

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

-----X Case No. 17-cv-02032

LOIMATA ALALAMUA, on behalf of herself
individually and all others similarly situated,

Plaintiff,

-against-

**CLASS ACTION
COMPLAINT**

ALLTRAN FINANCIAL, LP f/k/a
UNITED RECOVERY SYSTEMS, LP,

Defendant.

-----X

Plaintiff, by and through her attorneys, FAGENSON & PUGLISI, PLLC,
upon knowledge as to herself and her own acts, and as to all other matters upon
information and belief, brings this complaint against above-named defendant and in
support thereof alleges the following:

INTRODUCTION

1. This is an action for damages brought by an individual consumer and
on behalf of a class for defendant's violations of the Fair Debt Collection Practices Act
("FDCPA"), 15 U.S.C. § 1692, *et seq.* which prohibits debt collectors from engaging in
abusive, deceptive and unfair acts and practices.

JURISDICTION AND VENUE

2. This Court has federal question jurisdiction pursuant to the FDCPA, 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. This Court has venue pursuant to 28 U.S.C. § 1391(b) in that a substantial portion of the events or omissions giving rise to this action occurred in this District.

PARTIES

4. Plaintiff is a natural person who resides in this District.

5. Plaintiff is a consumer within the meaning of 15 U.S.C. § 1692a(3) as she is a natural person who is alleged by defendant to owe a financial obligation.

6. The financial obligation which defendant sought to collect from plaintiff is a debt within the meaning of 15 U.S.C. § 1692a(5) in that the obligation which defendant sought to collect from plaintiff was originally incurred, if at all, for personal, family or household purposes on a Sears store card account originally owned by Citibank, N.A.

7. Defendant is a debt collector within the meaning of 15 U.S.C. § 1692a(6).

8. The principal purpose of defendant's business is the collection of defaulted consumer debts.

9. Defendant uses the mails in its business the principal purpose of which is the collection of defaulted consumer debts.

10. Defendant regularly collects or attempts to collect defaulted consumer debts owed or due or alleged to be owed or due to others.

11. Upon information and belief, defendant is a foreign limited partnership formed under the laws of the State of Texas.

FACTUAL ALLEGATIONS

12. Plaintiff re-alleges paragraphs 1 to 11 as if fully re-stated herein.

13. Defendant sent to plaintiff a collection letter dated April 5, 2016.

14. Defendant sent the letter in an attempt to collect a debt on behalf of Citibank.

15. At the time defendant sent the letter, the debt was in default.

16. In the letter defendant stated that the amount due was \$4,587.67.

17. In the letter defendant further stated, in pertinent part:

“Our client, the above named creditor, has agreed to accept \$3,211.37 as a settlement for monies owing on your account.”

18. Further in the letter, defendant stated, in pertinent part:

“Citibank, N.A. will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulations.”

19. Upon receipt of defendant’s letter and upon reading defendant’s statement regarding the Internal Revenue Service (“IRS”), plaintiff felt she may get into trouble with the IRS for refusal to pay the full balance of the debt.

20. Upon receipt of defendant's letter and upon reading defendant's statement regarding the IRS, plaintiff believed, erroneously, that if she negotiated to settle the debt for less than the full amount claimed the creditor would report the settlement to the IRS.

21. Upon receipt of defendant's letter and after reading defendant's statement regarding the IRS, plaintiff believed, erroneously, that if she negotiated to settle the debt for less than the full amount defendant claimed she owed, then the entire amount of the debt discharged would be reported to the IRS.

22. Upon receipt of defendant's letter and after reading defendant's statement regarding the IRS, plaintiff believed, erroneously, that the only way for her to avoid any IRS reporting of a discharge of indebtedness was for her to pay the full debt amount claimed.

AS AND FOR A FIRST CAUSE OF ACTION

Intimidation of plaintiff by the IRS statement

15 U.S.C. §§ 1692e and 1692e(2)(A)

23. Plaintiff re-alleges paragraphs 1 to 22 as if fully re-stated herein.

24. Defendant stated in its letter that the debt amount due was \$4,587.67.

25. In the letter defendant offered to settle the debt for \$3,211.37 – which represents a discharge of indebtedness of \$1,376.30.

26. In the letter defendant also included a statement (the “IRS statement”) that:

“Citibank, N.A. will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulations.”

27. No law required defendant to include the IRS statement in its collection letter.

28. Defendant did not mention in its letter that it is the discharge of indebtedness *that is principal* in the amount of \$600.00 or more that triggers the IRS reporting requirement.

29. Under 26 C.F.R. § 1.6050P-1(d)(2), the discharge of the amount of a debt that is interest is not required to be reported to the IRS.

30. Under 26 C.F.R. § 1.6050P-1(d)(3), the discharge of the amount of a debt other than stated principal is not required to be reported to the IRS.

31. There are additional exceptions to the reporting requirement for a discharge of indebtedness.

32. Citibank is not required by the Internal Revenue Code and corresponding IRS regulations to report “any” discharge of indebtedness, as defendant stated in its letter.

33. Defendant’s IRS statement that Citibank will report *any* discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulations is therefore false.

34. Defendant's IRS statement that Citibank will report *any* discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulations is also deceptive and misleading.

35. Said IRS statement is deceptive and misleading because it would cause the least sophisticated consumer to believe, erroneously, that a discharge in any amount could trigger reporting to the IRS.

36. This belief would make the least sophisticated consumer less likely to negotiate any settlement for less than the full balance, for fear that she would be reported to the IRS.

37. Further, because Citibank may be required to report only a discharge of indebtedness of \$600.00 or more *of principal*, defendant's IRS statement may not apply to plaintiff at all.

38. Some portion of the discharge of indebtedness defendant offered was interest.

39. Some portion of the discharge of indebtedness defendant offered was fees and charges.

40. Some portion of the discharge of indebtedness defendant offered was not principal.

41. The interest, fees and charges included in the amount offered to be discharged would not be required to be reported to the IRS.

42. Defendant's IRS statement would cause the least sophisticated consumer to believe, erroneously, that all of the amount defendant offered to discharge would automatically have to be reported to the IRS if plaintiff accepted the offer.

43. Defendant's IRS statement is false, deceptive and misleading for this reason also.

44. Defendant included the IRS statement in expectation that plaintiff, having been deceived, would then be misled into settling the debt without negotiating it out of fear that she would be reported to the IRS.

45. Alternatively, defendant included the IRS statement in expectation that plaintiff, having been deceived, would then be misled into settling the debt for the payment of a greater amount than she needed to pay in order to avoid being reported to the IRS.

46. Defendant's gratuitous inclusion of the IRS statement in its letter was meant by defendant to scare and intimidate plaintiff and the least sophisticated consumer to pay more of the debt than necessary in an effort to avoid involvement of the IRS in the settlement of the debt,

47. Defendant's inclusion of the IRS statement in its letter is a ploy illicitly to increase collections.

48. Defendant's IRS statement is false, in violation of 15 U.S.C. §§ 1692e and 1692e(2)(A), in that Citibank is required only to report a discharge of indebtedness that is \$600.00 or more *of principal*.

49. Defendant's IRS statement is also a deceptive and misleading representation used by defendant in connection with the collection of the debt, in violation of 15 U.S.C. §§ 1692e and 1692e(2)(A), in that the effect of the statement is to cause plaintiff to believe that she has to pay all of the debt, or a greater portion of the debt than she lawfully has to, in order to avoid the reporting of a discharge of indebtedness by Citibank.

CLASS ALLEGATIONS

50. Plaintiff re-alleges paragraphs 1 to 49 as if fully re-stated herein.

51. This action is brought on behalf of plaintiff and the members of a class. The class consists of all natural persons who defendant's records reflect were sent debt collection letters within the State of New York within the period of time commencing one year before the filing of this complaint up to and including the date of the filing of the complaint and who were sent a collection letter (a) in substantially the same form as the letter defendant sent to plaintiff; (b) the collection letter was sent to a consumer seeking payment of a consumer debt owed to Citibank, N.A.; (c) the collection letter was not returned by the postal service as undeliverable; and (d) the collection letter states, in sum or substance:

“Citibank N.A. will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulations.”

52. The class does not include defendant or persons who are officers, directors, or employees of defendant.

53. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

- (A) Based on the fact that the collection letter that is the gravamen of this litigation is a mass-mailed form letter, the class is so numerous that joinder of all members is impracticable. Upon information and belief, thousands of persons have received similar debt collection letters from defendant which violate the various provisions of the FDCPA.
- (B) There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether defendant violated the FDCPA including but not limited to §§ 1692e and 1692e(2)(A) by inserting the IRS statement in its collection letters.
- (C) The only individual issue is the identification of the consumers who received the letters (the class members), a matter capable of ministerial determination from the records of defendant.
- (D) The claims of plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) Plaintiff will fairly and adequately represent the class members' interests. Plaintiff has retained experienced counsel. Plaintiff's interests are consistent with those of the members of the class.

54. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA in 15 U.S.C. § 1692k. The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

55. If the facts are discovered to be appropriate, plaintiff will seek to certify a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

56. Communications from debt collectors, such as those sent by defendant, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer".

57. As a result of the above violations, defendant is liable to plaintiff and the members of the class for damages in an amount to be determined at the time of trial, plus costs and attorneys' fees.

WHEREFORE, plaintiff respectfully prays that judgment be entered against defendant as follows:

- (a) certifying a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- (b) awarding class members the maximum statutory damages pursuant to 15 U.S.C. § 1692k;
- (c) awarding maximum individual statutory damages pursuant to 15 U.S.C. § 1692k;
- (d) awarding actual damages pursuant to 15 U.S.C. § 1692k in an amount to be determined at time of trial.
- (e) awarding reasonable attorneys' fees, costs and disbursements pursuant to 15 U.S.C. § 1692k; and
- (f) for such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York
April 6, 2017.

/s/ Novlette R. Kidd
NOVLETTE R. KIDD, ESQ. (NK 9339)
FAGENSON & PUGLISI, PLLC
Attorneys for Plaintiff
450 Seventh Avenue, Suite 704
New York, New York 10123
Telephone: (212) 268-2128
Nkidd@fagensonpuglisi.com

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

LOIMATA ALALAMUA on behalf of herself individually and all others similarly situated

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) FAGENSON & PUGLISI, PLLC, 450 Seventh Avenue, Suite 704, New York, New York 10123. Tel. (212) 268-2128.

DEFENDANTS

ALLTRAN FINANCIAL, LP f/k/a UNITED RECOVERY SYSTEMS, LP

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)

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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 - Transfer, 8 Multidistrict Litigation - Direct File

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.

Brief description of cause: Violations of Fair Debt Collection Practices Act, deception

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/06/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Novlette R. Kidd

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Novlette R. Kidd, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason **Class action.**

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A - Plaintiff is a natural person.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ Novlette R. Kidd

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

LOIMATA ALALAMUA, on behalf of herself
individually and all others similarly situated,

Plaintiff(s)

v.

ALLTRAN FINANCIAL, LP, f/k/a
UNITED RECOVERY SYSTEMS, LP,

Defendant(s)

Civil Action No. 17-CV-02032

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ALLTRAN FINANCIAL, LP f/k/a UNITED RECOVERY SYSTEMS, LP
C/O C T Corporation System
111 Eighth Avenue
New York, New York 10011

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: FAGENSON & PUGLISI, PLLC
450 Seventh Avenue, Suite 704
New York, New York 10123

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 17-CV-02032

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Alltran Financial Sued Over 'Intimidating' Debt Collection Letter](#)
