

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

KATHLEEN A. LOTUFO, on behalf of herself
and all others similarly situated

Civil Action No.

Plaintiffs,

**CLASS ACTION
COMPLAINT**

v.

**NO JURY TRIAL
DEMANDED**

KIRSCHENBAUM & PHILLIPS, P.C.

Defendant.

-----X

Plaintiff, by and through her counsel, Gus Michael Farinella, Esq., as and for her complaint against Defendant, on behalf of herself and pursuant to Rule 23 of the Federal Rules of Civil Procedure all others similarly situated, alleges as follows:

INTRODUCTION

1. Kathleen A. Lotufo (“Plaintiff”), on her own behalf and on behalf of the class she seeks to represent, brings this action to secure redress for the debt collection practices utilized by Kirschenbaum & Phillips, P.C. (“K&P” or “Defendant”) in connection with their attempts to collect alleged debts from herself and others similarly situated.
2. Plaintiff alleges that Defendant’s collection practices violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (“FDCPA”).
3. The FDCPA broadly prohibits conduct which harasses, oppresses or abuses any debtor; any false, deceptive or misleading statements made in connection with the collection of a debt; unfair

or unconscionable collection methods; and requires certain disclosures. *See* 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

4. The FDCPA is a strict liability statute which provides for actual or statutory damages upon the showing of a single violation. *See Bentley v Great Lakes Collection Bureau*, 6 F.3d 60, 62-63 (2d Cir. 1993).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this FDCPA claim pursuant to 15 U.S.C. §1692k(d) and 28 U.S.C. §1331.
6. Venue and personal jurisdiction in this District are proper because:
 - i. The acts giving rise to this lawsuit occurred within this District;
 - ii. Defendant does business within this District; and
 - iii. Defendant is located in this District.

PARTIES

7. Plaintiff, Kathleen A. Lotufo, is an individual natural person who at all relevant times resided in the City of Richmond Hill, County of Queens, State of New York.
8. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).
9. Defendant, K&P, is a corporation with its principal place of business located at 40 Daniel Street – Suite 7 Farmingdale, NY 11735.
10. The principal purpose of K&P is the collection of debts using the mail and telephone.
11. K&P regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
12. K&P is a “debt collector” as that term is defined by 15 U.S.C. §1692a(6).

FACTS

13. Sometime prior to January 1, 2016, Plaintiff allegedly incurred a financial obligation to Discover Bank (the “Debt”).
14. Discover Bank is a “creditor” as defined by 15 U.S.C. §1692a(4).
15. The Debt arose out of a transaction in which the money, property, insurance or services which were the subject of the transaction were primarily for personal, family or household purposes, namely fees emanating from a personal Discover Bank credit card account in Plaintiff’s name.
16. The Debt arose out of a consumer credit card account which Plaintiff opened in order to pay for her personal and household items.
17. The Discover Bank credit card was neither opened nor used by Plaintiff to pay for business expenses.
18. Plaintiff’s credit card debt to Discover Bank is a “debt” as defined by 15 U.S.C. §1692a(5).
19. Sometime after the incurrence of the Debt, but before the Debt was referred to Defendant for collection, Plaintiff was alleged to have defaulted on payments owed on the Debt.
20. At some point after Plaintiff’s alleged default, Discover Bank determined that the Debt was uncollectable, and therefore decided to “charge-off” the Debt.
21. Creditors charge-off debts in accordance with federal regulations that permit the creditor to remove the debt from their financial records.¹ These charged-off accounts are treated as a loss and the creditor receives a tax deduction under the Internal Revenue Code.

¹ By charging off the Account, the Debt had been in default for a period of approximately 180 days. *See* Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 (June 12, 2000); *see also* Victoria J. Haneman, *The Ethical Exploitation of the Unrepresented Consumer*, 73 Mo. L. Rev. 707, 713-14 (2008) (“a credit card account is characterized as a ‘charge-off’ account (or worthless account for taxable purposes) when no payment has been received for 180 days.”).

22. Sometime after Discover Bank charged off the Debt, Plaintiff's Debt was placed with Defendant for collection.
23. K&P contends that the Debt is past-due and in default.
24. At the time the Debt was referred to K&P, the Debt was past-due.
25. At the time the Debt was referred to K&P, the Debt was in default.
26. At the time the Debt was referred to K&P for collection, the Debt had been charged off by Discover Bank.
27. At all times relevant hereto, K&P acted in an attempt to collect the Debt.
28. On or about October 11, 2016, K&P mailed or caused to be mailed a collection letter to Plaintiff. (Annexed and attached hereto as Exhibit A is a true copy of the collection letter dated October 11, 2016 sent by K&P to Plaintiff, except the undersigned counsel has in accordance with Fed. R. Civ. P. 5.2 redacted the financial account numbers and Plaintiff's street address in order to protect their privacy).
29. K&P mailed the October 11, 2016 letter attached as Exhibit A as a part of their efforts to collect the Debt.
30. Plaintiff received the letter attached as Exhibit A in the mail.
31. Plaintiff read the letter attached as Exhibit A upon receipt of the letter in the mail.
32. Exhibit A was sent in connection with the collection of the Debt.
33. Exhibit A seeks to collect the Debt.
34. Exhibit A conveyed information regarding the Debt including the alleged balance due, account number, and a demand for payment.
35. The letter attached as Exhibit A is a "communication" as that term is defined by 15 U.S.C. §1692a(2).

36. The letter attached as Exhibit A is the first written communication Plaintiff received from Defendant.
37. The letter attached as Exhibit A is the first written communication Defendant sent to Plaintiff regarding the Debt.
38. Exhibit A represents K&P's initial collection "communication" with Plaintiff as "communication" is defined by 15 U.S.C. §1692a(2).
39. Exhibit A states in relevant part: "The amount reflected above is the amount you owe as of the date of this letter. This amount may vary from day to day, due to interest or other charges added to your account after the date of this letter. Hence if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which even we will inform you before depositing the check for collection."
40. Contrary to the above statement contained in the October 11, 2016 letter attached as Exhibit A, at no time after October 11, 2016 did Discover Bank or Defendant add "an adjustment" to the balance due on the Debt in the form of interest and/or any other charges.
41. Contrary to the above statement contained in the October 11, 2016 letter attached as Exhibit A, at no time on or after October 11, 2016 could Discover Bank or Defendant have legally added "an adjustment" to the balance due on the Debt in the form of interest and/or any other charges.
42. Contrary to the statement contained in the October 11, 2016 letter attached as Exhibit A, at no time does Defendant add "an adjustment" in the form of interest or other charges to the balance(s) due on charged off consumer debts, which are similar to the Debt, and which they seek to collect.

43. Contrary to the statement contained in the October 11, 2016 letter attached as Exhibit A, at no time can Defendant add “an adjustment” in the form of interest or other charges to the balance(s) due on charged off consumer debts, which are similar to the Debt and which they seek to collect.
44. On information and belief, Defendant is not legally or contractually permitted add interest to the Debt.
45. On information and belief, Defendant is not legally or contractually permitted to add any other charges or adjustments to the balance alleged due on the Debt.
46. On information and belief, K&P would not “adjust” the balance of Plaintiff’s Debt nor would the amount of the Debt vary from day to day because of interest or other charges because Discover Bank only authorized K&P collect the listed balance of \$17,241.10.
47. Charged off debts such as Plaintiff’s Debt that K&P seeks to collect never vary because of “adjustments” such as interest or other charges.
48. K&P does not add any “adjustments” in the form of interest or any other charges to the amount of the debt it seeks to collect from any consumer, such as Plaintiff, whose debt has been previously charged off by their creditor.
49. K&P never seeks to collect any additional amounts for a previously charged off debt after a consumer has paid the initially demanded balance in full.
50. Federal regulations require banks, such as Discover Bank to send periodic statements on all accounts, including defaulting accounts in order to assess and charge interest or fees to the account.² Thus, banks such as Discover Bank, cannot charge “adjustments”, such as interest or fees, if periodic statements are not sent.

² 12 C.F.R. § 226.5(b)(2)(i).

51. On information and belief, Discover Bank ceased sending period statements, charged-off the Debt, and stopped charging “adjustments”, such as interest and/or fees, prior to Plaintiff’s Debt being placed with Defendant for collection and Defendant mailing or causing to be mailed the October 11, 2016 letter attached as Exhibit A to the Plaintiff.
52. In fact, the balance of the Debt remained at \$17,241.10. (Annexed and attached hereto as Exhibit B is a true copy of a letter dated March 27, 2017 sent by K&P to the Plaintiff, except the undersigned counsel has in accordance with Fed. R. Civ. P. 5.2 redacted the financial account numbers and Plaintiff’s street address in order to protect their privacy).
53. The balance of the Debt did not change or “adjust” or “vary from day to day” in the approximately six months between the letters attached as Exhibit A and Exhibit B, and has not “adjusted” since March 27, 2017.
54. Upon information and belief, there would be no required adjustments in the form of interest or other charges that may vary from day to day regarding Plaintiff’s Debt.
55. Defendant’s statement that, “This amount may vary from day to day, due to interest or other charges added to your account after the date of this letter. Hence if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which even we will inform you before depositing the check for collection” is false, deceptive, and misleading to the least sophisticated consumer because Defendant falsely suggested in their letter attached as Exhibit A that the balance due on the Debt may increase from day to day because of “adjustments” in the form of interest or other charges. In fact, the balance due on the debt could not vary from day to day because of interest or other charges because Discover Bank had stopped charging adjustments (such

as interest or other any charges) prior to the Debt being placed with Defendant for collection, and K&P was aware of this fact.³

56. Such a false statement makes the least sophisticated consumer uncertain as to the amount allegedly owed to Discover Bank and uncertain as to how much additional “adjustments” such as interest or other charges, would continue to accrue on the Debt.
57. Defendant’s false and misleading statement that, “This amount may vary from day to day, due to interest or other charges added to your account after the date of this letter. Hence if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which even we will inform you before depositing the check for collection” is a collection play and a deceptive tactic used to trick the least sophisticated consumer into believing that paying less than the full amount owed or not immediately paying would cause the balance of the Debt to increase.
58. Exhibit A is a standardized form letter.
59. K&P’s debt collection practice is largely automated and utilizes standardized form letters.
60. On information and belief, the October 11, 2016 letter attached as Exhibit A is a mass-produced, computer generated form letter that is prepared by K&P and mailed to consumers in the State of New York, such as Plaintiff, from whom they are attempting to collect a debt.
61. Exhibit A is a standardized form letter that K&P uses for the purpose of attempting to comply with 15 U.S.C. §1692g, which was sent, or caused to be sent, over the course of

³ Beauchamp v. Financial Recovery Services, Inc., 2011 WL 891320 at *3 (S.D.N.Y. March 11, 2011) (“Here, a consumer reading the Letter could believe that FRS does, at times, add interest or other charges to the amount it seeks to collect. If FRS never increases the amount owed beyond that states in the Letter, as Beauchamp contends, then the consumer will in fact have been misled)

the past year by K&P to hundreds of New York consumers from whom K&P attempted to collect a debt.

62. Defendant used the same procedures it used in sending the letter attached as Exhibit A when sending the same and/or similar letters to other consumers in New York.

CLAIMS FOR RELIEF

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT (15 .S.C. §1692e)

63. Plaintiff incorporates by reference all the above paragraphs as though fully stated herein.
64. The conduct of K&P in this case violates 15 U.S.C. §§1692, 1692e(2)(A), 1692e(5), and 1692e(10).
65. The FDCPA at 15 U.S.C. §1692e provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of –

(A) the character, amount, or legal status of any debt; or

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

66. The Defendant's violated §1692e of the FDCPA because letter attached as Exhibit A:
- i. Made false, deceptive or misleading representations or means in connection with the collection of a debt in violation of 15 U.S.C. §1692e.
 - ii. Made false representations of the character, amount, or legal status of a debt in violation of 15 U.S.C. §1692e(2)(A) by falsely representing that the amount of the debt was subject to adjustments (such as interest or other charges) when

in fact, legally, it was not because of the charge off that had occurred prior to the letter being mailed by K&P to Plaintiff.

- iii. Threatened to take an action that could not legally be taken or that was not intended to be taken, in violation of 15 U.S.C. §1692e(5), by falsely stating that the Debt may be subject to adjustments and vary from day to day when K&P knew that in reality under no circumstances would the Debt be subjected to adjustments because of for example, interest or other charges.
- iv. Used false representations or deceptive means to collect or attempt to collect a debt, in violation of 15 U.S.C. §1692(e)(10) by falsely suggesting, contrary to K&P's actual practice, that adjustments in the form of interest or other fees may be added to the balance of the Debt.

67. The violations of the FDCPA described herein constitute *per se* violations.

68. Plaintiff has alleged a particularized injury because the letter attached as Exhibit A was mailed and directed to her.

69. Plaintiff has alleged a concrete harm because the FDCPA creates a substantive right to be free from abusive debt communications and Defendant's violations of the FDCPA results in concrete harm to Plaintiff. *See Papetti v. Does 1-25*, 2017 WL 2304227 (2d. Cir. May 26, 2017)

70. Be reason thereof, Defendant is liable to Plaintiff and the proposed class for judgment that Defendant's conduct violated 15 U.S.C. §1692e and for statutory damages costs and attorneys' fees pursuant to 15 U.S.C. §1692k.

COUNT II

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C. §1692g)

71. Plaintiff incorporates by reference all the above paragraphs as though fully stated herein.

72. The conduct of K&P in this case violates 15 U.S.C. §1692g(a)(1).

73. The FDCPA at Section 1692g provides:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing

(1) the amount of the debt;

74. K&P violated 1692g(a)(1) because the letter attached as Exhibit A states that the balance due on the account may vary from day to day because of interest or other charges, when in reality, it would not and K&P was aware of this fact. This false statement caused Plaintiff to be uncertain as to her rights and left her confused about the total amount she owes.
75. Plaintiff and other least sophisticated consumers could reasonably believe based on Exhibit A that K&P does add interest or other charges to the amounts it seeks to collect from debts that have been previously charged off by their original creditor. Such a belief would be false.
76. Because Exhibit A provides that the outstanding balance may increase, Plaintiff and other least sophisticated consumers may reasonably conclude that they must pay the balance stated in the letter immediately or possibly owe a larger amount.
77. In the Seventh Circuit case of Miller v. Mcalla, Raymer, Padrick, Cobb, Nichols, and Clark LLC 214 F.3d 872 (7th Cir. 2000) the court stated safe harbor language (“as of the date of this letter etc...”) to instruct debt collectors how to properly disclose the amount owed in situations where they are charging interest, late fees or other charges. “We hold that the following statement satisfies the debt collector’s duty to state the amount of the debt in cases like this where the amount varies from day to day.” Id. The Second Circuit in Avila v. Riexinger & Associates, LLC, 817 F. 3d 72 (2d. Cir. 2016) adopted the Miller safe harbor language.

78. K&P wrongfully mirrored the Miller and Avila safe harbor language in this case because they were not legally or contractually allowed to add or charge any additional interest or other charges on the Debt but falsely implied that they may. As such, the letter cannot be saved by the Avila/Miller safe harbor language.
79. Be reason thereof, Defendant is liable to Plaintiff and the proposed class for judgment that Defendant's conduct violated 15 U.S.C. §1692g and for statutory damages costs and attorneys' fees pursuant to 15 U.S.C. §1692k.

CLASS ALLEGATIONS

80. Plaintiff incorporates by reference all the above paragraphs as though fully stated herein.
81. This action is brought as a class action. Plaintiff brings this action on behalf of herself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.
82. The class is initially defined as: (a) all individuals (b) with a New York address (c) who were sent letters or notices from K&P in a form materially identical or substantially similar to letter attached as Exhibit A to the Complaint (d) which was not returned as undeliverable (e) on or after a date one year prior to the filing of this action and on or before a date 20 days after the filing of this action; and (f) which contained at least one of the alleged violations of 15 U.S.C. §1692 *et seq.* herein.
83. The class definition above may be subsequently modified or refined.
84. The proposed class specifically excludes the United States of America, the states of the Second Circuit, counsel for the parties, the presiding United States District Court Judge,

the Judges of the United States Court of Appeals for the Second Circuit and the United States Supreme Court.

85. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- i. **Numerosity**: The Plaintiff is informed and believes and on that basis alleges that the class defined above is so numerous that joinder of all members would be impracticable. Upon information and belief, there are at least 40 members of the class. The exact number of class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery. The class is ascertainable in that the names and addresses of all class members can be identified in business records maintained by Defendant.
- ii. **Common Questions Predominate**: There exists a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to: (a) The existence of Defendant's identical conduct particular to the matter at issue; (b) Defendant's violations of the FDCPA, specifically 15 U.S.C. §1692e and 15 U.S.C. §1692g; (c) The availability of statutory penalties; and (d) Attorneys' fees and costs.
- iii. **Typicality**: Plaintiff's claims are typical of those of the class they seek to represent. The claims of Plaintiff and of each class member originate from the same conduct, practice, and procedure, on the part of Defendant. Thus, if

brought and prosecuted individually, the claims of each class member would require proof of the same material and substantive facts. Plaintiff possesses the same interests and has suffered the same injuries as each absent class member. Plaintiff asserts identical claims and seeks identical relief on behalf of the absent class members.

- iv. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the class and has no interest adverse to or which directly and irrevocably conflicts with the interests of other members of the class. Plaintiff is willing and prepared to serve this Court and the proposed class. The interests of the Plaintiff are co-extensive with and not antagonistic to those of the absent class members.

Plaintiff has retained the services of counsel who are experienced in FDCPA litigation and will adequately prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent class members. Neither the Plaintiff, nor their counsel, have any interests which might cause them to not vigorously pursue the instant class action lawsuit.

- v. **Superiority**: A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

86. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate in that the questions of law and fact common to members of the class

predominate over any questions affecting any individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

87. A class action is superior for the fair and efficient adjudication of this matter, in that:

- i. Individual actions are not economically feasible;
- ii. Members of the class are likely to be unaware of their rights;
- iii. Congress intended class actions to be the principal enforcement mechanism under the FDCA.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class and against Defendant for:

1. An order certifying that Counts I and II may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and the undersigned counsel to represent the class as previously set forth and defined above;
2. Adjudging that K&P violated 15 U.S.C. §§1692e, 1692e(2)(A), 1692e(5), 1692e(10), 1692g, and 1692g(a)(1);
3. An award of statutory damages for Kathleen A. Lotufo and the class pursuant to 15 U.S.C. §1692k;
4. Attorneys' fees, litigation expenses and costs of suit pursuant to 15 U.S.C. §1692k; and
5. Such other and further relief as the Court deems proper.

Dated: Floral Park, New York
October 10, 2017

THE PLAINTIFF

/s/ Gus Michael Farinella

By: _____

Gus Michael Farinella, Esq.
Law Offices of Gus Michael Farinella PC
Attorney for Plaintiff
110 Jericho Turnpike – Suite 100
Floral Park, NY 11001
Tel: (212) 675-6161
Fax: (212) 675-4367
gmf@lawgmf.com

NOTICE OF ASSIGNMENT

Please be advised that all rights relating to attorneys' fees have been assigned to counsel.

The Law Offices of Gus Michael Farinella, PC

/s/ Gus Michael Farinella

By: _____

Gus Michael Farinella

EXHIBIT A

Kirschenbaum & Phillips, P.C.

Attorneys at Law
40 Daniel Street - Suite 7
P.O. Box 9000
Farmingdale, NY 11735-9000
Tel: (516) 746-1144 Fax: (516) 742-2735 Toll Free: (866) 746-1144

October 11, 2016

KATHLEEN A LOTUFO

[REDACTED]
RICHMOND HILL, NY 11418-3022

Re: Creditor: DISCOVER BANK
Account Holder: Kathleen A Lotufo
Account Number: ***** [REDACTED]
Our File Number: [REDACTED] 33

The Total Amount of the Debt Due as of Charge-Off:	\$17,263.66
The Total Amount of Interest Accrued since Charge-Off:	\$.00
The Total Amount of Non-Interest Charges or Fees accrued since Charge-Off:	\$.00
The Total Amount of Payments and Credits made on the debt since the Charge-Off:	<u>\$22.56</u>
Balance Due:	\$17,241.10

Dear KATHLEEN A LOTUFO:

This is to notify you that Discover Bank has retained this firm to collect its claim against you for the balance owing on your Discover Card Account.

The amount reflected above is the amount you owe as of the date of this letter. This amount may vary from day to day, due to interest or other charges added to your account after the date of this letter. Hence if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For an exact amount owed or for further information please contact our office at (866) 746-1144 or (516) 746-1144.

Your account representative is SAIFFA TAYLOR and can be reached at ext. 2519.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

NOTICES REQUIRED BY THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR.
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

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Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

- (i) the use or threat of violence;
- (ii) the use of obscene or profane language; and
- (iii) repeated phone calls made with the intent to annoy, abuse or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits;
10. Federal student loans, federal student grants, and federal work study funds; and
11. Ninety percent of your wages or salary earned in the last sixty days.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.

D-30D

Very truly yours,

KIRSCHENBAUM & PHILLIPS, P.C.

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR.
THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT
PURPOSE.**

EXHIBIT B

Attorneys at Law
40 Daniel Street - Suite 7
P.O. Box 9000
Farmingdale, NY 11735-9000
Tel: (516) 746-1144 Fax: (516) 742-2735 Toll Free: (866) 746-1144

March 27, 2017

KATHLEEN A LOTUFO
[REDACTED]

RICHMOND HILL NY 11418-3022

Re: Our File Number: [REDACTED] 233
Caption: DISCOVER BANK
Kathleen A Lotufo
Account Number: ***** [REDACTED]
Creditor: DISCOVER BANK
Current Balance: \$17,241.10

Dear KATHLEEN A LOTUFO:

The amount reflected above is the amount you owe as of the date of this letter. The amount may vary from day to day, due to interest or other charges added to your account after the date of this letter. Hence if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you before depositing the payment for collection. For an exact amount owed or for further information, please contact our office at (866) 746-1144 or (516) 780-7388. You may also contact our office to setup a repayment plan on the full balance.

We are authorized to extend to you the opportunity to settle this debt. Below are the options please select one:

- A. _____ One payment: You pay 50% of the balance in one (1) payment of \$8,620.55. Payment must be received on or before April 24, 2017. We are not obligated to renew this offer.
- B. _____ Six payments: You pay 65% of the balance \$11,206.72 in six (6) monthly payments of \$1,867.79 each. First payment of \$1,867.79 due April 24, 2017 followed by five (5) consecutive payments of \$1,867.79 due on the same day each successive month. We are not obligated to renew this offer.
- C. _____ Twelve payments: You pay 75% of the balance \$12,930.83 in twelve (12) monthly payments of \$1,077.57 each. First payment of \$1,077.57 due on or before April 24, 2017 followed by eleven (11) consecutive payments of \$1,077.57 due on the same day each successive month. We are not obligated to renew this offer.

Please forward the payment payable to and forwarded to KIRSCHENBAUM & PHILLIPS, P.C., to P.O. Box 9000 Farmingdale, New York 11735-9000. Please be sure to include our file number DC20133 on the payment to ensure prompt crediting. Settling a debt for less than the balance owed may have tax consequences and Discover may file a 1099C form. We cannot provide you with tax advice. If you have any questions Discover encourages you to consult a tax adviser of your choosing.

Very truly yours,
KIRSCHENBAUM & PHILLIPS, P.C.

A-TAX6

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KATHLEEN A. LOTUFO, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Gus Michael Farinella 212-675-6161 110 Jericho Turnpike - Suite 100 gmf@lawgmf.com Floral Park, NY 11001

DEFENDANTS

KIRSCHENBAUM & PHILLIPS, P.C.

County of Residence of First Listed Defendant Nassau (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §1692 et seq. Brief description of cause: Defendant's letter violated various provisions of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 500,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/10/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Gus Michael Farinella

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Gus Michael Farinella, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason Class Action

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ Gus Michael Farinella

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kirschenbaum & Phillips Accused of Unfair Debt Collection Method](#)
