

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROBERT SILBAUGH
Plaintiff

*

*

vs.

Civil Action No. ELH-11-01387

*

OMNI CREDIT SERVICES OF FLORIDA,
INC., et al.

*

Defendants

*

MEMORANDUM

Robert Silbaugh, plaintiff, filed suit in this Court on May 23, 2011 (ECF 1), alleging that the defendant, Omni Credit Services of Florida, Inc., violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*; the Maryland Consumer Debt Collection Act, § 14-201, *et seq.* of the Commercial Law Article of the Maryland Code; and the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.* After having been served on September 16, 2011 (ECF 3), the defendant failed to appear, answer, or otherwise defend in this matter. Accordingly, on September 28, 2011, plaintiff asked the Clerk to enter an order of default against the defendant. *See* ECF 5. On October 4, 2011, the Clerk issued an “Order Of Default” (ECF 6).

Thereafter, on November 22, 2011, pursuant to F. R. Civ. P. 55(b)(2), plaintiff filed a “Notice Of Motion For Default Judgment” (“Motion,” ECF 8), which was supported by a Declaration of Plaintiff (ECF 8-1); a Declaration of counsel for the plaintiff, Forrest Mays, Esquire (ECF 8-2); and a Memorandum of Law (ECF 8-3). In the Motion, plaintiff requested statutory damages of \$1,000 under the FDCPA, and, pursuant to 15 U.S.C. § 1692(k)(a)(3), costs of litigation and reasonable attorneys’ fees. ECF 8-3 at 5. In addition, under the TCPA, plaintiff requested statutory damages of \$500 and, because of the nature of the conduct of the defendant,

requested treble damages, for a total of \$1,500. In conclusion, plaintiff requested “the maximum amount of statutory damages, \$1,000.00 for FDCPA violations, \$1,500.00 for TCPA violations, and reasonable attorneys’ fees and costs. . . .” ECF 8-3 at 7. However, plaintiff did not particularize or itemize his request for attorneys’ fees.

On December 13, 2011, pursuant to 28 U.S.C. § 636 and Local Rule 301, this Court referred the matter to Magistrate Judge Susan Gauvey for a Report and Recommendation as to the pending Motion. ECF 9. On January 31, 2012, Judge Gauvey issued a thorough and well considered Report And Recommendation (“Report”) (ECF 10). She made the following recommendations, *id.* at 7-8:

1. That the Court grant plaintiff’s Motion For Default Judgment;
2. That the Court award statutory damages under the FDCPA of \$1,000.00;
3. That the Court award statutory damages under the TCPA of \$500.00 (i.e., damages without trebling).

With regard to the matter of attorneys’ fees, Judge Gauvey recognized that, under § 1692(k)(a)(3) of the FDCPA, courts may award “the costs of the action, together with a reasonable attorney’s fee.” However, Judge Gauvey observed that “plaintiff has not requested any specific amount of attorneys’ fees and costs and has provided absolutely no proof as to those matters.” Therefore, she said: “Accordingly, no award of attorney’s fees or costs is recommended, at this time.” *Id.* at 8.

The time for filing objections as to the Report has passed. *See* F. R. Civ. P. 72(b); Local Rule 301.5(b). No objections were filed with respect to the Report. Nor has plaintiff’s counsel submitted any specific request as to the award of attorney’s fees, despite Judge Gauvey’s comments and recommendation.

In accordance with F. R. Civ. P. 72(b), I have reviewed the Report for clear error with respect to the determination of the issues to which the Report relates. I find that Judge Gauvey's proposed rulings are correct in all respects. Accordingly, I adopt the Report And Recommendation as my own.

I will, however, permit counsel for plaintiff to submit a petition for costs and attorneys' fees, along with a memorandum and supporting documentation, within 14 days from the date of the entry of the accompanying Order implementing these rulings.

Date: February 23, 2012

/s/
Ellen L. Hollander
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROBERT SILBAUGH
Plaintiff

*

vs.

Civil Action No. ELH-11-01387

*

*

OMNI CREDIT SERVICES OF FLORIDA,
INC., et al.

*

Defendants

*

ORDER

For the reasons set forth in the accompanying Memorandum, it is this 23rd day of
February, 2012, **ORDERED**:

- 1) The Court adopts the Report and Recommendation (ECF 10);
- 2) The Court grants plaintiff's Motion For Default Judgment (ECF 8);
- 3) The Court awards statutory damages to plaintiff in the total sum of \$1,500.00;
- 4) If plaintiff's counsel seeks to pursue an award of counsel fees and costs in connection
with this litigation, plaintiff's counsel must submit, no later than 14 days from the
date of entry of this Order, a petition for the award of costs and attorney's fees,
supported by a memorandum and adequate documentation.

/s/ _____
Ellen L. Hollander
United States District Judge