The Lustig Firm also told consumers receiving only exempt income that they must make a lump sum payment to avoid having to appear in court for a payment review.

53. When consumers receiving only exempt income agreed to a payment plan but then could not make payments, the Lustig Firm demanded a lump sum payment to “reinstate” the plan, and threatened to “take action to recover the full balance due on your account” if the consumer did not comply with a payment plan.

54. In sum, the Lustig Firm routinely initiated and prosecuted Supplementary Process examinations, small claims payment hearings against consumers and served Capias civil arrest warrants, despite knowing that no court would ever order the consumers to pay the Lustig Firm any amount whatsoever. The Lustig Firm nevertheless sought these examinations, hearings, and

arrest warrants in order to frighten and harass consumers, and to coerce consumers into making payments from Social Security benefits, and other exempt income, which the Lustig Firm and the Debt Buyers had no right to collect.

C. Filing Collection Lawsuits Without Adequate Proof Of The Debt

55. Due to its high volume collection tactics and lack of account-level documentation, the Lustig Firm relied on the Debt Buyer's summary data file as the basis for commencing collection and initiating lawsuits against consumers, despite knowing that these data files were frequently inaccurate or incomplete.

56. The Lustig Firm has sued thousands of Massachusetts consumers without possessing meaningful account-level documentation of the alleged debt.

57. Moreover, the Lustig Firm has sued these consumers knowing that it cannot in many or most instances obtain the consumer's original credit application, the terms and condition of credit, the consumer's payment history, last billing statement, and charge-off statement. The access to this type account-level documentation was particularly limited for those debts that had been resold on multiple occasions from one debt buyer to another before placement with the Lustig Firm.

58. The Lustig Firm's collection suits against consumers overwhelmingly resulted in default judgments against the consumer without the Lustig Firm ever offering account-level proof of the debt.

59. Indeed, in instances when a consumer appeared and challenged an alleged debt in a collection action, the Lustig Firm dismissed the collection suit.

60. When the Lustig Firm did request account level documentation of a debt from the Debt Buyers, the Debt Buyers routinely denied these requests. The Debt Buyers often told the

Lustig Firm that the prior owner had purged the requested records from its files, that the Debt Buyer was entitled to only a limited number of documents, or that the Debt Buyer's time to request documents from the prior owner of the debt had expired.

61. Because the Lustig Firm routinely lacked account-level documentation of the debt, the Lustig Firm has sued consumers without knowing whether the facts alleged in its collection complaints were true.

62. The Lustig Firm sued consumers naming the wrong entity as the original creditor.

63. In many instances, the Lustig Firm continued to demand payments, and obtained judgments and capias warrants against consumers in cases where the Firm knew the debt collection lawsuit made false allegations regarding the debt.

D. Misrepresentations of Meaningful Attorney Involvement

64. When the Lustig Firm commenced its letter campaign to the consumer, the first letter generated by the Lustig Firm demanded payment on the alleged debt and stated that "[a]t this time, no attorney with this firm has personally reviewed the particular circumstances of your account."

65. If the consumer made no payment toward the alleged debt, the Lustig Firm then warned the consumer by letter that "should you fail to contact our office following the receipt of this letter to discuss the resolution of this account, your account will be reviewed by one of our firm's attorneys to determine if legal action should be filed against you."

66. Upon filing a collection action, the Lustig Firm informed the consumer that "your account . . . was recently reviewed and a decision was made to file a[n] . . . action against you."

67. In many cases, these representations were false because no attorney had conducted any review that legitimately “determine[d] if legal action should be filed against [the consumer].”

68. Since 2011, the Lustig Firm has sued more than 100,000 Massachusetts consumers primarily in Small Claims and Civil Sessions in District Courts across the Commonwealth.

69. Wilson and Lustig regularly signed court pleadings for the Lustig Firm in legal actions to collect consumer debts and are two of only four firm attorneys authorized to sign pleadings. Wilson is the only person authorized by the Lustig Firm to approve the filing of a lawsuit. Lustig and Wilson had no meaningful involvement in drafting complaints; nor did they review underlying documentation concerning alleged debts to verify legally significant facts.

70. Further, the Lustig Firm had no policy requiring an attorney, before commencing a lawsuit, to obtain account-level documentation necessary to confirm legally significant facts giving rise to the debt, such as the date and terms of initial the contract with the consumer, the date of the consumer’s last payment, the client’s present ownership of the debt, and proper chain of title to the present owner. In fact, the Lustig Firm was aware that it frequently did not have and could not obtain such documentation and conducted no such review prior to filing suit.

71. The number of courts involved and the volume of collection suits filed against consumers was so large that the Lustig Firm relied on a network of unaffiliated substitute attorneys – so-called “coverage” attorneys – to appear in court on behalf of the Firm, often with no knowledge whatsoever about the alleged debt or the consumer.

72. When confronted by the consumer or court about the validity of the debt, the coverage attorneys were unable to produce documentation of the debt, and instead requested continuances or simply agreed to dismiss the case for lack of proof.

E. Collection Of Time-Barred Debt

73. The Lustig Firm routinely sought to collect credit card debts that the original creditor deemed to be uncollectable and “charged-off” as a loss for tax purposes.

74. In many instances, these credit card debts were sold to Debt Buyers and placed with the Lustig Firm for collection years after they had been charged off by the original creditor.

75. The Lustig Firm then collected, attempted to collect, and sued consumers on the alleged debts, some of which were charged off more than ten years ago, and in some instances the alleged debts were charged off in the 1990s.

76. The Lustig Firm routinely alleged in collection lawsuits that a consumer made a payment on a debt years after it was charged-off by the original creditor. In such cases, a debt collection suit would typically have been barred by the statute limitations but for this alleged payment – years after the debt fell into default – that “revived” the statute of limitations.

77. The Lustig Firm rarely, if ever, requested or obtained documentation or proof of the post-charge-off payment. Instead, the Lustig Firm’s only evidence of such a payment was an entry in the summary data file provided by the Debt Buyer.

78. In many instances, the consumer had not made the alleged post-charge-off payment and accordingly the alleged debt was time-barred.

79. The Lustig Firm had no policy requiring review of account-level documentation or proof of the last date of payment by the consumer or date of charge-off before commencing payment demand calls, letters, and litigation.

80. As a result, the Lustig Firm sued consumers based on alleged debts that they knew or should have known were barred by the statute of limitations.

F. Use Of False And Misleading Affidavits In Lawsuits Against Consumers

81. In the course of bringing the Collection Suits, the Firm's attorneys routinely executed and filed affidavits pursuant to G.L. c. 231, § 13B, attesting under the pains and penalties of perjury to the amount due to the plaintiff and how the amount was purportedly calculated, despite the fact that the Lustig Firm and the Debt Buyers did not possess sufficient documentation from which to make such a calculation.

82. The Lustig Firm used its software to generate the G.L. c. 231, § 13B affidavits automatically by populating a template with electronic data from the Debt Buyers regarding the amount of the debt. In many cases, the Firm's senior attorneys, including Lustig and Wilson, signed such affidavits under pains and penalties of perjury without reviewing account-level documentation to verify the accuracy of the sworn statements contained therein, including the amount allegedly due and the manner in which the amount due was calculated. Rather than perform an independent assessment of the account-level documentation and calculate the amount allegedly due to the plaintiff, the Firm's attorneys relied on the summary account data file provided by its clients, despite the Lustig Firm's knowledge that many times such data files were inaccurate or incomplete.

83. Additionally, without reviewing account-level documentation of the alleged debt, the Lustig Firm's attorneys, including Lustig and Wilson, routinely signed affidavits for default judgments pursuant to Massachusetts Rule of Civil Procedure 55(b)(2), attesting to the veracity of the alleged debt, interest, and payments toward the balance.

84. The Lustig Firm's computer system automatically generated motions for default judgment default judgments against consumers and the Lustig Firm's attorneys signed these without review of account-level documentation.

85. The Lustig Firm's four senior attorneys, including Lustig and Wilson, did not exercise independent professional judgment to determine whether the facts alleged in the affidavit for default judgment were supported by account-level documentation of the debt, nor did they review the contracts governing the sale of accounts to determine, amongst other things, whether those contracts disclaimed any warranties regarding the accuracy or validity of the debts.

86. The Defendants also routinely filed in court affidavits signed by the Debt Buyer as proof of the alleged debt.

87. For example, the Defendants submitted affidavits signed by employees of debt buyers, such as Portfolio Recovery Associates, LLC and Midland Funding, LLC, that represented that the debt buyer representative had personal knowledge of the original creditors' records and had determined from review of those records the amount owed, the date the account was opened, the date of the last consumer payment, the date of charge off, and the chain of title to the present owner.

88. In many instances, the Debt Buyer affiants did not have personal knowledge of these facts and had signed the affidavits without reviewing account-level documentation of the debt from the original creditor.

89. The Lustig Firm knew or should have known that these Debt Buyer affidavits were not based on personal knowledge of the account-level documentation of the debt and were therefore not legally competent to establish the facts attested therein.

G. Demanding Payment From Consumers Who Disputed The Debt

90. When consumers disputed the validity of a debt in writing and requested validation more than thirty days after the Lustig Firm's initial collection notice, the Lustig Firm replied by letter stating "given your apparent familiarity with the rights and obligations [under the law], it should be clear to you that your request is not timely" and refused to respond to the consumer's request to validate the alleged debt.

91. When a consumer disputed the validity of the alleged debt within thirty days after the Lustig Firm's initial collection notice, the Lustig Firm took as long as six months to respond to the consumer's dispute and at times were unable to validate the debt.

92. In some instances, when a consumer questioned the validity of the debt but did not use the word "dispute," the Lustig Firm failed to acknowledge the consumer's dispute altogether.

93. The Lustig Firm simply did not investigate consumer disputes made over the telephone to representatives of the Firm. If consumers did not express their disputes in writing, the Lustig Firm continued to demand payment without seeking validation of the debt.

94. In many instances, the Lustig Firm was unable to determine whether a debt had been disputed because the Debt Buyer did not possess the original creditor's payment history or dispute history for the account and could not obtain it from the original creditor or prior owner of the debt.

95. The Lustig Firm demanded payments and sued consumers even after the consumer told the Firm about a prior dispute of the debt with the original creditor. In such instances, the Lustig Firm did not cease collection or attempt to verify the past dispute history.

H. Demanding Consumer Payment Even After Court Dismissal

96. The Lustig Firm has continued demanding payments on alleged debts even after the case was dismissed in court for lack of proof.

97. In some cases, the Lustig Firm resumed phone calls to the consumer demanding payments on an alleged debt within days after court dismissal of its lawsuit.

I. Misrepresenting the Amount of the Debt Owed

98. The Lustig Firm's lack of account-level payment history has led it to pursue consumers who did not owe the debt or amount alleged by the Firm.

99. For example, the Lustig Firm attempted to collect on debts that had already been paid off in their entirety.

100. Consumers received demand letters from the Firm stating that payments were owed or overdue even though consumer had made a payment and the Firm had received the payment.

101. When consumers called the Firm to question the amount of the alleged debt, the Firm's representatives were unable to provide consumers with original account balance information, and were unable to itemize the balance into charges for principal, interest, and fees.

V. CAUSE OF ACTION

COUNT I

MASSACHUSETTS CONSUMER PROTECTION ACT, G.L. c. 93A

102. The Massachusetts Consumer Protection Act, G.L. c. 93A, § 2(a) provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

103. “[T]he meaning of unfairness under Chapter 93A is not fixed in stone; nor is it limited to conduct that is unlawful under the common law or prior statutes. Rather, it is forever evolving, not only to adapt to changing social, economic, and technological circumstances, but also to reflect what we have learned to be unfair from our experience as a commonwealth.” *Com. v. Fremont Inv. & Loan*, Civ. No. 07-4373-BLS1 (Sup. Ct. Feb. 25, 2008) (Gants, J.).

104. A practice may be deemed unfair if it is “immoral, unethical, oppressive, or unscrupulous” or “within at least the penumbra of some common-law, statutory, or other established concept of unfairness.” *Datacomm Interface, Inc. v. Computerworld, Inc.*, 396 Mass. 760, 778 (1986).

105. G.L. c. 93, § 49 provides that no “attorney for a creditor ... of a natural person present or residing in Massachusetts who has incurred a debt primarily for personal, family or household purposes shall collect or attempt to collect such debt in an unfair, deceptive or unreasonable manner.” Moreover, a “[f]ailure to comply with” G.L. c. 93, § 49 “constitute[s] an unfair or deceptive act or practice under” G.L. c. 93A.

A. Lustig, Glaser & Wilson, PC

106. The allegations in the paragraphs above are re-alleged and incorporated herein by reference.

107. The Firm’s collection of consumer debt constitutes trade or commerce within the scope of G.L. c. 93A.

108. The Firm is a person as defined by G.L. c. 93A.

109. Each payment demand letter or telephone call made by the Firm constitutes a “representation, communication, or means in connection with the collection of any debt” within the scope of 940 CMR 7.07 (8).

110. Each lawsuit, pleading, motion, or court document filed by the Firm constitutes a “representation, communication, or means in connection with the collection of any debt” within the scope of 940 CMR 7.07 (8).

111. The Lustig Firm has engaged in, and continues to engage in, unfair or deceptive acts or practices, in violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2(a). These acts or practices include collecting or attempting to collect a debt through the following means:

- a. Falsely threatening, directly or indirectly, to pursue court process, including but not limited to court-ordered payments, civil arrest warrants, and court examinations, that cannot legally be taken against consumers whose sole source of income is exempt from court-ordered payment;
- b. Failing to disclose to consumers that the Lustig Firm is prohibited by law from seeking court-ordered payment of exempt income;
- c. Filing collection lawsuits in courts of the Commonwealth without adequate proof of the debts;
- d. Filing lawsuits against consumers containing incorrect information regarding the original creditor and/or the ownership of the debt;
- e. Representing to consumers that failure to pay a debt would result in an attorney from the Lustig Firm reviewing the alleged debt to determine if legal action should be filed against the consumer, when in fact no attorney from the Lustig Firm was meaningfully involved in reviewing documentation of the alleged debts, preparing the complaint, and filing the complaint;

- f. Filing collection lawsuits in court signed by an attorney of the Lustig Firm, which represented to consumers that the Lustig Firm's attorneys were meaningfully involved in reviewing documentation of the alleged debts, preparing the complaints, and filing the complaints, when in fact the Lustig Firm's attorneys were not meaningfully involved in reviewing documentation of the alleged debts, preparing the complaints, and filing the complaints;
- g. Demanding payments and collecting payments from consumers on alleged debts that are time-barred;
- h. Filing collection lawsuits in courts of the Commonwealth on the basis of alleged debts that are time-barred;
- i. Filing affidavits executed by attorneys of the Lustig Firm that represented to consumers, directly or indirectly, that the attorney had personal knowledge of the validity of the debt, the amount owed, and the true owner of the debts when in fact the attorney did not have personal knowledge of such facts;
- j. Using affidavits from the Debt Buyers as proof of the debt when the Lustig Firm knew or should have known that the affidavits from the Debt Buyers were not based on personal knowledge;
- k. Failing to investigate the validity of an alleged debt when consumers disputed the debt;
- l. Demanding and collecting payments from consumers who disputed alleged debts;

m. Demanding and collecting payments from consumers after the lawsuits against these consumers had been dismissed; and

n. Misrepresenting the amount of an alleged debt to a consumer.

112. The acts or practices alleged in Paragraph 111 also independently constitute violations of Office of the Attorney General Debt Collection Regulations, 940 CMR 7.04(1)(b)(1)-(3), and 940 CMR 7.07(8).

113. The acts or practices alleged in Paragraph 111 also constitute independent violations of G.L. c. 93, § 49.

114. The Firm knew or should have known the conduct alleged herein violated G.L. c. 93A, § 2.

B. Ronald Lustig

115. The allegations in the paragraphs above are re-alleged and incorporated herein by reference.

116. Lustig's collection of consumer debts constitutes trade or commerce within the scope of G.L. c. 93A.

117. Lustig is a person as defined by G.L. c. 93A.

118. Each payment demand letter or telephone call authorized by Lustig constitutes a "representation, communication, or means in connection with the collection of any debt" within the scope of 940 CMR 7.07 (8).

119. Each lawsuit, pleading, motion, or court document filed by Lustig constitutes a "representation, communication, or means in connection with the collection of any debt" within the scope of 940 CMR 7.07 (8).

120. Lustig has engaged in, and continues to engage in, unfair or deceptive acts or practices, in violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2(a). These acts or practices include collecting or attempting to collect a debt through the following means:

- a. Falsely threatening, directly or indirectly, to pursue court process, including but not limited to court-ordered payments, civil arrest warrants, and court examinations, that cannot legally be taken against consumers whose sole source of income is exempt from court-ordered payment;
- b. Failing to disclose to consumers that the Firm is prohibited by law from seeking court-ordered payment of exempt income;
- c. Filing collection lawsuits in courts of the Commonwealth without adequate proof of the debts;
- d. Filing lawsuits against consumers containing incorrect information regarding the original creditor and/or the ownership of the debt;
- e. Representing to consumers that failure to pay a debt would result in an attorney from the Lustig Firm reviewing the alleged debt to determine if legal action should be filed against the consumer, when in fact no attorney from the Lustig Firm was meaningfully involved in reviewing documentation of the alleged debts, preparing the complaint, and filing the complaint;
- f. Filing collection lawsuits in court signed by an attorney of the Lustig Firm, which represented to consumers that the Lustig Firm's attorneys were meaningfully involved in reviewing documentation of the alleged debts, preparing the complaints, and filing the complaints, when in fact the

Lustig Firm's attorneys were not meaningfully involved in reviewing documentation of the alleged debts, preparing the complaints, and filing the complaints;

- g. Demanding payments and collecting payments from consumers on alleged debts that are time-barred;
- h. Filing collection lawsuits in courts of the Commonwealth on the basis of alleged debts that are time-barred;
- i. Filing affidavits executed by an attorney of the Lustig Firm that represented to consumers, directly or indirectly, that the attorney had personal knowledge of the validity of the debt, the amount owed, and the true owner of the debts when in fact the attorney did not have personal knowledge of such facts;
- j. Using affidavits from the Debt Buyers as proof of the debt when the Firm knew or should have known that the affidavits from the Debt Buyers were not based on personal knowledge;
- k. Failing to investigate the validity of an alleged debt when consumers disputed the debt;
- l. Demanding and collecting payments from consumers who disputed alleged debts;
- m. Demanding and collecting payments from consumers after the lawsuit against these consumers had been dismissed; and
- n. Misrepresenting the amount of an alleged debt to a consumer.

119. The acts or practices alleged in Paragraph 118 also independently constitute violations of Office of the Attorney General Debt Collection Regulations, 940 CMR 7.04(1)(b)(1)-(3), and 940 CMR 7.07(8).

120. The acts or practices alleged in Paragraph 118 also constitute independent violations of G.L. c. 93, § 49.

121. Lustig knew or should have known the conduct alleged herein violated G.L. c. 93A, § 2.

C. Kenneth Wilson

122. The allegations in the paragraphs above are re-alleged and incorporated herein by reference.

123. Wilson's collection of consumer debts constitutes trade or commerce within the scope of G.L. c. 93A.

124. Wilson is a person as defined by G.L. c. 93A.

125. Each payment demand letter or telephone call authorized by Wilson constitutes a "representation, communication, or means in connection with the collection of any debt" within the scope of 940 CMR 7.07 (8).

126. Each lawsuit, pleading, motion, or court document filed by Wilson constitutes a "representation, communication, or means in connection with the collection of any debt" within the scope of 940 CMR 7.07 (8).

127. Wilson has engaged in, and continues to engage in, unfair or deceptive acts or practices, in violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2(a). These acts or practices include collecting or attempting to collect a debt through the following means:

- a. Falsely threatening, directly or indirectly, to pursue court process,
including but not limited to court-ordered payments, civil arrest warrants,

- and court examinations, that cannot legally be taken against consumers whose sole source of income is exempt from court-ordered payment;
- b. Failing to disclose to consumers that the Firm is prohibited by law from seeking court-ordered payment of exempt income;
 - c. Filing collection lawsuits in courts of the Commonwealth without adequate proof of the debts;
 - d. Filing lawsuits against consumers containing incorrect information regarding the original creditor and/or the ownership of the debt;
 - e. Representing to consumers that failure to pay a debt would result in an attorney from the Lustig Firm reviewing the alleged debt to determine if legal action should be filed against the consumer, when in fact no attorney from the Lustig Firm was meaningfully involved in reviewing documentation of the alleged debts, preparing the complaint, and filing the complaint;
 - f. Filing collection lawsuits in court signed by an attorney of the Lustig Firm, which represented to consumers that the Lustig Firm's attorneys were meaningfully involved in reviewing documentation of the alleged debts, preparing the complaints, and filing the complaints, when in fact the Lustig Firm's attorneys were not meaningfully involved in reviewing documentation of the alleged debts, preparing the complaints, and filing the complaints;
 - g. Demanding payments and collecting payments from consumers on alleged debts that are time-barred;

- h. Filing collection lawsuits in courts of the Commonwealth on the basis of alleged debts that are time-barred;
- i. Filing affidavits executed by attorneys of the Lustig Firm that represented to consumers, directly or indirectly, that the attorney had personal knowledge of the validity of the debt, the amount owed, and the true owner of the debts when in fact the attorney did not have personal knowledge of such facts;
- j. Using affidavits from the Debt Buyers as proof of the debt when the Firm knew or should have known that the affidavits from the Debt Buyer were not based on personal knowledge;
- k. Failing to investigate the validity of an alleged debt when consumers disputed the debt;
- l. Demanding and collecting payments from consumers who disputed alleged debts;
- m. Demanding and collecting payments from consumers after the lawsuits against these consumers had been dismissed; and
- n. Misrepresenting the amount of an alleged debt to a consumer.

128. The acts or practices alleged in Paragraph 127 also independently constitute violations of Office of the Attorney General Debt Collection Regulations, 940 CMR 7.04(1)(b)(1)-(3), and 940 CMR 7.07(8).

129. The acts or practices alleged in Paragraph 127 also constitute independent violations of G.L. c. 93, § 49.

130. Wilson knew or should have known the conduct alleged herein violated G.L. c. 93A, § 2.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests relief as follows:

1. Permanently enjoin Defendants from committing future violations G.L. c. 93A;
2. Award damages or other monetary relief against Defendants;
3. Order Defendants to pay restitution to consumers harmed by their unlawful
conduct;
4. Order disgorgement of ill-gotten revenues against Defendants;
5. Impose civil money penalties of \$5,000 per violation against Defendants;
6. Order Defendants to pay the Attorney General for costs incurred in connection
with the investigation and prosecution of this action; and
7. Award additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL

A handwritten signature in dark ink, reading "Peter Downing". The signature is fluid and cursive, with a long horizontal stroke at the end.

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