CREDIT *where* CREDIT *is due*

Cashing Out On Your Credit Report Errors

ATTORNEY
DARREN ARONOW
&
ATTORNEY
EDWARD JAMISON

Dear BK Attorneys,

Contact Attorney Edward Jamison at **412-610-2785** to discuss getting free use of his software that helps you automate gathering the evidence needed to file these lawsuits

Sincerely,

Attorney Edward Jamison

Credit Where Credit is Due

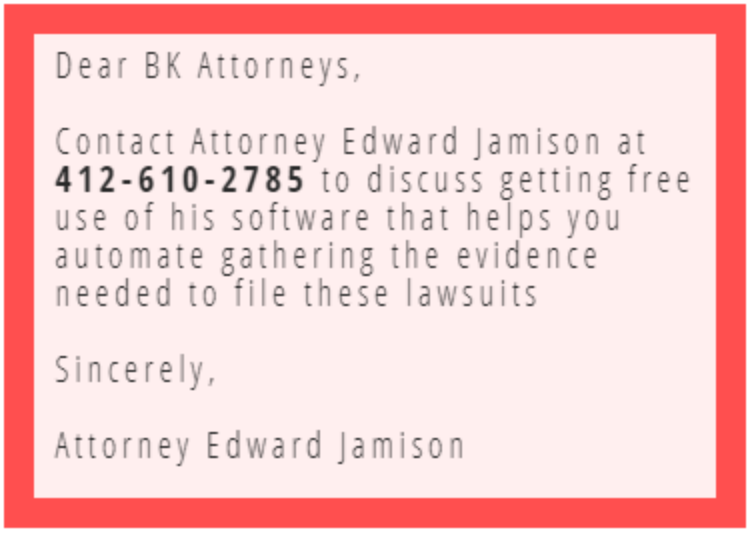
"Cashing out on your credit report errors"

By:

Attorney Darren Aronow
&
Attorney Edward Jamison

Disclosure:

This book has been authored with my personal experiences, knowledge and interpretation of case law and statutes in mind. However, in the ever changing area of consumer law, we see each state, judicial district and judge, often with some varying interpretations. Additionally, new case law is made daily from the United States Supreme Court and down to the local county courts; so the prudent advice would be to check your area for updated, accurate and relevant changes in case law. Some of the information may not be accurate and up to date at the time of publication if there have been changes in the laws, regulations and/or statutes, so check it out.



ISBN:
ISBN-13:

CONTENTS

1 – THIS BOOK'S PURPOSE

Our debt collectors and creditors play an end game of making a lot of money off of our hard times; so we must turn that premise around; send a strong message and make money off of them, when possible, by using the full extent of the federal laws. Our credit report is, in essence, our life history on the grid and walks us through everything we have ever done financially. Not unlike the circles of a tree that will tell you when there was a drought, a fire or lots of rain, our credit report will show, at least to one who is adapted in reading it properly, your entire life history including the good and the bad times. We can transcribe the report and see if you had a BMW or a Hyundai; if you always paid your mortgage on time, or if you were always late; if you had $1,000 dollars in lines of credit or $100,000; if you filed a bankruptcy; and much more. By reading between the lines, we can walk in our clients footprints and get a glimpse of their life.

The information in this book will change the lenses from which you view a credit report forever, here's why:

- What if I were to tell you that you can use a credit report in a number of ways to make money off yours and your client's creditors almost as simply as bringing a check to the bank and cashing it?
- What if I told you that you should not avoid, but look for the clients that have the most debt collection accounts; that complain of the most harassing phone calls; that are being swarmed by debts gone wild and that don't have two nickels to rub together?

Those clients will love you when you turn their anxiety and despair into excitement and enthusiasm by turning their world around; and show them how you can turn lead into gold. They will give you all the credit where credit is due; and that would be to you, their credit specialist that stands out from the other nationally named credit repair companies that do nothing to help their clients against these violations.

After you are done with this book, you will be adding up all the violations in your head as you scan through every credit report, telling clients how much money they will make during this process. Reading a credit report will never be the same and will open your eyes to an entirely new business model and your referral base will go through the roof. How many referrals do you think you will get when your clients say they have made money off their credit errors? Nothing will create massive referrals more than making your client's money.

2 - FDCPA - WHAT IS IT?

Fair Debt Collections Practice Act – What it is?

This is the federal law that was created to stop the relentless harassment by debt collectors against you. When a debt collector is calling all hours of the night; calling your employer multiple times; telling you they will sue you; telling you that you will go to jail or get sued; these are the regulations that will bring you some peace and justice against those perpetrators. But first, a few things must be in order before knowing if it is a FDCPA claim.

1. Plaintiff is a consumer. If it is a business or commercial debt, then it doesn't apply here.

2. The potential FDCPA violation is less then one (1) year old as statute of limitations would have expired.

3. The creditor is a debt collector and not the original creditor

What is a debt collector?

- Being a debt collector means that the creditor got the debt AFTER it went into default. EX: I have a mortgage with Chase. I go into default and then it is sold or service released to Seterus. Seterus, whether they own or just service the loan, are now considered a debt collector.

- The law firm representing the bank in a foreclosure is a debt collector.

- The student loan servicing company, if they got the loan after it went to default, is also a debt collector.

    - Generally, debt collection companies or debt buyers are considered debt collector and are regulated under the FDCPA, but the originating lender, such as Capital One, Santander, etc. is not a debt collector.

    - Any and all debt collection law firms, whether it be a foreclosure firm, student loan collection firm, credit card collection firm, automobile repossession, utilities, tax debts, etc.; are ALL currently considered debt collectors pursuant to the statute.

4. The debt arises out of a transaction that was for personal purposes (which is just about all purposes if it wasn't for a business purpose). However, if for example, your credit card was a business credit card that you used to purchase business equipment, then that is not for personal purposes and may not fall under the protection of the statute for FDCPA.

5. The damages pursuant to federal statute is up to $1,000.00 in statutory damages and the legal fees. Almost universally, in settling a FDCPA case, it is assumed that the consumer is going to receive the full statutory damage amount. Additionally, the lawyer will have incurred filing fees, service of process fees, and the time that he/she put into the drafting of the complaint, reviewing documents, sometimes appearing in court and even trial, although that is rare; for which they will get all the money for their time in legal fees back for a successful settlement or litigation of the case. There are plenty of cases where the consumer received the $1,000 statutory damages and the lawyer received tens of thousands in legal fees for the successful litigation of the case.

6. The creditor violated one of the provisions of the FDCPA

What are the most common FDCPA violations to look out for in

There are various FDCPA violations, such as harassing letters and phone calls directly to you, family, employer, friends, etc. but we are going to focus on the credit report. You want to keep ALL of the correspondences that the client has received (including the envelopes because of the post mark dates). And you will want to compare each collection letter against the information in the credit report. The credit report is the modern day map that will deliver you step by step to the buried treasure. And you will find that the treasure is still buried there, waiting to be uncovered by you.

The credit report says “collections”, “debt collector”, “charge-off”, etc. so it pretty much tells you the current status of the debt. All you have to do is to do what most do not; that is, to use the power of observation. Now you can look at a document on its surface from the perspective of a debtor, without all your preconceived notions like:

- Generally, the banks & debt collectors are correct (not true)
- Generally, the banks & debt collectors are accurate (not true)

Accurate? If you really believe the banks and debt collectors are accurate, then you will not often catch these violations. If you do however believe that they are businesses that ONLY see a financial bottom line and their own concerted efforts to meet their own financial agenda, then you are going to do very well with this information. You are smart enough to think for

yourself and I am far from a conspiracy theorist; however, once you start looking at credit reports through different and darker lenses, you will see that it is not what you may have previously thought.

How do we find violations on credit reports?

FDCPA violations are all over the credit reports and are easily found. Wouldn't your client love to hear how as a credit repair company, you are going to make them money? That they may make as much, if not more, then what it cost them to fix their credit? Well you absolutely can do that by understanding how to read the credit while thinking of these consumer laws. Let's list some of the easier FDCPA claims that you see on credit and we will circle back around to them again.

1. The debt collector reports twice on credit
   Reporting twice means that the debt collector is reporting incorrectly for the debt that is owed, and which is essentially saying that you owe more than you really owe. If the debt shows twice, then one of the entries is incorrect and it reports as if you owe twice as much as you do. This is a violation of the FDCPA. So regardless of whether they fix it when you send a notice to the Credit Reporting Agency's (CRA's), it is still a violation for which you should be collecting money through litigation.

2. The debt collector is re aging the debt
   Reporting debt that has the incorrect open date is called "re-aging". Often the debt collectors put in the date that they received the file, but by showing that as the open date, it hurts your credit by making the debt appear as if it is more recent debt. Ex: I have a credit card default from 2013

and it was sent to a debt collector in 2016, and shows an open date of 2016. This old debt that is near to coming off of the credit report appears to be recent debt whereby damaging your credit score. Furthermore, it may also be past the statute of limitations, which is also a separate violation. That means that the debt may only be collectible for a certain amount of years defined by your state statute of limitations laws. Ex: New York State law says a debt is no longer actionable by lawsuit after 6 years from default. NYS requires that the debt collector tell you that the statute of limitations has expired. If they do not notify you that the statute of limitations has expired and/or if they put the incorrect date and re age the debt, then that is a deceptive means of collecting by getting to the consumer through the abuse of the consumer's credit report.

3. <u>The debt collector has a different amount due on the invoice or judgment than the credit report.</u>

Differing amounts are possible violations of the FDCPA for which the creditor is liable and will ultimately pay. Often the debt collector adds money to the debts for additional interest or additional collection fees. If they add money that was not part of the initial written contract or part of the court's judgment, then it is a violation. The debt collectors often add varying fees, whether they are collection fees, legal fees, extra interest, or any other fees. The issue is that they are not allowed to arbitrarily decide this and you would have had to agree to those terms when you first took the debt, and without that initial acceptance of those fees, then we have a FDCPA violation. If there is NO written agreement, then they cannot add fees for collections, legal, etc.

It is very common to find the debt collector reporting on

credit different then the creditors invoice or from the judgment amount. Remember, that the judgment has to also allow for interest or legal fees, etc., so when you see a judgment, you should read the judgment and do the math. The debt collectors tend to round up,,,, way up!

So, when we are looking for violations on our credit report, we often find lower amounts reporting rather than higher amounts. It seems simple that the higher amounts are “wrong” and deceptive, but what about when it is a lesser amount? Is there really a harm to report less money then you truly owe? There are different ways to view this concern; as an attorney and then as the consumer directly. As an attorney, we look at it through the lens that if I were standing in front of a judge, how would that play out. I would have to argue to the judge that, “Your Honor, we find it egregious that we really owe $500 and they say I owe $300 and we want justice”. lol. So, although it kind of sounds ridiculous, that is really what we are suggesting. However, it is the web we weave in court and if we lay our foundation properly, then it is just as damaging to show more money than less.

The standards of reporting include “accurate” as well as “honest”. When the credit report is inaccurate, even though it is technically in our favor, it is still incorrect. It is also true, that if an attorney were standing in front of a judge making this argument, it certainly would be an uphill battle. But, it is still incorrect reporting. How can you budget your finances with incorrect amounts? If you were getting a mortgage or a car, wouldn’t that creditor want to know your real and accurate debt load? If the creditor is wrong about the debt amount, arguably the most important data for both the consumer and the

creditor, then what else are they wrong about? If they are wrong with your account, how many other consumer accounts are they wrong about? A good attorney will turn this minor error into a full-on attack against the creditor for intentional misreporting with deceptive pattern and practice. Think about it, if the consumer wanted to pay off the debt in full and went off their credit report and sent the $300 with the expectations that it is paid in full, the creditor would not say, “I’m sorry and we will accept your payment as paid in full”, but rather they would say, “thanks, but don't forget the balance of $200”. The creditor will ultimately not accept the lesser amount as full payment, therefore, it is my opinion that it is deceptive in nature and still potentially worth suing.

4. The debt collector has any inconsistent or incorrect information on the credit report.

   Differing information are violations. As a catch all, any deceptive means to collect is a violation under FDCPA, and as an attorney we can properly “structure” the argument and the accompanying allegation. The debt collectors tend to be sloppy in their reporting because this is still simply a business that is prone to mistakes. And the bigger and more egregious violations are often with the smaller debts because the debt collection companies working on small debts are generally using less qualified persons as the debt collector agents. When one credit reporting agency has information different from the other two, then the debt collector is reporting wrong to at least one of them, therefore it is a violation of the FDCPA.

5. The debt collector is reporting debt that was already paid, settled or discharged in bankruptcy, therefore the legal status

of the debt is wrong and is therefore a violation under the FDCPA.

In the bankruptcy world, the consumers (called "debtors") are entitled to their fresh financial start after discharge. That is the catch phrase throughout the bankruptcy world, but after discharge, the consumer is entitled to be free of any creditors pursuing them in any shape or form. When we look at the credit reports post-bankruptcy reporting, we are looking for a wide variety of incorrect reporting. It will say something similar to "discharge in bankruptcy", or maybe simply, "Chapter 7 bankruptcy", but they all have minor variations in the verbiage. As long as it gets the point that the consumer filed bankruptcy and was discharged, that's all we really need.

Now after our discharge, the fun starts by following the bouncing ball and post-bankruptcy discharged debt is actually a business in which some creditors actively sell this debt. And then other creditors simply make lots of errors because their systems are not very good in tracking the bankruptcy. The bankruptcy code is very specific:

11 U.S.C. 524: says that a discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor.

To say it even more simply, and based on case law in your district, the act of collecting is everything from sending an email invoice, calling to collect, sending a monthly invoice or reporting on your credit incorrectly. Once the consumer receives their discharge, there is NO reporting that is alright. However, first, we always want to ask the client to make sure

> the creditor was given proper notice of the bankruptcy filing. If the attorney filing was mistaken and did not include the creditor in the bankruptcy petition, then we already have a problem to overcome. Now just about every major creditor in the country has software that will notify them that you filed bankruptcy. So, for example, if your attorney forgot to include American Express in the bankruptcy petition, I promise you

that once you file, your American Express card will be discontinued because they will have been made aware of your bankruptcy filing. However, smaller creditors and debt collectors may not have the technology for automated notification unless they are given proper notice in the bankruptcy petition; thereby they would have received notice from the federal court clerk. Additionally, if a creditor, even a major creditor was missed, my suggestion would be to send them a letter and a copy of your discharge receipt so that they have received it and if they pursue you later, you have the records that they now have been put on notice of the bankruptcy discharge. Alternatively, you can also reopen your bankruptcy case and add the creditor, however, most attorneys will charge you a fair amount of money for that service and it may not be necessary in some districts. Additionally, discharge violation lawsuits can be filed directly against the creditor and don't have to be through a debt collector like a FDCPA case.

Once we know the creditor was given proper notice of your bankruptcy discharge; and has still reported on your credit report; now we are ready to go on the offensive. There is no grace period in which the creditor has any time to misreport on your credit, therefore since the creditor knew of the bankruptcy and was supposed to stop reporting when you initially filed, then any communications during the bankruptcy would have been an automatic stay violation which is just as bad as the discharge

violation. Therefore, the day after we are discharged, any reporting is a violation. Now, although any contact is considered a discharge violation, the worse that violation is, the higher the damage award or the settlement would potentially be. Additionally, there is no statute of limitations on discharge violations against a debtor, so even if this violation is discovered years later, there still is a case.

The most common post-bankruptcy discharge violations to watch out for are:

- soft inquiries – unauthorized and impermissible credit pulls by the creditors and/or debt collectors
- a new “open date” for the debt, making it seem as if it is newer debt
- continued late reporting without notating the bankruptcy discharge
- re reporting discharged debt

Once you see any of these or other violations, the next question is if there are any actual damages? Did you get credit at a higher interest rate for a car, credit card, or anything else? The discharge is an order signed by a federal bankruptcy judge that says all your unsecured debts are discharged and you are no longer personally liable for those debts. Judges do not like when creditors ignore their order and continue to pursue the consumers in any form. Even a soft pull, although it seems relatively harmless, the real question is what right or reason would they have for looking at your credit if you do not owe them any money anymore? It is analogous to a creditor randomly looking at any person's credit report without a valid reason. That would be considered an egregious act in violation of the bankruptcy discharge violation, as well as an invasion of privacy.

HINT: In some states, the state invasion of privacy laws are extremely strong and should be added to your lawsuit to settle for even higher amounts.

BONUS: The debt buyer law firms fall under the category as "debt collector" so when we have violations perpetrated by them then we have two defendants and therefore, potentially twice the money.

Once we have established a violation, then we normally send a letter to the creditor/debt collector directly and to the CRA's direct so that we can set up the lawsuit. If the CRA's and the creditor correct their error, then we still have the discharge violation. However, if they do not, then we may ALSO have a FCRA violation against the creditor and the CRA's, as well as a FDCPA violation if the creditor was a debt collector.

6. <u>If it is a debt collector and after bankruptcy, then you have a FDCPA and a discharge violation together.</u>

The fact that it is on your credit, you will want to write a letter to the debt collector (furnisher) and to all of the CRA's, requesting that they correct the entry, and if they do not correct your credit report, then you also have a FCRA violation, creating the trifecta. The process of disputing the debt with the CRA's; will make the CRA send a request to the furnisher, asking for confirmation that the debt is accurate. Either the furnisher will confirm that the entry is in fact wrong and the CRA's will then correct the entry on your credit report, or they will confirm that the request is wrong and the debt should remain as reported. Often they will respond to the furnisher that it is in fact correct; in which case your clients case, just grew.

7. <u>Inquiries after Bankruptcy</u>

If you also find a credit <u>i</u>nquiry soft pull after bankruptcy and <u>f</u>rom a debt collector, then you have a FDCPA violation and a discharge

violation; since a debt collector (or a direct creditor) has no purpose other than for deceptive means, to take a peek at your credit report after a bankruptcy discharge. You also have your discharge violation against the creditor, even if they are the originating creditor and not a debt collector, as discharge violations are not limited to just debt collectors.

With any of these violations, once you identify the violation, you will then want to establish the damages for the FDCPA and for the discharge violation. You know you have a lawsuit that will pay, with the only question being how much will you get? However, by sending the letters to the CRA's and the creditor, then you may establish the additional FCRA violation; adding what's called an "impermissible pull" if the CRA's actually confirm that the soft pull was justified. So you potentially take a case with one defendant, to a case with potentially the debt collector, the originating creditor and all 3 CRA's; making a case with 5 defendants and a potential five figure settlement case. Not a bad case!

8. Loan modification / Mortgage servicer:

How often has your client received a loan modification from their mortgage servicer/lender? They often re amortize the arrears into the loan balance. What we commonly see is that the credit report will show the old balance and not the new balance. Often, there is also a balloon payment that is not reflected properly on the total principal amount due in the credit report. So you should ask for a copy of their loan modification agreement and do the math to see if it is reporting properly. This is a simple FDCPA violation as long as the servicer, became the servicer after the loan went into default. That makes the servicer considered a debt collector and liable

under FDCPA.

a. Check your credit report and see when they started reporting the balance to be current. If they are still reporting that the balance is late, then we also have a FDCPA violation.

b. Check your credit report and see what the monthly payment is showing as; and again, if they are not reporting the proper monthly payment amount then we have a FDCPA violation for which your client can get paid.

BONUS – Within these fact patterns for loan modifications, there are also RESPA, TILA, FCRA violations and possibly more. They can be fairly advanced for consumer attorneys but as the credit specialist, if you know what to keep an eye open for, then you can drive your client to the right attorney that can turn despair and frustration into hope.

How do we resolve it?

FDCPA lawsuits come with what's called statutory damages of up to $1,000 per lawsuit. That means you don't even have to prove that the violation caused you damages in order to get a damage award. However, even if there were 3 violations from the same debt collector, the lawsuit would only be for $1,000 statutory damages (it would be frowned upon by the judicial system to file multiple cases against the same debt collector deriving from the same actions), as FDCPA damages are not stackable. The statute requires the debt collector to pay $1,000 to the debtor and to pay their legal fees; so these cases are great attorney cases. Filing a federal FDCPA lawsuit, will generally settle in about 30 to 45 days since they are low dollar amount cases and is not worth the cost of the opposition attorneys to litigate it. This means that the debt

collectors prefer to pay out quickly rather than to report to their insurance company or to pay their attorneys to fight it. It is simply the cost of doing business for most of them. However, if your case is fluff, then don't be surprised if they do fight it and win. You still want to make sure you have "real" cases to file; but it is possible to have $1,000 in damages and tens of thousands in legal fees that the debt collector has to pay.

Often FDCPA may go hand in hand with other violations as well, so watch closely for the next publication with a working title of "Remember That Credit is Money: Advanced Credit Repair" for the advanced consumer law violations edition dealing also with:

Fair and Accurate Credit Transactions Act

Fair Credit Reporting Act

Electronic Funds Transfer Act

Fair Credit Billing Act

Telephone Consumer Protection Act

And More

BONUS: When you settle a debt or get a judgment in your favor; file a dispute with the CRA's with a copy of the judgment. The likelihood is that it will be declined by the CRA's and create a FDCPA and FCRA violation because the left and right hands do not know what each other are doing. So for example, I settled a student loan at around 10% of the face amount in state court. I noticed that the creditor never told the CRA's that the debt was satisfied so their credit report still showed the full amount due, so I sent a letter to the CRA's with a copy of the satisfaction and they disregarded it because when the CRA sent a request to the debt collector, they affirmed the full amount due. Another violation to sue them for!

3 - FDCPA CHEAT SHEET

FDCPA	***DEFINITIONS***
1692 (a)(1)	Bureau - the Bureau of Consumer Financial Protection
1692 (a)(2)	Communication - convey information regarding debt directly or indirectly to any person through any medium
1692 (a)(3)	Consumer - any natural person obligated or allegedly obligated to pay any debt
1692 (a)(4)	Creditor - any person who offers or extends credit creating a debt but not if he receives an assignment or transfer of a debt in default
1692 (a)(5)	Debt- obligation is primarily for personal, family or household purpose
1692 (a)(6)	Debt Collector- is collectors, collection agencies, lawyers and forms writers

	ACQUISITION OF LOCATION INFORMATION BY DEBT COLLECTORS
1692b	Any debt collector communicating with other then the creditor for purpose of locating creditor shall:
1692 b (1)	Identify himself; state he is confirming location information & if requested, identify his employer
1692 b (2)	NOT state that the consumer owes any debt
1692 b (3)	NOT call more then once unless by request or if debt collector believes the information was wrong & now would be correct
1692 b (4)	NOT communicate by postcard
1692 b (5)	NOT use any language or symbols on the envelope that indicates debt collection
1692 b (6)	After debt collector knows the consumer is represented by an attorney, NOT communicate unless the attorney is non-responsive

	COMMUNICATION IN CONNECTION WITH DEBT COLLECTION
1692 c (a)	Without prior consumer consent given directly to the debt collector, the debt collector cannot communicate
1692 c(a)(1)	No communication at an unusual time or known to be inconvenient & between 8am to 9pm
1692 c(a)(2)	If the debt collector knows the consumer is represented by an attorney
1692 c(a)(3)	Cannot harass at place of employment
1692 (c)(b)	Without EXPRESS consent, debt collecotr cannot communicate with a 3rd party
1692 (c)(c)	If consumer notified the debt collector in writing that they refuse to pay or that the DC should cease comm, then DC must stop except:
1692(c)(c)(1)	To advise consumer that debt collector will no longer try collecting
1692(c)(c)(2)	To notify consumer that they will start a specific remedy
1692(c)(c)(3)	To notify consumer that they will start a lawsuit or other specific remedy
1692 (c)(d)	Definition of consumer includes spouse, parent, guardian, executor or administrator

	HARASSMENT OR ABUSE
1692 d	Debt collectormay not engage in any conduct the natural consequence of which is to harass, oppress or abuse
1692 (d)(1)	Threaten violence or other criminal means to harm person, reputation or property
1692 (d)(2)	Use of obscene or profane language intended to abuse the hearer or reader
1692 (d)(3)	Publication of list of consumers
1692 (d)(4)	Advertisement for sale of debt to try to coerce payment of that debt
1692 (d)(5)	Cause phone to ring repeatedly with intent to annoy, abuse or harass any person at the called number
1692 (d)(6)	The placement of phone calls without meaningful disclosure of the callers identity

	FALSE OR MISLEADING REPRESENTATIONS IN COMMUNICATIONS
1692 e	Debt collector may not use false, deceptive or misleading representation or means in the collection of a debt
1692 (e)(1)	False representation or implication that debt collector is affiliated with U.S. or state include use of badge or uniform
1692 (e)(2)(a)	False representation of the character, amount or legal status of any debt; or
1692 (e)(2)(b)	False representation of any services rendered or compensation which may be lawfully received by a debt collector
1692 (e)(3)	False representation or implication tha an individual is an attorney or that the communication is from an attorney
1692 (e)(4)	Represent that non payment will result in arrest or seizure/garnish/sale of property unless it is lawful & DC intends to do it
1692 (e)(5)	Threat to take any action that cannot legally be taken or that is not intended to be taken
1692 (e)(6)	False representaion or implication that a sale or transfer of any interest in a debt shall cause the consumer to:
1692 (e)(6)(A)	Lose any claim or defense to payment of the debt; OR
1692 (e)(6)(B)	Become subject to any practice prohibited by this
1692 (e)(7)	False representation or implication that a crime, or other conduct, has been committed, in order to disgrace
1692 (e)(8)	Communicating or threatening to communicate credit info which is false, including failure to communicate that a debt is disputed
1692 (e)(9)	Use or distribution of any written communicate which simulates or falsely represent a court document (or gov't agency)

1692 (e)(10)	Use of false representations or deceptive means to attempt to collect any debt or to obtain information concerning a consumer
1692 (e)(11)	Failure to disclose in initial written or oral communication, that DC is attempting to collect a debt & that info is for that purpose
1692 (e)(12)	False representation that accounts have been turned over to innocent purchasers for value
1692 (e)(13)	False representation that documents are legal process
1692 (e)(14)	Use of any business, company or organization name other than the true name of the DC
1692 (e)(15)	False representation that documents are not legal process or do not require action by the consumer
1692 (e)(16)	False representation that DC operates or is employed by a Credit Reporting Agency

	UNFAIR PRACTICES
1692 (f)	Debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt
1692 (f)(1)	Collecting any amount (include interest, fees etc), unless fees are expressly authorized by the original agreement or permitted by law
1692 (f)(2)	Acceptance by a DC of a post dated ceck by more then 5 days unless DC notifies in writing the intent to deposit
1692 (f)(3)	Solicitation by DC of post dated check for purpose of threatening criminal prosecution
1692 (f)(4)	Depositing a post dated check prior to date on check
1692 (f)(5)	Causing charges to be made to consumer for communication such as collect calls, etc
1692 (f)(6)	Threatening to take any non judicial action to effect dispossession of property IF:

	FURNISHING CERTAIN DECEPTIVE FORMS
1692 (j)(a)	someone other then creditor is attempting to collect the debt
1692 (j)(b)	Anyone violating this section is subject to violations
	CIVIL LIABILITY / DAMAGES
1692 (k)(a)	Liable for:
1692 (k)(a)(1)	Actual damages
1692 (k)(a)(2)(A)	Up to $1,000
1692(k)(a)(2)(B)	For class action
1692(k)(a)(3)	Costs of the action, together with reasonable attorneys fees

4 - BANKRUPTCY

You should all be soliciting local lawyers for credit repair after bankruptcy. Why? Because you create that relationship with them for credit repair and then when the creditors/debt collectors start to report again on the client's credit report, then you send it right back to the lawyer with a pretty pink bow wrapped around the discharge violation. Lawyers generally do not want to talk to old clients because they feel it will not make them money so then why bother talking to them. I can't tell you how many clients' send me emails or leave me messages saying that something is reporting on their credit and they are mad at me because I said everything should show "discharged in bankruptcy". As an attorney, I used to just want to ignore the client; but why? Because who wants to work on a file that you already got paid for? You want to work on the new files that you can still make money from. But what if you knew that you could make more money on your old clients then you could on your new clients? You are benefiting them by becoming their client liaison to help get their credit up; and then if they are hit with the creditors coming back and re-reporting, then they have new lawsuits. You land up getting more credit repair business; the lawyer gets more money from clients that he/she would have never bothered with; and the client gets money to reimburse themselves for the credit repair. And if that attorney doesn't want to engage in this type of consumer law practice, they will at least be happy that they are not fielding calls from that client anymore (which will be their loss) and they have an outlet to send those clients.

After the credit repair, EVERY bankruptcy client should be enrolled in credit monitoring because when they re-report, it will get caught immediately. For example: There is a case in the Southern District of New York, in which Chase was caught intentionally selling bankrupt credit card debt to debt buyers. Seems crazy? No, this happens every day because banks know they can sell this debt and very few consumers will do anything about it; but you must open your eyes to see it. Have your clients invest into the monthly credit monitoring and watch the cases start coming in. Whether it be the intentional sale of bankruptcy debt or the unintentional mistakes by the debt collectors poor business practice, either way becomes your windfall.

Automatic Stay violation:

Section 362 of the United States Bankruptcy Code is the automatic stay violation which basically means that during the bankruptcy, ALL creditors, secured and unsecured, must cease collections and communications with the debtor. We see all kinds of violations during the bankruptcy that starts with monitoring the credit report so that we can identify these issues as they arise. These violations are not quite the "norm" on every case but are much more frequent than you may think. I would say that I see at least 2 out of 10 cases with automatic stay violations.

When we have an automatic stay violation during a Chapter 7 bankruptcy, many attorneys figure that the creditor will catch on eventually and rectify the error, or do nothing, in which the attorney will tell the client, "not to worry because the debt is being discharged anyway". However, the attorneys are not looking at the "credit scoring" aspect, nor is the client considering the same at this point in time. However, the attorney should know better and has a duty to help the client to get the goal that was set out to be

accomplished from the start, which is to wipe out the debt and get a fresh financial start. But as a credit specialist, we have to look at repairing their credit afterwards as well as protecting the clients from their own creditors during the bankruptcy process. Since most typical chapter 7 bankruptcies are done in 90 days, it is imperative that we monitor the credit regularly during the bankruptcy so that if something is found, the lawsuit against the creditor can be filed with the bankruptcy court immediately.

In Chapter 7 bankruptcy, we generally find that the vast majority of the creditors will be willing to settle early on. The damages are not decided by the Bankruptcy Code but rather by case law and by your judge, unless it settles more often then not. Most districts that I know of require the attorney fees to be paid by the creditor/debt collector; even if the actual damages are nominal. The rationale behind that is that even if there are no real and actual damages; if the punishment did not include at least the legal fees, then no attorneys would ever represent debtors and take these cases, thus there would be no checks and balances for the creditors. However, it is not appreciated by the judges that creditors not follow the automatic stay, so again, they do tend to settle quickly.

On some occasions, we see when clients had automatic withdrawal set up with the creditor, that many of those lenders do not disengage the withdrawal, and now you have them wrongly taking money every month. Whenever possible, we try to “stack” our claims so that if we lose one, we have one or two more cause of actions. Fortunately, there is an overlap with these consumer laws and the creditors are very helpful in giving us the violations we need to go after. In these cases, we have actual damages for our lawsuit, which is the money they wrongfully took out of the clients bank account. Stack the EFTA along with the auto stay violation and the case is growing nicely! If it was a debt collector and not a

direct creditor, then you may also have a FDCPA violation.

HINT: Once there is a wrongful electronic withdrawal of funds, then we have an EFTA (Electronic Funds Transfer Act) violation which additionally includes up to a $1,000 statutory damage claim and the reasonable attorney fees and costs. If you did not settle your case, then the bankruptcy judge would award damages in a trial, and the reasonable legal fees and costs.

However, during a Chapter 13 bankruptcy, this is a repayment of your secured and/or unsecured creditors, which takes from 3 to 5 years, and the credit should be monitored just as regularly. Firstly, the violations found, can often help fund the payments of the debt to the trustee so that the client can finish with their bankruptcy that much faster. Secondly, the creditors have no right to monitor your credit during the bankruptcy, which as I said, is a very frequent occurrence. During the Chapter 13, the creditors have to file proof of claims to show proof that they are the rightful owner of the debt; how much they believe they are entitled to get paid; when the debt originated; when the debt was charged off; etc. The proof of claim is the only way a creditor gets paid, but if that creditor is a debt collector, and the credit report is different in the aforementioned information, then you will find yourself catching an abundance of FDCPA violations. Imagine if your client was thanking you for all the money they made during their bankruptcy? If you work with your client's bankruptcy attorney, not only would you be supplying him/her with a valuable resource to create legal fee revenue, but you would be supplying your client with valuable money-making resources to assist in paying off their Chapter 13 early.

> During the 3 to 5 years of the Chapter 13 bankruptcy, the credit report will say simply “included in bankruptcy” or maybe just “Chapter 13 bankruptcy” but you will be watching

for the creditors to report a myriad of errors on the credit report. Additionally, when you find the creditors checking your clients credit, then you should find yourself getting your case started. The automatic stay stops the creditors from reporting anything on credit whether it be good or bad, there is no reporting on credit during the bankruptcy.

Generally, the credit reporting agencies interface with most creditors through a software system known as e-Oscar. That is the “Online Solution for Complete and Accurate Reporting”. The short of it is that when you send a dispute to the credit reporting agency, they will send out an inquiry to the creditor through this interface. The creditor will do some “research” and respond back to the credit reporting agencies through e-Oscar. There are no phone calls or anything, just simply an inquiry with potential for human error, which is what creates all these lawsuits because they are making mistakes from both the credit reporting agencies and the creditors directly.

In the cases where we find the creditor sending multiple letters, emails, phone calls, the creditor creates what’s called “pattern and practice”. In most jurisdictions, the courts will award damages to the debtor and award reasonable legal fees, but when there is pattern and practice, the judges may also award punitive damages as a “punishment” against the creditor which can lead to a windfall of more money.

The credit report will often show “soft inquiries”, where the creditors are peaking behind the curtains to take a look at the credit of the debtor. This is clearly a violation of the automatic stay, which raises the question as to what is the policy and procedure of

the creditor that they are making illegal credit inquiries during a bankruptcy. When you raise this issue, the creditor will not want to explain to a federal bankruptcy judge as to why they are pulling the credit of a debtor in bankruptcy and more importantly, how often do they commit this practice and with how many consumers?

Often, we find that some creditors just "miss" the bankruptcy all together and never adjust in their computer system, thus continue sending invoices and email invoices to the debtor during the bankruptcy. When you see current payments or late payments on the credit report, then this is a flag that something is going wrong. Furthermore, the late payment itself is an automatic stay violation but any activity on the credit report is a flag that they are not reporting properly.

Discharge violation

Section 524 (a)(2) of the United States Bankruptcy Code is the discharge of all of your unsecured debts, the liability of your secured debts, etc. So when the creditor makes an attempt to collect on these debts, it is known as a "discharge violation" for which we can sue and get money damages. There are no statutory damages in the bankruptcy code, but generally, the case law allows for the legal fees to be paid and then the damages will be decided by the judge if the case does not settle. This helps to push most creditors to offer a quick settlement, as explaining these violations to the judge is normally not in the best interest of the creditors, especially if they are knowingly repeat offenders.

During and after the completion of a Chapter 7 or a Chapter 13 bankruptcy, it is imperative to monitor your credit closely. For years, you must be concerned with the recycling of your discharged debt as the debt buyers sell discharged debt; sometimes intentionally and sometimes by mistake. But regardless of why, they create discharge violations that will go hand in hand with

FDCPA, FCRA and other consumer law violations.

What is it?

Many of the debt collectors/creditors will never actually manually remove your debt from their system so that you are not contacted again. We find that most of these "manual errors" are by credit unions and smaller type organizations who may have substandard software detection systems and who seemingly do not have the software that would help curb this behavior. So they will chase you during and after the bankruptcy ends, when you are supposed to be free from all of your creditors contacts, calls, letters, etc. but instead, it's like ground hog day and it starts all over again.

They do not remove you from their system because they would rather keep your information in their computer system and solicit you again when you are done with your bankruptcy. They do this knowing the number of attorneys that sue is nominal so it's a risk reward analysis. So maybe it's time for you to make them start to regret it.

The debt collector's/creditors computer software is not as advanced as many people would imagine, and many creditors have these unscrupulous policies because who sues them? Regardless of whether the mistake is intentional or unintentional, as credit repair specialists, you owe it to your clients to have answers they need and want. There is nothing more frustrating than filing a bankruptcy; having a creditor/debt collector harass the consumer; and not even the attorney has a viable solution for them.

Chapter 7 and Chapter 13

How do we find it?

Many credit reports will show credit inquiries by creditors who

have been discharged in bankruptcy. This is the pre-text to the impermissible credit pull case under the FCRA case and is also a FDCPA claim if they were a debt collector. Often the debt gets back into circulation in several ways. One of those, is that some of the banks in the past have knowingly sold bankrupted debts to debt buyers so that they can make money on it even though it is discharged. The epitome of corporate greed. Other creditors just do not have suitable systems of checks and balances so they end up continuing to pursue the debt after bankruptcy. After bankruptcy, you should always start checking the credit within 3 to 6 months afterwards to see what is going to show up.

BONUS TOP TEN DISCHARGE VIOLATIONS:

There are too many scenarios to go through every possible discharge violation, but let's go through the Top Ten most common that I see in my law practice. Since virtually none of our clients will actively watch their credit reporting without us telling them to, we usually only find out after it has been sitting on their credit for a while and building up the "damage". Often, they only find out when they are looking to buy a new home, refinance their home, lease a car, etc. But unfortunately, at this point, the client is now rushed to fix the problem, often will simply pay a credit repair company just to make it go away and we are fixing these issues "after the fact". There is nothing wrong with that, but the violations often go unchecked, which is why the creditors will continue. Nobody does anything about it.

1. When refinancing or purchasing a property, we find out about the discharge violation from the new mortgage banker/broker who finds a discharged debt reported with an outstanding balance. Usually, the client pays it, even though they should not, because they need the purchase

or refinance to get approved. There is no statute of limitations for the discharge violation, so we can sue after it has been paid which makes the damages portion of the lawsuit, very clear. Or we can sue beforehand, fix it rather quickly and everyone will make some money as well.

2. When refinancing or purchasing a property, we find out about the discharge violation from the new mortgage banker/broker who finds a discharged debt reporting as a "charge off" or "account closed by grantor". Often the loan officer will suggest to the consumer to pay it so that they can finish their mortgage transaction. The simple truth is that most brokers/bankers don't know the proper advice to give to the consumer, so they tell then what seems to make the most sense to them in order to finish the transaction. This discharge violation can easily be fixed quickly without paying anything and will make everyone money as well.

4. The consumer is contacted by phone and/or mail by a debt buyer or the attorney for the debt buyer, who often does not know about the bankruptcy, and the consumer unwittingly pays it just so they do not have future problems. In this case, we would sue the debt buyer for a discharge violation and for FDCPA violations.

5. The consumer is contacted by phone and/or mail by a debt buyer or the attorney for the debt buyer, who often does not know about the bankruptcy, and the debtor ignores it or disputes the debt to remove it from their credit report. And the debt buyer wrongfully verifies that it is accurate to the credit reporting agencies. In this case, we would sue the debt buyer for a discharge violation, FDCPA violation and possibly a FCRA violation.

6. The consumer is contacted by a debt buyer and/or their collection companies for the same discharged debt. Often, once it is disputed, the debt is sold or assigned to another debt collector without removing it from their "list" so they keep perpetuating the same wrongful collection efforts. In this case, we would sue the debt buyer and all of the collection companies, for a discharge violation, FDCPA violation and possibly a FCRA violation.

7. The consumer is NOT contacted by anyone but is denied credit due to the incorrect reporting of the discharged debt. The consumer will often dispute the debt using the denial letter but the credit reporting agencies will verify the debt wrongfully or remove and re-report within 6 months. In this case, we would sue the debt buyer for a discharge violation, FDCPA violation and possibly a FCRA violation.

8. The consumer's credit report is reporting a zero "balance owed" for a discharged debt and is contacted by the debt buyer with a demand for payment. This is incorrect reporting regardless of the contact by the debt buyer. In this case, we would sue the debt buyer for a discharge violation, FDCPA violation and possibly a FCRA violation.

9. The consumer's credit report reflects a zero balance for discharged debt and the creditor or a debt buyer starts a series of soft pulls on the credit report. This is incorrect reporting of the credit report and is what is known as an "impermissible pull". In this case, we would sue the debt buyer or the creditor for a discharge violation, FDCPA violation and possibly a FCRA violation.

10. The consumer's credit report is reporting "closed at grantors request" for discharged debt rather than showing "discharged in bankruptcy". Although it may seem to be irrelevant as they are not asking for payment, however, it does affect the credit score and will negatively stay on credit for longer. When it is closed at grantors request, it can stay on your credit for 10 years rather than the standard 8 years for bankrupt debt.

11. During the bankruptcy, if there was some removal of a judgment and/or lien in actions such as a cram down motion, motion to avoid a lien, etc and the original creditor or the debt buyer do not reflect the status of the debt properly. In this case, we would sue the debt buyer and/or

the creditor for a discharge violation, FDCPA violation and possibly a FCRA violation.

HINT: Once the contact comes from a collections attorney, then we have an additional defendant, which generally means a higher settlement amount. Some lawyers have an issue with suing other law firms and some do not. Maybe the theory of "karma" for an attorney buys some goodwill in that decision process. That will be up to your attorney and his/her view on that matter.

<u>How do we resolve it?</u>

Once we find this error, we send a letter to the credit reporting agencies and to the creditor/debt collector (often called the furnisher) so that we may preserve our right to sue all of them. So if they do NOT remove it from your credit report, then you have a FCRA lawsuit. In addition, if it is a debt collector, and regardless

of the FCRA, you may have a FDCPA lawsuit but if it is not, then you still have a discharge violation lawsuit. Every attorney has a different view on it, but I prefer to take my case into federal court as opposed to bankruptcy court for a number of reasons:

1. There are no jury trials in bankruptcy court.
2. Bankruptcy judges are often not big fans of giving big settlements as bankruptcy is meant to get rid of debt, and they often do not feel it should become a profit center for the consumer (called a debtor in bankruptcy).
3. Bankruptcy judges look to fast track the case out of their court; when possible, my preference is to bring the case into district court, but this is case by case and district to district.

Our goal is to cast a broad net in order to catch as many fish as we can in one shot. We may get multiple creditors, debt collectors and credit reporting agencies and have a six figure pay day for the consumer or maybe we just catch a few statutory violations and the consumer gets his credit repaired along with some spending money. But either way, this area of law is in my opinion, the least utilized by attorneys with some of the most abused fields in the country. According to the Consumer Financial Protection Bureau, for 2017; credit reporting made up the 4th largest consumer complaint and debt collection the 6th largest consumer complaint. SEE CFPB vol. 21, March 2017. So this field will just keep growing since the debt collectors are making more money than they are losing in continuing their methods of collections.

FCRA “Fair Credit Reporting Act” - What is it?

When we find a discrepancy on your credit, such as, identity theft, mistaken identity or simply incorrect information, pursuant to the FCRA, pursuant to regulation, we have to send one notice to the credit reporting agencies and to the furnisher (the creditor), informing them of the inaccuracy. By statute, they are given one opportunity to correct their error and must use reasonable due diligence in investigating the alleged error. However, if they do not fix the error after using reasonable due diligence, then any damages that you accrue after that denial, the credit reporting agencies and the furnisher may be liable for. Now if there is no “actual” damages, then we can collect the statutory damage award of “up to $1,0000 and reasonable legal fees”. However, if you received a mortgage, car or credit card with a higher interest rate, then we have a quantifiable damage award claim.

So, for example, for identity theft; let’s say we try to get a mortgage, and then we are denied due to information that is incorrect. Then you should go to the local police station and get a police report (make sure it is very specific and use account numbers and as much detail as you can give) and send a letter with a copy of the police report to the credit reporting agencies and the furnisher. And then let’s say that they respond and they still do not remove the incorrect entry. Now, if you get another denial letter from the lender; NOW, it is considered damages that you can sue them for. Damages can be a denial for car, mortgage, credit cards, or simply a higher interest rates on any of those; it can be denial for rental apartment because of your credit score; denial for employment because of your credit score; or any other denial that is based off of your credit score. Additionally, in some states, emotional distress is a very serious damage award in the lawsuits

as well. You may even be able to settle at a large enough amount to be putting the down payment on that house you were going to buy.

Let's say you have a similar name as someone else; sometimes it's John Smith and his son, John Smith, Jr. and their information is mixed; or maybe your name is John Smith and there are a hundred other John Smiths near you. This is simply called a mixed profile and if the credit reporting agencies and the furnisher don't correct it after you send them notice, then it is again, only a damages case because the mistake is factual so the question is how much are they going to pay you for your damages. In addition, they will also be paying all your reasonable attorney fees and costs. In my practice, I generally pay the federal filing fee and process of service fees, as I know I will get it back in my lawsuit and many consumers do not have the total of $500 or so for those filing fees and service costs. I don't want the consumer worrying about getting their money back so I prefer to just pay it myself. But obviously, every attorney will run their practice as they see fit.

And lastly, let's say that it is just wrong information. Maybe you already paid the debt or it is reporting twice, or a number of other scenarios; again, if the credit reporting agencies and the furnisher do not correct it after given notice, then anything after that is damages for which you will be compensated for. So if they verify that the debt is accurate, when we know it is wrong for whatever reason and after we have disputed it; we get a denial for a credit card, or maybe we get approved for a car lease but at 12% interest instead of 6%, then there are quantifiable damages that we can calculate for our damages demand.

FCRA has the possibility for statutory damages of up to $1,000 or for actual damages, but not both; and for reasonable legal fees and

costs. So in the least, if you don't have substantial damages, you will normally get the consumer $1,000 from each credit reporting agency and furnisher that incorrectly reported and your attorney will love the cases you send to him/her. So, to recap, let's say 2 out of the 3 credit reporting agencies correct it and the debt collector also corrects it; then you have a FCRA claim against the one credit reporting agency that did not correct it and you have a FDCPA against the debt collector that incorrectly reported to begin with, since there is no notice requirement for a FDCPA claim. This is a constant stream of new revenue and happy clients. The credit reporting agencies have generally taken the position that to correct all of the ways to misreport, is just not worth the cost as opposed to the number of settlements they pay out every year. Remember that the 3 biggest credit reporting agencies report over 4 billion per year in revenue. The number of attorneys filing these lawsuits is nominal so it simply makes more sense to pay the attorneys then to pay to correct their computer systems which would presumably cost a lot.

How do we find it?

Once you review your credit report, you will find entries that do not belong there. Sometimes you know the person who stole your card and used it, other times you have no idea you have been robbed. The problem is that very few of you know that you are entitled to money damages if the credit reporting agencies won't correct it quickly or at all. So don't just do credit repair, but rather do credit repair with an eye out for the goal of finding and filing a lawsuit as well; which will ultimately reimburse you for all of your costs for the credit repair and you may still have enough left over for a down payment on a house. And in this case, the cost of the credit repair may be part of your "actual" damages, since if it was not for the actions of the credit reporting agencies, you would not have been paying for this credit repair.

Once we know we have damages, we are now at the point that we have a federal case ready to get filed. Once this case is filed, it will be assigned to a large law firm that handles most of the cases for each of the credit reporting agencies. First, we request that they mitigate the damages and fix the credit score so that we can provide our client with their credit back and they can purchase whatever it was they were trying to purchase. The law firm will often want to mitigate the damages for their client and not perpetuate the problem and create more damages. Now that the credit score is fixed, we have only a "damages" case left and its quite easy to settle at that point for a decent amount of money and surely plenty more money than the credit repair cost in the first place.

In our new age, we find ourselves in a society where we have no choice but to protect our coveted credit score, and the internet, the radio, and the television are littered with commercials for credit repair to make sure that we keep our credit as high as it can be. But what do you do when the credit reporting agencies (CRA's) just won't fix it? What do we do when there is that identity theft and the credit reporting agencies will not remove the incorrect information? Well everyone in credit repair industry will threaten the "golden" credit oriented lawsuit called Fair Credit Reporting Act (FCRA). But we want to show you the low hanging fruit that will make immediate money for the client and for the attorney. You will be the direct cause for helping the client emerge from their private despair and stand tall with pristine credit, and more than a few dollars in their pockets.

6 - STUDENT LOANS & PRIVATE LOANS

Student Loans: Federal and Private

Most of us went to college and just followed the queue of the college financial advisor whose job was to get everything, and then some, paid with school loans. That was tuition, boarding, books, spending money, etc. And many parents being first generation immigrants or first time college students, did not know the detriment of school loans and how it would impact their lives later. These massive amounts of loans will be either federal or private loans. The difference being that with the private student loans, there are no consolidation programs or forgiveness programs available and with the federal student loans, there are programs to help.

What is it?

Graduating students come out of school with federal loans known as a Direct Loan and are normally split into subsidized Direct Loans and unsubsidized Direct Loans. This is a standard 10-year amortization loan but has no forgiveness or reduced payment programs attached to this loan type. Generally, each semester is broken into half subsidized and half unsubsidized, with the only difference being that the subsidized are interest free while you are in deferment periods. So if at any point you want to pay back a loan early, pay back the unsubsidized so that you can get rid of the interest bearing loans.

How do we find it?

On the credit report, you will have several entries that may be with Great Lakes, NelNet, PHEAA, etc. and ends with "Dept of Ed". So you would see "Great Lakes / Dept of Ed". These entries may seem to have duplicates but they are simply the subsidized and unsubsidized portions of each loan. So if you took 4 separate loans for school, it will actually show on your credit report as 8 separate loans. But whenever you see "Dept of Ed", they are federal loans and can be consolidated.

How do we resolve it?

FEDERAL LOANS:

When we see a cluster of entries ending in "Dept of Ed", then we normally want to review this client for a student loan consolidation to see if they qualify for a reduced monthly payment and possibly one of the loan forgiveness programs available. The programs available allow for forgiveness after 10 years of timely payments for different reasons. The trick is knowing how to put the client into the proper program so that they are able to pay an affordable amount and properly get the forgiveness at the end. It would be a sad mistake if a consumer paid for 10 years and expected to get loan forgiveness, only to find out they were in the wrong program. So be careful that you don't hurt the consumer.

The consolidation types consist of:

* 10-year standard
* extended – extend to 25 years
* graduated – steps up every 2 years
* extended graduated – extend to 25 years & steps up every 2 years
* ICR – based on income & loan balance; may shorten the term

* IBR – income & household size based / 25-year forgiveness
* PAYE – pay as you earn 2013/2014 grads ONLY
* REPAYE – revised pay as you earn

The forgiveness programs have to line up properly with its specific consolidation type in order for the forgiveness to be approved after the 10 years of timely payments. The principal forgiveness programs include:

* Public Service Loan Forgiveness
* Teacher Forgiveness
* 9/11 Forgiveness
* Totally & Permanently Disabled
* Death of the student or death of the parent in a parent plus loan, will discharge the debt
* If the school closed within 120 days of your graduation or leaving the school, you may be able to get a discharge
* A false certification may gain a discharge; when for example you never graduated high school and should have never gotten into college or you could have never met the job requirement; for example, you went to a trade school that would not hire felons and you disclosed it and they accepted you into the trade school anyway

Consolidation programs are based off your income and your household size and you may qualify for a zero monthly payment. Regardless of what your payment amount is, every year, you will have to recertify to provide proof of your current income and household size. So one year you may be paying $200 per month, but then you get married and have 2 children and decide not to work, and may be paying zero for 5 years until you go back into the workplace. Most consumers will just call the servicer and ask for a hardship deferment which will almost always be granted but will ultimately just add on lots of interest to your student loans.

This zero monthly payment will report you as “current” on your credit report.

If you miss payments on federal student loans you are categorized into either “delinquent” (1 to 270 days behind) or “default” (271 days or more). If you are delinquent, and you have not already consolidated, then you can consolidate to get current again. In which case, it will now report “current” on your credit report. However, the late payments will remain on your history. In the alternative, you can also “rehabilitate” your loan, in which case you will make a determined payment amount for 9 out of 10 months. If you happened to be getting your salary garnished, after the 5th payment, the garnishment is supposed to stop. If it does not, then you may potentially have a FDCPA violation against the debt collector. This payment will be as low as $5 per month, depending on your income and will change the reporting on your credit history by removing the “default” notation to current when you are completed. This will create a boost in your credit score.

Once you submit for your student loan consolidation, the servicer and/or the debt collector are required to stop reporting negatively on your credit report for 60 days. More often than not, they do not bother to change the reporting of the debt. Now if the creditor/servicer does fall under the definition of a “debt collector”, then their incorrect credit reporting is also a FDCPA violation for which we can file suit. Regardless, once you send a credit dispute to remove the incorrect reporting, and if they do not remove it, then you now have a FCRA violation as well, even if it is the originating creditor.

PRIVATE LOANS:

Private loans are a different animal altogether and in my opinion, are some of the most abusive debt collectors out of all the debt

collectors. Primarily, I believe, because the debt collectors feel impervious because the myth is that since you can't discharge the debt in bankruptcy, you are stuck no matter what. Therefore, if you owe them, then they can threaten you in whatever fashion they want. We have had many clients come to us from other lawyers who gave them the advice to just hide your money so the creditors cannot take it once they get their judgment against you, leaving you no chance of hope. The truth is that private student loans, other than being non-dischargeable in bankruptcy, are no different than credit card debt in some ways. They can be sued the same for FDCPA, or FCRA or any other consumer laws. They also have a statute of limitations which mirrors the unsecured debt statute of limitations in your state. For example, if your state has a 4-year statute of limitations on the collection of credit card debt, and the student loans went into default more than 4 years ago, then a proficient attorney will get your student loan debt dismissed if ever brought to suit, or settled at a fair amount. It is now uncollectable debt that is beyond the statute of limitations. However, the attorneys usually don't know this, (often judges don't either) and the creditors do know this, therefore they often will get default judgments against the consumers and now you have a judgment against you.

7 - CREDIT MONITORING

Credit Monitoring is very important in this digital era, and is something that every consumer must have. Credit monitoring is not only important for limiting the negative effects of identity theft and credit reporting mistakes, but it's your only tool to fight back. By knowing how to identify these constant problems and errors, you empower yourself with the information and knowledge you will need in order to pursue the creditors and debt collectors. You should know how to get justice for the frustration and havoc that the creditors and debt collectors create without remorse. You'll be able to rest easier knowing that you are on top of who is accessing your credit report and also be alerted whenever changes are made to your report. Timely e-mail alerts of any key changes, including verification of changes that you have initiated as well as any unauthorized changes will allow you to halt potential identity theft and creditor errors in its tracks; and to identity potential lawsuit opportunities for situations like:

- a creditor that was included in a bankruptcy running an inquiry on your credit during the automatic stay period or after the debt was discharged. These violations happen more than you think and having credit monitoring will alert you of these violations that may have went unnoticed had you not had credit monitoring.
- a creditor actually re-reporting on your credit report after a Chapter 7 bankruptcy or during a Chapter 13 bankruptcy. If you are not watching your credit closely, then they could sneak it in right under your nose.
- a debt buyer and/or a debt collector will buy the debt and now show it on your credit report for a more recent day other than when the debt went into default. Without your attention, these details go unnoticed.

- a creditor improperly reporting the debt or a judgment, after it has been paid and/or settled. More often, they do not remove it off your credit report and in a timely fashion, after the debt should have been removed or amended.
- a creditor may be reporting the right information but with two separate entries, thereby damaging your credit twice for the same thing.
- a creditor is reporting old debt as if it were newer, thereby creating more damage by making it appear that it is new debt.
- a creditor/debt collector is reporting disputed information during the dispute period, which is a violation.
- a medical collector reports medical debt prematurely instead of allowing for the proper grace period before making collection efforts.

Some of the credit monitoring services only provide reports from 2 out of the 3 credit reporting agencies. And in this day and age, we must protect from every predator; we must protect from all 3 credit reporting agencies. IdentityIQ is a great service that provides you with credit monitoring of all three of your credit reports and Vantage FICO Scores once a month for only $19.99 per month (regular $29.99) at https://idiq.nbob.org. They also give you Dark Web Monitoring and Identity Monitoring that includes criminal record monitoring in addition to monitoring your credit report. IdentityIQ is a leader in the industry and their prices are some of the lowest in the industry too when using the discount link at https://idiq.nbob.org

8 - ACTUAL CASE EXAMPLES “SALADINO”

Saladino v Ally Financial: This is a case that years after the chapter 7 bankruptcy, we discovered that the creditor was still reporting incorrectly on her credit and were inquiring via “soft pulls”, into her credit. This was a discharge violation that we found on her credit report years after the bankruptcy was over. We re-opened her case to sue the creditor for a discharge violation. Also, on her same credit report we found another creditor doing the same thing and filed a similar lawsuit. These two creditors allegedly brought her score down and caused her to get higher interest rates on her car leases and credit cards. One case is below.

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

----------X

In Re: CASE NO.: 8-15-71641-reg

Jeanette Saladino, Chapter 7 Debtor.

----------X

Jeanette Saladino,

Plaintiff, COMPLAINT -Against-

Adv. Pro. 8-18-08084-reg

Ally Financial, Inc.

Defendant.

----------X

Plaintiff, Jeanette Saladino, (hereinafter “Ms. Saladino” or “Plaintiff”) herein by her attorney, Aronow Law PC, as and for her

complaint against the defendant, Ally Financial, Inc. (hereinafter "Ally" or "Defendant"), to determine discharge violations, respectfully complains as follows:

NATURE OF THE ACTION

1. This is an adversarial proceeding brought on behalf of the Plaintiff who seeks actual damages, statutory damages, punitive damages and legal fees and expenses due to defendant's improper and illegal actions in violation of the discharge injunction pursuant to 11 U.S.C. §524 for deceptively and illegally making collection demands to collect pre-petition debt as well as for promulgating deceptive business practices pursuant to NY GBL §349; which has caused undue harassment, severe emotional distress and fear for which defendant is both the direct and proximate cause.

JURISDICTION

2. This Honorable Court has jurisdiction of this adversarial proceeding pursuant to 28 U.S.C. §§157; 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1409 and 1927. The statutory predicate for this proceeding is 11 U.S.C. § 524 of the Bankruptcy

Code.

This action is a core proceeding pursuant to 28 U.S.C. § 157 (b) (2) (I). This Honorable Court has supplemental jurisdiction to hear all state law claims pursuant to Section 1367 of Title 28 of the United States Code.

PARTIES

3. The plaintiff is a natural person residing at 2 Patricia Lane, Lake Grove, NY 11755 in Suffolk County, State of New York, and is also a debtor under the provisions of Chapter 7 of Title 11 of the United States Code.

4. The plaintiff is a “debtor” and a “consumer” as those terms are defined by§524 of the United States Bankruptcy Code and additionally the New York State General Business Law.

5. The Defendant, Ally, is a bank holding company organized in Delaware and headquartered in 500 Woodward Avenue, Detroit, Michigan 48226. Ally’s Chief Executive Officer is Jeffrey J Brown doing business from 440 S Church Street, Charlotte, North Carolina, 28202. According to the NYS

Department of State website, Ally can be served to CT Corporation System 111 Eighth Avenue, New York, New York 10011. Ally also does business from 200 Renaissance Center, Detroit, MI 48243.

PRELIMINARY STATEMENT

6. The plaintiff filed a petition for relief pursuant to Chapter 7 of the Bankruptcy Code on April 18, 2015. See Plaintiff's Exhibit "A".

7. As a part of plaintiff's filing, a request for notice of a 341 meeting of creditors was also filed and entered on April 20, 2015 (docket #5).

8. A certificate of mailing with notice evidencing that notice was sent to Ally on April 22, 2015 is memorialized in docket #6 and 7. On said certificate of notice, Ally was given notice by the federal court clerk, Joseph Speetjens, under the penalty of perjury to email address: ally@ebn.phinsolutions.com on April 20, 2015. See exhibit "B".

9. Ms. Saladino's bankruptcy was voluntarily discharged by

this Honorable Court on July 29, 2015 and a final decree issued, (docket #10).

10. A notice of Motion to Re-open the bankruptcy was served by certified mail, return receipt requested in accordance with Bankruptcy Code 7004 (h) addressed to both Ally Financial, Inc. at 500 Woodward Avenue, Detroit, MI 48226 and 200 Renaissance Center, Detroit, MI 48243 and CT Corporation System, 111 Eighth Avenue, NY, NY 10011.

11. Despite proper service upon Ally, Ally has neither appeared nor objected to date and your affiant has not received a request for an extension of time from Ally to either appear or object.

12. This Honorable Court signed an order to reopen the case on May 22, 2018 docketed under # 15; to pursue the alleged discharge violations as discussed at more length herein below.

STATEMENT OF UNDISPUTED FACTS

13. Defendant, Ally, a pre-petition creditor, was served notice of the original bankruptcy filing as evidenced by the Certificate of

Notice docketed under # 7 demonstrating that Ms. Saladino properly filed and later completed a no-asset Chapter 7 bankruptcy petition.

14. Ms. Saladino was discharged of all liabilities and obligations to pay those debts listed in her bankruptcy, including the purported debt owed to the defendant.

15. Defendant was given proper notice of the bankruptcy, at the proper address throughout plaintiff's bankruptcy, including a copy of the Honorable Court's discharge order.

16. The Discharge Order provides in pertinent part that "The discharge prohibits any attempt to collect from the debtor(s) a debt that has been discharged." "A creditor who violates this order can be required to pay damages and attorney's fees to the debtor" and that "The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged". This discharge extended to and included the debt owed to the Defendant.

17. Pursuant to 11 U.S.C. §524(a)(2): "A discharge in a case under this title operates as an injunction against the

commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor,".

STATEMENT OF RELEVANT FACTS

18. Despite receipt of the notice of Chapter 7 bankruptcy filing, the Notice to Creditor's and the discharge order, the defendant is still actively seeking to collect a pre-petition discharged debt through re reporting and re ageing of the discharged debt as an active debt on her credit report; the credit reporting is continuing to report the account erroneously. (See Exhibit "C")

19. As such, Defendant's continuous harassment by continuing the negative reporting on her credit report for a discharged debt to plaintiff is a willful and egregious violation of this Honorable Court's discharge injunction.

20. The defendant's willful, contumacious and relentless pursuit of Ms. Saladino to pay the discharged debt when she believed she was getting a "fresh start" by virtue of filing for

bankruptcy protection, has left her mentally drained, emotionally distraught and extremely stressed especially since she has been slowly rebuilding her life, such that she was finally in a position to obtain credit at a lower interest rate and leave the most difficult financial period in her life in the past.

21. After enduring several months of pulling her credit to try to understand why Ally is still reporting, the debtor contacted our office in extreme anger leveling accusations that the Ally debt was somehow excluded from her bankruptcy petition.

22. After reviewing Ms. Saladino's file and also reviewing all of the electronically filed documents on PACER, it became clear that Ally had no basis for demanding payment for a pre-petition debt.

23. Plaintiff initially discovered that the Ally account # xxxxx5023 had been properly discharged when Ally began derogatorily reporting on her credit report post discharge that the account was still opened and in default; and erroneously reported late payments against her, subsequent to her discharge.

24. As a result of Ally's willful actions, the debtor became increasingly anxious, fearing that she would never be relieved of said debt, even after her bankruptcy discharge. She had trouble sleeping and eating due to the continued concern over her credit.

25. Exacerbating the circumstances, Ms. Saladino felt betrayed and deceived by your affiant who explained that her debt would be discharged and she could move forward with a fresh start. She felt sickened and disheartened that she trusted her attorney who represented that she would be given a financial fresh start thus alienating her from the one party that could truly assist her.

26. The plaintiff avers that at all times relevant to the allegations herein:

(a.) The defendant has substantially frustrated the discharge order entered in this case and its conduct constitutes gross violations of the discharge injunction as provided by §524 of Title 11 of the United States Code and further have caused the plaintiff

unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code;

(b.) The defendant knew and in fact had actual knowledge that the plaintiff's debt to it was discharged in bankruptcy and that plaintiff was therefore protected from any direct or indirect actions to collect the discharged debt whatsoever by virtue of the Discharge Injunction issued by this Honorable Court pursuant to § 524 of Title 11 of the United States Code and notwithstanding such knowledge, willfully reported credit information intended to collect a debt and actively sought to collect the debt without any right to do so.

27. The plaintiff alleges that the myriad of intentional and egregious discharge violations justifies the award of substantial and significant punitive damages in this case.

28. The defendant by re-reporting discharged debt and attempting to re-age uncollectible debt, defendant is using deceptive means to induce the plaintiff to pay a debt that is not owed.

29. As a result of the defendant's actions, the debtor has

suffered anxiety and emotional distress, fear that she still owed the debt to Ally despite legal advice and an Order of a U.S. Bankruptcy Court, and has suffered actual damages in the form of, legal fees, credit report fees which were ordered to confirm whether the debt was owed or not.

FIRST CLAIM FOR RELIEF

(Violation of the Discharge Injunction)

30. The allegations in paragraphs "1" through "29" of this complaint are re-alleged and incorporated herein by this reference as if set forth more fully herein.

31. Pursuant to 11 U.S.C. §524, a discharge order "operates as an injunction" against acts to collect on discharged debts. The defendant's actions set forth hereinabove constitute willful violations of the discharge injunction.

32. The plaintiff alleges that the willful conduct of the defendant in this case has substantially frustrated the discharge order entered in this case and has caused the plaintiff unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code.

33. The plaintiff also alleges that in order to carry out the provision of the Bankruptcy Code and to maintain its integrity, this Court should impose actual damages and punitive damages and award legal fees payable by the defendant pursuant to the provisions of § 105 of the Bankruptcy Code.

34. The plaintiff alleges that by re-reporting late payments, re-ageing the debt, reporting the debt as having an outstanding balance owed and not reporting the discharge to the consumer credit reporting agencies, the defendant engaged in an affirmative act in violation of the discharge injunction of §524.

35. The plaintiff further alleges that the only reasonable purpose for re-reporting and re-ageing the debt improperly was to collect the discharge debt and has created damages in the form of actual damages for the cost of credit reports, certified mailings and additional costs for thousands of dollars in higher down payments and interest rate for car lease, higher interest rates on credit cards and credit denials. Additionally, she has suffered through the embarrassment and humiliation of not being able to recover from her bankruptcy after years of diligence. See exhibit “D”.

36. The plaintiff further alleges that in order to protect the debtor who has completed her Chapter 7 and secured a full discharge thereunder this Court should impose sanctions against the Defendant for its misconduct in this case.

SECOND CLAIM FOR RELIEF

(Deceptive Acts and Practices Unlawful: GBL §349)

37. Ms. Saladino repeats, reiterates and re-alleges each and every statement and allegation contained in paragraphs "1 through 36" as if fully set forth herein.

GBL §349 states in relevant part that:

"Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

38. Ms. Saladino's relationship with Ally arose out of a "consumer debt" as that term is defined in the General Business Law (hereinafter "GBL") of New York.

39. Ally conducts a business that is subject to the applicable provisions of the General Business Law of New York and specifically GBL §349. Ally lends for automobile loans which is a

consumer-oriented business practice and reporting on discharged debt is materially misleading and deceptive.

40. Ally is liable to Ms. Saladino pursuant to GBL §349 which states that a deceptive act or business practice is a violation of the Statute and entitles the aggrieved party to actual, statutory and punitive damages.

41. Ally has continued to falsely and deceptively report that Ms. Saladino has debt that is still opened despite having actual notice that it was discharged in bankruptcy and continues to harass Ms. Saladino to deceptively collect discharged debt that they knew or should have known was no longer collectible.

42. Plaintiff has suffered both pecuniary and non-pecuniary actual damages in the form of legal fees to re-open her bankruptcy to gain protection from Ally's deceptive, harassing and unlawful acts, court filing fees, and non-pecuniary damages in the form of damage to her credit score and hindering her ability to obtain credit at prevailing interest rates to which she would be entitled, but for, Ally's illegal and deceptive acts costing Ms. Saladino thousands of

extra dollars in unnecessarily high interest payments for an automobile lease and credit cards.

43. As a result of Ally's willful and deceptive actions, Ally has violated GBL §349 and is liable to Ms. Saladino for actual damages, statutory damages, punitive damages, costs, and attorney's fees.

JURY DEMAND

44. Plaintiff hereby requests a trial by jury on all issues, with the maximum number of jurors permitted by law.

WHEREFORE, the plaintiff having set forth her claims for relief against the defendant respectfully pray of the Court as follows:

A. That the plaintiff recovers against the defendant a sum to be determined by the Court in the form of actual damages;

B. That the plaintiff recovers against the defendant a sum to be determined by the Court in the form of punitive damages;

C. That the plaintiff recovers against the defendant a sum to be determined by the Court in the form of statutory damages;

D. That the plaintiff recovers against the defendant all reasonable legal fees and expenses incurred by her attorney; and

E. That the plaintiff has such other and further relief as the Court may deem just and proper.

Dated: June 5, 2018

Woodbury, New York

/s/ Darren Aronow_____

Darren Aronow

Attorney for Debtor/Plaintiff

20 Crossways Park Drive North, Suite 210

Woodbury, NY 11801

(516) 762-6700

9 – ACTUAL CASE EXAMPLES "LOSPENUSO"

Lospenuso v Home Depot U.S.A. & Citibank NMTC Corporation: This was a case that during the chapter 13 bankruptcy, we discovered that the bank allegedly took money out of her bank account during the bankruptcy. This was an alleged Automatic Stay violation and an EFTA (Electronic Funds Transfer Act) violation because they illegally took money on an automatic withdrawal. This case was resolved quickly and parties signed a confidentiality agreement.

NOTE: None of our cases that I've filed have ever gone to trial. Almost everyone settles before ever getting to trial. The average settlement we see for simple automatic stay and FDCPA violations is normally between $5,000 to $10,000 although we could potentially get more if we were to try all of these cases, however, the client's money is capped and the creditors will generally settle for reasonable amounts, so we settle. Some of the most prominent attorneys in this field have never gone to trial as it is usually the creditor who wants to settle and of course the consumer does not want to go through deposition and trial when they can just settle quick, get some money and get their credit repaired. One day, I'm sure one of my cases will go to trial but if not, I am happy to keep settling them.

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

----------X

IN RE: Case No.: 8-17-70077-reg
Chapter 13

Darrin Lospenuso & Heather Lospenuso,
Debtors.

Adv. Pro.: 8-17-08116-reg

Plaintiffs, COMPLAINT

-Against-

Home Depot U.S.A., Inc. &

Citibank NMTC Corporation

Defendants.

----------X

Plaintiffs, Darrin Lospenuso & Heather Lospenuso, by their attorneys, ARONOW LAW, P.C. as and for their Complaint against Home Depot U.S.A., Inc. & Citibank NMTC Corporation ("Defendants") for violations of the automatic stay as set forth in 11 U.S.C. §362 and the Electronic Fund Transfer Act (hereinafter "EFTA") as set forth in 15 U.S.C. §1693, respectfully alleges and represents to this Court, upon information and belief as follows:

PRELIMINARY STATEMENT

1. By this action, Plaintiff seeks entry of an order pursuant to 11 U.S.C. §362 of the Bankruptcy Code determining that the Defendants willfully violated the automatic stay; Plaintiff is entitled to actual and punitive damages as a result of Defendants' violations, as well as, reasonable attorney fees and costs; pursuant to 15 U.S.C. §1693 which allows for recovery of the aforesaid damages due to the Defendants' willful violation of the EFTA;

Plaintiff is also entitled to statutory damages of $1,000 and reasonable attorney's fees and costs.

JURISDICTION AND VENUE

3. This action arises under 11 U.S.C. §362 and Rule 7001 of the Federal Rules of Bankruptcy Procedure; and 15 U.S.C. §1693 (EFTA).

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334 as this action arose in and during the pendency of the Plaintiff's Chapter 13 Bankruptcy. This is a core proceeding pursuant to 28 U.S.C. §157 (b)(2). Venue is proper in this district pursuant to 28 U.S.C. §1409(a).

PARTIES

5. Upon information and belief, Defendant, The Home Depot, aka Home Depot U.S.A., Inc., is a corporation duly organized and existing under the laws of the state of Delaware and registered to do business in the State of New York, with an agent designated for service of process

at Corporation Service Company 80 State Street, Albany, New York 12207-2543and with its principal place of business at 2455 Paces Ferry Rd, SE #B #3, Atlanta, GA 30339-1834 and is a named creditor in the initial Schedule F of the Plaintiff Debtor bankruptcy petition. See Exhibit "A".

6. Upon information and belief, Defendant, Citibank aka, Citibank NMTC Corporation, is a corporation duly organized and existing under the laws of the state of Delaware and is registered to do business in the State of New York, and may be served with process by directing such to Citicorp Cr Srvs/ Centralized Bankruptcy, PO BOX 790040, St. Louis, MO 6319 and is a named creditor in the initial Schedule F of the Plaintiff Debtor bankruptcy petition. See Exhibit "A"
7. Darrin Lospenuso and Heather Lospenuso ("Plaintiff(s)") were and still are domiciliaries of the State of New York residing at 76 Shadow Grove Lane, Holbrook, NY 11741.

STATEMENT OF FACTS

8. On December 28, 2016, the Plaintiffs filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code ("Petition Date").

9. On January 9, 2017, Defendants were served with a Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines, notifying Defendants of Plaintiff's bankruptcy filing and notice that any acts to collect any debt owing to creditor were prohibited under the provisions of 11 U.S.C. §362 of the automatic stay. (Dkt. No. 8-2) A copy of the Notice and Certificate of Notice is annexed here to as Exhibit "B".

10. On January 19, 2017, Defendants withdrew $490.00 from the Plaintiffs' Chase Bank account #xxxx8944 for credit card debt in an attempt to collect a debt and in violation of the automatic stay. This withdrawal by the Defendants

lowered the balance of the Plaintiff's account to $0.00; resulting, in Check #537 in the amount of $18.00 to bounce and the Plaintiff to be charged a $34.00 insufficient funds fee, a non-dischargeable post-petition fee. A copy of Plaintiffs' bank statement reflecting the Defendants withdrawal and the resulting insufficient funds fee is annexed hereto as Exhibit "C".

11. In violation of 11 U.S.C. §362(a)(6), Defendant made a willful and intentional post-petition attempt to collect pre-petition debt by initiating an Electronic Funds Transfer ("EFT"); resulting in an unauthorized withdrawal of monies from Plaintiff's bank account in violation of the automatic stay in place and despite being duly notice that a Federal Bankruptcy Stay was in effect.
12. In violation of 11 U.S.C. §362(a)(6), Defendant made a willful and intentional and successful post-petition, EFT withdrawal without any authority to do so.

13. On January 21, 2017, in an effort to resolve the matter in good faith and preserve judicial economy, counsel for Plaintiff's Office sent a notice in writing that Defendant was in violation of this Honorable Court's automatic stay order and that the EFT withdrawal in the amount of $490.00 from the Plaintiff's account was perpetrated in violation of 11 U.S.C. §362, and that the money must be returned to the Plaintiff. A copy of the First §362(a) Notice Letter sent to the Defendants on January 21, 2017 is annexed hereto as Exhibit "D".
14. On March 9, 2017, the Defendant was given a second notice that the aforementioned EFT withdrawal was in violation of a Federal Bankruptcy Stay and that the money must be returned. A copy of the Second §362(a) Notice Letter sent to the Defendants on March 9, 2017 is annexed hereto as Exhibit "E".
15. On March 27, 2017, the Defendant, Citi, faxed a letter refusing to return the EFT withdrawn in violation of 11

U.S.C. §362 despite indisputable knowledge that the EFT withdrawal was a violation of this Honorable Court's Stay Order. A copy of the Defendants response to the §362(a) Notice Letter sent to Plaintiff's Counsel attorney on March 27, 2017 is annexed hereto as Exhibit "F".

16. On February 13, 2017, Plaintiff attended their first §341(a) Meeting of Creditors held with Trustee, Michael J. Macco.
17. Upon information and belief, and based upon the Certificate of Service on file with the Court, at the time of the successful EFT withdrawal of Plaintiff' funds, Defendants had received actual notice of Plaintiff's bankruptcy filing and the attendant automatic stay.

18. The Plaintiffs haves been damaged by the Defendants' illegal and successful withdrawal of money from the Plaintiffs' bank account resulting in pre-petition debt being withdrawn from the bank account in violation of the automatic stay; by time and cost in traveling to her attorney; legal fees; and the emotional distress that pre-

bankruptcy petition creditor can take their money with impunity denying them of the peace of mind that every honest debtor cleaves to, a “fresh start”.

19. Defendants’ utter lack of appropriate procedures to prevent illegal EFT withdrawals that violate Federal Court orders and the bad faith shown by Defendants who were given a fair opportunity to return the monies which Plaintiffs sought in good faith prior to filing a law suit, evidence willfulness recklessness and a blatant disregard for this Honorable Court’s Orders.
20. Defendants have demonstrated a complete indifference to the automatic stay Order since they received actual notice of the stay and not one but two letters asking them to correct their actions prior to judicial intervention which they refused to do which the imposition of actual, punitive and statutory damages as well as attorney’s fees. See, Exhibit “F”.

21. Defendant knew of the bankruptcy and deliberately attempted and successfully withdrew payments from the Plaintiff's account in violation of the Automatic Stay. There can be no clearer demonstration of willfulness in that despite Notice of the Bankruptcy and not one, but two good faith letters to resolve the illegal and improper collection of debt, Defendants refused to return the illegally obtained money. This Honorable Court has consistently held that a deliberate action taken while the violator knew the stay was in effect warrants de minimus the award of actual damages. To wit: In re Ebadi, 448 B.R. 308, 320 (Bankr. E.D.N.Y. 2011), the Court wrote that:

A deliberate action that violates the automatic stay, taken while the violator knew that the stay was in effect, justifies an award of actual damages, with no further showing necessary. Crysen/Montenay Energy Co. v. Esselen Assocs., Inc. (In re Crysen/Montenay Energy Co.), 902 F.2d 1098, 1105 (2d Cir.1990); In re Robinson, 228 B.R. 75, 80 n. 5 (Bankr.E.D.N.Y.1998). The action itself being deliberate suffices to constitute a willful violation of the stay, even if the fact that the action would violate the stay was unknown to the offender. See In re Robinson, 228 B.R. at 80 n. 5; In re Olejnik, No. 09–76714–AST, 2010 WL 4366183, at *5 (Bankr.E.D.N.Y. Oct. 28, 2010)

(citing In re Bresler, 119 B.R. 400, 402 (Bankr.E.D.N.Y.1990)).

In re Ebadi, 448 B.R. 308, 320 (Bankr. E.D.N.Y. 2011)

FIRST CAUSE OF ACTION

Violation of the Automatic Stay

Pursuant to 11 U.S.C. S362

22. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 20, above.

23. The Defendant has violated the automatic stay as set forth in 11 U.S.C. §362 by collecting a debt while Plaintiff is under the protection of the United States Bankruptcy Court.

24. That Defendant willfully, intentionally and with full knowledge of the Plaintiff's bankruptcy filing, violated the automatic stay as set forth in 11 U.S.C. §362 by attempting to withdraw, and actually withdrawing by EFT money from the Plaintiffs' bank account in violation of this Honorable Court's automatic stay order. Accordingly, this Court should award Plaintiffs actual damages, punitive damages

and attorney fees against Defendant for intentionally violating the automatic stay.

25. This Honorable Court is more than justified in awarding punitive damages especially, since the Defendants were made aware of the willful, intentional and wrongful withdrawal of money from the Plaintiffs and yet intentionally chose NOT to return the money flying in the face and impugning the authority of this Court and blatantly disregarding the automatic stay order despite notice and not one but two good faith attempts to resolve the matter before seeking judicial intervention.

26. It is clear from Defendants' blatant and willful actions that they lack appropriate procedures to ensure that violations of the automatic stay do not occur, evidence willfulness and reckless indifference as to whether or not violations of the automatic stay occur, and justify the imposition of actual damages, punitive damages and attorney's fees, necessitating Plaintiff to file a claim with this Honorable

Court and impeding judicial economy against Defendant in an amount to be determined by this court. Defendants admit to their blatant violation of this Honorable Court's Stay Order and in essence "spit in the face" of this Honorable Court's Judicial Authority by choosing to ignore the Court Order, and refusing to return the money of their own free will on not one but two occasions after being duly notice of their violations of a number of Federal Laws.

27. The Defendants have needlessly increased the legal fees and expenses that have been and will be incurred by the Plaintiffs in this case. Accordingly, this Court should award Plaintiffs, actual and statutory damages and attorney fees in light of Defendants' intentional violation of the automatic stay and refusal to resolve the issue in good faith.

28. Defendants blatant disregard and incontrovertible willfulness in this matter warrant imposition of punitive

damages to the maximum extent allowable under the United States Bankruptcy Code.

SECOND CAUSE OF ACTION

Violation of the Electronic Fund Transfer Act

Pursuant to 15 U.S.C. §1693

29. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 27, above.

30. The Defendants have violated the EFTA as set forth in 15 U.S.C. §1693 by improperly collecting money via ACH by failing to re-fund or re-credit an electronic funds transfer to the Plaintiffs.

31. Pursuant to 15 U.S.C. §1693 (f)(a) entitle Error Resolution, Plaintiffs sent a written notice of the error to the Defendants which contained all the necessary information to constitute a proper notification of the financial institutions regarding their respective errors.

32. 15 U.S.C. § 1693(f)(a) et seq. states in relevant part that the written notice must set forth:

> (1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;
>
> (2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 1693d(b) of this title, the consumer's account, contains an error and the amount of such error; and
>
> (3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence."
>
> Plaintiffs sent not one but two notices to the

defendants providing the required information to the defendant financial institutions. See Exhibit "C"

33. That Defendant willfully, intentionally and having fully knowledge of the Plaintiff's bankruptcy filing, violated the EFTA as set forth in 15 U.S.C. §1693 by failing to correct their error, despite being duly and properly noticed.

34. 15 U.S.C. §1693(f) (f)sets forth what constitutes a violation of the EFTA as follows:

> "(f)ACTS CONSTITUTING ERROR For the purpose of this section, an error consists of—
>
> (1)an unauthorized electronic fund transfer;
>
> (2) an incorrect electronic fund transfer from or to the consumer's account;
>
> (3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;
>
> (4) a computational error by the financial institution;
>
> (5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

> (6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this subchapter; or
>
> (7) any other error described in regulations of the Bureau.

35. In accordance with 15 U.S.C. §1693(f) (e), if the Court finds that:

> "(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c), and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or
>
> (2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation,
>
> then the consumer shall be entitled to treble damages determined under section 1693m(a)(1) [1] of this title."

36. As such, since it is incontrovertible that Defendants willfully, intentionally and in bad faith violated the EFTA,

Plaintiffs are entitled to an award of treble their actual damages in accordance with 15 U.S.C. §1693(m)(a)(1) and §1693(f)(e)(2).

Additionally, this Honorable Court may impose statutory damages in the maximum amount of $1,000.00 as well as to award attorney fees and costs against the Defendant for intentionally violating the EFTA.

CLAIM FOR RELIEF

37. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 35 of this Complaint as though fully set forth at length herein.
38. Pursuant to Rule 7001, the Defendants will immediately stop any attempts to collect this debt during the bankruptcy.
39. Pursuant to 11 U.S.C. §362, the Defendants are in violation of the automatic stay.
40. Pursuant to 11 U.S.C. §362, the Defendants will incur actual damages, punitive damages, attorney's fees and costs and punitive damages for the willful and intentional violation of the automatic stay.

41. Pursuant to 15 U.S.C. §1693, the Defendants are in violation of EFTA.

42. Pursuant to 15 U.S.C. §1693, the Defendants will incur statutory damages of $1,000.00 and attorney's fees and costs for the willful and intentional violation of EFTA.

WHEREFORE, the Plaintiff respectfully request that this Honorable Court enter judgment for the Plaintiff as follows:

1. A Declaratory Judgment finding Defendant willfully and intentionally violated the automatic stay pursuant to 11 U.S.C. §362 and will immediately cease and desist any further attempt to collect the debt under Rule 7001;
2. An order awarding Plaintiff actual damages, the maximum amount of punitive damages permissible under the United States Bankruptcy Code, attorney's fees and costs incurred herein pursuant to 11 U.S.C. §362;
3. A Declaratory Judgment finding Defendant willfully and intentionally violated EFTA pursuant to 15 U.S.C. §1693;
4. An order awarding Plaintiff statutory damages in the maximum amount allowable, treble actual damages, and attorney's fees and costs incurred herein pursuant to 15 U.S.C. §1693;
5. For such other and further relief as the Court deems just and proper.

Dated: April 10, 2017

Woodbury, New York

/s/Darren Aronow_____

Darren Aronow

10 – ACTUAL CASE EXAMPLES "CLOTH"

CLOTH: AFTER REVIEWING HIS CASE, WE DISCOVERED THAT WHILE WE WERE REVIEWING HIM FOR A LOAN MODIFICATION, THE SERVICER, WHO BECAUSE THEY USE A "DBA", ARE CONSIDERED A DEBT COLLECTOR, WAS CONTACTING THE CLIENT DIRECTLY. THIS IS A FDCPA VIOLATION BECAUSE THEY MUST CONTACT THE LAW FIRM ONLY, ONCE THEY ARE AWARE THAT THE CLIENT IS REPRESENTED BY AN ATTORNEY. THIS CASE SETTLED QUICKLY.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
MATTHEW CLOTH
Plaintiff, CV:
v.

NATIONSTAR MORTGAGE, LLC d/b/a
MR. COOPER

Defendant.
----------X

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual, statutory damages and punitive damages and for a declaratory judgment brought by Plaintiff, Matthew Cloth, an individual consumer, (hereinafter "Mr. Cloth" or "Plaintiff") against Nationstar Mortgage LLC doing business as mr. Cooper, (hereinafter "Mr. Cooper" or "Defendant") for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and for attorneys' fees, litigation expenses and costs pursuant to 28 U.S.C. § 2201 and § 2202; for violation of New York General Business Law §349 (hereinafter GBL §349) which

prohibits deceptive acts or practices in the conduct of any business; trade, or commerce or in the furnishing of any service in the State of New York which shall be unlawful; and a declaratory judgment for violation of the New York Fair Debt Collection Practices Act §601 (8) which prohibits principal creditors and their agents (debt collectors) from making a "claim or attempt, or threaten to enforce a right with knowledge or reason to know that the right does not exist" (hereinafter "NYFDCPA") for knowingly contacting the plaintiff directly while he is represented by an attorney.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692(k) and 28 U.S.C. § 1331. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this district is proper in that the defendant transacts business here and the conduct complained of occurred here where the plaintiff resides.

3. This court has supplemental jurisdiction to hear all state law claims pursuant to §1367 of Title 28 of the U.S.C and as such has jurisdiction to rule on violations of GBL §349 and the NYFDCPA §601.

III. PARTIES

4. Plaintiff, is a natural person residing in Richmond County, New York; a "consumer" as that term is defined by 15 U.S.C. §1692a(3); and a person affected by a violation of the FDCPA and other claims with standing to bring this claim primarily under 15 U.S.C. §1692.

5. Defendant, Nationstar Mortgage LLC d/b/a mr. Cooper is a Delaware Limited Liability Company (hereinafter "LLC") registered and authorized to do business in New York State; primarily involved and engaged in the business of collecting debt in New York State. mr.

Cooper as a d/b/a of Nationstar has its principal place of business located at 8950 Cypress Waters Boulevard, Dallas, Texas 75019.

6. According to the New York Department of State, Nationstar and thus its d/b/a mr. Cooper may be served through the Secretary of State for service to Corporation Service Company located at 80 State Street, Albany, New York 12207-2543. The principal purpose of the Defendant is the collection of debts including in the county of Richmond and State of New York and Defendant regularly attempts to collect debts alleged to be due to another. Defendant is a "debt collector" as that term is defined by 15 U.S.C. §1692a (6).

7. Defendant, mr. Cooper is primarily engaged in the collection of debts from consumers using the mail and the telephone. The defendant regularly attempts to collect consumer debts alleged to be due to another. The defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692a (6).

IV. FACTUAL ALLEGATIONS

8. Plaintiff allegedly owes a debt purportedly owed to a creditor on whose behalf mr. Cooper.

9. Mr. Cooper is a debt collector as well as a self-admitted d/b/a which in and of itself establishes that mr. Cooper is a debt collector under the statue: see Exhibit "C".

10. In accordance with 15 U.S.C. §1692a(6) mr. Cooper is automatically a "debt collector" because it is merely a d/b/a of Nationstar. Nationstar, by hiding its identity behind another name that it not its own seeks to distinguish itself from debt collection and any complaints arising therefrom against its behavior no longer effect the Nationstar brand and shall lessen and

slow the effects to its reputation as a company, especially Nationstar's other business function as a loan originator. Thus, even if Nationstar was collecting on its own behalf, since it is now using a d/b/a it is deemed by case law to be a debt collector.

11. On September 11, 2017, Plaintiff Law Firm sent a Third-Party Authorization letter to mr. Cooper, thus putting them on constructive, as well as, actual notice that Mr. Cloth was represented by counsel. see Exhibit "A"

12. On or around November 23, 2017, the plaintiff, despite being represented by counsel, received a "denial letter" directly from mr. Cooper pertaining to the plaintiffs' loss mitigation application in violation of 15 U.S.C. §1692c (a)(2). see attached Exhibit "C", Plaintiffs Affidavit in Merit

13. On or around January 19, 2018 despite notice of representation, the plaintiff received what was purported to be a "payment letter" directly from mr. Cooper, see Exhibit "C"; notifying the plaintiff of an account balance, loss mitigation options and the potential for loan acceleration, despite knowledge of legal representation and is considered an attempt to collect a "debt" (hereinafter referred to as "debt") as that term is defined by 15 U.S.C. §1692a(5).

14. Due to mr. Cooper's pattern and practice of deceptive collection practices the Plaintiff has suffered actual pecuniary damages in the form of certified mailing costs and non-pecuniary damages in the form anxiety, frustration and threat to the financial well-being of his family, amongst other things. see Exhibit "B".

15. The above-described collection communications made to the plaintiff by the defendant, were made in violation of numerous and multiple provisions of the FDCPA, including but not limited to 15 U.S.C. §1692c, 1692c

(a)(2); New York General Business Law §601; New York General Business Law§349; amongst others.

V. SUMMARY

16. The above-described collection communications were made directly to the plaintiffs by the defendant and/or defendant's employees and were made in violation of numerous and multiple provisions of the FDCPA and NY GBL including but not limited to all the provisions of each cited herein.

17. Furthermore, the defendant is liable under 15 U.S.C. §1692c (a)(2) due to loss mitigation and payment letters sent directly to the plaintiff despite already receiving Third Party Authorization notice from plaintiff's law firm.

18. The plaintiff has suffered pecuniary and non-pecuniary damages such as certified mailing to the attorney's office, fear, harassment and stress due to the defendant's pattern and practices of prohibited and deceptive acts. see Exhibit "B".

FIRST CLAIM FOR RELEIF

VI. FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) VIOLATIONS AGAINST THE DEFENDANT

19. The plaintiff repeats and re-allege and incorporate by reference to the foregoing paragraphs as though fully stated herein.

20. The Defendant, mr. Cooper violated the FDCPA for illegally contacting the debtor in violation of §1692 which states in relevant part:

Legal Standard: 15 U.S.C. §1692c (a)(2):

"If the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or."

21. In accordance to 15 U.S.C. §1692a(6) mr. Cooper is merely a d/b/a for Nationstar to distinguish from Nationstar's other business function as loan originator; therefore mr. Cooper is a debt collector.

15 U.S.C. §1692a(6) states in relevant part that:

"[A]ny creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts."

22. The defendant violated numerous provisions of the FDCPA. The defendant's willful violations include but are not limited to the following:

    (a) §1692c (a)(2): On November 23, 2017, despite due notice, defendant, mr. Cooper sent a "payment letter" directly to the plaintiff not withstanding receipt of notice of representation via a Third-Party Authorization sent by the firm to mr. Cooper on September 11, 2017. The Third-Party Authorization specifically put mr. Cooper on notice that Mr. Cloth was represented by counsel and the notice was faxed successfully to defendant.

    (b) §1692c (a)(2): Defendant, mr. Cooper sent a "denial letter" directly to the plaintiffs despite having

already received a Third-Party Authorization from plaintiff law firm. This is a violation due to a prior Authorization faxed from plaintiff law firm to Defendant clearly instructing all communication including denial letters be forwarded to plaintiff law firm.

23. As a result of each of mr. Cooper's violations of the FDCPA, the defendant is liable to the plaintiff for actual and statutory damages that the defendant's conduct violated the FDCPA and that they cease their deceptive practices; for Plaintiff's actual damages pursuant to 15 U.S.C. §1692 k(a)(1); statutory damages in an amount up to $1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A); and reasonable attorney fees and costs from the defendant Mr. Cooper pursuant to 15 U.S.C. §1692k(a)(3).

SECOND CLAIM FOR RELIEF

VII. NY GENERAL BUSINESS LAW §349 AS AND AGAINST DEFENDANT

26. The plaintiff repeats and re-allege and incorporate by reference to the foregoing paragraphs as though fully stated herein.

27. The plaintiff is a "consumer" as that term is defined in the GENERAL BUSINESS LAW § 349 of New York.

28. The plaintiff's relationship with the defendant arose out of a "consumer debt" as that term in the General Business Law (hereinafter "GBL") § 349 of New York.

29. The Defendant, mr. Cooper was and is respectively a "debt collector" as that term is defined by applicable provisions of the GBL§ 349.

30. Under the GBL §349 the defendant was and is prohibited from engaging in any deceptive behavior and to commit such deceptive act for pecuniary gain. All the FDCPA and NYFDCPA violations are re-alleged and incorporated herein by reference and taken together constitute the conduct prohibited by this section. The improper and deceptive behavior, knowingly or should have known mr. Cloth was represented by counsel however; mr. Cooper still sent correspondence directly to Mr. Cloth violating the statute. Mr. Cooper ignored the faxed notice of representation which came directly from Plaintiff Law Firm.

31. The plaintiff has suffered both pecuniary and non-pecuniary damages in the form of certified mailing to the attorney's office, stress, fear, anxiety and harassment. see Exhibit "B".

As a result, the defendant is liable under GBL § 349 violations and penalties.

THIRD CLAIM FOR RELIEF

VIII. NEW YORK FAIR DEBT COLLECTION PRACTICES ACT VIOLATONS AGAINST DEFENDANT

24. The plaintiff repeats and re-allege and incorporate by reference to the foregoing paragraphs as though fully stated herein.

25. The plaintiff is a "consumer" as that term is defined in the New York Fair Debt Collection Practices Act § 600 of New York.

26. The plaintiff's relationship with the defendant arose out of a "consumer debt" as that term in the New York Fair Debt Collection Practices Act § 600 of New York.

27. The defendant was and is a "debt collector" as that term is defined by applicable provisions of the New York Fair Debt Collection Practices Act§ 600.

28. Under the New York Fair Debt Collection Practices Act §601 the defendant mr. Cooper was and is prohibited from engaging in any conduct that the natural consequences of which is to oppress, harass or abuse any person. All of the FDCPA violations are realleged and incorporated herein by this reference and taken together constitute the conduct prohibited by this section. Both of the letters were sent directly to Mr. Cloth's address despite the Third-Party Authorization letter faxed prior notifying mr. Cooper that Mr. Cloth was represented by counsel. mr. Cooper willfully ignored the fax successfully sent on September 11, 2017 stating Mr. Cloth is represented by counsel and continued the oppressive tactic of sending direct correspondence to Mr. Cloth's residence.

29. The plaintiff has suffered both actual pecuniary in the form of certified mailings and non-pecuniary actual damages in the form of stress, fear, anxiety and harassment.

30. As a result, the defendant is liable under New York Fair Debt Collection Practices Act § 602 violations and penalties.

> A. Except as otherwise provided by law, any person who shall violate the terms of this article shall be guilty of a misdemeanor and/or felony, and each such violation shall be deemed a separate offense.
>
> B. The attorney general or the district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

31. Plaintiff requests for a declaratory judgment adjudging that Defendant violated the NYFDCPA.

TRIAL BY JURY

32. The plaintiff is entitled to and hereby respectfully demands a trial by jury pursuant to US Const. amend. 7. Fed. R. Civ. Pro. 38.

WHEREFORE, the plaintiff respectfully requests that judgment be entered against the defendant for the following:

A. Declaratory judgment that the defendant's conduct violated the FDCPA and must cease;

B. Actual damages pursuant to 15 U.S.C. §1692k(a)(1) against the defendant for each plaintiff;

C. Statutory damages of $1,000 pursuant to 15 U.S.C § 1692k(a)(1) against the defendant for the plaintiff;

D. Declaratory Judgment pursuant to New York General Business Law §601.

E. Actual and punitive damages pursuant to GBL §349.

F. Actual and punitive damages pursuant to §1692c (a)(2).

G. Reasonable attorney fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) against the defendant for the plaintiff; and

H. For such other and further relief as the Court may deem just and proper.

12. ACTUAL CASE EXAMPLES "BISONO"

BISONO: AFTER REVIEWING HER COLLECTION LETTER, WE DISCOVERED VIOLATIONS IN THE LANGUAGE THE DEBT COLLECTOR USED IN THEIR LETTER. THE FDCPA REQUIRES THAT THE DEBT COLLECTOR NOT USE DECEPTIVE MEANS, AND DECEPTIVE IS SUBJECT TO THE READER OF THE LETTER. THE LEGAL THRESHOLD FOR FDCPA IS THAT THE "LEAST SOPHISTICATED CONSUMER" SHOULD UNDERSTAND THE LANGUAGE. THIS CASE ALSO SETTLED SHORTLY AFTER FILING.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
MERCEDES BISONO,
Plaintiff, CV:
v.

PORTFOLIO RECOVERY ASSOCIATES, LLC.

Defendant.
----------X

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

I.INTRODUCTION

1. This is an action for actual, statutory damages and punitive damages and for a declaratory judgment brought by Plaintiff, Mercedes Bisono, an individual consumer, (hereinafter "Ms. Bisono" or "Plaintiff") against Portfolio Recovery Associates, LLC (hereinafter "Portfolio Recovery" or "Defendant") for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and for attorneys' fees, litigation expenses and costs pursuant to 28 U.S.C. § 2201 and § 2202; for violation of New York General Business Law §349 (hereinafter GBL §349) which

prohibits deceptive acts or practices in the conduct of any business; trade, or commerce or in the furnishing of any service in the State of New York which shall be unlawful; and a declaratory judgment for violation of the New York Fair Debt Collection Practices Act §601 (8) which prohibits principal creditors and their agents (debt collectors) from making a "claim or attempt, or threaten to enforce a right with knowledge or reason to know that the right does not exist" (hereinafter "NYFDCPA") for sending a deceptive collection notice.

J. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692(k) and 28 U.S.C. § 1331. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this district is proper in that the Defendant transacts business here and the conduct complained of occurred here where the Plaintiff resides.

3. This court has supplemental jurisdiction to hear all state law claims pursuant to §1367 of Title 28 of the U.S.C and as such has jurisdiction to rule on violations of GBL §349 and the NYFDCPA §601.

1. PARTIES

4. Plaintiff, Mercedes Bisono is a natural person residing in Nassau County located at 5 Hedge Lane, Westbury, NY 11590; a "consumer" as that term is defined by 15 U.S.C. §1692a(3); and a person affected by a violation of the FDCPA and other claims with standing to bring this claim primarily under 15 U.S.C. §1692.

5. Defendant, Portfolio Recovery is Foreign Limited Liability Company registered and authorized to do business in New York State; primarily involved and engaged in the business of collecting debt in New York State. Portfolio Recovery has its principal place of business located at 120 Corporate Boulevard, Norfolk, Virginia 23502.

6. According to the New York Department of State, Portfolio Recovery may be served through the Secretary of State for service to C/O Corporation Service Company, located at 80 State Street, Albany, New York 12207. The principal purpose of the Defendant is the collection of debts including in the County of Nassau and State of New York and Defendant regularly attempts to collect debts alleged to be due to another. Defendant is a "debt collector" as that term is defined by 15 U.S.C. §1692a (6).

7. Defendant, Portfolio Recovery is engaged in the collection of debts from consumers using the mail and the telephone. The Defendant regularly attempts to collect consumer debts alleged to be due to another. The Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a (6).

III. FACTUAL ALLEGATIONS

8. Plaintiff allegedly owes a debt from Old Navy which was transferred to Portfolio Recovery for collection.

9. On February 22, 2018, Ms. Bisono received a concerning collection letter from Portfolio Recovery. Furthermore, there were multiple payment options however, no explanation on the ramifications if Ms. Bisono chose any particular option. see Exhibit "B"

10. Portfolio Recovery is a self-proclaimed debt collector in which their website explains: “Portfolio Recovery has been a DBA certified member September 2014.” see Hyperlink below

https://www.portfoliorecovery.com/

11. Upon information and belief, there were additional ambiguous collection letters sent directly to Ms. Bisono.

12. Portfolio Recovery allegedly has a pattern and practice of deceptive business practices in collecting debts. see Hyperlink

https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=portfolio%20recovery%20associates%2C%20llc&size=25&sort=created_date_desc

The search of the Consumer Financial Protection Bureau complaints database, reports over 70 recent complaints against Portfolio Recovery. We can only imagine how many more additional unreported complaints for deceptive debt collection practices as it seems that this is the modus operandi for this company.

13. Portfolio Recovery knew or should have known that Ms. Bisono’s collection letter did not inform her of the difference between settling a debt and paying in full. The letter only gives two options; therefore, it does not offer the option of nonpayment or any other alternative, leaving Ms. Bisono to believe she has no other options. Furthermore, Portfolio Recovery explains two payment s options but does not explain the negative effect in settling a debt as opposed to paying in full. This includes the

reporting to her credit negatively and/or any tax consequences. Without explaining the entire story to the consumer, you are portraying an false and deceptive picture for Ms. Bisono.

14. Due to Portfolio Recovery's practice of deceptive collection practices, the Ms. Bisono has had considerable anxiety and stress in trying to decipher which option was her best option and the level of financial harm for each option. see Exhibit "B".

15. There is no question that Defendant, Portfolio Recovery, should have better explained the options and the potential financial harm each option may carry.

FIRST CLAIM FOR RELEIF

IV. FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)
VIOLATIONS AGAINST THE DEFENDANT

16. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs as though fully stated herein.

17. Plaintiff allegedly owes a debt purportedly owed to a creditor on whose behalf Portfolio Recovery.

18. The alleged debt was transferred to the Defendant, Portfolio Recovery for collections against and from the Plaintiff. In Skinner, The Court held "individuals and entities who regularly purchase debts originated by someone else and then seek to collect those debts for their own account" are considered debt collectors. Skinner v. LVNV Funding, LLC, 2018 WL 319320.

19. 15 U.S.C. §1692e states in relevant part that:

15 U.S.C. § 1692e "Any 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

(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.

Defendant, Portfolio Recovery sent collection letters with options to pay the debt however did not explain how each option would affect Ms. Bisono.

20. The Defendant violated numerous provisions of the FDCPA. The Defendant's willful violations include but are not limited to the following:

(a)§ 1692e (2): Defendant, Portfolio Recovery, On or around February 22, 2018 sent a collection letter directly to Ms. Bisono. Although the letter provided options to pay the alleged $7,522.66 debt however, the letter contained no information on the consequences for choosing any option. An unsophisticated consumer would not know a debt marked settled has much more of a harmful impact on Ms. Bisono credit as opposed to the debt marked paid in full on a credit report. In Addition, Ms. Bisono would not be aware that if she opted to settle the matter, she would be taxed on money saved in the settled matter. Therefore, the omission of imperative information explaining the payment options is deceptive

in having Ms. Bisono select a repayment option while not fully aware of the consequences.

(b) §1692e (10): Defendant Portfolio Recovery, On or around February 22, 2018 sent a collection letter directly to Ms. Bisono. The letter itself only provided several options to pay off the full balance or having the balance marked settled. The letter does not inform Ms. Bisono that a settled debt may have more of a negative impact on a credit report as opposed to a debt marked paid in full. In addition, Ms. Bisono will be liable for the taxes on the money saved if she chose to settle the debt. This is a violation because an unsophisticated consumer such as Ms. Bisono would not be able weigh out the pros and cons of each decision, just off the face of the letter.

As a result of each of Portfolio Recovery's violation of the FDCPA, the Defendant is liable to Ms. Bisono for declaratory judgment that the Defendant's conduct violated the FDCPA and that Portfolio Recovery cease collection activities; actual damages pursuant to 15 U.S.C. §1692 k(a)(1); statutory damages in an amount up to $1,000.00 from the Defendant Portfolio Recovery pursuant to 15 U.S.C. §1692k(a)(2)(A); and reasonable attorney fees and costs from Defendant Portfolio Recovery pursuant to 15 U.S.C. §1692k(a)(3).

SECOND CLAIM FOR RELIEF

V.NY GENERAL BUSINESS LAW §349 AS AND AGAINST DEFENDANT

21. The Plaintiff repeats and re-allege and incorporate by reference to the foregoing paragraphs as though fully stated herein.

22. The Plaintiff is a "consumer" as that term is defined in the GENERAL BUSINESS LAW § 349 of New York.

23. The Plaintiff's relationship with the Defendant arose out of a "consumer debt" as that term in the General Business Law (hereinafter "GBL") § 349 of New York.

24. The Defendant, Portfolio Recovery was and is respectively a "debt collector" as that term is defined by applicable provisions of the GBL§ 349.

25. Specifically, Defendant is liable to Plaintiff pursuant to GBL §349 which states in relevant part that:

"Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

Defendant, Portfolio Recovery sent a collection letter directly to Plaintiff providing options for repayment however, did not inform Ms. Bisono how each option may have a different impact pending whether the debt is marked paid in full or settled.

26. Plaintiff have suffered both pecuniary and non-pecuniary actual damages in the form of $2.30 in fuel costs driving to attorney's office, fear, anxiety and stress. see Exhibit "A"

As a result, the defendant is liable under GBL § 349 violations and penalties.

THIRD CLAIM FOR RELIEF

VI.NEW YORK FAIR DEBT COLLECTION PRACTICES ACT VIOLATONS AGAINST DEFENDANT

27. The Plaintiff repeats and realleges and incorporate by reference to the foregoing paragraphs as though fully stated herein.

28. The Plaintiff is a "consumer" as that term is defined in the New York Fair Debt Collection Practices Act § 600 of New York.

29. The Plaintiff's relationship with the Defendant arose out of a "consumer debt" as that term in the New York Fair Debt Collection Practices Act § 600 of New York.

30. The Defendant was and is a "debt collector" as that term is defined by applicable provisions of the New York Fair Debt Collection Practices Act§ 600.

31. Under the New York Fair Debt Collection Practices Act §601 the Defendant Portfolio Recovery was and is prohibited from engaging in any conduct that the natural consequences of which is to oppress, harass or abuse any person. The FDCPA violation is realleged and incorporated herein by this reference and taken together constitute the conduct prohibited by this section. The collection letter provided repayment options however, the risk of how one option as opposed to another may affect Plaintiff's credit report.

32. The Plaintiff has suffered both actual pecuniary in the form of $2.30 in fuel costs driving to attorney's office and non-pecuniary actual damages in the form of stress, fear, anxiety and harassment.

As a result, the defendant is liable under New York Fair Debt Collection Practices Act § 602 violations and penalties.

> A. Except as otherwise provided by law, any person who shall violate the terms of this article shall be guilty of a misdemeanor and/or felony, and each such violation shall be deemed a separate offense.

B. The attorney general or the district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

33. The Plaintiff prays for a declaratory judgment adjudging that Defendant violated the NYFDCPA.

TRIAL BY JURY

34. The Plaintiff is entitled to and hereby respectfully demands a trial by jury pursuant to US Const. amend. 7. Fed. R. Civ. Pro. 38.

WHEREFORE, the Plaintiff respectfully requests that judgment be entered against the defendant for the following:

a. Declaratory judgment that the Defendant's conduct violated the FDCPA and must cease;

b. Actual damages pursuant to 15 U.S.C. §1692k(a)(1) against the Defendant for Plaintiff;

c. Statutory damages of $1,000 pursuant to 15 U.S.C § 1692k(a)(1) against the Defendant for the Plaintiff;

d. Declaratory Judgment pursuant to New York General Business Law §601.

e. Actual and punitive damages pursuant to GBL §349.

f. Actual and punitive damages pursuant to §1692e (2), §1692e (10).

g. Reasonable attorney fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendant for the Plaintiff; and

h. For such other and further relief as the Court may deem just and proper.

Dated this 25th day of May, 2018.

Respectfully submitted,

12 - ACTUAL CASE EXAMPLES “RIVERA”

Rivera: After reviewing his credit report, we found two violations from two debt collectors for which we immediately filed the two separate FDCPA lawsuits. The debt collector was re-aging the debt and reporting it as if the default happened recently, when if it did happen, then the debt collector should have reported it as opened properly and not when they started their collections. See one of the cases below

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

JAIME RIVERA

Plaintiff, CV: 18-2553

v.

ALLIED ACCOUNT SERVICES, INC.

Defendant.

----------X

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual, statutory damages and punitive damages and for a declaratory judgment brought by Plaintiff, Jaime Rivera, an individual consumer, (hereinafter “Mr. Rivera” or “Plaintiff”) against Allied Account Services, Inc. (hereinafter “Allied Account” or “Defendant”) for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter

"FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and for attorneys' fees, litigation expenses and costs pursuant to 28 U.S.C. § 2201 and § 2202; for violation of New York General Business Law §349 (hereinafter GBL §349) which prohibits deceptive acts or practices in the conduct of any business; trade, or commerce or in the furnishing of any service in the State of New York which shall be unlawful; and a declaratory judgment for violation of the New York Fair Debt Collection Practices Act §601 (8) which prohibits principal creditors and their agents (debt collectors) from making a "claim or attempt, or threaten to enforce a right with knowledge or reason to know that the right does not exist" (hereinafter "NYFDCPA") against Allied Account for attempting to collect a stale debt through misreporting the account .

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692(k) and 28 U.S.C. § 1331. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this district is proper in that the Defendant transacts business here and the conduct complained of occurred here where the Plaintiff's resides.

3. This court has supplemental jurisdiction to hear all state law claims pursuant to §1367 of Title 28 of the U.S.C and as such has jurisdiction to rule on violations of GBL §349 and the NYFDCPA §601.

III. PARTIES

4. Plaintiff, Jaime Rivera is a natural person residing in Queens County located at 94-11 214th Place, Queens Village, NY 11428; a "consumer" as that term is defined by 15 U.S.C. §1692a(3); and a person affected by a violation of the FDCPA and other claims with standing to bring this claim primarily under 15 U.S.C. §1692.

5. Defendant, Allied Account is a Domestic Business Corporation registered and authorized to do business in New York State; primarily involved and engaged in the business of collecting debt in New York State. Allied Account has its principal place of business located at 422 Bedford Avenue, Bellmore, New York 11710.

6. According to the New York State Department of State, Allied Account may be served through the Secretary of State for service to James R. Mott located at 422 Bedford Avenue, Bellmore, New York 11710. The principal purpose of the Defendant is the collection of debts including in the county of Queens and State of New York and Defendant regularly attempts to collect debts alleged to be due to another. Defendant is a "debt collector" as that term is defined by 15 U.S.C. §1692a (6).

7. Defendant, Allied Account is primarily engaged in the collection of debts from consumers using the mail and the telephone. The Defendant regularly attempts to collect consumer debts alleged to be due to another. The Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692a (6).

IV. FACTUAL ALLEGATIONS

8. Plaintiff allegedly opened an account 1243XXXX in and around 2009 with National Grid; a local utility company that provides natural gas service to residential properties.

9. At some point in time, the debt collector, Allied Account began to service the account 1243XXXX on behalf of National Grid.

10. Upon information and belief, the 2009 account was associated with a home that was sold in October 2016, therefore the alleged debt could not possibly have been opened in October 2017.

11. Allied Account is a self-proclaimed debt collector in which their website explains: “Allied Account Services is an accounts receivable management firm specializing in the recovery of delinquent debt.” see Hyperlink below

http://www.alliedaccountservices.com/

12. Allied Account is currently misreporting the alleged $118.00 debt and has the account dated as opened on or around October 2017 on Mr. Rivera’s credit report. At no time in the last nine years, has Mr. Rivera opened an account with National Grid, as the Defendant alleges on the credit report. In fact, other than the previously mentioned property, Mr. Rivera lives at home with his parents and has no utility services in his own name. see Exhibit “B”.

13. Mr. Rivera only discovered the egregious misreporting on or about December 6, 2017 after inspecting his personal credit report before he was planning to acquire new credit. Additionally, Mr. Rivera soon after notified the credit bureaus of the discrepancies. see Exhibit “A”.

14. Allied Account allegedly has a long pattern and practice of deceptive business practices including misreporting on other consumer credit reports. see Hyperlink

https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=Allied%20Account%20Services&size=25&sort=created_date_desc

The search of the Consumer Financial Protection Bureau

complaints database, reports 118 complaints against Allied Account. And the first four (4) complaints are all the similar complaint, that they are collecting on debt that is not the consumer's debt. Those first four (4) complaints are complaint numbers: 2875035; 2868273; 2863766; and 2859733. We can only imagine how many more of the 118 complaints are the same story as it seems that this is the modus operandi for this company.

15. On or about April 16, 2018 Mr. Rivera contacted National Grid inquiring on information on any outstanding accounts. Mr. Rivera spoke to a National Grid representative named "Angelica" and the representative confirmed that his account was closed on or about December 12, 2016. However, the entire credit report is incorrect as this debt is reporting during a period for which Mr. Rivera was not a home owner and had NO new accounts with National Grid. see Plaintiff's Affidavit of Merit.

16. Due to Allied Account's false representation of the alleged debt owed, Mr. Rivera has had considerable anxiety and stress in trying to fix the debt collectors egregious errors and actual costs in running his credit multiple times in order to confirm that it has been fixed. see Exhibit "A".

17. There is no question that the Defendant's above-described collection reporting pertaining to Mr. Rivera's alleged debt, was made in violation of numerous and multiple provisions of the FDCPA, including but not limited to U.S.C. §1692e, §1692e (2), §1692e (5), §1692e (10); New York General Business Law §601; NYFDCPA §601; amongst others.

FIRST CLAIM FOR RELEIF

V. FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

VIOLATIONS AGAINST THE DEFENDANT

18. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs as though fully stated herein.

19. The alleged debt was consigned, placed or otherwise transferred to the Defendant, Allied Account for collections against and from the Plaintiff. In Skinner, The Court held "individuals and entities who regularly purchase debts originated by someone else and then seek to collect those debts for their own account" are considered debt collectors. Skinner v. LVNV Funding, LLC, 2018 WL 319320.

20. The alleged misreporting was discovered on or about December 7, 2017. In Lautman, The Court held "…the statute of limitations should 'not begin to run until the plaintiff knew or should have known of the defendant's violation of the Act'." Lautnan v. 2800 Coyle Street Owners Corp, 2014 WL 4843947.

21. 15 U.S.C. §1692e states in relevant part that:

15 U.S.C. § 1692e "Any 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.

Defendant, Allied Account continued to misreport Mr. Rivera's account to credit bureaus despite the account being closed for years and having no consumer activity.

22. The Defendant violated numerous provisions of the FDCPA. The Defendant's willful violations include but are not limited to the following:

(a) §1692e (2): Defendant Allied Account misreported on December 2017 the account opened the following year and reported to the credit bureaus that Mr. Rivera's account 1243XXXX was delinquent $118.00. This is an obvious and intentional violation because the original creditor, National Grid, informed Mr. Rivera that his account was closed on December 12, 2016. However, Allied Account still reported Mr. Rivera's account as "opened", months later. The Defendant is falsely representing the character, amount and legal status of an alleged debt that they cannot pursue due to their misreporting of the alleged debt. Furthermore, even if it were actual debt belonging to Mr. Rivera, the debt collector would be guilty of re-aging this debt in order to deceive the consumer into paying them and misreporting debt to make it seem as if it is new.

(b) §1692e (5): Defendant Allied Account misreported on December 2017 with the credit bureaus against Mr. Rivera with an improperly misreported debt which creates a greater negative impact on Mr. Rivera's personal credit report. This is another blatant violation due to Mr. Rivera calling and confirming with National Grid that his account was closed on December 12, 2016.

However, Allied Accounts is still reporting the account opened months later. The Defendant is in further violation by pursuing a debt that cannot legally be pursued because it is not valid debt and it is being intentionally re-aged by misreporting on his credit report.

(c) 1692e (10): Defendant Allied Account intentionally misreported Mr. Rivera's alleged debt to December 13, 2017, despite creditor National Grid informing Mr. Rivera's that his account was closed on December 12, 2016. This is a violation because Defendant listed the debt as opened in 2017 despite Mr. Rivera's taking no action on the account and creditor National Grid having the account marked as closed since last year; therefore, the Defendant is deceptively attempting to collect on a debt by misreporting on Mr. Rivera's credit report.

(d) As a result of each of Allied Account's violation of the FDCPA, the Defendant is liable to the Plaintiff for declaratory judgment that the Defendant's conduct violated the FDCPA and that Allied Account cease collection activities; actual damages pursuant to 15 U.S.C. §1692 k(a)(1); statutory damages in an amount up to $1,000.00 for the Plaintiff from the Defendant Allied Account pursuant to 15 U.S.C. §1692k(a)(2)(A); and reasonable attorney fees and costs from Defendant Allied Account pursuant to 15 U.S.C. §1692k(a)(3).

SECOND CLAIM FOR RELIEF

VI. NY GENERAL BUSINESS LAW §349 AS AND AGAINST DEFENDANT

23. The Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs as though fully stated herein.

24. The Plaintiff is a "consumer" as that term is defined in the GENERAL BUSINESS LAW § 349 of New York.

25. The Plaintiff's relationship with the Defendant arose out of a "consumer debt" as that term in the General Business Law (hereinafter "GBL") § 349 of New York.

26. The Defendant, Allied Accounts was and is respectively a "debt collector" as that term is defined by applicable provisions of the GBL§ 349.

27. Specifically, Defendant is liable to Plaintiff pursuant to GBL §349 which states in relevant part that:

"Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

Defendant, Allied Account misreported and misreported an alleged debt and reported negatively to credit bureaus despite the account being closed in 2016.

28. Plaintiff have suffered both pecuniary and non-pecuniary damages in the form of $14.98 in ordering a personal credit report for his review; as well as fear, anxiety and stress. see Exhibit "C"

As a result, the defendant is liable under GBL § 349 violations and penalties.

THIRD CLAIM FOR RELIEF

VII. NEW YORK FAIR DEBT COLLECTION PRACTICES ACT VIOLATONS AGAINST DEFENDANT

29. The Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs as though fully stated herein.

30. The Plaintiff is a "consumer" as that term is defined in the New York Fair Debt Collection Practices Act § 600 of New York.

31. The Plaintiff's relationship with the Defendant arose out of a "consumer debt" as that term in the New York Fair Debt Collection Practices Act § 600 of New York.

32. The Defendant was and is a "debt collector" as that term is defined by applicable provisions of the New York Fair Debt Collection Practices Act§ 600.

33. Under the New York Fair Debt Collection Practices Act §601 the Defendant Allied Account was and is prohibited from engaging in any conduct that the natural consequences of which is to oppress, harass or abuse any person. All of the FDCPA violations are realleged and incorporated herein by this reference and taken together constitute the conduct prohibited by this section. Defendant, Allied Account reported and misreported on a debt for 2017, when that alleged debt closed in December 2016.

34. The Plaintiff has suffered both actual damages in the form of $14.98 in ordering a personal credit report for review and non-pecuniary damages in the form of stress, fear, anxiety and harassment.

As a result, the defendant is liable under New York Fair Debt Collection Practices Act § 602 violations and penalties.

A. Except as otherwise provided by law, any person who shall violate the terms of this article shall be guilty of a misdemeanor and/or felony, and each such violation shall be deemed a separate offense.

B. The attorney general or the district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such

violation.

35. The Plaintiff pray for a declaratory judgment adjudging that Defendant violated the NYFDCPA.

TRIAL BY JURY

36. The Plaintiff is entitled to and hereby respectfully demands a trial by jury pursuant to US Const. amend. 7. Fed. R. Civ. Pro. 38.

WHEREFORE, the Plaintiff respectfully request that judgment be entered against the defendant for the following:

A. Declaratory judgment that the Defendant's conduct violated the FDCPA and must cease;

B. Actual damages pursuant to 15 U.S.C. §1692k(a)(1) against the Defendant for Plaintiff;

C. Statutory damages of $1,000 pursuant to 15 U.S.C § 1692k(a)(1) against the Defendant for the Plaintiff;

D. Declaratory Judgment pursuant to New York General Business Law §601.

E. Actual and punitive damages pursuant to GBL §349.

F. Actual and punitive damages pursuant to §1692e (2), (5), (10).

G. Reasonable attorney fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendant for the Plaintiff; and

H. For such other and further relief as the Court may deem just and proper.

ABOUT THE AUTHORS

Darren Aronow, New York

Darren Aronow is a consumer law attorney based out of Woodbury and Brooklyn, New York with a mid-size firm of about 40 employees. He has been practicing since 2003 and has established himself as a respected attorney primarily practicing in the Eastern District of New York, District Court and Bankruptcy Courts. His practice encompasses bankruptcy, foreclosure defense, loan modifications, real estate, short sales, student loan defense and a plethora of consumer laws which he regularly files in federal court including but not limited to FCRA, FDCPA, TCPA, CROA, RESPA, TILA, EFTA, bankruptcy violations and more.

Mr. Aronow graduated with Cum Laude honors from Stony Brook University with a Bachelors of Science in Psychology. He then attended Brooklyn Law School, graduating with a Juris Doctorate. He went right to practice for himself directly out of law school and never looked back and is licensed to practice law in New York, New Jersey, Pennsylvania and Virginia. Through his employed associate attorneys, his law firm is also currently practicing several other states and on its way to opening offices in some of these other states so that he may help more consumers.

Edward Jamison, Esq.

Founder of Jamison Legal Group & Identity Theft Solutions LLC

Edward Jamison is a graduate of Duquesne University School of Law. He is an attorney who is nationally recognized as an expert in consumer credit, credit scoring and identity theft.

Edward has been featured on NBC's Emmy Award winning television show Starting Over as their credit expert multiple times. A prolific author, his articles have appeared frequently in national magazines such as the Scotsman Guide, Mortgage Market Guide, Mortgage Press, Mortgage Planner Magazine and Broker Banker.

In 2004, Edward was certified by the State Bar of California and the California Department of Real Estate to provide continuing education seminars on the subject of credit scoring. He regularly conducts credit scoring seminars around the country and speaks to large groups at conferences for lawyers, accountants, mortgage brokers, financial planners and real estate professionals.

As an attorney, Edward has helped thousands of clients with Identity Theft and credit related issues. He is considered the attorney of choice for credit matters at companies such as Platinum Capital, Chase, Merrill Lynch and numerous law firms. With CreditCRM, a company Edward sold in 2009, Edward packaged his years of credit knowledge and experience with the same systems he used to run his own practice and made them available to Mortgage Brokers to start their own credit consulting business. He trained more than 400 CreditCRM members to become credit experts and gave them the tools to successfully start, market and maintain their own lucrative practices.

Conclusion:

After reading through this book, the hope is that you can see the plethora of ways to identify violations by the debt collectors and creditors that go unnoticed every day. This is less of an attack on the industry, but more of a wakeup call that they should not be able to walk all over consumers just because they can. I hope you see what I see and use these resources to benefit those who are being taken advantage of.