

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PETER R. BENSON, on behalf of	:	
himself and all others similarly	:	
situated,	:	
Plaintiff,	:	CASE NO.
	:	
v.	:	
	:	
BUDGET RENT A CAR SYSTEM, INC.	:	
	:	
and	:	
	:	
JNR ADJUSTMENT COMPANY, INC.,	:	
	:	
Defendants.	:	

COMPLAINT – CLASS ACTION

Plaintiff, by his undersigned counsel, brings the following Complaint against defendants upon knowledge as to his personal circumstances and, as to all other matters, upon information and belief based, among other things, upon the investigation made by and through his counsel:

INTRODUCTION

1. This is an action pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et. seq., Pennsylvania Fair Credit Extension Uniformity Act, 73 Pa.C.S. § 2270.2 et. seq., Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa.C.S. § 201-1 et. seq., and common law.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. 1692(k)(d) and 28 U.S.C. § 1331, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.

3. Venue in this District is proper in that the defendants transact business here and the conduct complained of occurred here.

PARTIES

4. Plaintiff, Benson, is a resident of Pennsylvania and a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692(a)(3) and applicable state law.

5. Defendant, Budget Rent A Car System, Inc. (“Budget”) is a wholly owned subsidiary of Avis Budget Group Inc. which is a corporation organized and existing under the laws of Delaware. Budget has its headquarters and principal place of business at 6 Sylvan Way, Parsippany, New Jersey 07054. Budget represents itself to be the owner and franchiser of one of the world’s best known car rental brands with more than 1,900 car rental locations in the United States and worldwide.

6. Defendant, JNR Adjustment Company Inc. (“JNR”) is a corporation organized and existing under the laws of Minnesota with its principal place of business in Minneapolis, Minnesota. JNR is a national collection firm that specializes, *inter alia*, in collecting vehicle damage claims. JNR is a “debt collector” as defined in the FDCPA and under applicable state law.

FACTS

7. On October 26, 2007, plaintiff rented a 2007 Chrysler PT Touring from Budget at its Philadelphia International Airport location. Plaintiff initialed the car rental

agreement (“Agreement”) to indicate that he was rejecting Budget’s Loss Damage Waiver coverage (“LDW”). A copy of the Agreement is attached as Exhibit “A”.

8. While he was driving the Budget car, plaintiff collided with a deer which resulted in damage to the car and the car was returned to Budget with damage to the front end of the vehicle the next day.

9. On the face of the Agreement, next to plaintiff’s signature, the agreement states, in pertinent part:

If the renter declines LDW, renter may be liable for up to the retail fair market value (less salvage) of the car, regardless of fault, unless ordinary negligence is excluded by law. Repair’s are at Budget’s cost. Read LDW terms on the rental document jacket terms and conditions, including exclusions from LDW.

10. Buried inside the “rental document jacket” are contradictory terms concerning the renter’s responsibility for damage to the car in the event the LDW coverage is not purchased:

8. Damage/Loss to the Car. If you do not accept LDW, or if the car is lost or damaged as direct or indirect result of violation of paragraph 14, you are responsible; and you will pay us for all loss of or damage to the car regardless of cause, or who, or what caused it. If the car is damaged, you will pay our estimated repair cost, or if, in our sole discretion, we determine to sell the car in its damaged condition, you will pay the difference between the car’s retail full market value before it was damaged, and the sale proceeds.....As part of our loss, you’ll also pay for loss of use of the car, without regard to our fleet utilization, plus an administrative fee, plus towing and storage charges, if any (“incidental loss”).

11. After the accident, plaintiff promptly filed a claim with his insurance company to reimburse Budget for the damage to the Budget rental car.

12. Budget and plaintiff's insurance company both had an estimate prepared of the cost to repair the damage to the car. Plaintiff's insurance company prepared an "Estimate of Record" that valued the cost to repair the car at \$5,577.35 using CCC Pathways software. Budget had the car damage assessed at \$5,481.08 using Ultramate of Mitchell International software.

13. On November 8, 2007, Budget obtained a purported appraisal of the "market value" of the car using Mitchell Total Logic software. Using this software, Budget appraised and determined it had a "market value" of \$12,919.87. Budget's purported market value appraisal is faulty, *inter alia*, because the appraisal is based on a non-existent car, not the one plaintiff rented. Moreover, the appraisal over values the car by at least \$800.

14. Budget did not repair the car. Instead on December 6, 2007, Budget sold the car as salvage through BSC America Bel Air Auto Auction for \$4,100. The car was purportedly sold to Intercar Leasing, Inc. The auctioneer deducted an administrative fee of \$135 from the auction sale price so that Budget claims it received \$3,965 for the sale of the car in its damaged state.

15. On December 11, 2007, Budget wrote to the plaintiff and demanded payment of \$9,698.79. Enclosed with the demand was a document entitled Vehicle Loss Disclosure that calculated the total damage claim amount as follows:

Actual Loss	
Actual Cash Value:	\$12,919.87
Actual Disposal Proceeds:	\$ <u>3,965.00</u>
Subtotal:	\$ 8,954.87
Damage Claim Amount:	\$ 8,954.87
Towing/Storage:	\$ 106.00
Loss of Revenue/Use:	
(30 x \$20.33 x 70%) =	\$ 426.93
Appraisal/Evaluation/Administrative Fees	\$ <u>150.00</u>
Total Damage Claim Amount	\$ 9,637.80

(The difference between the amount demanded by Budget and the total damage claim amount as set forth in the Vehicle Loss Disclosure document is not explained.)

16. On January 9, 2008, Budget wrote a second demand letter to plaintiff, this time demanding \$9637.80, the amount stated on the Vehicle Loss Disclosure form.

17. On January 22, 2008, plaintiff's insurance company paid Budget \$5,077.35, the amount it had calculated for the cost to repair the car less plaintiff's \$500 policy deductible.

18. On January 30, 2008, Budget acknowledged receipt of partial payment in the amount of \$5,077.35 and demanded that plaintiff pay an additional \$4,560.45. This sum exceeds the amount authorized under the Agreement, includes charges that are not authorized by the Agreement and/or applicable law and is false in that the "Actual Cash Value" of the vehicle claimed by Budget is inflated and is not based on the fair market value of the vehicle rented by plaintiff.

19. On April 16, 2008, Budget wrote to plaintiff and advised him that "based upon the facts and circumstances surrounding the above-referenced rental and subsequent

loss, Avis Budget Group, including both Avis and Budget Rent A Car, has decided not to rent vehicles to you in the future.”

20. In a separate letter on April 16, 2008, Budget advised plaintiff that it was forwarding its claim to a “collection vendor”.

21. On May 6, 2008, JNR wrote to plaintiff on behalf of Budget. The letter demanded payment of \$4,560.45 and stated that “if paid in full to this office, all collection efforts will be stopped.” A copy of this letter is attached as Exhibit “B”.

CLASS ALLEGATIONS

22. This action is brought as a class action. Plaintiff tentatively defines the class as all persons who, during the four (4) years prior to the filing of this Complaint rented a car from defendant Budget, declined the Loss Damage Waiver, damaged the car and who were affected by at least one of the following practices that are the subject of this Complaint:

- a. assessment of charges for administrative fees, loss of rental value and/or any fees or charges not authorized under the Agreement;
- b. assessment of charges based on a valuation of the rental car that exceed the retail fair market value of the car;
- c. failure to repair the car prior to sale of the rental car;
- d. use of dealer only auctions for sale of the rental car;
- e. collection of amounts based on any of the foregoing practices.

23. Upon completion of discovery with respect to the scope of the Class and the Class Period, plaintiff reserves the right to amend the definition of the Class and/or any sub-class thereof and/or the Class Period.

24. Plaintiff seeks certification of the Class defined above under Federal Rules of Civil Procedure 23(a) and (b)(1), (2) and (3). The term “Class” also includes those sub-classes which ultimately may be asserted upon completion of the discovery described above.

25. The Class is so numerous as to make it impractical to bring all members before the Court. The exact number of members is unknown but can be determined in records maintained by defendants. Inasmuch as Budget is one of the largest car rental companies in the nation, the number of members of the Class is estimated to be in the thousands.

26. Common questions of law and fact exist as to all members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Budget has sought and collected fees and charges not authorized by the Agreement or not legally due and owing;
- b. whether the conduct of JNR violated the FDCPA;
- c. whether the LDW provisions of the Agreement constitute illegal and unenforceable penalties;
- d. whether defendants’ conduct violated the Pennsylvania Fair Credit Extension Uniformity Act and Pennsylvania Unfair Trade Practices and Consumer Protection Law.

27. Plaintiff's claims are based on form car rental agreements, form letters and standardized practices that were used or implemented by Budget and JNR on a nationwide basis.

28. There are no substantial individual questions among the claims of members of the Class, other than the amount of damages that each Class member is entitled to receive. The injunctive relief is uniform as to all member of the Class. Common questions thus predominate.

29. Plaintiff's claims are typical of the claims of the members of the Class, as plaintiff and all other members of the Class sustained harm arising out of defendants' common course of wrongful conduct.

30. Plaintiff is an adequate representative of the Class he seeks to represent. There are no conflicts between him and other Class members.

31. Plaintiff has suffered the same wrongs as Class members generally and is intent on seeing such wrongs remedied. Plaintiff is fully committed to fairly, adequately and vigorously representing and protecting the interest of the members of the Class. Plaintiff has retained counsel competent and experienced in class action and consumer litigation for this purpose.

32. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for defendants within the meaning of Rule 23(b)(1)(A).

33. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole within the meaning of Rule 23(b)(2).

34. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members within the meaning of Rule 23(b)(3).

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy within the meaning of Rule 23(b)(3) because joinder of all members is impracticable, and pursuing Class members' claims on an individual basis would be both prohibitively expensive for most Class members and inefficient from the standpoint of the judicial system. Plaintiff knows of no material difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FEDERAL CLAIM

COUNT I

Violations of FDCPA Against JNR

36. Plaintiff incorporates herein by reference all preceding allegations of law and fact.

37. Plaintiff brings this Count of the Complaint only against JNR.

38. The debt which defendant seeks to collect from plaintiff is a consumer debt within the meaning of the FDCPA and JNR is a debt collector as defined therein.

39. Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- a. defendant violated 15 U.S.C. § 1692(f)(1) by collecting or attempting to collect an amount from plaintiff and the members of the Class, which is not expressly authorized by the agreement creating the debt or permitted by law;
- b. defendant violated 15 U.S.C. § 1692 (e)(2)(A) by its false representation of the amount and legal status of the debt.

40. As a result of the above violations of the FDCPA, defendant is liable to plaintiff and the Class for declaratory judgment that defendant's conduct violated the FDCPA, and plaintiff's actual damages, statutory damages and costs and attorneys' fees.

STATE LAW CLAIMS

COUNT II

Breach of Contract Against Budget

41. Plaintiff incorporates herein by reference all preceding allegations of law and fact.

42. This Count of the Complaint is brought only against Budget.

43. The Agreement is a form agreement drafted by Budget and used by it nation wide when it rents cars to consumers like plaintiff. The relevant provisions of this agreement are uniform.

44. Budget has charged or collected amounts that are not due and owing under the Agreement.

45. The provisions of the Agreement pertaining to LDW are contradictory and ambiguous; since the contract was drafted by Budget, these ambiguities and contradictions are to be construed against Budget.

46. By virtue of the foregoing, Budget breached the Agreement by charging plaintiff for more than the difference between the retail fair market value less salvage and by charging plaintiff for loss of revenue, towing, administrative fees and expenses.

47. Budget failed to reasonably mitigate its damages by selling the car at a dealers' only salvage auction instead of repairing the car and selling it at an auction open to the public.

48. Budget violated the duty of good faith and fair dealing implicit in every contract, and thereby violated the contract by choosing a course of conduct, i.e. selling the car without repairing it – that maximized plaintiff's damages and put Budget in a better position than if the accident had not occurred.

49. The amount of damages claimed by Budget under the LDW provisions of the Agreement are not reasonable and are unconscionably high so that these provisions are unenforceable as written because they constitute an unenforceable penalty.

50. Further, each of the contractual violations alleged herein above constitutes a violation of Budget's implied duty of good faith and fair dealing, which duty is owed to plaintiff and each member of the Class.

51. By virtue of the foregoing, Budget has breached its contracts with plaintiff and the members of the Class, which has caused damages to plaintiff and the members of the Class in an amount to be determined.

COUNT III

Violation of Pennsylvania Fair Credit Extension Uniformity Act 73 Pa.C.S. § 2270.2 et. seq., and Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 Pa.C.S. § 201-1 et seq.

52. Plaintiff incorporates herein by reference all preceding allegations of law and fact.

53. Budget is a creditor as defined by 73 Pa.C.S. § 2270.3.

54. JNR is a debt collector as defined by 73 Pa.C.S. § 2270.3.

55. Plaintiff is a consumer as defined by 73 Pa.C.S. § 2270.3. Plaintiff and members of the Class entered into the transaction described above and incurred liability for debts as described above.

56. Defendants violated the Pennsylvania Fair Credit Extension Uniformity act. Defendants violations include, but are not limited to, the following:

- a. defendants violated § 2270.4(b)(5)(ii) by their false representation of the amount and legal status of the debt;
- b. defendants violated § 2270.4 (b)(6)(i) by collecting or attempting to collect an amount from plaintiff and the members of the Class which is not expressly authorized by the agreement creating the debt or permitted by law;
- c. defendant, JNR violated 15 U.S.C. § 1629 et. seq. and thereby violated § 2270.4(a).

57. By virtue of the foregoing, defendants have committed per se violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 23 Pa.C.S. § 201-1 et. seq.

58. As a result of defendants' violations, plaintiff and the members of the Class have suffered ascertainable losses entitling them to an award of treble damages and attorneys' fees pursuant to 23 Pa.C.S. § 201-9.2.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendants as follows:

- a. certifying this action as a Class Action, with plaintiff as the representative of the Class;
- b. declaring defendants' conduct unlawful;
- c. awarding plaintiff and the other members of the Class damages in an amount necessary to compensate them fully for their losses, together with interest;
- d. awarding plaintiff treble damages and injunctive relief for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law and FDCPA, as appropriate;
- e. awarding the maximum amount of statutory damages provided under 15 U.S.C. §1692k;
- f. awarding each member of the Class a refund of the amounts paid to defendants over and above the amounts to which they were legally entitled;

g. awarding plaintiff his costs of suit, including attorneys' fees and expenses;

h. granting such other and further relief as is just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all Counts so triable.

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