

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

Consumer Financial Protection Bureau,

Plaintiff,

v.

Frederick J. Hanna & Associates, P.C.,  
Frederick J. Hanna, individually, Joseph  
C. Cooling, individually, and Robert A.  
Winter, individually,

Defendants.

**Civil Action No.  
1:14-CV-2211- AT**

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

Defendants Frederick J. Hanna & Associates, P.C. (the "Firm"), Frederick J. Hanna ("Hanna"), Joseph C. Cooling ("Cooling"), and Robert A. Winter ("Winter") (collectively, the Firm, Hanna, Cooling, and Winter are referred to as "Defendants") submit the following Answer and Affirmative Defenses to the Consumer Financial Protection Bureau's Complaint:

**ANSWER TO ENUMERATED ALLEGATIONS:**

**Introduction**

1. Defendants, a law firm and its principal partners, have sued hundreds of thousands of Georgia consumers to collect debts that the consumers allegedly owe to others.

**RESPONSE:** Defendants ADMIT that they have sued individuals in Georgia to collect debts owed to others, but DENY this allegation to the extent it is intended to assert that Defendants have sued "hundreds of thousands" of individuals who do not, in fact, owe the debts that are the subject of the lawsuits Defendants filed.

2. To produce so many lawsuits, the Firm operates less like a law firm than a factory. It relies on an automated system and non-attorney support staff to determine which consumers to sue. The non-attorney support staff produce the lawsuits and place them into mail buckets, which are then delivered to attorneys essentially waiting at the end of an assembly line. The Firm's attorneys are expected to spend less than a minute reviewing and approving each suit.

**RESPONSE:** DENIED.

3. Using high-volume litigation tactics, Defendants collect millions of dollars each year, often from consumers who may not actually owe debts or may not owe debts in the amounts claimed.

**RESPONSE:** DENIED.

### **Jurisdiction and Venue**

4. This Court has subject-matter jurisdiction over this action because it presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

**RESPONSE:** ADMITTED.

5. Venue is proper because the Firm is located, resides, and transacts business in the Atlanta Division of this district, and Defendants are Georgia residents. 28 U.S.C. §§ 90(a)(2), 1391(b)(1); 12 U.S.C. § 5564(f); N.D. Ga. R. 3.1(B)(1).

**RESPONSE:** ADMITTED.

**Parties**

6. The Bureau is an agency of the United States charged with regulating the offering and providing of consumer-financial products and services under “Federal consumer financial laws,” 12 U.S.C. § 5491(a), including the Fair Debt Collection Practices Act (“FDCPA”) and the Consumer Financial Protection Act of 2010 (“CFPA”). 12 U.S.C. § 5481(12)(H), (14). The Bureau’s regulatory authority extends to persons engaged in the collection of debt related to any consumer-financial product or service. 12 U.S.C. § 5481(5), (15)(A)(x). The Bureau has independent litigating authority to commence civil actions by its own attorneys to address violations of “Federal consumer financial laws,” including the FDCPA and the CFPA. 12 U.S.C. § 5564(a)-(b); 15 U.S.C. § 16921(b)(6).

**RESPONSE:** ADMITTED.

7. The Firm is headquartered and maintains its principal place of business in this district. The Firm regularly collects or attempts to collect, directly

or indirectly, consumer credit-card debts on behalf of both credit-card issuers and debt buyers that purchase portfolios of defaulted credit-card debts. The Firm is therefore a “covered person” under the CFPA and a “debt collector” under the FDCPA. 12 U.S.C. § 5481(6), (15)(A)(x); 15 U.S.C. § 1692a(6).

**RESPONSE:** Defendants ADMIT that the Firm maintains its headquarters and principal place of business in this jurisdiction and that Defendants file and prosecute lawsuits involving defaulted credit card debts. Defendants DENY the remaining allegations of Paragraph 7.

8. Frederick J. Hanna (“Hanna”) is the Firm’s president and principal owner. Hanna, a licensed attorney, regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another through consumer-debt-collection litigation. Hanna is therefore a “debt collector” under the FDCPA. 15 U.S.C. § 1692a(6). Hanna has managerial responsibility for the Firm and materially participates in the conduct of its affairs, including the development and approval of the collection practices described in this Complaint. Hanna is therefore a “related person” under the CFPA. 12 U.S.C. § 5481(25)(C)(i)-(ii). Because Hanna is a “related person” he is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25).

**RESPONSE:** Defendants ADMIT that Hanna is the firm's president and principal owner and is a licensed attorney in Georgia. Defendants DENY the remaining allegations of Paragraph 8.

9. Joseph C. Cooling (“Cooling”) is the Firm’s managing partner and a minority owner. Cooling, a licensed attorney, regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another through consumer-debt-collection litigation. Cooling is therefore a “debt collector” under the FDCPA. 15 U.S.C. § 1692a(6). Cooling has managerial responsibility for the Firm and materially participates in the conduct of its affairs, including the development and approval of the collection practices described in this Complaint. Cooling is therefore a “related person” under the CFPA. 12 U.S.C. § 5481(25)(C)(i)-(ii). Because Cooling is a “related person,” he is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25).

**RESPONSE:** Defendants admit that Cooling is a managing partner and minority owner of the Firm, a licensed attorney in Georgia, that he files lawsuits on behalf of his clients, and that he has managerial responsibilities within the Firm. Defendants DENY the remaining allegations of Paragraph 9.

10. Robert A. Winter (“Winter”) is the Firm’s managing partner and a minority owner. Winter, a licensed attorney, regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due

another through consumer-debt-collection litigation. Winter is therefore a “debt collector” under the FDCPA. 15 U.S.C. § 1692a(6). Winter has managerial responsibility for the Firm and materially participates in the conduct of its affairs, including the development and approval of the collection practices described in this Complaint. Winter is therefore a “related person” under the CFPA. 12 U.S.C. § 5481(25)(C)(i)-(ii). Because Winter is a “related person,” he is deemed a “covered person” under the CFPA. 12 U.S.C. § 5481(25).

**RESPONSE:** Defendants admit that Winter is a managing partner and minority owner of the Firm, a licensed attorney, that he files lawsuits on behalf of his clients, and that he has managerial responsibilities within the Firm. Defendants DENY the remaining allegations of Paragraph 9.

11. Hanna, Cooling, and Winter are intimately familiar with and direct the Firm’s operations, including its debt-collection litigation processes. Each knew of and approved all of the practices described in this Complaint.

**RESPONSE:** Defendants ADMIT that Cooling and Winter are familiar with and direct the Firm’s operations, but DENY that Hanna is familiar with and directs the Firm's operations. Defendants further DENY the remaining allegations of Paragraph 11.

## Facts

12. Since January 1, 2009, Defendants have collected or attempted to collect debts for credit-card issuers such as JP Morgan Chase, Bank of America, Capital One, and Discover, and debt buyers such as Portfolio Recovery Associates and Midland Funding, LLC. The alleged debts were incurred by consumers primarily for personal, family, or household purposes.

**RESPONSE:** Defendants ADMIT that since January 1, 2009, they have filed lawsuits to collect debts owed to their clients and that the listed entities in Paragraph 12 were clients of the Firm during this time period. Defendants are without sufficient knowledge or information to admit or deny the remainder of Paragraph 12, and therefore DENY it.

13. To collect these debts, the Firm frequently turns to litigation. In Georgia alone, the Firm sued about 78,000 consumers in 2009; about 84,000 in 2010; about 71,000 in 2011; about 57,000 in 2012; and about 60,000 in 2013. In sum, the Firm filed more than 350,000 collection suits from 2009 through 2013 (the “Georgia Collection Suits”).

**RESPONSE:** ADMITTED. Defendants further state that the Firm is a litigation law firm that is typically hired to pursue litigation once other efforts to recover defaulted debts have failed. Defendants conduct substantial due diligence and investigation before filing suit, but such investigations are designed to

determine whether filing suit is both legal and ethical. Defendants are thus no different than other law firms that are hired to pursue judicial remedies for their clients.

14. The Firm's non-attorney support staff has far outnumbered its attorneys. From 2009 through 2013, Defendants employed, at any given time, hundreds of non-attorney staff but only between 8 and 16 attorneys.

**RESPONSE:** Defendants ADMIT that its non-attorney support staff has outnumbered its attorneys, but DENY that there is anything improper about the professional judgment they exercise when staffing cases.

15. In 2009 and 2010, the Firm directed one attorney to sign about 85% of the Georgia Collection Suits — about 138,000 lawsuits. Over two years, this single attorney signed an average of about 1,300 collection suits a week.

**RESPONSE:** Defendants are without sufficient knowledge or information to admit or deny this allegation, and therefore DENY it.

16. For the Georgia Collection Suits, the Firm:

- a. delegated to non-attorney support staff the responsibility for determining whether consumers' accounts were "suit worthy";
- b. directed its attorneys to rely on an automated system and support-staff research to determine whether consumers had sought relief in bankruptcy or whether their debts were barred by limitations;

c. directed its attorneys to rely on an automated system and support-staff research to determine legally significant facts such as each consumer's date of initial contract and the date the consumer last made a payment;

d. delegated to non-attorney support staff the responsibility for determining the alleged principal owed, alleged interest owed, and alleged attorneys' fees owed; and

e. delegated to non-attorney support staff the responsibility for drafting complaints on a mass scale for placement into mail buckets forwarded to attorneys.

**RESPONSE:** Defendants ADMIT that the Firm utilized non-attorney support staff to assist the Firm's attorneys in preparing and filing lawsuits, but DENY that all such functions were delegated to the Firm's non-attorney support staff or that the Firm's attorneys were not adequately involved in preparing and filing suits on behalf of the Firm's clients.

17. The Firm's Georgia Collection Suits bore the names and signatures (or, in some cases, purported signatures) of attorneys, despite those attorneys not being meaningfully involved in the decision to initiate the lawsuits or in the preparation of the pleadings.

**RESPONSE:** DENIED.

18. The Firm's attorneys did not exercise independent professional judgment in determining whether to file the Georgia Collection Suits or what remedies to seek. The Firm's attorneys gave only cursory review to those suits, checking the pleadings prepared by non-attorney support staff for grammar and spelling errors. The Firm's attorneys were expected to spend no more than one minute reviewing and signing the pleadings prepared by support staff.

**RESPONSE:** DENIED.

19. The Firm filed the Georgia Collection Suits on a mass scale against consumers, some of whom may not have owed the alleged debts.

**RESPONSE:** DENIED.

20. The Firm filed most of the Georgia Collection Suits against consumers on behalf of debt buyers. Those debt buyers often could not support their collection activities with basic documents, such as the original contracts underlying the alleged debts or the chain of title evidencing that the debt buyer had standing to sue the consumer. Defendants filed the Georgia Collection Suits without investigating or verifying support for the suits, including whether the facts alleged were true.

**RESPONSE:** DENIED.

21. In most of the Georgia Collection Suits, consumers either failed to appear, which resulted in a default judgment, or agreed to settle.

**RESPONSE:** DENIED.

22. When consumers responded to the Georgia Collection Suits, the Firm's attorneys routinely dismissed the cases. Indeed, since 2009, the Firm's attorneys have voluntarily dismissed more than 40,000 of the Georgia Collection Suits after they had already been served — a rate of more than 155 *a week*. Consumers who retained attorneys were almost four times more likely to have their cases dismissed.

**RESPONSE:** Defendants ADMIT that the Firm has dismissed cases since 2009 but DENY all remaining allegations in Paragraph 22.

23. The Firm routinely obtained and used affidavits in the Georgia Collection Suits in which the affiants represented that they had personal knowledge of the validity and ownership of debts. Defendants knew or should have known that many of these affidavits were executed by persons who lacked personal knowledge of the facts.

**RESPONSE:** DENIED.

24. For affidavits received from its debt-buyer clients, the Firm's attorneys did not determine whether any underlying documentation for the debt was available, nor did they review the contracts governing the sale of accounts to

determine whether those contracts disclaimed any warranties regarding the accuracy or validity of the debts.

**RESPONSE**: DENIED.

25. Defendants acted recklessly or knowingly.

**RESPONSE**: DENIED.

### **Violations of Law**

26. This Complaint challenges two categories of Defendants' conduct in the Georgia Collection Suits: (1) their lack of meaningful attorney involvement in preparing and filing complaints; and (2) their use of affidavits.

**RESPONSE**: This allegation provides a summary of those that follow, and therefore no response is necessary. To the extent a response is required, Defendants DENY this allegation.

### **Count I**

#### **Lack of Meaningful Attorney Involvement, in Violation of the FDCPA**

27. The Bureau incorporates the allegations of paragraphs 1-25 of this Complaint.

**RESPONSE**: Defendants incorporate their responses to Paragraphs 1-25. Furthermore, incorporation of all prior allegations by reference is considered shotgun pleading, which is improper and for which no response is required.

28. As described above, the Georgia Collection Suits may have featured the signatures of attorneys, but they were prepared and filed without meaningful attorney involvement.

**RESPONSE:** DENIED.

29. Defendants thus falsely represented to consumers that the Georgia Collection Suits were from attorneys when, in fact, attorneys were not meaningfully involved in preparing or filing the suits.

**RESPONSE:** DENIED.

30. Defendants' acts and practices constitute violations of sections 807(3) and 807(10) of the FDCPA. 15 U.S.C. § 1692e(3), (10).

**RESPONSE:** DENIED.

**Count II**  
**Lack of Meaningful Attorney Involvement, in Violation of the CFPA**

31. The Bureau incorporates the allegations of paragraphs 1-25 of this Complaint.

**RESPONSE:** Defendants incorporate their responses to Paragraphs 1-25.

32. Defendants' FDCPA violations, described in Count I, constitute violations of section 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

**RESPONSE:** DENIED.

33. As described above, the complaints filed in the Georgia Collection Suits represented, directly or indirectly, expressly or by implication, that attorneys were meaningfully involved in preparing and filing the complaints.

**RESPONSE:** Defendants ADMIT that its attorneys were involved – both directly and indirectly – with the filing of the Georgia Collection suits. Defendants DENY, however, that the complaints contained any representation beyond the allegations of the complaints and the effect under Georgia law of signing the pleadings.

34. In fact, the complaints filed in the Georgia Collection Suits were prepared and filed without meaningful attorney involvement.

**RESPONSE:** DENIED.

35. Defendants' representations as set forth in paragraph 33 were therefore false or misleading and constituted deceptive acts and practices, in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

**RESPONSE:** DENIED.

**Count III**  
**Use of Affidavits in Violation of the FDCPA**

36. The Bureau incorporates the allegations of paragraphs 1-25 of this Complaint.

**RESPONSE:** Defendants incorporate their responses to Paragraphs 1-25.

37. As described above, in numerous instances in the Georgia Collection Suits, Defendants used affidavits in which the affiants represented that they had personal knowledge of the validity and ownership of debts. Defendants knew or should have known that many of these affidavits were executed by persons who lacked personal knowledge of the facts contained in them.

**RESPONSE:** Defendants ADMIT that the Firm used affidavits in lawsuits filed on behalf of the Firm's clients, but DENY the remaining allegations of Paragraph 37.

38. Defendants' use of such affidavits falsely represented to consumers the character, amount, or legal status of debts.

**RESPONSE:** DENIED.

39. Defendants' use of such affidavits constituted false representations or deceptive means to collect or attempt to collect debts.

**RESPONSE:** DENIED.

40. Defendants' use of such affidavits was an unfair or unconscionable means used to collect or attempt to collect debts.

**RESPONSE:** DENIED.

41. Defendants' acts and practices constitute violations of sections 807(2)(A), 807(10), and 808 of the FDCPA. 15 U.S.C. §§ 1692e(2)(A), (10), 1692f.

**RESPONSE:** DENIED.

**Count IV  
Use of Affidavits in Violation of the CFPA**

42. The Bureau incorporates the allegations of paragraphs 1-25 of this Complaint.

**RESPONSE:** Defendants incorporate their responses to Paragraphs 1-25.

43. Defendants' FDCPA violations, described in Count III, constitute violations of section 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

**RESPONSE:** DENIED.

44. In numerous instances in the Georgia Collection Suits, Defendants used affidavits in which the affiants represented that they had personal knowledge of the validity and ownership of debts. By using these affidavits, Defendants represented, directly or indirectly, expressly or by implication, that those affiants had personal knowledge of the validity and ownership of the debts. In numerous instances in which they submitted such affidavits, Defendants knew or should have known that the affiants in fact did not have such personal knowledge.

**RESPONSE:** Defendants ADMIT that the Firm used affidavits in lawsuits filed on behalf of the Firm's clients, but DENY the remaining allegations of Paragraph 44.

45. Defendants' representations as set forth in paragraph 44 of this Complaint were false or misleading and constituted deceptive acts and practices, in

violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

**RESPONSE**: DENIED.

**DEFENSES**

1. Plaintiff's Complaint fails to state a claim on which relief can be granted and must therefore be dismissed.
2. Plaintiff's Complaint must be dismissed because it does not meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b).
3. Plaintiff's Complaint must be dismissed because it was filed outside of the applicable one-year statute of limitations under the FDCPA.
4. Plaintiff's Complaint must be dismissed because it violates the Commerce Clause of the Constitution of the United States.
5. Plaintiff's Complaint must be dismissed because it violates the First and Fifth Amendment right of access to the courts.
6. Plaintiff's Complaint must be dismissed because it violates the Due Process Clause of the Fifth and Fourteenth Amendments.
7. Plaintiff's Complaint must be dismissed because it violates the Equal Protection principle embodied in the Due Process Clause of the Fifth and Fourteenth Amendments.

8. Plaintiff's Complaint must be dismissed because it violates the First Amendment right to petition the government.

9. Plaintiff's Complaint must be dismissed because Plaintiff has exceeded the authority granted to it under the Consumer Financial Protection Act, including by attempting to regulate the practice of law in violation of the practice-of-law exclusion of 12 U.S.C. § 5517(e).

10. Plaintiff's Complaint must be dismissed because any error on the part of Defendants was not intentional and instead, was the product of a bona fide effort to ensure the accuracy of Defendants' activities in connection with filing and prosecuting lawsuits in Georgia state courts.

11. Plaintiff's Complaint must be dismissed because any error on the part of Defendants occurred in spite of the existence of extensive good-faith policies and procedures designed to ensure the accuracy of Defendants' filings in connection with lawsuits filed in Georgia state courts.

12. Plaintiff's Complaint must be dismissed because Defendants complied with all of their legal and ethical obligations when filing and prosecuting lawsuits in the State Court of Georgia.

13. Plaintiff's Complaint must be dismissed because Plaintiff has no authority to regulate Defendants' conduct when it comes to filing complaints and

other papers in Georgia state courts, which are activities that the practice-of-law exclusion bars Plaintiff from regulating. *See* 12 U.S.C. § 5517(e).

Respectfully submitted July 27<sup>th</sup>, 2015.

/s/ Christopher J. Willis  
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*Counsel for Defendants*

**CERTIFICATION OF COMPLIANCE WITH L.R. 5.1B**

I hereby certify that the foregoing has been computer processed with 14 point New Times Roman font in compliance with the United States District Court for the Northern District of Georgia Local Rule 5.1B.

Dated: July 27<sup>th</sup>, 2015

/s/ Christopher J. Willis

Christopher J. Willis

Ga. Bar No. 766297

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I filed the foregoing ANSWER AND AFFIRMATIVE DEFENSES with the Clerk of Court using the CM/ECF system which will automatically serve the following parties:

Lawrence Brown (Lawrence.Brown@cfpb.gov)  
Thomas Ward (Thomas.Ward@cfpb.gov)  
Consumer Financial Protection Bureau  
ATTN: Enforcement  
1750 Pennsylvania Ave., 10<sup>th</sup> Floor  
Washington, D.C. 20552

Date: July 27<sup>th</sup>, 2015

/s/ Christopher J. Willis

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