

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
CIVIL DIVISION

ROBERT UPSON,	}	
ON BEHALF OF HIMSELF AND	}	
ALL OTHERS SIMILARLY SITUATED,	}	
	}	
Plaintiff,	}	Civil Action, File No.
v	}	
	}	
VITAL RECOVERY SERVICES, LLC,	}	
INCLINE FUND II, LTD, AND	}	
INCLINE FUND MANAGEMENT, LLC,	}	
	}	
Defendants.	}	

COMPLAINT

DEMAND FOR TRIAL BY JURY

Plaintiff, Robert Upson [hereinafter “Upson”] on behalf of himself and all others similarly situated, by and through his attorney, Mitchell L. Pashkin, Esq., complains of Defendants, Vital Recovery Services, LLC [hereinafter “VRS”], Incline Fund II, LTD [hereinafter “IFII”], and Incline Fund Management, LLC [hereinafter “IFM”], and alleges as follows:

1. This court has jurisdiction of this case pursuant to 15 U.S.C. § 1692k(d), 28 USCS § 1331, and/or pursuant to 28 USCS § 1332 (d)(2)(A).
2. Venue in this district is proper based on Defendants’ regular transaction of business within this district. Venue in this district also is proper based on VRS possessing a license from the New York City Department of Consumer Affairs to operate as a “Debt Collection Agency” in New York City which includes this district. Defendants also derive substantial revenue from services rendered in this district. The aforementioned transaction of business and

services includes but is not limited to the collection of debt from consumers who reside in this district.

3. Venue in this district also is proper in light of the occurrences which form the basis for this Complaint having occurred in whole or in part in this district.
4. Plaintiff demands a trial by jury pursuant to FRCP 38 (b).
5. Upson is a natural person who resides at 14 Greenwood Boulevard, Manorville, NY 11949.
6. Upson is a “consumer” as defined by 15 U.S.C. § 1692(a)(3) of the FDCPA.
7. On or about May 6, 2017, VRS, on behalf of IFII and IFM, sent Upson the letter annexed as Exhibit A. Upson received and read Exhibit A. For the reasons set forth below, Upson’s receipt and reading of Exhibit A deprived Upson of her rights to not be subject to abusive, deceptive, or misleading debt collection practices.
8. Per statements and references in Exhibit A, VRS, on behalf of IFII and IFM, sent Exhibit A to Upson in an attempt to collect a past due debt.
9. The past due debt set forth in Exhibit A was based on Plaintiff, as an individual, being issued a loan or line of credit from lending Club Corporation for his individual use, individually using the proceeds of the loan or using the line of credit to purchase goods for personal, family or household purposes. VRS, on behalf of IFII and IFM, via Exhibit A, attempted to collect this past due debt from Upson in his individual capacity; and Exhibit A did not refer to any kind of business associated with the account. Based on the above, the past due debt at issue arose out of a transaction used primarily for personal, family or household purposes, and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5).
10. VRS is a Georgia Domestic Limited Liability Company and a New York Foreign Limited Liability Company located in Tennessee.

11. Per § 20-490 of the New York City Administrative Code, any business that seeks to collect personal or household debts from New York City residents must have a Debt Collection Agency License from the New York City Department of Consumer Affairs. VRS possesses a license from the New York City Department of Consumer Affairs to operate as a “Debt Collection Agency”.
12. Based upon Exhibit A and upon VRS possessing a license from the New York City Department of Consumer Affairs to operate as a “Debt Collection Agency”, the principal purpose of VRS is the collection of debts using the instrumentalities of interstate commerce, including mails and telephone; and it regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another.
13. On Exhibit A, VRS sets forth that it is a debt collection agency attempting to collect a debt. Exhibit A contains disclosures required to be made by a “debt collector” under the FDCPA as part of a communication attempting to collect a ‘debt’ or in connection with the collection of a “debt”.
14. Based upon the allegations in the above three paragraphs, VRS is a “debt collector” as defined by 15 U.S.C. § 1692a(6) of the FDCPA.
15. IFII is a “debt collector” as defined by 15 U.S.C. § 1692a(6) of the FDCPA.
16. IFM is a “debt collector” as defined by 15 U.S.C. § 1692a(6) of the FDCPA.

FIRST CAUSE OF ACTION-CLASS CLAIM

17. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-16 of this Complaint.
18. Exhibit A is the written notice required under 15 USC § 1692g(a).

19. Exhibit A did not set forth the amount of the “debt”; and therefore Defendants violated 15 USC § 1692g(a)(1) by VRS, on behalf of IFII and IFM, sending Exhibit A to Upson.

SECOND CAUSE OF ACTION-CLASS CLAIM

20. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-16 of this Complaint.

21. Statements set forth in Exhibit A amounted to a false, deceptive or misleading means in connection with the collection of a debt in violation of 15 USC § 1692e, 15 USC § 1692e(2)(A), and 15 USC § 1692e(10) and/or a violation of 15 USC § 1692g(a)(1).

THIRD CAUSE OF ACTION-CLASS CLAIM

22. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-16 of this Complaint.

23. Exhibit A amounted to a false, deceptive or misleading means in connection with the collection of a debt in violation of 15 USC 1692e, 15 USC 1692e(2)(A), and 15 USC 1692e(10).

FOURTH CAUSE OF ACTION-CLASS CLAIM

24. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-16 of this Complaint.

25. Defendants violated 15 USC § 1692g(a)(1) by VRS, on behalf of IFII and IFM, sending Exhibit A to Upson.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of a class pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

27. The class consist of (a) all natural persons (b) who received a letter from VRS dated between May 6, 2017 and May 6, 2017 (c) to collect a past due consumer debt, (d) in a form materially identical or substantially similar to Exhibit A.
28. The class members are so numerous that joinder is impracticable. On information and belief, there are more than 50 members.
29. There are questions of law and fact common to the class members, which common questions predominate over any questions that affect only individual class members.
30. The predominant common question is whether Defendant's letters violate the FDCPA.
31. Plaintiff will fairly and adequately represent the interests of the class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases and class actions.
32. A class action is the superior means of adjudicating this dispute.
33. Individual cases are not economically feasible.

WHEREFORE, Plaintiff requests the following relief:

1. A Judgment against Defendants in favor of Plaintiff and the class members for statutory damages, and costs and attorney's fees; and
2. Any and all other relief deemed just and warranted by this court.

Dated: May 7, 2018

/s/

Mitchell L. Pashkin, Esq. (MLP-9016)
Attorney For Plaintiff
775 Park Avenue, Suite 255
Huntington, NY 11743
(631) 335-1107

Vital Recovery Services, LLC
 PO Box 923748
 Peachtree Corners, GA 300103748
 (888)297-4067

PO Box 923748
 Peachtree Corners, GA 300103748



Robert Upson
 14 GREENWOOD BLVD
 MANORVILLE, NY 11949-3108

ACCOUNT INFORMATION	
New Account #	018046446
Total Balance Due	\$6,761.47



VITAL RECOVERY SERVICES, LLC
 PO BOX 923747
 PEACHTREE COR., GA 300103747

Pay to

Amount Paid:

Home Phone: _____
 Daytime Phone: _____

May 6, 2017

Please Detach And Return in The Enclosed Envelope With Your Payment

**IMPORTANT NOTICE: PLEASE RESPOND
 YOUR LENDING CLUB ACCOUNT HAS BEEN PLACED WITH US FOR COLLECTION**

Dear Robert Upson:

Vital Recovery Services, LLC is now servicing the LOAN account noted to the right that is held by INCLINE FUND II, LTD. This account was serviced by Lending Club and they have placed it with us for collections.

Send your full payment with the coupon above or call us. We would like to discuss the matter with you.

As of the date of this letter, you owe \$6,761.47. Because of interest, late charges and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown to the right, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call (888)297-4067.

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

ACCOUNT SUMMARY
Original Creditor WebBank
Current Creditor INCLINE FUND II, LTD
New Account # 018046446
Original Account # 63978270
Last Payment Date 03/09/2017
Principal Amount Due \$6,555.74
Interest Due \$186.86
Misc. Fee Due \$18.87
Total Balance Due \$6,761.47

PAYMENT OPTIONS
 To make a payment online: https://pay.vitalrecovery.com Sign on using payment id: 01804644633
 For further information or to pay by phone, please call Vital Recovery Services, LLC at (888)297-4067 .
 Mail check or money order payable to Vital Recovery Services, LLC

NEW YORK CITY RESIDENTS: Kyle Sutter, Operations Manager, B: 678-578-1045.

New York City Department of Consumer Affairs License Number: 2047506-DCA

NEW YORK STATE RESIDENTS: 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.

This letter is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. This communication is from a debt collector.



BBB
 RATING:
A+

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three Debt Collectors Facing Suit in NY Over Alleged Failure to State Consumer's Debt Amount](#)
