

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ITSCHAK MADAR on behalf of himself and
all other similarly situated consumers

Plaintiff,

-against-

BERMAN & RABIN, P.A.

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff, Itschak Madar, brings this action against Berman & Rabin, P.A. for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”). The FDCPA prohibits debt collectors from engaging in abusive, deceptive and unfair collection practices while attempting to collect on debts.

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that Defendant sought to collect from Plaintiff a consumer debt.
4. Upon information and belief, Defendant's principal place of business is located in Overland Park, Kansas.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

Allegations Particular to Itschak Madar

9. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.
10. On or about August 25, 2016, Defendant sent the Plaintiff a collection letter.
11. The said letter was an effort to collect on a consumer debt.
12. The said letter stated the following: “Settling a debt for less than the balance owed may have tax consequences for you. If the amount forgiven is \$600 or more, LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee of Washington Mutual Bank, NA may need to file a 1099C form with the IRS.”
13. The Defendant's language is deceptive and misleading and violated the FDCPA.
14. Under 26 C.F.R. §1.6050P-1(d)(2) and (3), only the discharge of principal need be reported:

(2) Interest. The discharge of an amount of indebtedness that is interest **is not required to be reported** under this section.

(3) Non-principal amounts in lending transactions. In the case of a lending transaction, the discharge of an amount other than stated principal **is not required to be reported** under this section. For this purpose, a lending transaction is any transaction in which a lender loans money to, or makes advances on behalf of, a borrower (including revolving credits and lines of

credit).

15. There are several exceptions in which settlements in excess of \$600.00 are not reported to the IRS.
16. In addition, it is highly improbable for one who is in debt to have income as a result of settling a debt, as that person is more likely to be insolvent; so such a discharge would not be considered as income.
17. A collection notice is deceptive when it reasonably can be read to have two or more different meanings, one of which is inaccurate.¹
18. The language in the letter that states “Settling a debt for less than the balance owed may have tax consequences for you. If the amount forgiven is \$600 or more, LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee of Washington Mutual Bank, NA may need to file a 1099C form with the IRS” could reasonably be understood by the least sophisticated consumer to mean that IRS regulations require that the client report all forgiveness of debt.
19. The phrase “Settling a debt for less than the balance owed may have tax consequences for you. If the amount forgiven is \$600 or more, LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee of Washington Mutual Bank, NA may need to file a 1099C form with the IRS” injects the Internal Revenue Service where there is no legal requirement or other obligation to do so.
20. Defendant included the said language in an attempt to intimidate Plaintiff in violation of the FDCPA.

¹ Pipiles v. Credit Bureau of Lockport, Inc., 886 F.2d 22, 25 (2d Cir. 1989) (Because the collection notice was reasonably susceptible to an inaccurate reading, it was deceptive within the meaning of the Act.); Clomon v. Jackson, 988 F.2d 1314, 1319 (2d Cir. 1993) (Collection notices are deceptive if they are open to more than one reasonable interpretation, at least one of which is inaccurate.); Russell v. Equifax A.R.S., 74 F.3d 30, 34 (2d Cir. N.Y. 1996) (A collection notice is deceptive when it can be reasonably read to have two or more different meanings, one of which is inaccurate. The fact that the notice's terminology was vague or uncertain will not prevent it from being held deceptive under § 1692e(10) of the Act.)

21. The unsophisticated consumer reading the said letter will reasonably believe that if he or she does not contact Defendant immediately, a 1099-C Form could be filed with the IRS.
22. The unsophisticated consumer would understand this statement to mean that the creditor is required by IRS regulations to report forgiveness of debt.
23. The Defendant made the false and deceptive threat in an effort to scare and frighten the unsophisticated consumer into thinking he or she has to deal with the IRS and pay tax on the debt if he or she does not pay the amount in full.
24. Although the Defendant had no duty to disclose any potential tax ramifications,² when Defendant chooses to give tax disclosures, it must do so in a way that it will not mislead the least sophisticated consumer as to his or her tax consequences.³
25. Current case law has made clear, that if debt collectors are providing tax advice with regards to the reporting of forgiveness of debt, they cannot provide vague, incomplete and misleading disclosures that leaves out the essential element that the reporting of

² Altman v. J.C. Christensen & Assocs., 786 F.3d 191, 194, 2015 U.S. App. LEXIS 7980, *7 (2d Cir. N.Y. 2015) "[T]he FDCPA does not require a debt collector to make any affirmative disclosures of potential tax consequences when collecting a debt."

³ Foster v. Allianceone Receivables Mgmt., No. 15-cv-11108, 2016 U.S. Dist. LEXIS 56958, at *5-6 (N.D. Ill. Apr. 28, 2016) ("Plaintiff also argues that including any language regarding the IRS is a "collection ploy designed to deceive or mislead" the consumer into thinking that the IRS could be involved in their debt where there is no set of circumstances in which the IRS would be involved. At issue in this case is whether the unsophisticated consumer would plausibly be deceived by the Letter, and whether this deception would lead that consumer to settle the matter without negotiating the debt for fear that the settlement would be reported to the IRS. While the language at issue is not necessarily a misrepresentation of the law, by Defendant's own admission, the offered debt write-off does not meet the \$600.00 threshold mentioned. It is plausible that mention of the IRS in a situation where there is no set of circumstances in which the IRS would be involved could mislead "a person of modest education and limited commercial savvy." As a consumer may forego his or her rights related to the disputed debt, by settling the matter without negotiation due to this deception, the statement in question is material. Accepting the Complaint's well-pleaded factual allegations as true and drawing all reasonable inferences in Plaintiff's favor, Plaintiff alleges sufficient facts to state a plausible claim for relief."); Velez v. Enhanced Recovery Co., No. 16-164, 2016 U.S. Dist. LEXIS 57832 (E.D. Pa. May 2, 2016) ("The Statement "may not be false in all respects, [but] it certainly is not completely true... the use of the contingent "may" in the Statement here does not materially distinguish it from the challenged language in Good because both phrases fail to communicate that there are other exceptional circumstances beyond the threshold amount that affect whether the cancellation of the debt is reportable... The least sophisticated debtor, given a generally applicable rule **with some, but not all**, of the relevant exceptions thereto, might be misled into thinking that there will be adverse tax consequences for settling a debt for less than the total amount due. The conditional "may" of the Statement does not remove from the realm of possibility that the least sophisticated debtor might be deceived into thinking that ERC must or will report certain settlement amounts to the IRS, even when it does not intend to, or would not be required to, under the relevant statute and regulations... It would not be bizarre or idiosyncratic for the least sophisticated debtor to believe that the "invocation of the IRS reasonably suggests...that he or she could get in trouble with the IRS for refusal to pay the debt, or for obtaining any debt forgiveness of \$600 or more." The least sophisticated debtor could reasonably assume that ERC included the Statement because it was relevant, and such a debtor could believe, given the lack of specificity in the generally-stated rule that mentions one exception but not others, that the action he chooses to take with respect to the debt will trigger tax consequences or reporting requirements... we do not believe that the conditional "may" of the Statement renders it proper...The least sophisticated debtor, even reading carefully, might not understand that the "may" refers only to the \$600 threshold and to no other possible triggering event or exception. It would not be bizarre or idiosyncratic for the least sophisticated debtor to believe that ERC retained some discretion in whether to report or that some other related federal law governed the reporting of the discharge.") (emphasis added)

forgiveness of a debt happens only if the **principal** forgiven exceeds \$600, and that reporting of forgiveness of a debt would not happen even if the amount is greater than \$600, if the \$600 or greater amount forgiven contained interest forgiveness so long as the principal was less than \$600.

26. The statement “Settling a debt for less than the balance owed may have tax consequences for you. If the amount forgiven is \$600 or more, LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee of Washington Mutual Bank, NA may need to file a 1099C form with the IRS” is ambiguous, yet the vagueness and uncertainty does not erase the fundamental mischief and deception that the statement intends to cause to the consumer. A consumer reading this statement will be led to believe that if a settlement erases any amount of the debt, then the creditor is required to report the forgiveness of debt to the IRS, per the IRS regulations (creating by fear of the IRS another incentive for the consumer to pay the debt without erasing any amount through settlement). However, this statement is inherently deceptive and misleading, by giving erroneous and incomplete tax information - because in actual fact and according to IRS regulations, the creditor "**will not**" be required to report to the IRS report forgiveness of debt less than \$600, nor would the creditor be required to report an amount greater than \$600 in forgiveness if the amount contained interest.
27. If the creditor wishes to legitimately give tax advice in a sincere manner, one that does not mislead the consumer, then that creditor should specify and make clear to the least sophisticated consumer that only certain amounts require reporting, and that this applies only to principle and not to interest forgiveness.
28. The creditor should also specify what amounts are principle and what part of it is interest,

in the amounts owed. Any tax advice that does not specify the tax consequences as it applies to the consumer's circumstances is nothing more than a ploy to elicit a more substantial payment from the consumer than the consumer would have paid, had he or she understood the tax reporting consequences.

29. Defendant included the said language in its letter as a collection ploy designed to deceive or mislead the unsophisticated consumer into thinking the IRS will be somehow involved in their debt, in violation of the FDCPA.
30. The unsophisticated consumer will reasonably believe that in order not to be reported to the IRS, he or she must contact Defendant to keep that from occurring, regardless of whether the debt is reportable.
31. Defendant is not an applicable entity with a reporting obligation, it is but a debt collector. Defendant should especially refrain from giving such misleading tax advice, by suggesting that there is a possibility that the IRS could be involved in Plaintiff's debt, when, in fact, under no set of current circumstances would the IRS be involved.
32. The use of the words "Settling a debt for less than the balance owed may have tax consequences for you. If the amount forgiven is \$600 or more, LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee of Washington Mutual Bank, NA may need to file a 1099C form with the IRS" is an attempt by the debt collector to make the debtor think that the IRS regulations require the reporting of all forgiveness of debt. The least sophisticated consumer would reasonably read the letter to mean that the creditor will report all forgiveness of debt as is required by IRS regulations.⁴
33. Additionally, the Defendant's use of conditional language, i.e., the use of the word "may"

⁴ Russell v. Equifax A.R.S., 74 F.3d 30, 35, 1996 U.S. App. LEXIS 1042, *13 (2d Cir. N.Y. 1996) (That a notice's terminology is vague or uncertain will not prevent it from being held deceptive under 1692e.)

– does not save it from liability.

34. The Seventh Circuit, in Lox v. CDA, Ltd., 689 F.3d 818 (7th Cir. 2012), stated “that it is improper under the FDCPA to imply that certain outcomes might befall a delinquent debtor when, legally, those outcomes cannot come to pass”. *Id.*, at 825. In reaching this conclusion, the Court in *Lox* discussed *Ruth v. Triumph P’Ships*, 577 F.3d 790 (7th Cir. 2009), and *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055 (9th Cir. 2011). In *Gonzales*, the defendant had alleged that it would report the account as settled “if [the defendant was] reporting the account...” *Id.*, at 1059. In *Gonzales*, the defendant could not legally report the debt to a credit bureau, much like in this case Defendant, or its client, could not legally file a Form 1099-C with the IRS. *Gonzales* specifically reasoned that “[c]onditional language, particularly in the absence of any language clarifying or explaining the conditions, does not insulate a debt collector from liability.” *Id.*, at 1063. In *Ruth*, the defendant alleged that it “may collect and/or share all the information [defendant obtains] in servicing [the plaintiff’s] account”. *Id.*, at 793. However, the defendant in *Ruth* was legally barred from sharing any information absent consent, much like Defendant, or its client, is legally barred from filing a Form 1099-C with the IRS regarding Plaintiff’s debt. Defendant simply included the IRS in its letter to intimidate and mislead Plaintiff.
35. In a recent decision, this court found in the case of Kaff v. Nationwide Credit, Inc., 1:13-cv-05413, No. 32 (E.D.N.Y. Mar. 31, 2015) (Townes, J.) that a statement regarding the requirement to file a 1099: “was not strictly true under all circumstances because **it failed to apprise debtors** that possible exceptions could apply to the creditor’s mandatory reporting requirement, such as the exceptions **for interest and other non-principal**

debts." Kaff v. Nationwide Credit, Inc., 1:13-cv-05413, No. 32 (E.D.N.Y. Mar. 31, 2015) (Towns, J.) (emphasis added); see also Good v. Nationwide Credit, Inc., No. 14-4295, 2014 BL 302150 (E.D. Pa. Oct. 24, 2014) (finding that the statement "American Express is required to file a form 1099C with the Internal Revenue Service for any cancelled debt of \$600 or more. Please consult your tax advisor concerning any tax questions" is not true and does not accurately reflect the relevant law the court also found that the statement's invocation of the IRS was deceptive and materially misleading in violation of the FDCPA.)

36. The Defendant tends to give erroneous and/or incomplete tax advice to consumers.
37. The FDCPA does not require that tax consequences be identified in collection letters sent to consumers; but where a debt collector has chosen to threaten the debtor with tax consequences, and has done so inaccurately, the false representation causes detrimental harm to the consumer since it concretely thwarts the consumer's ability to freely navigate a course of action in response to the collection notice. The risk in this type of harm is the detrimental impact to the consumer. And such harm is precisely the kind of infringement of the consumer's best interests that the FDCPA seeks to combat.
38. Such a statement in a collection letter suggests to the least sophisticated consumer that failure to pay will get the consumer into trouble with the IRS.⁵
39. The statement in the said August 25, 2016 letter is false and misleading, in violation of 15 U.S.C. §§ 1692e, 1692e(2), and 1692e(10).
40. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.

⁵ Kaff v. Nationwide Credit, Inc., 1:13-cv-05413, No. 32 (E.D.N.Y. Mar. 31, 2015) (Towns, J.); Wagner v. Client Services, Inc., No. 08-5546, 2009 WL 839073, 2009 U.S. Dist. LEXIS 26604 (E.D.Pa., March 26, 2009); Sledge v. Sands, 182 F.R.D. 255 (N.D.Ill. 1998).

41. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
42. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.
43. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
44. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
45. Defendant's communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to Defendant's collection efforts.
46. The FDCPA ensures that consumers are fully and truthfully apprised of the facts and of their rights, the act enables them to understand, make informed decisions about, and participate fully and meaningfully in the debt collection process. The purpose of the FDCPA is to provide information that helps consumers to choose intelligently. The Defendant's false representations misled the Plaintiff in a manner that deprived him of his right to enjoy these benefits, these materially misleading statements trigger liability under section 1692e of the Act.
47. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
48. Plaintiff seeks to end these violations of the FDCPA. Plaintiff has suffered damages including but not limited to, fear, stress, mental anguish, emotional stress and acute embarrassment. Plaintiff and putative class members are entitled to preliminary and permanent injunctive relief, including, declaratory relief, and damages.

CLASS ALLEGATIONS

49. This action is brought as a class action. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.
50. The identities of all class members are readily ascertainable from the records of Berman & Rabin, P.A. and those business and governmental entities on whose behalf it attempts to collect debts.
51. Excluded from the Plaintiff's Class is the Defendant and all officers, members, partners, managers, directors, and employees of Berman & Rabin, P.A., and all of their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
52. There are questions of law and fact common to the Plaintiff's Class, which common issues predominate over any issues involving only individual class members. The principal issues are whether the Defendant's communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
53. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.
54. The Plaintiff will fairly and adequately protect the interests of the Plaintiff's Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor his attorneys have any interests, which might cause them not to vigorously pursue this action.

55. 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:

- (a) **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff's Class defined above is so numerous that joinder of all members would be impractical.
- (b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff's Class and those questions predominate over any questions or issues involving only individual class members. The principal issues are whether the Defendant's communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
- (c) **Typicality:** The Plaintiff's claims are typical of the claims of the class members. Plaintiff and all members of the Plaintiff's Class defined in this complaint have claims arising out of the Defendant's common uniform course of conduct complained of herein.
- (d) **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor his counsel have any interests, which might cause them not to vigorously pursue the instant class action lawsuit.

(e) **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. Certification of a class under Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure is appropriate because adjudications with respect to individual members create a risk of inconsistent or varying adjudications which could establish incompatible standards of conduct for Defendant who, on information and belief, collects debts throughout the United States of America.

56. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that a determination that the above stated claims, violate provisions of the Fair Debt Collection Practices Act, and is tantamount to declaratory relief and any monetary relief under the FDCPA would be merely incidental to that determination.

57. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff's Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

58. Further, Defendant has acted, or failed to act, on grounds generally applicable to the Rule (b)(1)(A) and (b)(2) Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.
59. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify one or more classes only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by Plaintiff on behalf of himself and the members of a class, as against the Defendant.

60. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through fifty nine (59) herein with the same force and effect as if the same were set forth at length herein.
61. This cause of action is brought on behalf of Plaintiff and the members of a class.
62. The class involves all individuals whom Defendant's records reflect resided in the State of New York and who were sent a collection letter in substantially the same form letter as the letter sent to the Plaintiff on or about August 25, 2016; and (a) the collection letter was sent to a consumer seeking payment of a personal debt; and (b) the collection letter was not returned by the postal service as undelivered; and (c) the Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692e, 1692e(2), and 1692e(10).

Violations of the Fair Debt Collection Practices Act

63. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.

64. Because the Defendant violated the Fair Debt Collection Practices Act, the Plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests preliminary and permanent injunctive relief, and that this Court enter judgment in Plaintiff's favor and against the Defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. § 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Brooklyn, New York
June 30, 2017

/s/ Maxim Maximov
Maxim Maximov, Esq.
Attorneys for the Plaintiff
Maxim Maximov, LLP
1701 Avenue P
Brooklyn, New York 11229
Office: (718) 395-3459
Facsimile: (718) 408-9570
E-mail: m@maximovlaw.com

Plaintiff requests trial by jury on all issues so triable.

/s/ Maxim Maximov
Maxim Maximov, Esq.

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

ITSCHAK MADAR

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

(c) Attorneys (Firm Name, Address, and Telephone Number) MAXIM MAXIMOV, LLP OFFICE: (718) 395-3459 1701 AVENUE P FAX: (718) 408-9570 BROOKLYN, NEW YORK 11229 E-MAIL: M@MAXIMOV.LAW.COM

DEFENDANTS

BERMAN & RABIN, P.A.

County of Residence of First Listed Defendant (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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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, 6 Multidistrict Litigation

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. SECTION 1692 -- FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) Brief description of cause: UNLAWFUL AND DECEITFUL DEBT COLLECTION BUSINESS PRACTICES

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/30/2017 SIGNATURE OF ATTORNEY OF RECORD /S/ MAXIM MAXIMOV, ESQ.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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, N/A, counsel for _____, 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

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:

N/A

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? NO
 - b) Did the events of 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/ MAXIM MAXIMOV, ESQ.

BERMAN & RABIN, P.A.

ATTORNEYS AT LAW
15280 METCALF AVE.
OVERLAND PARK, KS 66223
P.O. BOX 24237-66283
FAX: (913) 649-2335

August 25, 2016

Creditor: LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee Of Washington Mutual Bank, NA
Our Account Number: [REDACTED]
Balance: \$11,816.64

SETTLEMENT OFFER

The above referenced creditor has authorized us to settle your account for 50% of your balance or the sum of \$5,908.32. Please send your payment to our office on or before September 24, 2016.

If you would like to pay by phone, please call Dayne Thrower 913-777-7209 or toll free at 877/649-3078 to take advantage of this great savings. We are not obligated to renew this offer.

We accept checks by phone and post dated checks.

Settling a debt for less than the balance owed may have tax consequences for you. If the amount forgiven is \$600 or more, LVNV FUNDING LLC WASHINGTON MUTUAL BANK Assignee Of Washington Mutual Bank, NA may need to file a 1099C form with the IRS. We cannot provide you with tax advice. If you have any questions, we encourage you to consult a tax adviser of your choosing.

This communication is from a debt collector and this is an attempt to collect a debt and any information obtained will be used for that purpose. Unless you dispute this debt, or any portion of it, within 30 days after you receive this notice, we will assume that it is valid. If you notify us in writing within the 30 day period that you dispute this debt or any portion of it, we will obtain verification of the debt or a copy of any judgment and mail it to you. If the above creditor is not your original creditor and you submit a written request within the 30 day period for the name and address of the original creditor, we will supply such information to you.

Sincerely,

BERMAN & RABIN, P.A.

In accordance with the New York State Department of Financial Services, 23 NYCRR 1, we are required to inform you of the following:

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:



- a) The use or threat of violence;
- b) The use of obscene or profane language; and
- c) 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.

Detach Lower Portion and Return with Payment

CLBERM01
PO Box 1022
Wixom MI 48393-1022
ADDRESS SERVICE REQUESTED

<input type="checkbox"/>  <input type="checkbox"/>  CHECK CARD USING FOR PAYMENT		
CARD NUMBER	CVV #	EXP. DATE /
CARDHOLDER NAME		AMOUNT \$
CARDHOLDER SIGNATURE		

August 25, 2016

Berman and Rabin, P.A.
PO Box 24327
Overland Park KS 66283-4327



Itschak Madar
1333 51st St Apt 6E
Brooklyn NY 11219-3573



Our Account Number: [REDACTED]
Balance: \$11,816.64

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ITSCHAK MADAR on behalf of himself and
all other similarly situated consumers

Plaintiff,

-against-

BERMAN & RABIN, P.A.

Defendant.

SUMMONS IN A CIVIL ACTION

TO: BERMAN & RABIN, P.A.
15280 METCALF AVENUE
OVERLAND PARK, KANSAS 66223

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court
and serve upon PLAINTIFF'S ATTORNEY:

MAXIM MAXIMOV, ESQ.
MAXIM MAXIMOV, LLP
1701 AVENUE P
BROOKLYN, NEW YORK 11229

an answer to the complaint which is herewith served upon you, with **21** days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will
be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Berman and Rabin Threatens Debtors with Tax Consequences](#)
