

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

MARVIN KING,
SHELLEY KAHLE,
Plaintiffs

-vs-

Case No.
Hon.

BLACKHAWK RECOVERY
AND INVESTIGATIONS, LLC,
ROBERT JORDAN,
LARRY EVERSON,
COUNTY OF OAKLAND,
RUSSELL LEWIS,
MICHAEL DAVID,
ANDREW MOLDENHAUER,
Defendants

COMPLAINT & JURY DEMAND

Marvin King and Shelley Kahle state the following claims for relief:

Jurisdiction

1. This court has jurisdiction under the FDCPA, 15 U.S.C. §1692k(d), the Civil Rights Act, 42 U.S.C. § 1983, and 28 U.S.C. §§1331, 1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the federal law claims.

Parties

3. Plaintiff Marvin King resides in Wayne County, Michigan and is a citizen of Michigan.
4. Plaintiff Shelley Kahle resides in Wayne County, Michigan and is a citizen of Michigan.
5. The Defendants to this lawsuit are as follows:
 - a. Blackhawk Recovery and Investigations, LLC (“Blackhawk”) which is a corporation doing business in Michigan.
 - b. Robert Jordan (“Mr. Jordan”), who is owner, operator and/or manager of Blackhawk.
 - c. Larry Everson (“Mr. Everson”), who is an employee of Blackhawk.
 - d. County of Oakland, which is a municipal entity for the purposes of 42 U.S.C. § 1983.
 - e. Russell Lewis, who is a law enforcement officer in Oakland County and who is a “state actor” for the purpose of 42 U.S.C. § 1983.
 - f. Michael David, who is a law enforcement officer in Oakland County and who is a “state actor” for the purpose of 42 U.S.C. § 1983.
 - g. Andrew Moldenhauer, who is a law enforcement officer in Oakland County and who is a “state actor” for the purpose of 42 U.S.C. § 1983.

Venue

6. The transactions and occurrences which give rise to this action occurred in Oakland County.
7. Venue is proper in the Eastern District of Michigan.

General Allegations

8. Some time prior to June 3, 2016, Credit Acceptance engaged Blackhawk Recovery to repossess a 2009 Ford Escape, owned by Mr. King.
9. At all relevant times, Blackhawk and its agents acted under the direction of Mr. Jordan.
10. Mr. Jordan established the policies, procedures and practices of Blackhawk in his capacity as an owner, operator and/or manager of Blackhawk.
11. Sometime in April 2016, Mr. King spoke with Credit Acceptance and informed them that he was out of town and his vehicle payment would be 2-3 days late.
12. Credit Acceptance advised Mr. King that they would accept Mr. King's late payment.
13. After accepting Mr. King's payment, Credit Acceptance changed the payment plan so that payments of the same amount would be due every two weeks instead of monthly.
14. Mr. King was unable to meet this new payment schedule.

15. Mr. King is a merchandiser/stocker and one of the stores he works in is Meijer located at 1703 Haggerty Rd., Commerce Township, MI 48390.
16. Sometime between 11:00 pm and 2:00 am between June 2, 2016 - June 3, 2016, Mr. Everson went to the Meijer where Mr. King was working to take his vehicle on behalf of Blackhawk and with the authority of Credit Acceptance.
17. Mr. Everson found Mr. King's vehicle parked in the Meijer parking lot.
18. Mr. King's girlfriend, Shelley Kahle ("Ms. Kahle") and their dog, were inside the vehicle.
19. Without first attempting to contact Mr. King or tell Ms. Kahle that he was there to repossess the vehicle, Mr. Everson hooked the vehicle to his tow truck and began lifting the vehicle up from the ground, while Ms. Kahle and their dog were still inside the vehicle.
20. As Mr. Everson lifted the vehicle from the ground, Ms. Kahle objected to Mr. Everson doing so.
21. Mr. Everson ignored Ms. Kahle's objections.
22. While still lifted off the ground in the vehicle, Ms. Kahle called Mr. King on his cell phone to notify him of the repossession.
23. By lifting up the vehicle, Mr. Everson put Ms. Kahle in imminent fear of harm of a battery.

24. These facts constitute an assault on Ms. Kahle.
25. By lifting up the vehicle, Ms. Kahle was unable to exit the vehicle.
26. With no way to exit the vehicle, Ms. Kahle and their dog were panicked and upset.
27. These facts constitute false imprisonment against Ms. Kahle.
28. After Ms. Kahle alerted Mr. King of the repossession Mr. King came out of Meijer.
29. When Mr. King arrived Mr. Everson was on the phone with the Oakland County Sheriff's Department requesting help.
30. In response, the sheriff's department dispatched Officer Lewis, Officer David, Officer Moldenhauer, and at least three to the Meijer parking lot.
31. The officers arrived in five or six different vehicles.
32. After the officers arrived at the scene, they told Mr. King that they were not going to stay there all night and that the vehicle was no longer his because he did not make payments.
33. Mr. King attempted to tell the officers that what Mr. Everson was doing was wrong.
34. The officers requested Mr. King's registration papers, which Mr. King provided.

35. The officers demanded that Ms. Kahle get out of the vehicle yet the vehicle was still lifted off the ground, so she was not able to safely exit without jumping a few feet.
36. The officers finally asked Mr. Everson to lower the vehicle to the ground.
37. Mr. Everson partly lowered the vehicle so that when Ms. Kahle exited the vehicle it was not completely on the ground.
38. Upon exiting the vehicle, one of the officers told Ms. Kahle to unload their dog.
39. As soon as their dog got out of the vehicle, the officer put his hand on his gun, which further upset and frightened Ms. Kahle.
40. The officers threatened to arrest Ms. Kahle for disorderly conduct after she had already exited the vehicle, thereby facilitating the repossession.
41. The officers first demanded that Mr. King and Ms. Kahle move to the rear of the vehicle, and then to move away from the vehicle.
42. Mr. Everson then took possession of the vehicle on behalf of Blackhawk.
43. Before driving off, Mr. Everson told Mr. King that he would tell Credit Acceptance that the repossession “went down without a hitch.”
44. By lifting up the vehicle over Ms. Kahle’s objections and doing so while Ms. Kahle and their dog were still inside the vehicle, Blackhawk breached the

peace.

45. The officers had no legal authority to direct Plaintiffs to surrender the vehicle.

COUNT I – Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.
(Blackhawk, Mr. Jordan and Mr. Everson)

46. Plaintiffs incorporate the preceding allegations by reference.
47. At all relevant times Blackhawk– in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
48. Blackhawk, Mr. Jordan and Mr. Everson are "debt collectors" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
49. At all times relevant to this complaint, Blackhawk, Mr. Jordan and Mr. Everson sought to collect a "consumer" debt from Mr. King.
50. Blackhawk's, Mr. Jordan's and Mr. Everson's actions to collect this alleged debt from Mr. King violated the provisions of the FDCPA including, but not limited to: 15 U.S.C. §§ 1692d and 1692e.
51. Plaintiffs suffered damages as a result of these violations of the FDCPA.

COUNT II – Civil Rights Violation, 42 U.S.C. § 1983 (Officer Lewis, Officer David, Officer Moldenhauer and Mr. Everson)

52. Plaintiffs incorporate the preceding allegations by reference.

53. Blackhawk, through its agents, servants, or employees acted jointly and in concert with the Defendant officers to deprive Mr. King of his rights under the United States Constitution.
54. That as a result of their unlawful, malicious, reckless and indifferent acts or omissions, the Defendant officers both alone and in concert with Mr. Everson acted under color of law but contrary to law and deprived Plaintiffs of their rights, privileges, or immunities secured under the Constitution and laws of the United States and 42 U.S.C §1983 including:
 - a. Plaintiffs' right to be free from an unreasonable search or seizure of their persons, as guaranteed by Amendments IV and XIV of the United States Constitution, by confiscating Mr. King's automobile and refusing to return it, notwithstanding that fact that it was done without benefit of an arrest warrant, search warrant, or lawful probable cause to detain it.
 - b. Plaintiffs' right to due process of law, as guaranteed by Amendment XIV, by summarily repossessing Mr. King's automobile.
55. That as a direct and proximate result of the conduct of Defendants, Defendants deprived Mr. King of his personal property without due process of law.
56. As a result of the Oakland County Sheriff's Department's failure to adequately train their officers in civil disputes and vehicle repossession, the officers failed

to confirm the presence of a court order and unlawfully assisted in the repossession of the vehicle.

57. The officers' actions were instrumental in the taking of Mr. King's vehicle and Mr. Everson would not have been able to repossess the vehicle but for the presence and assistance of the police officers.
58. As a result, Plaintiffs suffered damages resulting from these violations of their civil rights.
59. The Oakland County Sheriff's Department maintains a policy which directs its officers to effectively assist in the repossession of vehicles where a breach of peace has occurred.
60. Unless enjoined, The Oakland County Sheriff's Department will continue its unlawful practices in violation of the United States Constitution and the established law barring repossessions which breach the peace.

COUNT III – Michigan Occupational Code (Blackhawk and Mr. Jordan)

61. Plaintiffs incorporate the preceding allegations by reference.
62. Blackhawk is a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b) and Mr. Jordan is the managing agent of Blackhawk.
63. Mr. King is a debtor as that term is defined in M.C.L. § 339.901(f).

64. Blackhawk's and Mr. Jordan's actions to collect from Mr. King violated the MOC including but not limited to the following: M.C.L. §§ 339.915, 339.918 and 339.917.
65. Plaintiffs suffered damages as a result of these violations of the MOC.
66. These violations of the MOC were willful.

COUNT IV- Statutory Conversion, M.C.L. § 600.2919a (BlackHawk, Mr. Jordan and Mr. Everson)

67. Plaintiffs incorporate the preceding allegations by reference.
68. Blackhawk had no right to possess or keep the vehicle from Mr. King following the repossession.
69. Upon completion of the unlawful repossession, Blackhawk and Mr. Jordan knew that the repossession had resulted in a breach of peace.
70. In spite of this knowledge, Blackhawk, Mr. Everson and Mr. Jordan jointly held, and assisted each other in holding Mr. King's vehicle from him in violation of M.C.L. § 600.2919a.
71. Mr. Everson knew at the time of the repossession that he had undertaken actions that breached the peace.
72. Blackhawk's and Mr. Everson's actions in unlawfully taking possession of the vehicle following a breach of peace were willful and/or intentional.
73. These acts constitute a willful or intentional violations of M.C.L. § 600.2919a.

74. Plaintiffs suffered damages as a result of this unlawful conversion

Demand For Jury Trial

75. Plaintiffs demand trial by jury in this action.

Prayer For Relief

76. *ACCORDINGLY, Plaintiffs request that this Honorable Court grant the following relief:*

- a. Actual damages for items including emotional distress, mental anguish, frustration, humiliation, and embarrassment;*
- b. Punitive damages available under 42 U.S.C. § 1983;*
- c. Statutory damages;*
- d. Enhanced damages under the Michigan Occupational Code, and*
- e. Costs and attorney fees.*

Respectfully Submitted,

By: s/ Priya Bali
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