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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11148
Non-Argument Calendar

D.C. Docket No. 4:19-cv-00299-HLM
DOUGLAS EDWARDS,
Plaintiff – Appellant,
versus
SOLOMON and SOLOMON, P.C.,
Defendant – Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(September 30, 2020)

Before MARTIN, JILL PRYOR, and BRANCH, Circuit
Judges.

PER CURIAM:

At issue in this appeal is whether Georgia’s renewal statute, O.C.G.A. § 9-261, can save a claim that is otherwise time-barred under the Fair Debt Collection Practice Act (FDCPA), 15 U.S.C. § 1692 *et seq.* We

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conclude that it cannot and affirm the district court's dismissal of Douglas Edwards's complaint against Solomon and Solomon, P.C. as time-barred.

I.

On April 26, 2019, Edwards filed a complaint against Solomon and Solomon—a third-party collection agency—in the Superior Court of Bartow County, Georgia. The complaint alleged that Solomon and Solomon violated various provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* On May 20, 2019, Solomon and Solomon removed the case to the United States District Court for the Northern District of Georgia based on federal question jurisdiction. The same day that Solomon and Solomon removed the case to federal court, Edwards voluntarily dismissed it without prejudice pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure.

Six months later, on November 27, 2019, Edwards refiled his complaint in the Superior Court of Bartow County, which alleged the same FDCPA claims against Solomon and Solomon as in the initial complaint. Once again, Solomon and Solomon removed the case to the U.S. District Court for the Northern District of Georgia on the basis of federal question jurisdiction.

This time, however, Solomon and Solomon also moved to dismiss Edwards's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Solomon and Solomon argued that Edwards's claims were time barred under the FDCPA's one-year statute

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of limitations, 15 U.S.C. § 1692k(d). As Solomon and Solomon pointed out in its motion, Edwards’s complaint specifically alleged that the FDCPA violations occurred on May 1, 2018, May 25, 2018, and July 23, 2018. But the new complaint was filed on November 27, 2019, and therefore, pursuant to § 1692(k)(d), any FDCPA violation must have occurred on or after November 26, 2018 to be actionable. Edwards opposed the motion, arguing that Georgia’s renewal statute, O.C.G.A. § 9-2-61, prevented his claims from being deemed time-barred. The district court ultimately dismissed Edwards’s complaint as time-barred, concluding that where Congress has set a specific statute of limitations, it cannot be extended by operation of state law. Edwards now appeals.

II.

We review the district court’s grant of Solomon and Solomon’s motion to dismiss *de novo*, “accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.” *Pinson v. JPMorgan Chase Bank, Nat’l Ass’n*, 942 F.3d 1200, 1206 (11th Cir. 2019).

III.

“The FDCPA imposes civil liability on debt collectors for certain prohibited debt collection practices.” *Hart v. Credit Control, LLC*, 871 F.3d 1255, 1257 (11th Cir. 2017) (alteration adopted) (quoting *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559 U.S.

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573, 576 (2010)). The only relevant FDCPA provision in this appeal is its statute of limitations provision, which provides that *an action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.*" 15 U.S.C. § 1692k(d) (emphasis added).

On appeal, Edwards does not dispute that his claims fall outside of the FDCPA's one-year statute of limitations. Rather, he argues that his claims are not time barred because he complied with Georgia's renewal statute, O.C.G.A. § 9-2-61. That statute provides in pertinent part:

When any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later . . .

O.C.G.A. § 9-2-61(a). Edwards's argument hinges on whether the Georgia renewal statute applies notwithstanding the FDCPA's express one-year statute of limitations. If it does, then his new complaint, which was filed within six months of the dismissal of his initial complaint, would have been timely.

Georgia’s renewal statute does not apply to the FDCPA. Our case law is clear that, where Congress has set an express statute of limitations, state law cannot otherwise extend it. In *Phillips v. United States*, for example, we considered whether the Georgia renewal statute could extend the time for filing a claim under the Federal Torts Claims Act (“FTCA”). 260 F.3d 1316, 1317-18 (11th Cir. 2001). We reasoned that because “a [federal] court looks to state law to define the time limitation applicable to a federal claim only when Congress has failed to provide a statute of imitations for a federal cause of action,” and Congress expressly provided a [six-month] limitation period for FTCA claims, “the incorporation of diverse state renewal provisions into [the FTCA] would undermine the uniform application of [the FTCA’s] six month time limitation just as effectively as would the incorporation of state law for the accrual of a cause of action.” *Id.* at 1318-19 (quotations omitted). Accordingly, we held that the Georgia renewal statute could not extend the FTCA’s limitations period. *Id.*; see also *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 433 (1965) (rejecting a claim that Ohio’s savings statute applied to the Federal Employers’ Liability Act because “[t]he incorporation of variant state savings statutes would defeat the aim of a federal limitation provision designed to produce national uniformity”); *Holmberg v. Armbrrecht*, 327 U.S. 392, 395 (1946) (“If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter. The Congressional statute of limitation is definitive.”).

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The same reasoning applies to FDCPA claims. Congress specifically provided for a one-year limitations period for FDCPA claims. *See* 15 U.S.C. § 1692k(d). And incorporating Georgia’s renewal statute into the FDCPA would undermine the uniform application of this federal limitation. We therefore conclude that Georgia’s renewal statute does not extend the FDCPA’s one-year statute of limitations.¹

Instead of following *Phillips*, Edwards urges to rely on *Arias v. Cameron*, 776 F.3d 1262 (11th Cir. 2015). In *Arias*, we held that a district court did not abuse its discretion by allowing the plaintiff to

¹ Edwards argues that our holding in *Phillips* does not extend to the FDCPA because FTCA plaintiffs may only bring claims in federal court, whereas the FDCPA permits claims to be filed in state and federal court. And he points out that the FTCA involves a specific waiver of sovereign immunity, which the FDCPA does not include, and therefore the FTCA’s statute of limitations provision is construed more strictly than the one at issue here. But Edwards does not present any authority showing that either distinction matters. Moreover, other circuits have also reached the same holding as *Phillips* outside the FTCA context. *See, e.g., E.E.O.C. v. W.H. Braum, Inc.*, 347 F.3d 1192, 1201 (10th Cir. 2003) (explaining that “[t]he federal scheme is complete and it is inappropriate to import state statutes of limitations, such as a savings clause, to time-bar an individual aggrieved employee under the ADA”); *Beck v. Caterpillar Inc.*, 50 F.3d 405, 407 (7th Cir. 1995) (“Where, as [in this hybrid suit under § 301 of the Labor Management Relations Act], the plaintiff voluntarily dismisses a lawsuit which was brought in federal court, asserts a purely federal claim, and is subject to a federal statute of limitations, state savings statutes do not apply.”); *Garrison v. Int’l Paper Co.*, 714 F.2d 757, 759 n.2 (8th Cir. 1983) (noting that “[b]ecause Title VII actions are governed by a federal statute of limitations, the Arkansas saving clause is inapplicable”).

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voluntarily dismiss his state law tort claim, which had been removed to federal court by the defendants, regardless of whether dismissal prejudiced defendants by stripping the defendants' statute of limitations defense. *Id.* at 1273. In reaching that conclusion, we observed that the defendant would likely not have had a statute of limitations defense if the defendant had not removed the case to federal court because the plaintiff could have invoked Georgia's renewal statute in state court. *Id.* at 1272. Thus, Edwards claims that Solomon and Solomon created the statute of limitations defense by removing his claims to federal court and if they had not, his suit would have been timely under Georgia law.

Edwards's reliance on *Arias* is misplaced. Unlike this case, which concerns a federal claim where Congress has set the applicable statute of limitations, *Arias* concerned a state law tort claim where the state legislature set the statute of limitations. *Id.* at 1265. Thus, *Arias* is of no help to Edwards.

In conclusion, because the Georgia renewal statute does not apply to federal causes of action where Congress expressly set a limitations period, such as the FDCPA, we affirm the district court's dismissal of his complaint.

AFFIRMED.

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**UNITED STATES COURT OF APPEALS
For the Eleventh Circuit**

No. 20-11148

District Court Docket No.
4:19-cv-00299-HLM

DOUGLAS EDWARDS,

Plaintiff - Appellant,

versus

SOLOMON AND SOLOMON, P.C.,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: September 30, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuarma H. Clark

ISSUED AS MANDATE 10/29/2020

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

DOUGLAS EDWARDS,

Plaintiff,

v.

SOLOMON AND
SOLOMON, P.C.,

Defendant.

CIVIL ACTION FILE NO.
4:19-CV-0299-HLM-WEJ

ORDER

(Filed Apr. 2, 2020)

This case is before the Court on Plaintiff's Motion to Stay Enforcement of Bill of Costs [21].

I. Background

On February 21, 2020, the Court adopted the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson, overruled Plaintiff's Objections, granted Defendant's Motion to Dismiss, and dismissed this action as time-barred. (Order of Feb. 21, 2020 (Docket Entry No. 17).) On that same day, the Clerk entered judgment. (Judgment (Docket Entry No. 18).)

On February 24, 2020, Defendant filed a Bill of Costs. (Bill of Costs (Docket Entry No. 19).) The Clerk has not yet taxed costs in this action. (See generally Docket.)

On March 19, 2020, Plaintiff filed a Notice of Appeal. (Notice of Appeal (Docket Entry No. 20).) On that same day, Plaintiff filed a Motion to Stay Enforcement of Bill of Costs. (Mot. Stay Enforcement Bill of Costs (Docket Entry No. 21).) Defendant filed a response to that Motion. (Resp. Mot. Stay Enforcement Bill of Costs (Docket Entry No. 26).) The Court finds that no reply from Plaintiff is necessary, and it concludes that the matter is ripe for resolution.

II. Discussion

As an initial matter, Plaintiff's Motion does not comply with the Local Rules because Plaintiff failed to attach a brief supporting the Motion. N.D. Ga. 7.1A. Ordinarily, the Court would deny the Motion without prejudice and would require Plaintiff to re-file it with an accompanying brief. The Court will make an exception to its usual practice in this one instance, and it will accept the Motion as filed. The Court, however, cautions counsel that it expects counsel to comply with the Local Rules for all future filings.

The Court agrees with Defendant that Plaintiff's Motion is technically premature, as the Clerk has not yet taxed costs in this action. The Court also notes that Plaintiff's argument that the Court should not require Plaintiff to post an appeal bond is moot because Defendant has not sought an appeal bond in this action. The Court will, however, direct the Clerk to stay the taxation of costs in this action pending the resolution of Plaintiff's appeal.

III. Conclusion

ACCORDINGLY, the Court **DENIES AS MOOT AND WITHOUT PREJUDICE** Plaintiff's Motion to Stay Enforcement of Bill of Costs [21]. The Motion is premature, as the Clerk has not yet taxed costs. To the extent that Plaintiff requests that the Court waive an appeal bond, this request is moot because Defendant has not sought to require Plaintiff to post an appeal bond. The Court **DIRECTS** the Clerk to **STAY** the taxation of costs in this matter pending the resolution of Plaintiff's appeal.

IT IS SO ORDERED, this the 2nd day of April, 2020.

/s/ Harold L. Murphy
SENIOR UNITED STATES
DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

DOUGLAS EDWARDS,

Plaintiff,

v.

SOLOMON AND
SOLOMON, P.C.,

Defendant.

CIVIL ACTION FILE NO.
4:19-CV-0299-HLM-WEJ

ORDER

(Filed Feb. 21, 2020)

This case is before the Court on Defendant's Motion to Dismiss for Failure to State a Claim ("Motion to Dismiss") [2], on the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [14], and on Plaintiff's Objections to the Final Report and Recommendation [16].

I. Standard of Review

28 U.S.C. § 636(b)(1) requires that in reviewing a magistrate judge's report and recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court therefore must conduct a de novo review if a party files "a proper, specific objection" to a factual finding contained in the report and recommendation. Macort v. Prem, Inc., 208 F. App'x

781, 784 (11th Cir. 2006); Jeffrey S. by Ernest S. v. State Bd. of Educ., 896 F.2d 507, 513 (11th Cir. 1990). If no party files a timely objection to a factual finding in the report and recommendation, the Court reviews that finding for clear error. Macort, 208 F. App'x at 784. Legal conclusions, of course, are subject to de novo review even if no party specifically objects. United States v. Keel, 164 F. App'x 958, 961 (11th Cir. 2006); United States v. Warren, 687 F.2d 347, 347 (11th Cir. 1982).

II. Background

Judge Johnson accurately set forth the background facts for this action. The Court incorporates that portion of the Final Report and Recommendation into this Order as if set forth fully herein. (Final Report & Recommendation (Docket Entry No. 14) at 1-2.)

On January 6, 2020, Defendant filed its Motion to Dismiss. (Mot. Dismiss (Docket Entry No. 2).) On February 4, 2020, Judge Johnson issued his Final Report and Recommendation. (Docket Entry No. 14.) Judge Johnson recommended that the Court grant Defendant's Motion to Dismiss. (See generally id.)

Plaintiff filed Objections to the Final Report and Recommendation. (Objs. (Docket Entry No. 16).) The Court finds that no response to those Objections from Defendant is necessary, and it concludes that the matter is ripe for resolution.

III. Motion to Dismiss Standard

The Court applies the same standard as set forth in the Final Report and Recommendation when reviewing this Motion to Dismiss. (Final Report & Recommendation at 2.)

IV. Discussion

Judge Johnson properly determined that Plaintiff's claims are time-barred. (Final Report & Recommendation at 2-7.) Specifically, the Fair Debt Collection Practices Act (the "FDCPA") has a one-year statute of limitations. (Id. at 3.) All of the FDCPA violations alleged by Plaintiff occurred more than a year and a day before Plaintiff filed this Complaint. (Id.) Georgia's savings statute, O.C.G.A. § 9-2-61, does not apply here. (Id. at 3-7.) In this Circuit, it is "clear that when a statute of limitations is set by Congress it cannot be extended by state law." (Id. at 5 (collecting cases).) The Court agrees with Judge Johnson that "Congress set the statute of limitations for the FDCPA, and allowing Plaintiff to use the Georgia savings statute would undermine the uniformity intended by Congress." (Id. at 7.) Judge Johnson correctly found that the Georgia savings statute does not make Plaintiff's FDCPA claims in this case timely. With all due respect to Plaintiff, nothing in his Objections warrants a different conclusion. (Objs.) The Court therefore adopts the Final Report and Recommendation, overrules Plaintiff's Objections, and grants Defendant's Motion to Dismiss.

V. Conclusion

ACCORDINGLY, the Court **ADOPTS** the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [14], **OVERRULES** Plaintiff's Objections to the Final Report and Recommendation [16], **GRANTS** Defendant's Motion to Dismiss [2], and **DISMISSES** this action as time-barred. The Court **DIRECTS** the Clerk to **CLOSE** this case

IT IS SO ORDERED, this the 21st day of February, 2020.

/s/ Harold L. Murphy

SENIOR UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

DOUGLAS EDWARDS,

Plaintiff,

v.

SOLOMON AND
SOLOMON, P.C.,

Defendant.

CIVIL ACTION FILE

NO. 4:19-CV-0299-HLM-WEJ

FINAL REPORT AND RECOMMENDATION

(Filed Feb. 4, 2020)

I. PROCEDURAL BACKGROUND

Plaintiff originally filed this case on April 26, 2019 in the Superior Court of Bartow County, Georgia asserting a violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692e, 1692k, against Solomon and Solomon, P.C. (“Solomon”). (*See* Pl.’s Resp. [7] 8.) On May 30, 2019, Solomon removed that case to federal court. (*See id.* at 17-8.) Plaintiff, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), voluntarily dismissed the suit without prejudice that same day and paid court costs. (*See id.* at 22.)

On November 27, 2019, plaintiff again filed this case in the Superior Court of Bartow County, Georgia, asserting the same substantive claims as contained in his April 26, 2019 complaint. (*See id.* at 25; Compl. [1-2].) Defendant again removed the case on December

30, 2019. (Notice of Removal [1].) Now pending before the Court is defendant Solomon's Motion to Dismiss for Failure to State a Claim [2]. For reasons discussed below, the undersigned **RECOMMENDS** that defendant's Motion be **GRANTED**.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows the Court to dismiss a complaint, or portions thereof, for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "[A] Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time-barred.'" Bruce v. U.S. Bank Nat'l Ass'n, 770 F. App'x 960, 965 (11th Cir. 2019) (per curiam) (quoting La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004)).

III. DISCUSSION

Defendant Solomon argues that the Complaint is due to be dismissed because plaintiff's claim is barred by the FDCPA's statute of limitations. (See Def.'s Br. [2-1], Def.'s Reply Br. [9].) Plaintiff opposes the motion, arguing that Georgia's "savings statute," O.C.G.A. § 9-2-61, prevents his claims from being time-barred. (See Pl.'s Resp. [7].)¹

¹ Plaintiff also filed a Sur-Reply [10] to defendant's Reply Brief. Neither the Federal Rules of Civil Procedure nor the Local Rules permit such sur-replies without prior authorization from

The FDCPA has a one-year statute of limitations. Id. at 965; 15 U.S.C. § 1692k(d). This is calculated as one year and one day from the date of the alleged violation. See Maloy v. Phillips, 64 F.3d 607 (11th Cir. 1995) (per curiam).

In this case, every alleged FDCPA violation occurred more than one year and a day before plaintiff filed the instant Complaint on November 27, 2019. Counts I, III, V, VII, and IX allegedly occurred on May 1, 2018. (Compl. [1-2] 8- 19.) Counts II, IV, VI, VII, and X allegedly occurred on May 25, 2018. (Id.) Counts XI and XII allegedly occurred on July 23, 2018. (Id. at 19-21.) From the face of the Complaint, every alleged violation occurred before November 26, 2018 and thus are barred by the FDCPA's one-year statute of limitations.

Despite his claims being facially time-barred, plaintiff argues that he may pursue them because of O.C.G.A. § 9-2-61, commonly referred to as Georgia's "savings statute." Section 9-2-61 states in relevant part as follows:

[w]hen any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six

the Court. Thus, the Court excludes plaintiffs Sur-Reply from its consideration.

months of its discontinuance or dismissal,
whichever is later . . .

Plaintiff argues that because he complied with O.C.G.A. § 9-2-61 by voluntarily dismissing his April 26, 2019 FDCPA claims and re-filing them in November 26, 2019 (within six months of his May 30, 2019 voluntary dismissal), his claims are not time-barred due to the Georgia savings statute.

In support of his argument, plaintiff cites only to Arias v. Cameron, 776 F.3d 1262 (11th Cir. 2015). In Arias, a bicyclist sued a business and its employee under state tort law to recover for injuries suffered in a collision with a car. Id. Defendants argued that the district court abused its discretion in granting plaintiff a dismissal because, inter alia, defendant had been legally prejudiced by losing its statute of limitations defense. In deciding that the district court did not abuse its discretion in granting plaintiffs dismissal, the Circuit noted that, had the case stayed in state court, defendants would likely not have had a statute of limitations defense because plaintiff could have taken advantage of Georgia's savings statute. Id. at 1272.² The Circuit further noted that “defendants effectively ‘created’ the very statute-of-limitations

² The Circuit's discussion of the Georgia savings statute here is dicta. The Circuit's decision turned on whether plaintiff's service of process related back to the date of filing such that the suit was timely rather than plaintiff's reliance on Georgia's savings statute. See Arias, 776 F.3d at 1269-71.

defense that they now complain that they have been ‘stripped’ of’ by removing to federal court. Id. at 1273.

Plaintiff’s sole reliance on Arias is misplaced. First, the Circuit’s discussion of Georgia’s six-month refiling provision was merely an accurate summary of state law—had the tort case remained in state court, plaintiff could have dismissed and re-filed within six months without being barred by the statute of limitations. Furthermore, the Circuit noted that by removing to federal court, defendants had arguably “created” the statute of limitations defense. Arias, 776 F.3d at 1273. Thus, the Circuit implied that plaintiff may not have been able to take advantage of Georgia’s six-month refiling provision precisely because the case was removed to federal court. See id. Finally, and most importantly, Eleventh Circuit precedent is clear that when a statute of limitations is set by Congress it cannot be extended by state law. See Phillips v. U.S., 260 F.3d 1316 (11th Cir. 2001) (plaintiff could not take advantage of Georgia savings statute in Federal Tort Claims Act case); Ingmire v. Target Corp., 520 F. App’x 832 (11th Cir. 2013) (per curiam) (plaintiff could not take advantage of Georgia savings statute in Age Discrimination in Employment Act case); Weldon v. Elec. Data Sys. Com., 138 F. App’x 136, 138 (11th Cir. 2015) (per curiam) (plaintiff could not take advantage of Georgia savings statute in Title VII case); see also Bruce v. Homeward Residential, Inc., 1:14-CV-03325-MHC-AJB, 2015 U.S. Dist. LEXIS 138766 (N.D. Ga. Aug. 5, 2015), R&R adopted by, 2015 U.S. Dist. LEXIS

138203 (N.D. Ga. Aug. 31, 2015) (savings statute was not applicable to Fair Credit Reporting Act case).

Unlike the instant case, which deals with a federal claim and a statute of limitations set by Congress, Arias dealt with a state law claim where the statute of limitations was set by the state. Thus, Arias is inapplicable to the case at bar. Additionally, the same concerns present in Phillips are present here. To allow plaintiff to take advantage of Georgia's savings statute would undermine the uniformity intended by Congress's one-year statute of limitations for FDCPA claims. See Phillips, 260 F.3d at 1319; Ingmire, 520 F. App'x at 833. Thus, federal courts look to state law to determine a limitations period for a federal cause of action "only when Congress has failed to provide a statute of limitations[.]" which is simply not the case for the FDCPA. Phillips, 260 F.3d at 1318; accord Ingmire, 520 F. App'x at 833.

Therefore, because Congress set the statute of limitations for the FDCPA and allowing plaintiff to use the Georgia savings statute would undermine the uniformity intended by Congress, plaintiff's claims are barred by the FDCPA's one-year statute of limitations. Accordingly, the undersigned **RECOMMENDS** that defendant's Motion be **GRANTED**.

IV. CONCLUSION

For reasons discussed above, the undersigned **RECOMMENDS** that the Motion to Dismiss [2] be **GRANTED**.

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The Clerk is **DIRECTED** to terminate the reference to the Magistrate Judge.

SO RECOMMENDED, this 4th day of February, 2020.

/s/ Walter E. Johnson
UNITED STATES
MAGISTRATE JUDGE

App. 23

**IN THE SUPERIOR COURT
OF BARTOW COUNTY
STATE OF GEORGIA**

DOUGLAS EDWARDS,)	
Plaintiff,)	
vs.)	Civil Action File No.
SOLOMON AND)	SUCV2019000510
SOLOMON P.C.,)	
Defendant,)	
)	

**DEFENDANT'S NOTICE OF
REMOVAL TO FEDERAL COURT**

(Filed May 30, 2019)

TO: Clerk, Superior Court of Bartow County
135 W. Cherokee Ave # 233
Cartersville, Georgia 30120

Please take notice that, pursuant to 28 U.S.C. § 1441, Defendant Solomon and Solomon P.C. has removed the above-styled civil action from this Court to the United States District Court for the Northern District of Georgia, Rome Division. A copy of the Notice of Removal filed in the United States District Court for the Northern District of Georgia, Rome Division is attached hereto. No further proceedings in this case in the Superior Court of Bartow County, State of Georgia shall be had.

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Respectfully submitted this 30th day of May, 2019.

BEDARD LAW GROUP, P.C.,

/s/ Jonathan K. Aust

Jonathan K. Aust

Georgia Bar No. 448584

John H. Bedard, Jr.

Georgia Bar No. 043473

Counsel for Defendant

4855 River Green Parkway, Suite 310

Duluth, GA 30096

Phone: (678) 253-1871

jaust@bedardlawgroup.com

jbedard@bedardlawgroup.com

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing Defendant's Notice of Removal to Federal Court by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

Rory K. Starkey

Hilliard Starkey Law

1245 Veterans Memorial Hwy, SW Suite 49

Mableton, Georgia 30126

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Respectfully submitted this 30th day of May, 2019.

BEDARD LAW GROUP, P.C.,

/s/ Jonathan K. Aust

Jonathan K. Aust

Georgia Bar No. 448584

John H. Bedard, Jr.

Georgia Bar No. 043473

Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

DOUGLAS EDWARDS,)	
)	
Plaintiff,)	
)	
vs.)	
)	Civil Action File No.
SOLOMON AND)	
SOLOMON P.C.,)	
)	
Defendant,)	
)	

DEFENDANT'S NOTICE OF REMOVAL

TO:

The United States District Court for the Northern District of Georgia, Rome Division	Rory K. Starkey Hilliard Starkey Law 1245 Veterans Memorial Hwy, SW Suite 49 Mableton, Georgia 30126
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PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1446(a) and (b), the Defendant Solomon and Solomon P.C. hereby removes this case to the United States District Court for the Northern District of Georgia, Rome Division based on the following grounds:

1. This action is removable to the United States District Court under 28 U.S.C. § 1331 and 1441 on the grounds of federal question jurisdiction, in that the complaint purports to allege a cause of action under

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the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

2. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty days after Defendant's receipt of the initial pleadings setting forth the claim for relief upon which this action is based.

3. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit "A" are copies of the following documents, which are all the process, pleadings and orders received by one or more Defendants in this action, to wit: Please find documents attached hereto as Exhibit "A."

4. Upon receipt of this Notice, no further action shall be taken in the Superior Court of Bartow County, State of Georgia.

5. By filing this Notice of Removal, the Defendant demonstrates its consent to the removal of the case to this Court.

Respectfully submitted this 30th day of May, 2019.

BEDARD LAW GROUP, P.C.,

/s/ Jonathan K. Aust

Jonathan K. Aust

Georgia Bar No. 448584

John H. Bedard, Jr.

Georgia Bar No. 043473

Counsel for Defendant

App. 28

4855 River Green Parkway, Suite 310
Duluth, GA 30096
Phone: (678) 253-1871
jaust@bedardlawgroup.com
jbedard@bedardlawgroup.com

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing Defendant's Notice of Removal by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

Rory K. Starkey
Hilliard Starkey Law
1245 Veterans Memorial Hwy, SW
Suite 49
Mableton, Georgia 30126

Respectfully submitted this 30th day of May, 2019.

BEDARD LAW GROUP, P.C.,

/s/ Jonathan K. Aust

Jonathan K. Aust
Georgia Bar No. 448584
John H. Bedard, Jr.
Georgia Bar No. 043473
Counsel for Defendant

EXHIBIT A

**General Civil and Domestic Relations Case
Filing Information Form**

☒ Superior or ☐ State Court of Bartow County

For Clerk Use Only

Date Filed 04-26-2019
MM-DD-YYYY

Case Number SUCV2019000510

Plaintiff(s)

Edwards, Douglas

Last	First	Middle I.	Suffix	Prefix
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Last	First	Middle I.	Suffix	Prefix
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Defendant(s)

Solomon and, Solomon P.C.

Last	First	Middle I.	Suffix	Prefix
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Last	First	Middle I.	Suffix	Prefix
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Last	First	Middle I.	Suffix	Prefix
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Last	First	Middle I.	Suffix	Prefix
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Plaintiff's Attorney Starkey, Rory

Bar Number 676450 **Self-Represented** ☐

Check One Case Type in One Box

General Civil Cases

- ☐ Medical Malpractice Tort
- ☐ Product Liability Tort
- ☐ Automobile Tort
- ☒ General Tort
- ☐ Contract
- ☐ Real Property
- ☐ Civil Appeal
- ☐ Habeas Corpus
- ☐ Restraining Petition
- ☐ Injunction/Mandamus/Other Writ
- ☐ Garnishment
- ☐ Landlord/Tenant
- ☐ Other General Civil

Domestic Relations Cases

- ☐ Dissolution/Divorce/Separate Maintenance
- ☐ Paternity/Legitimation
- ☐ Support – IV-D
- ☐ Support – Private (non-IV-D)
- ☐ Adoption
- ☐ Family Violence Petition
- ☐ Other Domestic Relations

Post-Judgement – Check One Case Type

- ☐ Contempt
 - ☐ Non-payment of child support, medical support, or alimony.
- ☐ Modification
- ☐ Administrative/Other

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- ☐ Check if the action is related to another action(s) pending or previously pending in this court involving some or all the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number

Case Number

- ☒ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. §9-11-7.1.
- ☐ Is interpreter needed in this case? If so, provide the language(s) required. _____

Language(s) Needed

- ☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.
-

**IN THE SUPERIOR COURT OF
BARTOW COUNTY
STATE OF GEORGIA**

DOUGLAS EDWARDS,)	
Plaintiff,)	Civil Action
vs.)	No. _____
SOLOMON AND)	(Filed Apr. 26, 2019)
SOLOMON P.C.,)	
Defendants.)	

COMPLAINT

Plaintiff, Douglas Edwards, hereby complains against Defendant, Solomon and Solomon P.C., for violations of the Federal Debt Consumer Protection Act.

PARTIES

1.

Plaintiff, Douglas Edwards is a resident of Bartow County, Georgia.

2.

Defendant, Solomon and Solomon, P.C., is a New York corporation, located at 5 Columbia Circle, Albany NY 12203.

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3.

Defendant Solomon and Solomon P.C. is a law firm in New York.

JURISDICTION AND VENUE

4.

This Court has subject matter jurisdiction over this matter pursuant to F.D.C.P.A Sections 807(2)(a) and 813(d).

5.

This Court may exercise personal jurisdiction over the Defendants because the Defendants committed a tortious act or omission within this state, O.C.G.A. § 9-10-91.

6.

Venue is proper in Bartow County because venue shall lie in any county wherein a substantial part of the business was transacted, the tortious act, omission, or injury occurred. O.C.G.A. § 9-10-93.

FACTS

7.

Plaintiff Douglas Edwards borrowed a total of \$47,094 over the course of seven years for the furtherance of his dentistry education at an eight percent

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interest rate. He borrowed \$2,500 every year from October 1984 through January 1991, except in August 1989 where he borrowed \$11,500. Mr. Edwards also borrowed an additional \$11,500 in September 1990 and September 1991. The primary lender on all the loans was Chemical Bank.

8.

After graduation, Mr. Edwards was unable to afford the loan on his meager dental assistance salary so he defaulted on the loan.

9.

On April 05, 1999, New York State Higher Education Services Corporation "NYSHE", the guarantor of the loan, obtained a judgment on a portion of Mr. Edwards' loan totaling \$21,719.89. He paid off the judgment portion in February, 2009. He has paid \$67,500 towards the non judgment portion of his loan yet Solomon and Solomon P.C. has refused to provide the principal amount on the debt.

10.

Solomon and Solomon P.C. was the designated debt collector for the non-judgement portion of the loan for NYSHE.

11.

On June, 1999 Solomon and Solomon P.C. contacted Mr. Edwards about the repayment of his loan. That communication failed to include the principal amount. Furthermore, Solomon and Solomon P.C.'s failed to include mandatory statutory language informing the consumer of his or her right to dispute the debt in its first communication or within thirty days of its first communication. Section 809. Section 809(a)(4) requires the debt collector to notify the consumer of his or her right to dispute the debt within thirty days of its first communication.

12.

Mr. Edwards made his first payment of \$300 to Solomon and Solomon P.C. on July 20, 1999 shortly after receiving his dentistry license. He has paid \$67,500 to Solomon and Solomon P.C. over the past nineteen years yet he has not seen a reduction in the amount owed on the loan.

13.

Over the past nineteen years, Mr. Edwards inquired about the principal amount of the loan from Solomon and Solomon P.C. and was given the run-around for several years. He was even told by a representative of Solomon and Solomon P.C. that they did not know the principal amount on Mr. Edwards' loan which is absurd.

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14.

Furthermore, in all the debt correspondences from Solomon and Solomon P.C., Solomon and Solomon P.C. failed to include a principal amount obstructing Mr. Edwards from obtaining the true nature of his loan.

15.

Mr. Edwards has been diligent in the payment of his loans for the past nineteen years and should have paid off his debt or at least drastically reduced his debt since the initial payment.

16.

Unfortunately, Mr. Edwards has been in fear of constant wage garnishment from an invalid loan.

CLAIMS

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

I. VIOLATION OF FDCPA § 807(2)

FALSE REPRESENTATION OF THE STATUS OF DEBT

17.

Plaintiff restates and incorporates paragraphs 7-16.

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18.

Section 807(2) prohibits debt collectors from falsely representing the character, legal status, or amount of a debt.

19.

Solomon and Solomon P.C. did not state the principal amount in its first communication with Mr. Edwards on June 05, 1999. Neither did it notify Mr. Edwards of his right to dispute the debt within thirty days of its first communication to Mr. Edwards.

20.

Mr. Edwards also contacted Solomon and Solomon P.C. several times to inquire about the principal amount of the debt and was rebuffed. A Solomon and Solomon P.C. representative also told Mr. Edwards that Solomon and Solomon P.C. was unaware of the principal amount of the debt.

21.

All correspondences between Mr. Edwards and Solomon and Solomon P.C. omit the principal debt amount.

22.

Although Mr. Edwards has paid \$67,500 to Solomon and Solomon P.C., his balance never reduced.

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23.

In so doing the described actions, Defendant's knowingly and falsely represented the amount of the debt. The failure to include the principal amount of the debt was a ploy by Solomon and Solomon P.C. to ensure that Mr. Edwards would be indebted forever preventing him from knowing the true character of his loan and preventing him from making intelligent choices on eliminating his debt.

DAMAGES

24.

Because of Defendants actions, Mr. Edwards has suffered great emotional distress.

25.

Solomon and Solomon P.C.'s intentional omission of the principal amount has put Mr. Edwards in constant fear of garnishment of wages for a debt that should have been paid off.

PRAYER

Whereby Petitioner prays for:

- (a) actual damages, including any overpayments to Solomon and Solomon P.C.
- (b) an award of nominal damages in the amount of \$1,000.

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(c) all reasonably attorney's fees

(d) and all costs.

Respectfully submitted on this the 26th day of April
2019.

/s/ R. K. Starkey
Rory K, Starkey, Esq.
Georgia Bar No.: 676450
Counsel for Plaintiff

Hilliard Starkey Law
1245 Veterans Memorial Hwy, SW
Suite 49
Mableton, GA 30-426
(678) 909-2096 (Office)
(678) 623-5767 (Facsimile)
rkstarkey@hstarlaw.com

AFFIDAVIT OF SERVICE

SUPERIOR COURT **Index #:**
STATE OF GEORGIA, SUCV2019-000510
COUNTY OF BARTOW **Date Filed:**
 EFILED IN OFFICE
 Court Date:
 CLERK OF SUPERIOR
 COURT BARTOW
 COUNTY, GEORGIA
 Assigned Justice:
 SUCV2019000510

 File No.:
 MAY 03, 2019 02:20 PM

Edwards, Douglas

Plaintiff(s)/Petitioner(s)

VS.

Solomon and Solomon P.C.

Defendant(s)/Respondent(s)

STATE OF New York , COUNTY OF ALBANY SS.:

Felix Correa, being duly sworn deposes and says:
Deponent is not a party herein, is over 18 years of age
and resides in New York. On Wednesday, May 1, 2019
at 10:33 AM.

at c/o Solomon & Solomon, 1 Columbia Circle, Albany,
NY 12203 deponent served the within Summons and
Complaint with Plaintiffs First Notice to Produce and
Request for Production of Documents to Defendant

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on: Julie B Solomon Defendant therein named.

INDIVIDUAL By delivering a true copy of each to
#1 ☒ said recipient personally; deponent
knew the person served to be the person described as said person. Said premises is subjects ☒ actual place of business ☐ dwelling house (usual place of abode) within the state.

DESCRIPTION A description of the Defendant, or
#2 ☒ other person served, or spoken to on
(use with behalf of the Defendant is as follows:
#1, 2 or 3) Sex: Female Color of skin: White
Color of hair: Black Age: 50
Height: 4'11" Weight: 140
Other Features:

#3 WIT. FEES \$ the authorized witness fee and / or
☐ traveling expenses were paid (tendered) to the recipient.

#4 MILITARY Your deponent asked person spoken
SRVC to whether the defendant was in the
☒ active military service of the United States or New York and received a negative reply. Upon information and belief I have; being based on the conversation and observations above narrated, defendant is not in the military service.

#5 OTHER
☐

#6 MAIL COPY On , deponent
☐ completed service by depositing a true copy of each document the above

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address in a 1st Class postpaid properly addressed envelope not indicating that mailing was from an attorney or concerned legal action and marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York. Certified Mail #:

Sworn to before me on this 1st day of May 2019

/s/ Heather Morigeralo

Heather Morigeralo

Notary Public, State of New York

No. 01M06261464

Qualified In Albany County

Commission Expires May 14, 2020

/s/ Felix Correa

Felix Correa

Job # S1822492

SERVICO, INC., P.O. Box 871, ALBANY, NY 12201

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**SUPERIOR COURT OF BARTOW COUNTY
BARTOW COUNTY, GEORGIA**

CIVIL ACTION NUMBER SUCV2019000510

Edwards, Douglas

PLAINTIFF

VS.

Solomon and, Solomon P.C.

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiffs attorney, whose name and address is:

**Rory Starkey
Hilliard Starkey Law
1245 Veterans Memorial Hwy SW Suite 49
Mabelton, Georgia 30126**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

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This 26th day of April, 2019.

Clerk of Superior Court

/s/ Melba Scoggins
Melba Scoggins, Clerk
Bartow County, Georgia

JS44 (Rev. 6/2017 NDGA)

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)	DEFENDANT(S)
Douglas Edwards	Solomon and Solomon P.C.
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Bartow</u>	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(EXCEPT IN U.S. PLAINTIFF CASES)	(IN U.S. PLAINTIFF CASES ONLY)
	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)	ATTORNEYS (IF KNOWN)
Rory K. Starkey. Hilliard Starkey Law. 1245 Veterans Memorial Hwy, SW Suite 49 Mableton, Georgia 30126. (678) 909-2096. rkstarkey@hstarlaw.com	Jonathan K. Aust and John H. Bedard, Jr. Bedard Law Group, P.C. 4855 River Green Parkway, Suite 310 Duluth, Georgia 30096. (678) 253-1871. jaust@bedardlawgroup.com jbedard@bedardlawgroup.com

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF | <input checked="" type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY) |
| <input type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT | |
| | <input type="checkbox"/> 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

PLF DEF

- | | | |
|----------------------------|----------------------------|---|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY |

PLF DEF

- | | | |
|----------------------------|----------------------------|---|
| <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE |
| <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | FOREIGN NATION |

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | |
|--|---|
| <input type="checkbox"/> 1 ORIGINAL PROCEEDING | <input checked="" type="checkbox"/> 2 REMOVED FROM STATE COURT |
| <input type="checkbox"/> 3 REMANDED FROM APPELLATE COURT | <input type="checkbox"/> 4 REINSTATED OR REOPENED |
| <input type="checkbox"/> 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District) | <input type="checkbox"/> 6 MULTIDISTRICT LITIGATION – TRANSFER |
| <input type="checkbox"/> 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT | <input type="checkbox"/> 8 MULTIDISTRICT LITIGATION – DIRECT FILE |

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE – DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Plaintiff alleges that Defendant violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692 et seq.

(IF COMPLEX, CHECK REASON BELOW)

- | | |
|---|---|
| <input type="checkbox"/> 1. Unusually large number of parties. | <input type="checkbox"/> 6. Problems locating or preserving evidence. |
| <input type="checkbox"/> 2. Unusually large number of claims or defenses. | <input type="checkbox"/> 7. Pending parallel investigations or actions by government. |
| <input type="checkbox"/> 3. Factual issues are exceptionally complex. | <input type="checkbox"/> 8. Multiple use of experts. |
| <input type="checkbox"/> 4. Greater than normal volume of evidence. | <input type="checkbox"/> 9. Need for discovery outside United States boundaries. |
| <input type="checkbox"/> 5. Extended discovery period is needed. | <input type="checkbox"/> 10. Existence of highly technical issues and proof. |

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT \$ _____
JUDGE _____	MAG. JUDGE _____ (Referral)
APPLYING IFP _____	MAG. JUDGE (HP) _____
NATURE OF SUIT _____	CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT – "0" MONTHS DISCOVERY TRACK

- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT – "4" MONTHS DISCOVERY TRACK

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 151 MEDICARE ACT
- ☐ 160 STOCKHOLDERS' SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

REAL PROPERTY – "4" MONTHS DISCOVERY TRACK

- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

TORTS – PERSONAL INJURY – "4" MONTHS DISCOVERY TRACK

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY

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- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY – MEDICAL MAL-
PRACTICE
- ☐ 365 PERSONAL INJURY – PRODUCT LIABIL-
ITY
- ☐ 367 PERSONAL INJURY – HEALTH CARE/
PHARMACEUTICAL PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PROD-
UCT LIABILITY

TORTS – PERSONAL PROPERTY – “4” MONTHS
DISCOVERY TRACK

- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABIL-
ITY

BANKRUPTCY – “0” MONTHS DISCOVERY TRACK

- ☐ 422 APPEAL 28 USC 158
- ☐ 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS – “4” MONTHS DISCOVERY TRACK

- ☐ 440 OTHER CIVIL RIGHTS
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS

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- ☐ 445 AMERICANS with DISABILITIES – Employment
- ☐ 446 AMERICANS with DISABILITIES – Other
- ☐ 448 EDUCATION

IMMIGRATION – “0” MONTHS DISCOVERY TRACK

- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS – “0” MONTHS DISCOVERY TRACK

- ☐ 463 HABEAS CORPUS- Alien Detainee
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 HABEAS CORPUS DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS – Filed Pro se
- ☐ 555 PRISON CONDITION(S) – Filed Pro se
- ☐ 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS – “4” MONTHS DISCOVERY TRACK

- ☐ 550 CIVIL RIGHTS – Filed by Counsel
- ☐ 555 PRISON CONDITION(S) – Filed by Counsel

FORFEITURE/PENALTY – “4” MONTHS DISCOVERY TRACK

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
21 USC 881
- ☐ 690 OTHER

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LABOR – “4” MONTHS DISCOVERY TRACK

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY and MEDICAL LEAVE ACT
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS – “4” MONTHS DISCOVERY TRACK

- ☐ 820 COPYRIGHTS
- ☐ 840 TRADEMARK

PROPERTY RIGHTS – “8” MONTHS DISCOVERY TRACK

- ☐ 830 PATENT
- ☐ 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) – a/k/a Hatch-Waxman cases

SOCIAL SECURITY – “0” MONTHS DISCOVERY TRACK

- ☐ 861 HIA (1395f3)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC (405(g))
- ☐ 863 DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS – “4” MONTHS DISCOVERY TRACK

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS – THIRD PARTY 26 USC 7609

OTHER STATUTES – “4” MONTHS DISCOVERY TRACK

- ☐ 375 FALSE CLAIMS ACT
- ☐ 376 Qui Tam 31 USC 3729(a)
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE/ICC RATES/ETC.
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☒ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES – “8” MONTHS DISCOVERY TRACK

- ☐ 410 ANTITRUST
- ☐ 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES – “0” MONTHS DISCOVERY TRACK

- ☐ 896 ARBITRATION
(Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF CLASS ACTION UNDER F.R.CIV.P. 23

DEMAND \$ _____

JURY DEMAND ☐ YES ☒ NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- ☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADE-MARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- ☐ 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- ☐ 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- ☐ 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case ☐ IS ☐ IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

<u>[Illegible]</u>	<u>5/30/19</u>
SIGNATURE OF	DATE
ATTORNEY OF RECORD	

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

DOUGLAS EDWARDS,

Plaintiff,

vs.

SOLOMON AND
SOLOMON P.C.,

Defendant,

CIVIL ACTION NO.
4:19-cv-299-HLM-WEJ

DEFENDANT'S NOTICE OF REMOVAL

(Filed Dec. 30, 2019)

TO: THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION and

Edward Douglas
Through his counsel of record:
Rory K. Starkey
Hilliard Starkey Law
561 Thornton Rd., Suite G
Lithia Springs, Georgia 30122

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1446(a) and (b), and 27 U.S.C. §1441(b), the Defendant, Solomon and Solomon P.C., hereby removes this case to the United States District Court for the Northern District of Georgia, Rome Division based on the following grounds:

1. This action is removable to the United States District Court under 28 U.S.C. Sections 1331 and 1441 on the grounds of federal question jurisdiction, in that the complaint purports to allege a cause of action

under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

2. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty days after Defendant's receipt of the initial pleadings setting forth the claim for relief upon which this action is based.

3. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit "A" are copies of the following documents, which are all the process, pleadings and orders received for this action.

4. Defendant was served with Plaintiff's Complaint on December 3, 2019.

5. Upon receipt of this Notice, no further action shall be taken in the Superior Court of Bartow County, State of Georgia.

6. By filing this Notice of Removal, the Defendant demonstrates its consent to the removal of the case to this Court.

This 30th day of December, 2019.

Respectfully submitted,

BEDARD LAW GROUP, P.C.

/s/ Michael K. Chapman

Michael K. Chapman

Georgia Bar No. 322145

John H. Bedard, Jr.

Georgia Bar No. 043473

Counsel for Defendant

Solomon and Solomon, P.C.

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Bedard Law Group, P.C.
4855 River Green Parkway, Suite 310
Duluth, Georgia 30096
Telephone: (678) 253-1871
E-mail: mchapman@bedardlawgroup.com
E-mail: jbedard@bedardlawgroup.com

CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 7.1D

Pursuant to Local Rule 7.1D, the undersigned counsel certifies that this document has been prepared using Times New Roman 14-point font.

This 30th day of December, 2019.

Respectfully submitted,

BEDARD LAW GROUP, P.C.

/s/ Michael K. Chapman

Michael K. Chapman

Georgia Bar No. 322145

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing Defendant Solomon and Solomon, P.C.'s Notice of Removal to the United States District Court for the Northern District of Georgia, Rome Division by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

Rory K. Starkey
Hilliard Starkey Law
561 Thornton Rd., Suite G
Lithia Springs, Georgia 30122

I further hereby certify that on this date, electronically filed this Notice of Removal using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorney(s) of record:

Rory K. Starkey
rkstarkey@hstarlaw.com

This 30th day of December, 2019.

Respectfully submitted,
BEDARD LAW GROUP, P.C.

/s/ Michael K. Chapman
Michael K. Chapman
Georgia Bar No. 322145

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (*SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.*)

I. (a) PLAINTIFFS

DOUGLAS EDWARDS

(b) County of Residence of First Listed Plaintiff
Bartow
(*EXCEPT IN U.S. PLAINTIFF CASES*)

(c) Attorneys (*Firm Name, Address, and Telephone Number*)

Rory Starkey of Hilliard Starkey Law, 561 Thornton Rd., Suite G, Lithia Springs, Georgia 30122; Tel: (678) 909-2096.

DEFENDANTS

SOLOMON AND SOLOMON, P.C.

County of Residence of First Listed Defendant
Bartow
(*EXCEPT IN U.S. PLAINTIFF CASES*)

NOTE: IN LAND CONDEMNATION CASES, USE
THE LOCATION OF THE TRACT OF LAND
INVOLVED

Attorneys (*If Known*)

Michael K. Chapman & John H. Bedard, Jr. of Bedard
Law Group, P.C., 4855 River Green Parkway, Suite 310,
Duluth, Georgia 30096; Tel: (678) 253-1871.

II. BASIS OF JURISDICTION (*Place an "X" in One Box Only*)

- | | |
|---|--|
| <input type="checkbox"/> 1 U.S. Government
Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(<i>U.S. Government Not
a Party</i>) |
| <input type="checkbox"/> 2 U.S. Government
Defendant | <input type="checkbox"/> 4 Diversity
(<i>Indicate Citizenship
of Parties in Item III</i>) |

III. CITIZENSHIP (*Place an "X" in One Box for Plaintiff
(For Diversity Cases Only) and One Box for Defendant*)

	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT

- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY

- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability

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- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury – Medical Malpractice
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury
Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS

- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 445 Amer. w/Disabilities – Employment
- ☐ 446 Amer. w/Disabilities – Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:

- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

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Other:

- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY

- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION

- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
- ☐ 830 Patent

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- ☐ 835 Patents – Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES

- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☒ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration

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- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (*Place an "X" in One Box Only*)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (*specify*)
- ☐ 6 Multidistrict Litigation – Transfer
- ☐ 8 Multidistrict Litigation – Direct File

VI. CAUSE OF ACTION

City the U.S. Civil Statute under which you are filing
(*Do not cite jurisdictional statutes unless diversity*):

28 USC Sec. 1441 – Federal Question Jurisdiction

Brief description of cause:

Plaintiff alleges claims against Defendant under the
Fair Debt Collection Practices Act, 15 USC Sec. 1692,
et seq.

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER
RULE 23, F.R.Cv. P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

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VIII. RELATED CASE(S) IF ANY *(See instructions)*

JUDGE _____

DOCKET NUMBER _____

DATE	SIGNATURE OF ATTORNEY OF RECORD
------	------------------------------------

12/30/2019	/s/ Michael K. Chapman (GA Bar No. 322145)
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FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____

APPLYING IFP _____ JUDGE _____

MAG. JUDGE _____

EXHIBIT A

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**SUPERIOR COURT OF BARTOW COUNTY
STATE OF GEORGIA**

CIVIL ACTION NUMBER SUCV20 19001541

Edwards, Douglas

PLAINTIFF

VS.

Solomon and Solomon PC

DEFENDANT

SUMMONS

(Filed Nov. 27, 2019)

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiffs attorney, whose name and address is:

**Rory Starkey
Hilliard Starkey Law
561 Thornton Rd
Suite G
Lithia Springs, Georgia 30122**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

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This 27th day of November, 2019.

Clerk of Superior Court

/s/ Melba Scoggins
Melba Scoggins, Clerk
Bartow County, Georgia

**IN THE SUPERIOR COURT OF BARTOW COUNTY
STATE OF GEORGIA**

DOUGLAS EDWARDS,)	
Plaintiff,)	
)	
vs.)	Civil Action
SOLOMON AND)	No.
SOLOMON P.C.,)	
)	
Defendants.)	

COMPLAINT

(Filed Nov. 27, 2019)

Plaintiff, Douglas Edwards, hereby complains against Defendant, Solomon and Solomon P.C., for violations of the Federal Debt Consumer Protection Act.

PARTIES

1.

Plaintiff, Douglas Edwards is a resident of Bartow County, Georgia.

2.

Defendant, Solomon and Solomon, P.C., is a New York corporation, located at 5 Columbia Circle, Albany NY 12203.

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3.

Defendant Solomon and Solomon P.C. is a law firm in New York.

JURISDICTION AND VENUE

4.

This Court has subject matter jurisdiction over this matter pursuant to F.D.C.P.A 15 USC § 692e and 15 USC § 692k.

5.

This Court may exercise personal jurisdiction over the Defendants because the Defendants committed a tortious act or omission within this state, O.C.G.A. § 10-91.

6.

Venue is proper in Bartow County because venue shall lie in any county wherein a substantial part of the business was transacted, the tortious act, omission, or injury occurred. O.C.G.A. § 9-10-93.

FACTS

7.

Plaintiff Douglas Edwards borrowed a total of \$47,094 over the course of seven years for the furtherance of his dentistry education at an eight

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percent interest rate. He borrowed \$2,500 every year from October 1984 through January 1991, except in August 1989 where he borrowed \$11,500. Mr. Edwards also borrowed an additional \$11,500 in September 1990 and September 1991. The primary lender on all the loans was Chemical Bank.

8.

After graduation, Mr. Edwards was unable to afford the loan on his meager dental assistance salary, so he defaulted on the loan.

9.

On April 05, 1999, New York State Higher Education Services Corporation “NYS HESC”, the guarantor of the loan, obtained a judgment on a portion of Mr. Edwards’ loan totaling \$21,719.89. Mr. Edwards paid off the judgment portion in February 2009.

10.

In June 1999, Solomon and Solomon P.C. contacted Mr. Edwards about the repayment of his loan. That communication failed to include the principal amount. Furthermore, Solomon and Solomon P.C.’s failed to include mandatory statutory language informing the consumer of his or her right to dispute the debt in its first communication or within thirty days of its first communication in violation of Section 809. Section 809(a)(4) requires the debt collector to

notify the consumer of his or her right to dispute the debt within thirty days of its first communication.

11.

Mr. Edwards made his first payment of \$300 to Solomon and Solomon P.C. on July 20, 1999 shortly after receiving his dentistry license. He consistently made payments every month without ever missing a payment.

12.

Mr. Edwards realized that the judgment loan that he had paid off was not reported to NYS HESC. After struggling to resolve the issue with his judgment loan, he contacted Solomon and Solomon P.C., the designated debt collector for the non-judgement portion of the loan for NYS HESC, to ensure that his payments were being applied properly and to get more information, including the principal amount, on his loan. Solomon and Solomon P.C. refused to provide the principal amount on the debt.

13.

So far, Mr. Edwards has paid \$68,400 to Solomon and Solomon P.C. over the past nineteen years yet he has not seen a reduction in the amount owed on the loan.

14.

Furthermore, Mr. Edwards has inquired about the principal amount of the loan from Solomon and Solomon P.C. and was given the run-around for several years. He was even told by a representative of Solomon and Solomon P.C. that they did not know the principal amount on Mr. Edwards' loan which is absurd.

15.

Additionally, in all the debt correspondences from Solomon and Solomon P.C., Solomon and Solomon P.C. failed to include a principal amount obstructing Mr. Edwards from obtaining the true nature of his loan.

16.

In addition to many others, Defendant's May 1, 2018 and May 25, 2018 dunning letters are evidence of the ruse Solomon and Solomon used on Mr. Edwards. These letters show the missing principal amounts despite Mr. Edward's several requests for the principal amount to be disclosed so he could make an informed decision on how to pay off his loans.

17.

Additionally, on July 23, 2018, Ms. Tonya Tillman, a representative of Solomon and Solomon P.C. attempted to collect on the paid off judgment loan, during a phone call with Ms. Edwards. Ms. Tillman asked Ms. Edwards whether she was calling to set up a

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payment plan for the overdue judgement debt. This unscrupulous request was a violation of the FDCPA as this loan had already been paid off.

18.

Mr. Edwards has been diligent in the payment of his loans for the past nineteen years and should have paid off his debt or at least drastically reduced his debt since the initial payment.

19.

Unfortunately, this is not the case as Mr. Edwards is in constant fear of wage garnishment from a woefully inaccurate or invalid loan.

CLAIMS

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

I. VIOLATION OF FDCPA 15 USC § 1692E(2)(A)

- A. WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR, THEY COMMIT A FALSE REPRESENTATION THAT THE COLLECTION AGENCY DOES NOT KNOW THE PRINCIPAL. THIS IS A VIOLATION OF 15 USC § 1692E'S GENERAL STATUTORY SCHEME WHICH PROHIBITS THE MISREPRESENTATION OF THE CHARACTER, LEGAL STATUS, OR AMOUNT OF A DEBT.

COUNT I: MAY 1, 2018 VIOLATION

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20.

Plaintiff restates and incorporates paragraphs 7-17.

21.

15 USC § 1692e(2)(a) prohibits debt collectors from falsely representing the character, legal status, or amount of a debt.

22.

Solomon and Solomon P.C. did not state the principal amount in its first communication with Mr. Edwards on June 05, 1999 or any other communication with Mr. Edwards including the May 1, 2018. Neither did it notify Mr. Edwards of his right to dispute the debt within thirty days of its first communication to Mr. Edwards.

23.

Mr. Edwards also contacted Solomon and Solomon P.C. several times to inquire about the principal amount of the debt and was rebuffed. A Solomon and Solomon P.C. representative also told Mr. Edwards that Solomon and Solomon P.C. was unaware of the principal amount of the debt. That representative was obviously lying and mispresenting the truth to Mr. Edwards because Solomon and Solomon P.C. had the principal balance but refused to disclose the information.

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24.

All correspondences between Mr. Edwards and Solomon and Solomon P.C. omit the principal debt amount including the May 1, 2018 correspondence.

25.

Although Mr. Edwards has paid \$300 a month consistently for the past nineteen years, his balance never reduced.

COUNT II: MAY 25, 2018 VIOLATION

26.

Plaintiff restates and incorporates paragraphs 7-17.

27.

15 USC § 1692e(2)(a) prohibits debt collectors from falsely representing the character, legal status, or amount of a debt.

28.

Solomon and Solomon P.C. never stated the principal amount in its first communication or in any of its communications with Mr. Edwards including the May 25, 2018 communication.

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29.

Furthermore, Solomon and Solomon P.C. refused to give Mr. Edwards the principal amount stating that “Solomon and Solomon P.C. was unaware of the principal amount.”

30.

So far, Mr. Edwards has not missed a payment since he started paying back his student loans, yet his loan continues to balloon into perpetuity with no end date in sight.

B. WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATIONS TO A DEBTOR, THEY COMMIT A FALSE REPRESENTATION THAT THERE IS NO PRINCIPAL BALANCE. SUCH IS A VIOLATION OF 15 USC 1692E’S GENERAL STATUTORY SCHEME OF NOT MISREPRESENTING THE CHARACTER, LEGAL STATUS, OR AMOUNT OF A DEBT.

COUNT III: MAY 1, 2018 VIOLATION

31.

Plaintiff restates and incorporates paragraphs 7-17.

32.

In this case, Solomon and Solomon P.C. has failed to include a principal amount in all of its correspondences with Mr. Edward including the May 1, 2018.

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Thereby, violating the FDCPA in every correspondence with Mr. Edwards.

33.

Furthermore, when Mr. Edwards asked about the principal amount from Solomon and Solomon P.C., they refused to provide him with the information.

34.

Solomon and Solomon P.C. went as far as stating that they were unaware of the principal amount. This misrepresentation is misleading as it indicates that there is no principal amount when the facts are undisputed that there is a principal balance.

COUNT IV: MAY 25, 2018 VIOLATION

35.

Plaintiff restates and incorporates paragraphs 7-17.

36.

Solomon and Solomon P.C. has intentionally refused to include a principal amount in all of its correspondences with Mr. Edward including the May 25, 2018 violating the FDCPA by misrepresenting the nature and amount of the loan.

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37.

Mr. Edwards was rebuffed when he inquired about the principal amount and was told that Solomon and Solomon P.C. was unaware of the principal amount which was false.

C. WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR THEY COMMIT A MISLEADING REPRESENTATION BECAUSE WITHOUT BEING PROVIDED A STATEMENT OF PRINCIPAL BALANCE THE DEBTOR IS UNABLE TO DETERMINE AN APPROPRIATE PAYMENT STRUCTURE AS WOULD EVER ALLOW THE PAY OFF THE DEBT SUCH IS A VIOLATION OF 15 USC 1692E'S GENERAL STATUTORY SCHEME OF NOT MISREPRESENTING CHARACTER, LEGAL STATUS, OR AMOUNT OF A DEBT.

COUNT V: MAY 1, 2018 VIOLATION

38.

Plaintiff restates and incorporates paragraphs 7-17.

39.

Solomon and Solomon P.C. knowingly and intentionally misrepresented the amount of Mr. Edwards debt. The failure to include the principal amount of the loan in any correspondences of the debt, including the May 1, 2018 correspondence, was a ploy by Solomon and Solomon P.C. to ensure that Mr. Edwards would be indebted forever preventing him from knowing the

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true nature/amount of his loan and preventing him from making intelligent choices on eliminating his debt.

40.

Mr. Edwards was unable to make principal only payments or set up an appropriate payment amount to pay off his debt. Instead, Mr. Edwards was put on a payment cycle that would never pay off.

41.

Additionally, Mr. Edwards doubled up his payments in January 2001, October 2005, and February 2008 in an attempt to make principal only payments, but the payments were still not applied to the principal. His principal never reduced.

42.

Each of those attempts at principal only payments create individual FDCPA violations as they misrepresent the nature and amount of the debt.

COUNT VI: MAY 25, 2018 VIOLATION

43.

Plaintiff restates and incorporates paragraphs 7-17.

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44.

Solomon and Solomon P.C. willfully misrepresented the amount of Mr. Edwards debt in order to keep Mr. Edwards in debt in perpetuity.

45.

Mr. Edwards was prevented from knowing the true nature and amount of his loan, so he was unable to make an informed decision on how to efficiently pay of his student loans. For instance, he wasn't given the option to make principal only payments. Instead, Mr. Edwards was put on a payment cycle that would never pay off.

46.

Additionally, Mr. Edwards doubled up his payments in January 2001, October 2005, and February 2008 in an attempt to make principal only payments, but the payments were not applied to the principal because his principal never reduced.

47.

Each of those attempts at principal only payments create individual FDCPA violations as they misrepresent the nature and amount of the debt.

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D. WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR, THEY COMMIT A FALSE REPRESENTATION ABOUT THE CHARACTER OF THE DEBT IN VIOLATION OF 15 USC § 1692E(2)(A).

COUNT VII: MAY 1, 2018 VIOLATION

48.

Plaintiff restates and incorporates paragraphs 7-17.

49.

Character is defined as the “aggregate of features and traits that form the individual nature of some person or things.” Solomon and Solomon P.C. intentionally omitted the principal amount of the loan to conceal the character the loan. By omitting the principal, the loan appears to be an interest only loan and not a typical loan.

50.

The omission of the principal amount in the May 1, 2018 loan and in all the previous loans presented a false narrative of a principal free loan that ran into perpetuity.

51.

This misrepresentation is in violation of 15 USC § 1692e(2)(a) as the lack of principal falsely represents

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the loan as an interest only loan that runs into perpetuity which is not the case.

52.

This failure to include a principal loan hindered Mr. Edwards ability to make an informed decision on how to pay off the loan.

53.

Therefore, even though Mr. Edwards paid \$300 a month consistently for the past nineteen years, his balance never reduced and his attempts to double up on the payments did not result in the reduction of his loan.

COUNT VIII: MAY 25, 2018 VIOLATION

54.

Plaintiff restates and incorporates paragraphs 7-17.

55.

Solomon and Solomon P.C. omission of the principal amount in all communications with Mr. Edward including the May 25, 2018 was an intentional decision to misrepresent Mr. Edward's loan and to keep him in debt forever.

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56.

The fact is Solomon and Solomon P.C. knew the principal amount but intended to portray the loan as an interest only loan.

57.

This misrepresentation hindered Mr. Edwards ability to pay down or pay off his loan.

E. WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR, THEY COMMIT A FALSE REPRESENTATION ABOUT THE LEGAL STATUS OF THE DEBT IN VIOLATION OF 15 USC § 1692E(2)(A).

COUNT IX: MAY 1, 2018 VIOLATION

58.

Plaintiff restates and incorporates paragraphs 7-17.

59.

Solomon and Solomon P.C.'s intentional omission of the principal amount was a willful attempt to conceal the legal status of the debt. The lack of information on the May 1, 2018 communication and the previous communications prevented Mr. Edwards from being able to determine the components of the loan and the loan portions that were disputed.

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60.

Because Mr. Edwards had issues with judgement debt collector not reporting his payments to the guaranty agency and overpaying the judgement debt collector, Mr. Edwards wanted to know the status of his non judgement debt because his payments only ballooned but never reduced.

61.

By concealing the principal amount, Solomon and Solomon P.C. attempted to hide the type of loan and the disputed portion of the loan.

COUNT X: MAY 25, 2018 VIOLATION

62.

Plaintiff restates and incorporates paragraphs 7-17.

63.

Solomon and Solomon P.C.'s concealment of Mr. Edwards debt was intentional misrepresentation of the legal status of the debt. The lack of information on the May 25, 2018 communication and the previous communications prevented Mr. Edwards from being able to determine the components of the loan and the loan portions that were disputed.

64.

Mr. Edwards in attempt to be meticulous after finding that his judgement loan payments were not being reported to the guaranty agency, contacted Solomon and Solomon P.C. to get the principal amount of the loan as his loan total never reduced but only increased similar to his judgement loan predicament. Mr. Edwards was rebuffed which made him question the accuracy of his non-judgement debt.

65.

In so doing the described actions, Solomon and Solomon P.C. knowingly and falsely represented the amount of the debt. The failure to include the principal amount of the debt was a ploy by Solomon and Solomon P.C. to ensure that Mr. Edwards would be indebted forever preventing him from knowing the true character of his loan and preventing him from making intelligent choices on eliminating his debt.

66.

By denying Mr. Edwards' request for the principal amount information, Solomon and Solomon P.C. concealed the type of loan and the disputed portion of the loan.

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E. WHEN A COLLECTOR ATTEMPTS TO COLLECT A DEBT THAT HAS ALREADY BEEN PAID OFF, THEY COMMIT A FALSE REPRESENTATION ABOUT THE LEGAL STATUS OF THE DEBT IN VIOLATION OF 15 USC § 1692E(2)(A).

COUNT XI: JULY 23, 2018 VIOLATION

67.

Plaintiff restates and incorporates paragraphs 7-17.

68.

Solomon and Solomon P.C.'s attempt to collect a debt that has already been paid in the July 23, 2018 phone conversation was an intentional misrepresentation of the legal status of the debt. The legal status of a debt refers to the legal authority to collect on a valid loan.

69.

Because the judgment loan had already been paid off, Solomon and Solomon P.C. did not have the legal authority to request payment on the loan.

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G. WHEN A COLLECTOR ATTEMPTS TO COLLECT A DEBT THAT HAS ALREADY BEEN PAID OFF, THEY COMMIT A FALSE REPRESENTATION ABOUT THE AMOUNT OF THE DEBT IN VIOLATION OF 15 USC § 1692E(2)(A).

COUNT XII: JULY 23, 2018 VIOLATION

70.

Plaintiff restates and incorporates paragraphs 7-17.

71.

A debt collect subject to the FDCPA cannot make a false representation as to the amount of the debt owed. In this case, the Solomon and Solomon P.C. requested payment on a paid off debt on July 23, 2018 inflating the total amount of the debt.

72.

This unjustified inflation of the total amount of the debt is a misrepresentation of the amount owed because it stipulates that the already disputed loan amount is a lot higher than it should be and that Solomon and Solomon P.C. can collect that higher amount. However, the judgment loan was paid off in 2009, so Solomon and Solomon P.C. had no legal authority to collect on the inflated amount as a portion of that amount had already been paid off and was therefore invalid.

II. VIOLATION OF FDCA 15 USC § 1692e(10)

WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR AND OTHERWISE REFUSE AND/OR FAIL TO DISCLOSE A DEBTOR'S PRINCIPAL BALANCE. THEY EMPLOY FALSE MEANS/METHODS IN THE COLLECTION OF A DEBT IN VIOLATION OF THE F.D.C.P.A

73.

Plaintiff restates and incorporates paragraphs 7-72 and the facts alleged thereto amount to violations of USC § 1692e(10).

74.

III. VIOLATION OF FDCA 15 USC § 1692f.

WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR AND OTHERWISE REFUSE AND/OR FAIL TO DISCLOSE A DEBTOR'S PRINCIPAL BALANCE. THEY EMPLOY UNFAIR AN UNCONSCIONABLE MEANS TO COLLECT AND/OR ATTEMPT TO COLLECT A DEBT.

75.

Plaintiff restates and incorporates paragraphs 7-74 and the facts alleged thereto amount to violations of USC § 1692f.

IV. VIOLATION OF FDCPA 15 USC § 1692f(1).

WHEN A COLLECTOR FAILS TO STATE A PRINCIPAL BALANCE IN ITS DUNNING COMMUNICATION TO A DEBTOR AND OTHERWISE REFUSE AND/OR FAIL TO DISCLOSE A DEBTOR'S PRINCIPAL BALANCE AND THE SAME RESULTS IN THE DEBTOR OVERPAYING INTEREST AND COLLECTION COSTS, THE COLLECTOR VIOLATES 15 USC § 1692F(1)'S PROHIBITION AGAINST COLLECTING AMOUNTS NOT OWED.

76.

Plaintiff restates and incorporates paragraphs 7-74 and the facts alleged thereto amount to violations of USC § 1692f(1).

WHEN A COLLECTOR FAILS TO APPROPRIATELY APPLY PAYMENTS AND /OR ACCOUNT FOR FUNDS REMITTED THE COLLECTOR VIOLATES 15 USC § 1692F(1)'S PROHIBITION AGAINST COLLECTING AMOUNTS NOT OWED.

77.

Plaintiff restates and incorporates paragraphs 7-74 and the facts alleged thereto amount to violations of USC § 1692f(1).

DAMAGES

78.

Because of Defendants actions, Mr. Edwards has suffered great emotional distress.

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79.

Solomon and Solomon P.C.'s intentional omission of the principal amount has put Mr. Edwards in constant fear of garnishment of wages for a debt that should have been paid off.

80.

Because of Defendants actions, Mr. Edwards has overpaid his student loans and never received credit for payments made to Solomon & Solomon.

PRAYER

Whereby Petitioner prays for:

- (a) actual damages, including any overpayments to Solomon and Solomon P.C.
- (b) an award of nominal damages in the amount of \$1,000.
- (c) all reasonably attorney's fees
- (d) and all costs.

Respectfully submitted this 27th day of November 2019.

/s/ R. K. Starkey
Rory K. Starkey
Bar No. 676450
Attorney for Petitioner

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HIILLIARD STARKEY LAW

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Lithia Springs, GA 30122

(678) 909-2-96 (phone)

(678) 623-5767 (fax)

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