

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

**PORTFOLIO RECOVERY
ASSOCIATES, LLC, A LIMITED
LIABILITY COMPANY,**

Plaintiff/Counterclaim Defendant,

Case No. 1216-CV34184

v.

Division 9

GUADALUPE MEJIA,

Defendant/Counterclaim Plaintiff.

JUDGMENT/ORDER

Pending before the Court is Counterclaim Defendant Portfolio Recovery Associates, LLC's ("Defendant's")¹ Motion For Judgment Notwithstanding The Verdict, Or In The Alternative, To Amend, Modify, And/Or Remit The Judgment. The Motion is denied.

Background

On October 31, 2014, this Court entered Judgment for the Plaintiff on her malicious prosecution counterclaim and her Fair Debt Collections Practices Act ("FDCPA") counterclaim and ordered that trial proceed on damages only. On May 4, 2015, this case came before the Court for trial on damages only. On May 11, 2015, the jury awarded Maria Guadalupe Mejia Alcantara ("Plaintiff") \$250,000.00 in compensatory damages and \$1,000.00 in statutory damages on her FDCPA claim. The jury also awarded her \$250,000.00 in compensatory

¹ To avoid confusion, the parties agreed that during trial, Defendant/Counterclaim Plaintiff Maria Guadalupe Mejia Alcantara would be referred to as "Plaintiff" and Plaintiff/Counterclaim Defendant Portfolio Recovery Associates, LLC as "Defendant." The Court will continue to do so here.

damages on her malicious prosecution claim and found Portfolio liable for punitive damages. After further deliberation, the jury awarded \$82,009,549.00 in punitive damages.

Following trial, the Court entered Judgment in favor of Plaintiff and against Defendant for punitive damages in the amount of \$82,009,549.00, compensatory damages in the amount of \$250,000.00, statutory damages in the amount of \$1,000.00. The Court further awarded Plaintiff attorney's fees and expenses as follows: (a) actual damages in the amount of \$9,995.00 for the attorney's fees associated with the her defense; (b) attorney's fees in the amount of \$276,025.00 under the FDCPA; and (c) expenses in the amount of \$33,222.97 under the FDCPA.

The pending motion was timely filed and contains numerous issues. The Motion is denied, but the Court will specifically address the Defendant's request for review of the jury's punitive damage award.

The Court acknowledges the purpose of punitive damages is to serve the State's interest in punishment and deterrence, and that these interests cannot be served unless potential defendants have fair notice, not only of the conduct that will subject them to punishment, but also of the severity of the penalty that a State may impose. "The decision to punish a tortfeasor through an award of punitive damages is an exercise of state power that must comply with the Due Process Clause of the Fourteenth Amendment of the United States Constitution and with Article I, section 10, of the Missouri Constitution." *Mansfield v. Horner*, 443 S.W.3d 627, 643 (Mo. Ct. App. 2014) (internal quotations and citations omitted).

Thus, the Court must review the punitive damage award to determine whether it is "grossly excessive." *Id.* Such analysis includes review of three guideposts: 1) the degree of reprehensibility of a defendant's conduct, 2) the ratio of the punitive award to the actual and

potential harm from the defendant's wrongdoing, and 3) the criminal and regulatory sanctions for comparable misconduct. *BMW of North America v. Gore*, 517 U.S. 559, 574-75 (1996).

Guidepost One

“The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) (internal quotation and citation omitted). The Supreme Court suggested several factors should be considered when determining reprehensibility of conduct: “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *Id.* at 419 (citation omitted).

Here, although the potential harm to the Plaintiff may be considered economic,² her financial vulnerability was particularly concerning. Plaintiff, although working, was in financial distress. She spoke limited English. She did not understand the legal system and had no financial ability to hire an attorney. She was afraid she would lose all she had worked for – her home of twenty years, her family, and her freedom. And, throughout this litigation, Defendant preyed upon those fears. Further, Defendant's conduct “involved repeated actions” in many respects.

From the beginning of the litigation, Defendant attempted to use the fact Plaintiff had no social security number to intimidate her. Defendant represented to the Court and Plaintiff it could not mount a defense to Plaintiff's claims or dismiss its claim against her until her social

² There was evidence Defendant's conduct had a physical and health-related impact on this particular Plaintiff.

security number was revealed. Eventually it was discovered an attorney had disclosed to Defendant, before Plaintiff filed her counterclaim, Plaintiff had no social security number. And at trial, evidence established Defendant resolved claims, in many instances, without disclosure of a social security number.

Defendant repeatedly was put on notice Plaintiff was not the correct person, but pressed forward with the lawsuit against her anyway. To locate the debtor account holder, Defendant relied on a Lexis Nexis search of a very common Hispanic name – the accuracy of which was specifically disclaimed. Defendant was warned it should independently verify the information. Defendant’s collection law firm, Gamache and Meyers, P.C., reviewed an Experian report that did not verify Plaintiff’s address, and in fact, indicated a Kansas address.

The day after the collection suit was served on Plaintiff, she appeared at legal aid distraught and crying. Suzanne Gladney, a practicing attorney for thirty-seven years, testified she spoke to three people at Gamache and Meyers and told them they had the wrong person, gave them identifying details about Plaintiff (she lived in Missouri, owned her home, never had a credit card) and attempted to fax to the law firm Plaintiff’s passport, which the firm refused. She told them Plaintiff did not have a social security number, and Gladney attempted to obtain the fraud affidavit Defendant wanted filled out. In response, Defendant arrived in Court prepared to seek a default judgment against Plaintiff.

As the lawsuit progressed, Defendant obtained account documents showing credit card payments were being made on the account from the Kansas address, as opposed to Plaintiff’s address. Plaintiff denied the debt in her Answer and responded, under oath, to interrogatories, document requests, and requests for admissions (63 questions but ironically Defendant did not request Plaintiff’s date of birth or social security number) providing even more personal

information establishing Plaintiff was not the debtor Defendant was seeking. But, Defendant continued to pursue its suit.

At trial, Defendant admitted it maintained its lawsuit against Plaintiff, not merely to collect the \$1,137.14 credit card debt owed, but because she filed a counterclaim. When Defendant did dismiss the case against Plaintiff, it did so “without prejudice” and threatened to refile against her even though it had no reason to question her and the conclusive evidence she was not the debtor.

Defendant testified through its attorneys and corporate representative that its business model did not include independent investigation of an accused’s claim she did not owe the debt at any point from purchase of the debt to litigation – even if legitimate concerns were raised. It maintained it is the wrongly accused’s burden to dispute the debt, prove it is not theirs, and provide to Defendant personal information. Defendant testified the fault for the present litigation was Plaintiff’s. Defendant made no apologies, testified its policies were sound, and no changes were anticipated.

Throughout the case, Defendant demonstrated a disrespect for the law. Numerous discovery abuses resulted in the Court sanctioning Defendant. Defendant argued at trial, had Plaintiff merely filled out a “fraud affidavit,” the case could have been resolved. However, that fraud affidavit would have required Plaintiff to perjure herself, a fact communicated to Defendant through Plaintiff’s counsel. During trial, collection counsel testified about a manufactured letter, supposedly representative of a letter sent to Gladney, but containing an address different than the address provided by Gladney.³

³ Counsel acknowledged that the original should have been maintained but was “lost.”

Evidence was presented establishing Plaintiff's experience was not an isolated incident. Brian Logan, an active member of the military, was harassed for years by the Defendant until he complained to the Missouri Attorney General's Office. He offered to fill out a fraud affidavit and when he provided his address for that purpose, he received only bills and no fraud affidavit. Defendant accused Logan's wife of having an affair as an explanation for the existence of the account. Dr. Ronald Harstad and his wife were harassed and berated by Defendant even though he disputed the debt in writing. His hiring of an attorney and filing of a counterclaim finally ended the matter, and he did not have to fill out a fraud affidavit. Evidence showed Defendant receives more complaints than any debt buyer in Missouri. And, at least 375 mistaken identity claims have been raised against Defendant.⁴ Based on the evidence before it, the Court finds Defendant's conduct to be intentional and malicious.

Guidepost Two

In awarding punitive damages, "courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Campbell*, 538 U.S. at 426. The Court has repeatedly rejected that the difference between a reasonable and grossly excessive award can be determined by "a simple mathematical formula, even one that compares actual and potential damages to the punitive award." *Id.* at 424-25 (internal quotation and citation omitted). And, while the Supreme Court noted "[s]ingle-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in range of 500 to 1," *id.* at 425 (citation omitted), due process may still be satisfied by a higher ratio where "a

⁴ These claims were the subject of discovery abuse litigation. The Court read an adverse inference instruction because it was determined Defendant never did provide all the claims discovery as ordered by the Court.

particularly egregious act has resulted in only a small amount of economic damages,” *id.* (citation omitted), or “where the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.” *Gore*, 517 U.S. at 582.

Where larger discrepancies between the size of the compensatory damages and punitive damages have been allowed, the Court has relied on the idea that they must weigh the actual and potential harm to the plaintiff the defendant’s conduct caused. *See TXO Prod. v. Alliance Res. Corp.*, 509 U.S. 443, 460 (1993) (\$19,000 in actual damages and \$10 million in punitive damages, a 526-to-1 ratio, for slander of title); *see also, Lynn v. TNT Logistics N. Am. Inc.*, 275 S.W.3d 304, 311-13 (Mo. Ct. App. 2008) (9 to 1 ratio applied by the trial court too low to punish and deter a defendant; 75 to 1 ratio applied); *Estate of Overbey v. Chad Franklin Nat’l Auto Sales*, 361 S.W.3d 364, 373 (Mo. 2012) (ratio of 111 to 1 upheld); *Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014) (double-digit ratio endorsed after considering defendant’s lack of remorse, refusal to rectify reckless practices, and refusal to comply with discovery); *Smith v. New Plaza Pontiac Co.*, 677 S.W.2d 941 (Mo. Ct. App. 1984) (\$400 in actual and \$30,000 in punitive damages, a 75-to-1 ratio, for making misrepresentations about the condition of a used car); *Kemp v. Am. Tel. & Tel. Co.*, 393 F.3d 1354 (11th Cir. 2004) (\$115 in compensatory damages and \$250,000 in punitive damages, a 2,172-to-1 ratio, for fraudulent billing practices); *Parrott v. Carr Chevrolet, Inc.*, 107 P.3d 473 (Or. 2001) (\$11,496 in compensatory damages and \$1 million in punitive damages, an 86-to-1 ratio, for misrepresentations related to the sale of a vehicle). Here, the Court finds the Defendant’s actions are particularly egregious. After review of the jury’s awards and the evidence before the Court, the measure of punishment is both

reasonable and proportionate to the amount of harm and potential harm to the plaintiff and to the general damages recovered.⁵

Guidepost Three

“A reviewing court engaged in determining whether an award of punitive damages is excessive should ‘accord ‘substantial deference’ to legislative judgments concerning appropriate sanctions for the conduct at issue.’” *BMW of North America, Inc.*, 517 U.S. 559, 583 (1996) (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301 (1989)) (O’Connor, J., opinion concurring in part and dissenting in part). There are no comparable criminal penalties to be considered here.

Conclusion

The Court finds the harm to Plaintiff was the result of intentional malice and not mere accident. This Defendant owns debt in all 50 states – 750,000 accounts in Missouri, 37,500 of which are in litigation. It shows no remorse. It’s business model is irresponsible and preys against the financially vulnerable.⁶ This Defendant does not respect the Court’s rules. And, especially reprehensible is Defendant’s use and abuse of our court system to harm the Plaintiff. Under the facts presented in this case, the Court cannot find that the jury’s punitive damage award – equating to half of Defendant’s net profits for one year – is grossly excessive.⁷

⁵ Defendant asked this Court to remit the actual damage award only if the Court refrained from remitting the punitive damage award. The determination of damages is primarily a question for the jury. *Fust v. Francois*, 913 S.W.2d 38, 49 (Mo. Ct. App. 1995). After considering the evidence in the light most favorable to the verdict, the Court does not find the verdict is so grossly excessive that it shocks the conscience of the court.

⁶ The Court does not intend to make any comment on the debt buying industry generally and is limiting its analysis to the evidence presented in this case about this Defendant.

⁷ The Court is not relying on the wealth of the Defendant to justify the award, but rather the reprehensibility of Defendant’s conduct.

It is hereby

ORDERED Counterclaim Defendant Portfolio Recovery Associates, LLC's Motion For Judgment Notwithstanding The Verdict, Or In The Alternative, To Amend, Modify, And/Or Remit The Judgment is denied.

04-Nov-2015

DATE



JOEL P. FAHNESTOCK, JUDGE

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was hand delivered/faxed/mailed and/or sent through the eFiling system to the following on 4th day of November, 2015:

EDWARD J. MYERS, Attorney for Plaintiff, GAMACHE & MYERS PC, 1000 CAMERA AVE - STE A, SAINT LOUIS, MO 63126, (314) 835-6604, EdwardMyers@GMCollects.com

GINA MARIE CHIALA, Attorney for Defendant, 1627 MAIN STREET, SUITE 900, KANSAS CITY, MO 64108, (816) 531-2147, GinaChiala@jobsandfreedom.org

SUNMIN JEREMIAH HONG, Attorney for Plaintiff, 231 S BEMISTON AVE, SUITE 1111, ST LOUIS, MO 63105,

DALE K IRWIN, Attorney for Defendant, SLOUGH CONNEALY IRWIN, & MADDEN LLC, 1627 MAIN STREET, SUITE 900, KANSAS CITY, MO 64108, (816) 531-2147, dirwin@scimlaw.com


JOSHUA C DICKINSON, Attorney for Plaintiff, 1000 WALNUT ST STE 1400, KANSAS CITY, MO 64106, (816) 474-3216, jdickinson@spencerfane.com

KERSTEN LEIGH HOLZHUETER, Attorney for Plaintiff, SPENCER FANE BRITT & BROWN LLP, 1000 WALNUT STREET, SUITE 1400, KANSAS CITY, MO 64106, (816) 474-3216,

FRED L SLOUGH, Attorney for 3rd Party, SLOUGH CONNEALY IRWIN & MADDEN, 1627 MAIN SUITE 900, KANSAS CITY, MO 64108, (816) 531-2147, fslough@scimlaw.com

ELIZABETH C CARVER, Attorney for Plaintiff, BRYAN CAVE 3600, 211 N BROADWAY, ST LOUIS, MO 63102-2733,

ROBERT M. THOMPSON, Attorney for Plaintiff, ONE KANSAS CITY PLACE, 1200 MAIN ST, STE 3800, KANSAS CITY, MO 64105, (816) 855-3233, rmthompson@bryancave.com



Law Clerk, Division 9