

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DISTRICT**

D'LIVRO BEAUCHAMP;)	
OBELISK HEALTHCARE, LLC)	
)	
PLAINTIFFS,)	
)	
v.)	CASE NO.: 2:11-CV-1029-MHT
)	
MIKE WALLACE;)	
ADVANCED RECOVERY SYSTEM;)	
DE LAGE LANDEN;)	
SPENSER CAPITAL GROUP, INC)	
d/b/a GROUP FINANCIAL SERVICES;)	
)	
DEFENDANTS.)	

AMENDED COMPLAINT

I. INTRODUCTION

1. This is an action brought by an individual consumer for statutory damages under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (hereinafter referred to as the "FDCP A"), resulting from Defendants' violations of the statute by engaging in abusive, deceptive and unfair debt collection practices.

II JURISDICTION

2. The jurisdiction of this court to determine this action arises under 15 U.S.C. §1692k(d), 28 U.S.C. §1337 and 28 U.S.C. §1337. Alabama and the conduct complained of occurred in Alabama. Moreover, the transaction giving rise to the alleged debt took place in Alabama as well.

III PARTIES

3. The plaintiff, D'livro Beauchamp, is a natural person residing in the City of Montgomery, County of Montgomery, and State of Alabama.
4. The plaintiff, Obelisk Healthcare, LLC, is an Alabama corporation engaged in the business of providing medical care in the State of Alabama with its principal place of business located at 4705 Woodmere Blvd, Montgomery, Alabama 36106-3078.
5. The defendant, Advanced Recovery System, Inc., is a Pennsylvania corporation engaged in the business of collecting debt in the State of Alabama with its principal place of business located at 901 East 8th Avenue, Ste 206, King of Prussia, PA 19406.
6. The defendant, Spenser Capital Group, Inc., is an Indiana corporation doing business in the State of Alabama with its principal place of

business located at 70 Arrow Road, Suite 5, Hilton Head, South Carolina 29938.

7. The defendant, De Lage Landen, is a Netherlands-based leasing company doing business in the State of Alabama with its principal place of business in the United States located at 1111 Old Eagle School Road, Wayne, Pennsylvania 19087-1453.
8. The defendant, Mike Wallace, is a Pennsylvania resident employed in the business of collecting debt in the State of Alabama, and works at 901 East 8th Avenue, Ste 206 King of Prussia, PA 19406.
9. The defendants are engaged in the collection of debts from consumers using the mail and telephone. Defendants regularly attempts to collect consumer debts alleged to be due to another. Defendants are "debt collectors" as defined by the FDCP A, 15 U.S.C. §1692a(6).

IV STATEMENT OF FACT

10. On January 3, 2004, Obelisk Healthcare entered into a lease agreement with Spenser Capital Group, Inc. to lease a Radcom x-ray machine. The lease was numbered 24605274.
11. On January 31, 2005, Obelisk Healthcare entered into a lease agreement with Spenser Capital Group, Inc. to for labor and supplies

for the x-ray machine listed in lease numbered 24605274. The service agreement lease was numbered 24610175.

12. The payment on the leases was made to De Lage Landen Financial Services, Inc.
13. Afterward, Spenser Capital Group, Inc. and De Lage Landen created another dummy lease which was numbered 24593682. The dummy lease was created without the knowledge and permission of the plaintiff. After creating the dummy lease, Spenser Capital Group, Inc. and De Lage Landen proceeded to collect more than \$34,560.00 that was not owed to it. The amount was collected based on the false and fraudulent dummy lease which was never executed or contemplated by plaintiffs. The defendants collected the fraudulent payments by mail and bank transfers.
14. Under lease numbers 24605274 and 24610175, there was an end of the lease provision that allowed the plaintiffs to terminate the lease and purchase the x-ray machine at 10% of the contract price. When the end of the lease provision is initiated, the defendants are required to sell the machine to the plaintiffs at 10% of the contract price, or pick up the x-ray machine.
15. On April 8, 2009, plaintiffs provided the defendants with termination

notices for all of his leases. The defendant refused to pick up the equipment or sell the equipment at 10% of the contract price. Instead, the defendant forced the plaintiffs to pay additional lease payments in excess of the amounts owed under the lease agreement. The defendants also increased the amount of the monthly payments in violation of the lease provisions.

16. The defendants collected more than \$31,163.07 from the plaintiffs, which was not owed to the defendants under the lease. When the defendant would refuse to make the payment, De Lage Landen would threaten to take legal action against the plaintiffs.
17. On or about April 27, 2011, Advanced Recovery Systems telephoned the plaintiff at his place of employment, and demanded payment of \$10,293.37 allegedly due on the two lease agreements actually executed by Dliviro Beauchamp, MD/Obelisk Healthcare LLC and Spenser Capital Group, Inc d/b/a Group Financial Services. This demand was made while the plaintiffs were still making the extorted and non-contractual monthly lease payments to the defendants. Advanced Recovery Systems also made the fraudulent demands by mail.
18. The plaintiff advised the defendants that he did not owe the alleged

amount. The representative of Advanced Recovery Systems claimed the amount was due under the lease term provisions. The representative of Advanced Recovery Systems also told the plaintiffs that the defendants were going to garnish and/or attach his bank accounts, if he refused to make a good faith payment on the alleged debt. More specifically, the defendants required that the plaintiffs give them a \$2,500.00 bank draft over the phone as a showing of good faith to prevent the defendants from garnishing and/or attaching his bank account. While the plaintiff contested the alleged amount owed, he agreed to provide a \$2,500 phone bank draft to prevent the garnishment of his bank account to avoid any problems with outstanding checks that had already been written on his bank account.

19. The defendants knew that the lease agreement did not provide for such payments. Instead, the defendants made said false misrepresented to get plaintiff to pay money not owed under the lease agreement, and to get plaintiffs' bank account information to steal proceeds from said bank account. After getting plaintiffs' bank account information, the defendants illegally took \$7,500.00 from plaintiffs' bank account.
13. A few days after the defendants had obtained plaintiff's bank account information; the defendants falsified two electronic bank drafts

and/or checks and presented them to plaintiff's bank for payment.

First, the defendant presented a bank draft for \$5,000 to plaintiff's bank and claimed that plaintiffs had authorized said payment. A few days later, the defendant presented a second bank draft for \$2,500, and falsely claimed that the plaintiff had authorized the second payment.

14. Plaintiff's bank paid the two falsified bank drafts or checks before the plaintiff discovered what was taking place. Before the plaintiff could take steps to stop the criminal action of the defendant, his bank account was overdrawn and several checks were presented for payment while insufficient funds, were in the account.
15. In or about May of 2011, the defendants telephoned plaintiff's place of business without prior consent from the plaintiff. The defendants talked with plaintiff's employees. The defendants asked plaintiff's employees several questions about plaintiff concerning matters not relating to the plaintiff's location.
16. On several occasions, the defendants have telephoned D'liviro Beauchamp at his home and place of business, and spoke with the plaintiff, his employees and his wife. During said calls, the defendants have used threatening and abusive language and made

repeat calls on several occasion to annoy the plaintiff. The defendants have claimed that they were going to garnish and/or attach plaintiffs' bank account if the plaintiffs refused to pay a feign amount allegedly owed on medical equipment leases.

COUNT I:
THEFT

17. The plaintiff adopts and incorporates by reference the allegations and averments contained in paragraphs 1 through 16 as if set out herein.
18. Defendants falsified a financial document to make it appear that the plaintiffs had authorized two electronic payments from their bank account when in fact they had not. The defendants used the threat of garnishing and attaching plaintiffs' bank account to obtain plaintiff's bank account information. Afterward, the defendant falsified electronic bank drafts, and stole several thousand dollars from the plaintiffs' bank account. The plaintiff did not owe the defendants any money. The defendants took the money from plaintiffs' bank account and converted and/or misappropriated plaintiffs' money to their own benefit.
19. The defendants took the money out of plaintiffs' bank account under

false pretenses and converted and misappropriated monies to their own and benefit.

20. The defendants' conduct was willful, intentional and oppressive.
21. The above described wrongful conduct of the defendants combined and concurred to proximately cause the plaintiff to suffer damages, financial loss, economic hardship and mental anguish.
22. Plaintiff demands judgment against defendants, jointly and severally, for compensatory and punitive damages, in an amount to be determined by a struck jury, and interest from the date of injury, costs and any other relief to which the plaintiff may be entitled.

WHEREFORE, PREMISES CONSIDERED, the plaintiff demands judgment against defendants, separately and severally, for compensatory and punitive damages, and interest from the date of injury, costs and any other relief to which the plaintiff may be entitled.

COUNT II:

VIOLATION OF THE FAIR DEBT COLLECTION PRACTICE ACT

23. The plaintiff adopts and incorporates by reference the allegations and averments contained in paragraphs 1 through 16 as if set out herein.
24. Defendants' violations of the statute include, but are not limited to

the following:

- A. The defendants violated 15 U.S.C. § 1692b(2) by communicating to a third person that the plaintiff owes a debt;
- B. The defendants violated 15 U.S.C. § 1692b(3) by talking to a third party and using language that suggests the debt collector is in the business of debt collection and/or that suggests that the communication relates to the collection of a debt.
- C. The defendants violated 15 U.S.C. § 1692e(1 0) by using deceptive means and misleading representations to collect the debt and obtain information concerning plaintiffs' bank account;
- D. The defendants violated 15 U.S.C. §1692d(1) by using criminal means to harm the plaintiff 's reputation and to steal the money or property of the plaintiffs;
- E. The defendants violated 15 U.S.C. §1692d(5) by causing a telephone to ring, engaging the plaintiff in telephone conversation repeatedly or continuously with the intent to annoy, abuse or harass the plaintiff;
- F. The defendants violated 15 U.S.C. § 1692d(2) by using language the natural consequence of which was to harass, oppress, abuse

- the plaintiff during the collection of the debt;
- G. The defendants violated 15 U.S.C. §1692c(b) by contacting and communicating with third parties, the plaintiffs' employee, without the authorization of the plaintiffs;
- H. The defendants violated 15 U. s. C. § I 692d(6) by making telephone calls without meaningful disclosure of the caller's identity;
- I. The defendants violated 15 U.S.C. § 1692e(2) by misrepresenting the legal status of the debt;
- J. The defendants violated 15 U.S.C. §1692e(3) by making false statements or implication which implies the statement or communication is from an attorney;
- K. The defendants violated 15 U.S.C. § 1692e(4) by making representation or implication that nonpayment of the debt would result in garnishment, attachment or other legal action where such action was unlawful and the debt collector or creditor had no intention to take such action;
- L. The defendants violated 15 U.S.C. §1692e(5) by threatening to take an action that cannot legally be taken or that was not intended to be taken;

- M. The defendants violated 15 U.S.C. §1692e(11) by failing to disclose in its initial communication that the debt collector is attempting to collect a debt and that information obtained would be used for that purpose and the failure in subsequent disclosure to inform the plaintiff that the communication is from a debt collector;
- N. The defendants violated 15 U.S.C. §1692f(3) by soliciting a postdated or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
- O. The defendants violated 15 U.S.C. § 1692f(6) by taking nonjudicial action to effect disposition of property when there is no present right to possession of the property claimed as collateral through an enforceable securing interest;
- P. The defendants violated 15 U.S.C. §1692e(2)(A), (5) and (10) by misrepresenting the imminence of legal action by the defendant;
- Q. The defendants violated 15 U.S.C. §1692g by making a threat of suit during the debt validation request period in a manner that overshadowed any alleged notice of validation rights and would create confusion for a least sophisticated consumer about his

rights;

R. The defendants violated 15 U.S.C. § 1692g(a) by failing to convey to the plaintiff the validation notice;

25. As a result of the defendants' violations of the Federal Debt Collection Practices Act, the defendants are liable to the plaintiff for declaratory judgment that defendants' conduct violated the FDCPA, and plaintiff's actual damages, including mental distress, and statutory damages and attorney's fees and costs.

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully requests that judgment be entered against the defendants as follows: (a) a declaratory judgment that the defendants' conduct violated the FDCP A, and injunctive relief for the said violation; (b) actual damages; (c) statutory damages in the amount of One Thousand (\$1,000.00) Dollars per violation as set forth in 15 U.S.C. §1692k; (d) legal fees and cost as set forth in 15 D.S.C. §1692k; (e) for such other and further relief as the Court may deem just and reasonable.

COUNT III
FRAUD

26. The plaintiff adopts and incorporates by reference the allegations and averments contained in paragraphs 1 and 16 as if set out herein.

27. The plaintiff avers that the defendants made certain false and fraudulent representations him, and described, herein above, concerning the need for a \$2,500.00 bank draft as a showing of good faith until the plaintiffs could prove the amount was not owed as claimed.
28. Defendants concealed the true fact from plaintiff concerning the purpose of the bank draft over the phone, and further concealed from the plaintiff that they were seeking information on plaintiff checking account so they could steal the proceeds in said account. The defendants further concealed the truth that they intended to use the information obtained to create two bank drafts from to make unauthorized withdrawals of proceeds from plaintiff's bank account.
29. Defendants represented to the plaintiff the following:
 - A. That on or about April 27, 2011, a representative of the defendant misrepresented to plaintiff that the defendants would only use his bank account information to create a \$2,500.00 bank draft as a showing of good faith to prevent the defendant from attaching plaintiffs' bank account while the plaintiff provide proof the amount was not owed;
 - B. That on or about April 27, 2011, the defendant misrepresented

that the plaintiff's bank information would not be miss handled and/or used to collect more money than authorized by him;

C. That on or about April 27, 2011, the defendant misrepresented that the banking information would only be used to present a \$2500.00 bank draft to plaintiffs account;

D. That the defendants falsified a lease account numbered 24593682, and falsely collected more than \$30,000 from the defendant

30. The misrepresentations of material facts were false and defendants knew they were false and the defendant, without knowledge of the true facts, recklessly misrepresented the facts, or were false and were made by the defendants by mistake, but it was their intention that plaintiff should rely on them.

31. The plaintiff believed the defendants' misrepresentations that he owed a feign debt. The defendants relied upon the defendants' false and fraudulent misrepresentations, and acted upon the misrepresentations to their detriment.

32. Defendants' actions as described above constitute fraud, misrepresentations of material fact, suppression of material fact, deceit and fraudulent deceit as set forth by Alabama Code §§6-5-100,

6-5-101, 6-5-102, 6-5-103 and 6-5-104.

33. The wrongful conduct on behalf of both the named defendants combined and concurred to proximately cause plaintiff to suffer damages, financial loss, economic hardship and mental anguish.
34. The defendants entered into a scheme to defraud the plaintiff by:
 - A. Falsely representing that the plaintiffs owed more than \$10,000 under the lease agreement
 - B. Falsely representing to the plaintiffs that they needed to provide them a \$2500.00 check as a showing of good faith payment to prevent the defendants from garnishing or attaching plaintiffs' bank account.
35. The scheme to defraud engaged in by all defendants is part of a practice of wrongful conduct perpetrated upon persons similarly situated as the plaintiff.
36. As a direct and proximate result of defendants' combining and concurring negligent and/or wanton acts, the plaintiff was caused to suffer damages, financial loss, economic hardship and mental anguish.

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against the defendants, separately and severally, for compensatory and

punitive damages, and interest from the date of injury, costs and any other relief to which plaintiff may be entitled.

COUNT IV:
BREACH OF CONTRACT

38. The plaintiff adopts and incorporates by reference the allegations and averments contained in the preceding paragraphs as if set out herein.
39. On January 3, 2004, Obelisk Healthcare entered into a lease agreement with Spenser Capital Group, Inc. to lease a Radcom x-ray machine. On January 31, 2005, Obelisk Healthcare entered into a lease agreement with Spenser Capital Group, Inc. to lease for Radcom labor and supplies for an x-ray machine.
40. The defendants have refused to comply with the end of the lease terms of the lease agreement. The defendant has refused to sell the machine at ten percent of its contract price, and has forced the plaintiff additional lease payments in an excessive amount in violation of lease agreements.
41. The plaintiff has complied with all terms of the lease agreements

WHEREFORE, PREMISES CONSIDERED, plaintiff demands judgment against defendants, separately and severally, for compensatory and punitive damages, and interest from the date of injury, costs and any other relief to which plaintiff may be entitled.

COUNT VI:
**NEGLIGENT AND WANTON HIRING, TRAINING,
SUPERVISION AND RETENTION**

41. The plaintiff adopts and incorporates by reference the allegations and averments contained in the preceding paragraphs as if set out herein.
42. Defendants owed a duty to the plaintiff to use reasonable care to determine the qualifications, skills, abilities and employment history of its agents and employers prior to hiring any such agent or employee. Defendants breached that duty and failed to use reasonable care to determine the qualifications, skills, abilities and employment history of its agents and employees.
43. Defendants owed a duty to the plaintiff to thoroughly investigate the past work history of its agents and employees to ensure that its agents properly and professionally represent the corporate defendants and are capable of honestly, accurately and fairly transacting business with the general public. Defendants breached that duty and failed to thoroughly investigate the past work history of its agents and employees to ensure that it's agents properly and professionally represent the corporate defendants and are capable of honestly, accurately and fairly transacting business with the general public.

44. Defendants owed a duty to the plaintiff to promptly act to protect the best interests of its customers and/or clients upon reports of, suspicion of and/or confirmation of any wrongdoing on the part of one or more of its agents or employees. Defendants breached that duty and failed to act promptly to protect the best interests of plaintiff upon reports of, suspicion of and/or confirmation of any wrongdoing on the part of one of its agents or employees.
45. Defendants owed a duty to the plaintiff to adequately or properly supervise its agents. Defendants breached that duty and failed to adequately and properly supervise its agents.
46. Plaintiff averred that the defendants negligently or wantonly investigated, hired, trained, supervised and/or retained its agents. Said negligent or wanton conduct proximately caused plaintiff to suffer damages, financial loss, economic hardship and mental anguish.
47. As a direct and proximate result of defendants' combining and concurring negligent and/or wanton acts, plaintiff was caused to suffer damages, financial loss, economic hardship and mental anguish.

WHEREFORE, PREMISES CONSIDERED, the plaintiff demands judgment against defendants, separately and severally, for compensatory

and punitive damages, plus interest from the date of injury, costs and any other relief to which plaintiff may be entitled.

COUNT VI
CONSPIRACY TO VIOLATE RICO

48. The plaintiff adopts and incorporates by reference the allegations and averments contained in paragraphs 1 through 16 as if set out herein.
49. This count is brought by the plaintiffs D'livro Beauchamp and Obelisk Healthcare, LLC against Defendants Mike Wallace Advanced Recovery System, De Lage Landen And Spenser Capital Group, Inc. (collectively the "RICO Defendants") alleging a cause of action under 18 U.S.C. §1962(d), for conspiring to violate 18 U.S.C. § 1962(c).
50. At all relevant times, the plaintiff, D'livro Beauchamp. and RICO Defendant, Mike Wallace, were "persons" pursuant to § 1961(3).
51. At all relevant times, Advanced Recovery System, a corporation, was an "enterprise" pursuant to § 1961(4).
52. At all relevant times, De Lage Landen, a corporation, was an "enterprise" pursuant to § 1961(4).
53. At all relevant times, Spenser Capital Group, Inc., a corporation, was an "enterprise" pursuant to § 1961(4).

54. At all relevant times, the three corporations engaged in, and their respective activities affected, interstate and foreign commerce, pursuant to §1961(4).
55. All of the USPS mailings and the numerous telephone calls, faxed communications, e-mails, bank transfers and internet postings were made in furtherance of the Fraudulent Electronic Check Scheme and the subsequent theft of money out of the plaintiffs' Alabama bank account. Therefore all of these communications were made in violation of the mail and wire fraud statutes. The plaintiffs were defrauded by one or more of these mails and wires. This pattern of mails, bank and interstate wire-communications occurred over a period of 27 months from the date the Theft by Trick and Fraudulent Electronic Check Scheme began when De Lagen Landen hired Advanced Recovery System to collect monies from the defendant that was not owed to De Lagen Landen. The Theft by Trick and Fraudulent Electronic Check Scheme victimized other persons in addition to the plaintiffs.
56. As detailed above, each of the RICO Defendants agreed to the Theft by Trick and Fraudulent Electronic Check Scheme, and also, to further perpetrate it through the three RICO enterprises, Advanced Recovery System, De Lagen Landen and Spenser Capital Group, Inc..

57. As detailed above, the individual RICO Defendant was in a managerial position in the Advanced Recovery System, De Lagen Landen and/or Spenser Capital Group, Inc. enterprises and also directed subordinates to carry out the Theft by Trick and Fraudulent Electronic Check Scheme, which they did.
58. Accordingly, each RICO Defendant agreed to participate in the affairs of one of the Advanced Recovery System, De Lagen Landen and/or Spenser Capital Group, Inc. enterprises through the commission of the Theft by Trick and Fraudulent Electronic Check Scheme, which is a pattern of racketeering activity (mail and wire fraud).
59. Thus, plaintiffs assert claims against all RICO Defendants for conspiring to violate § 1962(c), which prohibits any person employed by or associated with an enterprise from participating in the affairs of the enterprise through a pattern of racketeering activity.
60. This conspiracy to violate § 1962(c) is a violation of § 1962(d).

RICO PRAYER FOR RELIEF

DAMAGES:

- a. As a result of the above-described racketeering activity, the plaintiffs have been collectively damaged in their business and/or property in an amount of no less than \$82,500. Plaintiff Beauchamp's damages to his

business and/or property were proximately caused by the defendants' fraudulent electronic checks presented to plaintiff's bank, which resulted in an aggregate of \$7,500 being taken out of plaintiffs' bank account. The damages to his business and/or property, include \$7,500 in stolen monies plus lost interest on the money and lost wages from the numerous hours wasted in getting the bank to avoid any future fraudulent electronic checks.

- b. Pursuant to § 1964(c), the plaintiffs are entitled to recover three fold their damages plus costs and attorneys' fees from the RICO defendants.

INJUNCTIVE RELIEF:

- c. Pursuant to § 1964(a), the plaintiffs are entitled to appropriate injunctive relief to prevent and to restrain future RICO violations, including but not limited to an order by the Court (a) to require the immediate dissolution of Advanced Recovery System, De Lage Landen and/or Spenser Capital Group, Inc. and all of their offices and branches, (b) to require all of the defendants, De Lage Landen and/or Spenser Capital Group, Inc., to cease any and all association with Advanced Recovery System, and (c) to require that Advanced Recovery System, De Lage Landen and/or Spenser Capital Group, Inc., and all of their offices and branches turn over any and all information relating to fraud,

breach of duty, and other criminal, civil, and/or administrative violations to the appropriate local, state, and federal law enforcement agencies.

Respectfully submitted,

/s/ Roderick Graham
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(205) 427-9494
(205) 981-6785 Facsimile

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE THAT PLAINTIFF DEMANDS A TRIAL BY JURY IN THIS ACTION.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April 2012, a copy of the foregoing document was served on following parties by ECF, to wit:

Gary Wolfe
Wolfe, Jones, Wolfe, Hancock & Daniel, LLC
905 Bob Wallace Avenue
Huntsville, Alabama 35801

Spenser Capital Group, Inc.
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/s/ Roderick Graham
Attorney for Plaintiff