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Our File No.: 113519

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

Adrian Pezzica, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Stephen Einstein & Associates, P.C.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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Adrian Pezzica, individually and on behalf of all others similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Stephen Einstein & Associates, P.C. (hereinafter referred to as “*Defendant*”), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

3. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

4. At all relevant times, Defendant conducted business within the State of New York.

PARTIES

5. Plaintiff Adrian Pezzica is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

7. On information and belief, Defendant Stephen Einstein & Associates, P.C., is a New York Professional Corporation with a principal place of business in New York County, New York.

8. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

9. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

10. Defendant alleges Plaintiff owes a debt (“the Debt”).

11. The Debt was primarily for personal, family or household purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

12. Sometime after the incurrence of the Debt, Plaintiff fell behind on payments owed.

13. Thereafter, at an exact time known only to Defendant, the Debt was assigned or otherwise transferred to Defendant for collection.

14. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated December 14, 2016. (“**Exhibit 1.**”)

15. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT

Violation of 15 U.S.C. § 1692f

Unlawful Fee

16. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

17. 15 U.S.C. § 1692f provides a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

18. §1692f(1) limits prohibits the collection of any amount, including any interest, fee, charge, or expense incidental to the debt, unless such amount is expressly authorized by the

agreement creating the debt or permitted by law.

19. Defendant's letter sets forth that Defendant charged Plaintiff a fee of \$244.00.

20. Such fee is neither expressly authorized by the agreement creating the debt, nor permitted by law

21. Such fee is prohibited by 15 U.S.C. § 1692f(1).

SECOND COUNT

Violation of 15 U.S.C. § 1692e
False Representation as to Unlawful Fee

22. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

23. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt.

24. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

25. § 1692e(2)(B) prohibits the false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

26. Defendant violated § 1692e by making a false representation that it is entitled to receive compensation for payment via a fee.

27. The least sophisticated consumer would likely be deceived by the fee into believing that Defendant was legally entitled to collect the fee.

28. The least sophisticated consumer would likely be deceived in a material way by Defendant's conduct.

29. Defendant violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

THIRD COUNT

Violation of 15 U.S.C. §§ 1692e and 1692g

30. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

31. The Letter sets forth a "Charge Off Balance" of \$5753.69.

32. The Letter sets forth "Charges or Fees" of \$244.00.

33. The Letter sets forth a “Total Balance Due” of \$5,997.69.

34. The Letter fails to set forth the source of the “Charges or Fees” that accrued on the Debt since charge-off.

35. The Letter fails to set forth the date that the “Charges or Fees” were added to the Debt.

36. The Letter fails to set forth whether additional “Charges or Fees” may be added to the Debt.

37. The Letter fails to set forth the amount of any such additional “Charges or Fees” that may be added to the Debt.

38. The Letter fails to set forth the date any such additional “Charges or Fees” may be added to the debt.

39. The Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

40. The Letter fails to provide information that would 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.

41. The Letter fails to provide an explanation, understandable by Plaintiff, of any “Charges or Fees” that may cause the “Total Balance Due” to further increase.

42. The Letter fails to provide an explanation, understandable by the least sophisticated consumer, of any “Charges or Fees” that may cause the “Total Balance Due” to further increase.

43. 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.

44. 15 U.S.C. § 1692g(a)(1) requires the written notice provide “the amount of the debt.”

45. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly from the perspective of the least sophisticated consumer.

46. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

47. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

48. 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.

49. 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.

50. 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.

51. 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.

52. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Letter.

53. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

54. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

55. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether “Charges or Fees” would continue to accrue, or whether the amount of the debt was static.

56. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

57. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

58. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

59. A collection letter violates 15 U.S.C. § 1692e if it can reasonably be read by the

least sophisticated consumer to have two or more meanings, one of which is inaccurate.

60. The Letter, because of the aforementioned failures, could reasonably be read by the least sophisticated consumer to mean that “Charges or Fees” were still accruing.

61. The Letter, because of the aforementioned failures, could reasonably be read by the least sophisticated consumer to mean that “Charges or Fees” were no longer accruing.

62. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the “Total Balance Due.”

63. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the “Total Balance Due” at any time after receipt of the Letter.

64. The Letter could also reasonably be read by the least sophisticated consumer to mean that the “Total Balance Due” was accurate only on the date of the Letter because of the continued accumulation of “Charges or Fees.”

65. Because the Letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive under 15 U.S.C. § 1692e.

66. For these reasons, Defendant violated 15 U.S.C. §§ 1692e and 1692g. *See Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

CLASS ALLEGATIONS

67. 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 including a fee, from one year before the date of this Complaint to the present.

68. This action seeks a finding that Defendant’s conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

69. Defendant regularly engages in debt collection.

70. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts including a fee.

71. Plaintiff’s claims are typical of the claims of the Class. Common questions of law

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or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

72. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

73. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under consumer protection laws.

JURY DEMAND

74. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiff as Class Representative of the Class, and Plaintiff's attorneys as Class Counsel; and
- c. Find that Defendant's actions violate the FDCPA; and
- d. Grant damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- e. Grant Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and

- f. Grant Plaintiff's costs; together with
- g. Such other relief that the Court determines is just and proper.

DATED: October 23, 2017

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December 14, 2016

* Admitted in N.Y. and N.J.

Adrian J Pezzica
8 Windsor Court
Coram NY 11727

RE: Debtor: Adrian J Pezzica
Creditor: Credit Acceptance Corporation
Original Creditor:
Account #: XXXX7152
Our Acct #: [REDACTED] 2.001

CHARGE OFF BALANCE:		\$	5753.69
POST-CHARGE OFF INTEREST:	\$	0.00	
CHARGES OR FEES:	\$	244.00	
LESS PAYMENTS/CREDITS	\$	0.00	
TOTAL BALANCE DUE:	\$	5997.69	

This office has been hired to collect the above-referenced account. Unless you notify this office within thirty days after receipt of this notice, that you dispute the validity of the debt, or any portion thereof, we will assume the debt to be valid. If you do notify this office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment, if any, and we will mail to you a copy of such verification or judgment. If the original creditor is different from the creditor named above, then upon your written request within thirty days after receipt of this notice we will provide you with the name and address of the original creditor. Please feel free to contact us at **1-800-280-6205**.

PLEASE MAKE ALL CHECKS OR MONEY ORDERS PAYABLE TO THE ORDER OF STEPHEN EINSTEIN & ASSOCIATES, P.C.

Sincerely,
The Law Office of Stephen Einstein & Associates, P.C.

THIS FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NY Man Sues Stephen Einstein & Associates Over Added Debt Collection Fees](#)
