

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

ITSCHAK MADAR, on behalf of himself  
and all others similarly situated,

Plaintiffs,

-against-

THE CBE GROUP, INC.

Defendant.

**CIVIL ACTION**

**CLASS ACTION COMPLAINT  
AND  
DEMAND FOR JURY TRIAL**

Plaintiff ITSCHAK MADAR (hereinafter, “Plaintiff”), a New York resident, brings this class action complaint by and through his attorneys, Joseph H. Mizrahi Law, P.C., against Defendant THE CBE GROUP, INC. (hereinafter “Defendant”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re inadequate to protect consumers,” and that “the effective collection of debts” does not require “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).
2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to “insure that those debt collectors who refrain from using

abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

### **NATURE OF THE ACTION**

5. Plaintiff brings this class action on behalf of a class of New York consumers seeking redress for Defendant’s illegal practices, in connection with the collection of a debt allegedly owed by Plaintiff in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).
6. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the “FDCPA,” which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.
7. Plaintiff is seeking damages, and declaratory and injunctive relief.

### **PARTIES**

8. Plaintiff is a natural person and a resident of the State of New York, and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).
9. Defendant is a collection agency incorporated in Iowa and licensed to do business in New York.
10. Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

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

**CLASS ALLEGATIONS**

12. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter “FRCP”) Rule 23, individually and on behalf of the following nationwide consumer class (the “Class”):

- Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendant attempted to collect a consumer debt using the same unlawful form letter herein, from one year before the date of this Complaint to the present.
- The Class period begins one year to the filing of this Action.

13. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that was sent to hundreds of persons (*See **Exhibit A***, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff’s privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
  - a. Whether Defendant violated various provisions of the FDCPA;
  - b. Whether Plaintiff and the Class have been injured by Defendant’s conduct;
  - c. Whether Plaintiff and the Class have sustained damages and are

entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed proceed to without

remedy they will continue to reap and retain the proceeds of their ill-gotten gains.

- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

**ALLEGATIONS PARTICULAR TO ITSCHAK MADAR**

14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “13” herein with the same force and effect as if the same were set forth at length herein.
15. Some time prior to December 2, 2016, an obligation was allegedly incurred by Plaintiff to Verizon Wireless.
16. The aforesaid obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.
17. The alleged Verizon Wireless obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).
18. Verizon Wireless is a "creditor" as defined by 15 U.S.C. § 1692a(4).
19. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) of the FDCPA.
20. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) of the FDCPA.
21. At a time known only to Defendant, Verizon Wireless, directly or through an intermediary, contracted Defendant to collect Verizon Wireless’s debt.
22. In its effort to collect on the Verizon Wireless obligation, Defendant contacted Plaintiff by written correspondence on December 2, 2016. *See Exhibit A.*
23. The Letter was sent or caused to be sent by persons employed by Defendant as a “debt collector” as defined by 15 U.S.C. §1692a(6).
24. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

25. 15 U.S.C. § 1692f prohibits the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
26. Congress adopted the provisions of section 1692f with the stated intent to prohibit debt collectors from attempting collection of any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
27. Defendant's attempt at collecting more than what it initially stated was owed is exactly the type of harm Congress contemplated when enacting Section 1692f.
28. As such, Defendant's violations of the FDCPA created the risk of real harm that Plaintiff would overpay and thereby incur a significant monetary deficit due to Defendant's actions, when in reality; the amount allegedly owed on the debt would preclude such action.
29. Defendant's actions as described herein are part of a pattern and practice used to collect debts.
30. As set forth in the following Counts Defendant violated the FDCPA.

**First Count**  
**Violation of 15 U.S.C. §§ 1692e, 1692f *et seq***  
**The Charging of Unlawful Fees**

31. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "30" herein with the same force and effect as if the same were set forth at length herein.
32. Collection letters such as those sent by defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."
33. Section 1692e(10) states that:  
  
A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.... the following conduct is a violation of this section:  
  
(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.
34. Section 1692f(1) states that:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
35. That Defendant attempts to recover a Collection Fee in the amount of \$798.67 is improper.
  36. That said Collection Fee is a fee charged and collected by Defendant.
  37. That same is not expressly authorized by any agreement that Plaintiff has with the original creditor.
  38. That the Collection Fee is not permitted by any applicable law.
  39. That, as and for an alternative, Defendant retains all or a portion of the Collection Fee.
  40. That Defendant's retention of all or a portion of the Collection Fee is not expressly authorized by any agreement that plaintiff has with the original creditor.
  41. That Defendant's statement in its collection letter regarding the Collection Fee is an attempt to collect an amount which is not permitted by the FDCPA, § 1692f (1).
  42. That Defendant's statement in its collection letter regarding the Collection Fee constitutes an unfair and unconscionable means used by Defendant in its attempt to collect a debt, in violation of the FDCPA, including but not limited to § 1692f (1).
  43. That further, Defendant's statement in its collection letter regarding the Collection Fee also falsely represents the compensation which may be lawfully received by Defendant for the collection of the debt, in violation of the FDCPA, including but not limited to Section 1692e and 1692e(2)(B).
  44. That Defendant's statement in its collection letter regarding the Collection Fee constitutes a false, deceptive, and misleading representation or means used by Defendant in connection with

the collection of a debt, in violation of the FDCPA Sections 1692e and 1692e(10).

45. That further, Defendant's statement in its collection letter regarding the Collection Fee is a threat to take an action that cannot be legally taken, viz., to add a fee that is not authorized by any law or by the agreement between Plaintiff and the original creditor which created the alleged debt, and is therefore a violation of the FDCPA, Section 1692e (5).
46. Defendant used false representation and deceptive means to attempt to collect \$798.67 in Collection Fees without evidencing the basis for the added fee in violation of 15 U.S.C. §§ 1692e, 1692e (2), 1692e (5), 1692e (10), and 1692f (1).
47. Plaintiff seeks to end these violations of the FDCPA. Plaintiff and putative class members are entitled to preliminary and permanent injunctive relief, including, declaratory relief, and damages.
48. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692f *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

**Second Count**  
**15 U.S.C. §1692g**  
**Failure to Adequately and Honestly Convey the Amount of the Debt**

49. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "48" herein with the same force and effect as if the same were set forth at length herein.
50. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.
51. 15 U.S.C. § 1692g(a)(1) requires the written notice provide "the amount of the debt."
52. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly and accurately from the perspective of the least sophisticated consumer.



53. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.
54. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.
55. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.
56. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.
57. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).
58. The Letter failed to inform Plaintiff whether the amount listed is the actual amount of the debt due.
59. The Letter failed to inform Plaintiff whether the Collection Fees are continuing to accrue.
60. The Letter failed to inform Plaintiff if there is additional Collection Fees what the amount of the accrued Fees will be.
61. The Letter failed to inform Plaintiff if there is Collection Fees when such Fees will be applied.
62. The Letter failed to inform Plaintiff if there is Collection Fees the amount of money the amount listed will increase per day.
63. The Letter failed to inform Plaintiff if there is Collection Fees the amount of money the amount listed will increase per any measurable period.

64. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.
65. The least sophisticated consumer could reasonably believe that the debt could be satisfied by remitting the listed amount as of the date of the letter, at any time after receipt of the letter.
66. The least sophisticated consumer could reasonably believe that the amount listed was accurate only on the date of the Letter.
67. If a Collection Fee is continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate the applicable rate.
68. If a Collection Fee is continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate what the amount of the accrued Fees will be.
69. If "Collection Fees" are continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate the nature of the "Fees."<sup>1</sup>
70. The letter failed to advise Plaintiff that if Plaintiff pays the amount listed, an adjustment may be necessary after Defendant receives payment.
71. The letter failed to advise Plaintiff that if Plaintiff pays the amount listed, Defendant will inform Plaintiff of the balance difference before depositing payment.
72. The Defendant's failures are purposeful.

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<sup>1</sup> *Carlin v. Davidson Fink LLP*, 852 F.3d 207 (2d Cir. 2017), *Balke v. All. One Receivables Mgmt.*, No. 16-cv-5624(ADS)(AKT), 2017 U.S. Dist. LEXIS 94021, at \*14 (E.D.N.Y. June 19, 2017) ("[T]he Collection Letter in this case refers with vagueness to "accrued interest or other charges," without providing any information regarding the rate of interest; the nature of the "other charges"; how any such charges would be calculated; and what portion of the balance due, if any, reflects already-accrued interest and other charges. By failing to provide even the most basic level of specificity in this regard, the Court "cannot say whether those amounts are properly part of the amount of the debt," for purposes of section 1692g. *Carlin*, 852 F.3d at 216. Further, as set forth in *Carlin*, without any clarifying details, the Collection Letter states only that these unspecified assessments may be added to the balance due, which the Court finds to be insufficient to "accurately inform[ ] the [Plaintiff] that the amount of the debt stated in the letter will increase over time.") consumer knew the true amount due, Defendant does not inform the consumer whether the amount listed will increase.

73. Defendant failed to clearly and unambiguously state the amount of the debt, in violation of 15 U.S.C. § 1692g(a)(1).
74. The Letter would likely make the least sophisticated consumer uncertain as to the amount of the debt, in violation of 15 U.S.C. § 1692g(a)(1).
75. The Letter would likely make the least sophisticated consumer confused as to the amount of the debt, in violation of 15 U.S.C. § 1692g(a)(1).
76. Defendant's conduct violated 15 U.S.C. §§ 1692g(a)(1).

**Third Count**

**15 U.S.C. §1692e et seq.**

**False or Misleading Representations as to Status of Debt**

77. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “76” herein with the same force and effect as if the same were set forth at length herein.
78. Defendant’s debt collection efforts attempted and/or directed towards Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.
79. Pursuant to 15 U.S.C. §1692e, a debt collector is prohibited from using false, deceptive, or misleading representation in connection with the collection of a debt.
80. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on non-enumerated practice.
81. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.
82. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”
83. Defendant’s conduct constitutes a false, deceptive and misleading means and representation in connection with the collection of the debt, in violation of 15 U.S.C. § 1692e.

84. The Letter can reasonably be read by the least sophisticated consumer to have two or more meanings concerning the actual balance due, one of which must be inaccurate, in violation of 15 U.S.C. § 1692e.
85. According to this Court, a collection letter is deceptive and misleading when it falsely implies to the Least Sophisticated Consumer that Fees may be accruing when it is not in fact.<sup>2</sup>
86. By stating a Collection Fees charge in the amount of \$798.67, without further clarifying whether said Fees are continuing to accrue, Defendant falsely suggested that the Total Balance may be subject to change, and could be subject to additional Fees.
87. In the alternative, if Collection Fees are in fact accruing, Defendant violated the FDCPA by not clearly stating same, in accordance with Second Circuit precedent in *Avila* supra.
88. Defendant's debt collection efforts attempted and/or directed towards Plaintiff violated various provisions of the FDCPA, including but not limited to § 1692(e).
89. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Joseph H. Mizrahi, Esq., as Class Counsel;
- (b) Awarding Plaintiff and the Class statutory damages;

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<sup>2</sup> *Avila* compels the conclusion that any ambiguity as to post-dated accruals in a collection notice gives rise to a claim under the general prohibition of § 1692e – even if the ambiguity does no harm or even inures to the benefit of the debtor. *FATEMA ISLAM, Individually and on behalf of a class, Pl., v. AMERICAN RECOVERY SERVICE INCORPORATED*, Def., 17-CV-4228 (BMC), 2017 WL 4990570, at \*2 (E.D.N.Y. Oct. 31, 2017).

- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By: /s/ Joseph H. Mizrahi  
Joseph H. Mizrahi, Esq.  
Joseph H. Mizrahi Law, P.C.  
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Brooklyn, New York 11201  
Phone: (917) 299-6612  
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*Attorneys for Plaintiff*

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

/s/ Joseph H. Mizrahi  
Joseph H. Mizrahi, Esq.

Dated: Brooklyn, New York  
November 30, 2017



12/02/16

The CBE Group, Inc.  
 1309 Technology Pkwy, Cedar Falls, IA 50613  
 7:00 a.m. - 10:00 p.m. CT Monday-Friday  
 Saturday 8:00 a.m. - 12:00 p.m. CST

Call (855)722-9161

Creditor:	Verizon Wireless
Account Number:	55800001
CS Number:	501
Reference Number:	0180
Principal:	\$4,437.07
Collection Fees:	\$798.67
Balance:	\$5,235.74

Dear Itschak Madar :

Your Verizon Wireless account has been referred to CBE Group for collection. Please take this opportunity to pay your account balance in full.

We are committed to helping you resolve your debt. If you cannot pay the full balance at this time, we have many payment options that may meet your individual needs. Please give us a call at (855)722-9161. We are here to help.



*Pay Online –  
Account resolution  
the easy way:*

Login to your account at  
[www.paycbegroup.com](http://www.paycbegroup.com) to  
 quickly and easily pay your  
 balance in full or setup  
 payment arrangements.

Disconnect Date	Service/Equipment	Amount	Collection Fees	Total Due
11/26/16	SERVICE AMOUNT	\$4,437.07	\$798.67	\$5,235.74
<b>Total Amount Due:</b>				<b>\$5,235.74</b>

Service Address: 1333 51ST ST BROOKLYN, NY 11219-3573

Unless you notify this office within thirty (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 thirty (30) days after 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 this office in writing within thirty (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.

The CBE Group, Inc. mailing address Po Box 2635 , Waterloo, IA 50704-2635

**This is an attempt to collect a debt; any information obtained will be used for that purpose.  
 This communication is from a debt collector.  
 NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.**

PLEASE DETACH AND RETURN LOWER PORTION WITH ENCLOSED ENVELOPE

29\_CDCBEG04\_0180

PO BOX 2635  
 WATERLOO, IA 50704-2635  
 CHANGE SERVICE REQUESTED

IF PAYING BY CREDIT/DEBIT, FILL OUT BELOW

CARD NUMBER	EXP DATE	SELECT CARD USING FOR PAYMENT
SIGNATURE	<input type="checkbox"/> VISA <input type="checkbox"/> M/C <input type="checkbox"/> DISCOVER <input type="checkbox"/> AMERICAN EXPRESS	
PAYMENT AMOUNT		

CALL: (855)722-9161  
 2165858501-1-33-25361326



285567760



Itschak Madar

THE CBE GROUP, INC.  
 Payment Processing Center  
 PO Box 2038  
 Waterloo, IA 50704-2038

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CBE Group Hit with FDCPA Class Action Over 'Collection Fee'](#)

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