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9 *Iliana Aguilar*

10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 **ILIANA AGUILAR, on behalf of**
14 **herself and all other similarly**
15 **situated individuals,**
16 **Plaintiff,**

17 **v.**

18
19
20 **GREENSPOON MARDER, P.A.,**
21
22 **Defendant.**

Case No: '17CV0876 JLS BGS

COMPLAINT FOR DAMAGES

CLASS ACTION

1. FAIR DEBT COLLECTION
PRACTICES ACT, U.S.C. §
1692 ET SEQ.

JURY TRIAL DEMANDED

INTRODUCTION

- 1
2 1. The United States Congress has found abundant evidence of the use of abusive,
3 deceptive, and unfair debt collection practices by many debt collectors, and has
4 determined that abusive debt collection practices contribute to the number of
5 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions
6 of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15
7 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt
8 collection practices by debt collectors, to ensure that those debt collectors who
9 refrain from using abusive debt collection practices are not competitively
10 disadvantaged, and to promote consistent State action to protect consumers
11 against debt collection abuses.
- 12 2. Iliana Aguilar, (“Plaintiff”), through Plaintiff’s attorneys, brings this action on
13 behalf of herself and others similarly situated individuals, seeking available
14 legal and equitable remedies for of Greenspoon Marder, P.A.’s (“Defendant”)
15 violations of the FDCPA, to challenge the actions with regard to attempts by
16 Defendant to unlawfully and abusively collect a debt allegedly owed by
17 Plaintiff, and this conduct caused Plaintiff damages.
- 18 3. While many violations are described below with specificity, this Complaint
19 alleges violations of the statute cited in its entirety.
- 20 4. Unless otherwise stated, all the conduct engaged in by Defendant took place in
21 California.
- 22 5. Any violations by Defendant were knowing, willful, and intentional, and
23 Defendant did not maintain procedures reasonably adapted to avoid any such
24 violation.
- 25 6. Unless otherwise indicated, the use of Defendant’s name in this Complaint
26 includes all agents, employees, officers, members, directors, heirs, successors,
27 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
28 Defendant.

JURISDICTION AND VENUE

- 1
- 2 7. This Court has federal question jurisdiction because this case arises out of
- 3 violation of federal laws, specifically the FDCPA, 15 U.S.C. §§ 1692 et seq.
- 4 8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C.
- 5 §1692(k).
- 6 9. Defendant regularly attempts to collect alleged debts against consumers in San
- 7 Diego County by mailing abusive collection letters consumers, as Defendant did
- 8 to Plaintiff.
- 9 10. Venue is proper in the United States District Court for the Southern District of
- 10 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) at all
- 11 material times hereto, Plaintiff resided in the County of San Diego, State of
- 12 California which is within this judicial district; (ii) the conduct complained of
- 13 herein occurred within this judicial district; and (iii) many of the acts and
- 14 transactions giving rise to this action occurred in this district because Defendant,
- 15 personal jurisdiction is established.
- 16 11. Defendant is also subject to personal jurisdiction within this district because it
- 17 has office(s) in San Diego county.

PARTIES

- 18
- 19 12. Plaintiff is a natural person, as that term is used in 15 U.S.C. § 1692 *et seq.*, who
- 20 resides in the County of San Diego, State of California.
- 21 13. Plaintiff is a person from whom a debt collector sought to collect a consumer
- 22 debt which was due and owing or alleged to be due and owing from Plaintiff.
- 23 Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).
- 24 14. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at
- 25 all times mentioned herein was, a professional association and a national full-
- 26 service business law firm, based in Florida, collecting debt on behalf of its
- 27 clients. Plaintiff alleges that at all times relevant herein Defendant conducted
- 28

1 business in the State of California, in the County of San Diego, within this
2 judicial district.

3 15. Defendant uses an instrumentality of interstate commerce or the mails in a
4 business the principal purpose of which is the collection of debts, or who
5 regularly collects or attempts to collect, directly or indirectly, debts owed or due
6 or asserted to be owed or due another and is therefore a “debt collector” as that
7 phrase is defined by 15 U.S.C. § 1692a(6).

8 16. This case involves money, property or their equivalent, due or owing or alleged
9 to be due or owing from a natural person by reason of a consumer credit
10 transaction. As such, this action arises out of a “consumer debt” and “consumer
11 credit” and a “debt” as those terms are defined by 15 U.S.C. §1692a(5).

12 **FACTUAL ALLEGATIONS**

13 17. Sometime in 2006, Plaintiff allegedly incurred a debt Westgate Flamingo Bay,
14 LLC, which subsequently sold, transferred, or assigned the debt for collection to
15 Defendant.

16 18. These alleged financial obligations were money, property, or their equivalent,
17 for personal, family and/or household purposes, which is due or owing, or
18 alleged to be due or owing, from a natural person to another person and were
19 therefore “debt[s]” as that term is defined by 15 U.S.C. §1692a(5).

20 19. On or about January 18, 2017, Defendant, for the first time, corresponded with
21 Plaintiff in writing in attempt to collect debt on behalf of Westgate Flamingo
22 Bay, LLC.

23 20. Defendant’s January 18, 2017 letter stated as follows: “The total past due
24 amount is \$14,059.16, *plus any interest and late charges which have been added*
25 *to your account balance.*” (emphasis added).

26 21. Defendant’s January 18, 2017 letter failed to inform Plaintiff of the total amount
27 due, together with any interests and late charges.

- 1 22. Defendant's January 18, 2017 letter further failed to provide an amount for the
2 interest and late charges or even a percentage for consumers to calculate the
3 interest and late charges "which ha[d] been added" to the total account balance.
- 4 23. Under the FDCPA 15 U.S.C. § 1692e, debt collectors "may not use any false,
5 deceptive, or misleading representation or means in connection with the
6 collection of any debt."
- 7 24. Defendant's January 18, 2017 letter was false and/or misleading because it
8 failed to provide the total amount of debt by intentionally omitting the amount
9 of interest and late charges, in violation of 15 U.S.C. § 1692e, 1692e(2)(A), and
10 1692e(10).
- 11 25. Defendant's January 18, 2017 letter, wherein Defendant failed to provide the
12 total amount of the interest and charges, was also in violation of 15 U.S.C. §
13 1692g.
- 14 26. Under the FDCPA, 15 U.S.C. § 1692g, a debt collector must send a written
15 notice that informs the debtor of the amount of the debt, to whom the debt is
16 owed, and the debtor's right to dispute the debt in writing within thirty (30) days
17 of receipt of the letter, and the debtor's right to obtain a verification of the debt.
- 18 27. The § 1692g requirement is one of the most important requirements under the
19 FDCPA, and the debtor's right to dispute the debt must not be overshadowed or
20 inconsistent with other debt collection activities within the statutory thirty (30)
21 day period to avoid confusing the least sophisticated debtors as to the debtor's
22 validation rights.
- 23 28. The 1692g notice must be large and prominent enough to be noticed and easily
24 read. *See Riveria v. MAB Collections, Inc.* 682 F.Supp. 174, 177 (W.D.N.Y.
25 1988).
- 26 29. Debt collector's activities may not contradict the rights under the 1692g notice
27 in any way. *See Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d
28 1222 (9th Cir. 1988).

1 30. Defendant’s January 18, 2017 letter stated as follows:
2

3 If you do not dispute the validity of the debt or any portion
4 thereof, you can cure the default by paying \$14,059.16,
5 within thirty-five (35) days after your receipt of this notice.
6 If after thirty days after your receipt of this notice, you have
7 not disputed the debt or any portion of the debt, and you
8 have not paid the past due amount after thirty-five (35) days
after your receipt of this notice, your indebtedness may be
accelerated and foreclosure proceedings may be instituted.

9 31. Defendant’s January 18, 2017 letter was in violation of the 1692g based on its
10 overshadowing activities, specifically, a demand for payment within the thirty-
11 five (35) day period and a threat of the accelerated foreclosure proceeding.

12 32. Defendant’s demand for payment within the thirty-five (35) day period during
13 which Plaintiff has the right to dispute the validity of debt, overshadowed
14 Plaintiff’s right to dispute the debt, and instead wrongfully insisted Plaintiff’s
15 payment.

16 33. Collection abuses, especially by attorneys or law firms are highly discouraged,
17 and subject attorneys to a higher standard, in order to protect the vulnerable,
18 frightened, and often unsophisticated consumers. *See Pollard v. Law Office of*
19 *Mandy L. Spaulding*, 766 F.3d 98, 106-07 (1st Cir. 2014) (holding that “[a]n
20 attorney’s imprimatur conveys authority,” induced a consumer to act more
21 quickly, and “reinforces the perception that it threatens immediate litigation.”)

22 34. Defendant here is subject to this higher standard because it sent abusive and
23 misleading correspondence, overshadowing the most important rights of debtors.

24 35. Defendant’s abusive collection practices here warrant closer scrutiny because
25 law firm’s contact with a represented party is more abusive and threatening than
26 a correspondence from a debt-collection agency.
27
28

1 36. Defendant's correspondence in attempt to collect debt from Plaintiff constituted
2 abusive and harassing means to collect a payment in violation of 15 U.S.C. §
3 1692d.

4 37. Defendant's correspondence also constitute unfair and unconscionable means to
5 collect, or attempt to collect, a debt in violation of 15 U.S.C. § 1692f.

6 38. Plaintiff was personally affected because she was frustrated, distressed, and
7 frightened as a result of the Defendant's abusive debt collection communication.

8 **CLASS ALLEGATIONS**

9 39. Plaintiff brings this action on behalf of himself and all others similarly situated,
10 as a member of the proposed class (hereafter "The Class") defined as follows:

11 All persons within California who received any collection
12 correspondence from Defendant, that is identical or
13 substantially similar to the January 18, 2017 correspondence
14 Plaintiff received from Defendant, within the one year prior
15 to the filing of this Complaint.

16 40. Plaintiff represents, and is a member of, The Class, because Plaintiff received
17 Defendant's January 18, 2017 correspondence.

18 41. Defendant, its employees and agents are excluded from The Class. Plaintiff
19 does not know the number of members in The Class, but believes the Class
20 members number in the hundreds, if not more. Thus, this matter should be
21 certified as a Class Action to assist in the expeditious litigation of the matter.

22 42. Plaintiff and members of The Class were harmed by the acts of Defendant in at
23 least the following ways: (a) Defendant, either directly or through its agents,
24 illegally communicated with Plaintiff and The Class members in writing in
25 which it failed to inform Plaintiff and The Class members of the amount for late
26 charges and interest, added to Plaintiff's and The Class members' balance; (b)
27 Defendant, either directly or through its agents, illegally communicated with
28 Plaintiff and The Class members in writing in which they included similar

1 language within Plaintiff's correspondence, overshadowing the consumers'
2 rights under 1692g to dispute the debt. Plaintiff and the Class members were
3 damaged thereby.

4 43. The Class is so numerous that the individual joinder of all of its members is
5 impractical. While the exact number and identities of The Class members are
6 unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Class includes hundreds of members. Plaintiff alleges that The Class
9 members may be ascertained by the records maintained by Defendant.

10 44. The suit seeks damages and injunctive relief on behalf of The Class, and it
11 expressly not intended to request any recovery for personal injury and claims
12 related thereto. Plaintiff reserves the right to expand The Class definition to seek
13 recovery on behalf of additional persons as warranted as facts are learned in
14 further investigation and discovery.

15 45. Common questions of fact and law exist as to all members of the Class which
16 predominate over any questions affecting only individual members of the Class.
17 These common legal and factual questions, which do not vary between Class
18 members, and which may be determined without reference to the individual
19 circumstances of any Class members, include, but are not limited to, the
20 following:

21 a. Whether Defendant has a policy of communicating with consumers
22 in connection with the collection of an alleged debt wherein Defendant demands
23 payment within its initial correspondences to consumers;

24 b. Whether Defendant fails to inform consumers of the full amount of
25 debt by vaguely referring to an unidentified "interest and late charges;"

26 c. Whether Defendant's letter is false and misleading to the least
27 sophisticated consumers;

28 d. The nature and extent of damages and other remedies to which the

1 conduct of Defendant entitles the Class members.

2 46. As a person that received collection correspondences from Defendant wherein
3 Defendant fails to inform her of the total amount of debt by omitting the amount
4 of interest and charges, Plaintiff is asserting claims that are typical of The Class.

5 47. Plaintiff further received Defendant's correspondence in which defendant
6 demanded payment within the thirty-five day period, overshadowing Plaintiff's
7 rights to dispute the validity of debt, and thus asserting claims that are typical of
8 The Class.

9 48. Plaintiff will fairly and adequately protect the interests of the members of The
10 Class. Plaintiff has retained attorneys experienced in the prosecution of class
11 actions.

12 49. A class action is superior to other available methods of fair and efficient
13 adjudication of this controversy, since individual litigation of the claims of all
14 Class members is impracticable. Even if every Class member could afford
15 individual litigation, the court system could not. It would be unduly
16 burdensome to the courts in which individual litigation of numerous issues
17 would proceed. Individualized litigation would also present the potential for
18 varying, inconsistent, or contradictory judgments and would magnify the delay
19 and expense to all parties and to the court system resulting from multiple trials
20 of the same complex factual issues. By contrast, the conduct of this action as a
21 class action presents fewer management difficulties, conserves the resources of
22 the parties and of the court system, and protects the rights of each Class
23 member.

24 50. The prosecution of separate actions by individual Class members would create a
25 risk of adjudications with respect to them that would, as a practical matter, be
26 dispositive of the interests of the other Class members not parties to such
27 adjudications or that would substantially impair or impede the ability of such
28 non-party Class members to protect their interests.

1 51. Defendant has acted or refused to act in respects generally applicable to The
2 Class, thereby making appropriate final and injunctive relief with regard to the
3 members of the Class as a whole.

4 **FIRST CAUSE OF ACTION**

5 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

6 **15 U.S.C. § 1692 *ET. SEQ.***

7 52. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs
8 of this Complaint as though fully stated herein.

9 53. The foregoing acts and omissions constitute numerous and multiple violations of
10 the FDCPA, including but not limited to each and every one of the above-cited
11 provisions of the FDCPA, 15 U.S.C. §1692 *et seq.*

12 54. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any
13 actual damages pursuant to 15 U.S.C. §1692k(a)(1); statutory damages in the
14 amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable
15 attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
18 Plaintiff be awarded damages from Defendant, as follows:

- 19 • This action be certified as a class action on behalf of the Class and Plaintiff be
20 appointed as the representative of the Class;
- 21 • Appoint Plaintiff's Counsel as Class Counsel in this matter;
- 22 • An award of statutory damages of \$1,000.00 per class member, or of \$500,000.00
23 or 1% of Defendant's net worth, whichever is the lesser, pursuant to 15 U.S.C. §
24 1692k;
- 25 • An award of costs of litigation and reasonable attorney's fees, pursuant
26 to 15 U.S.C. § 1692k(a)(3);
- 27 • Prejudgment interest; and
- 28 • Any and all other relief that the Court deems just and proper.

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TRIAL BY JURY

55. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

HYDE & SWIGART

Date: May 1, 2017

By: s/Joshua Swigart
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Iliana Aguilar, Individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joshua B. Swigart, Esq., Hyde & Swigart 619-233-7770
2221Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS

Greenspoon Marder, P.A.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV0876 JLS BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (This State, Another State, Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §1692 et. seq. (FDCPA)

Brief description of cause:
Defendant violated Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/01/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Greenspoon Marder Misleads and Threatens Consumers](#)
