

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ARON FELBERBAUM on behalf of himself and  
all other similarly situated consumers

Plaintiff,

-against-

PHILLIPS & COHEN ASSOCIATES, LTD. &  
PCA ACQUISITIONS V, LLC D/B/A  
PORTFOLIO ASSET GROUP

Defendants.

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## CLASS ACTION COMPLAINT

### Introduction

1. Plaintiff, Aron Felberbaum, brings this action against Phillips & Cohen Associates, Ltd. & PCA Acquisitions V, LLC d/b/a Portfolio Asset Group for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”). The FDCPA prohibits debt collectors from engaging in abusive, deceptive and unfair collection practices while attempting to collect on debts.

### Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that Defendants sought to collect from Plaintiff a consumer debt.
4. Upon information and belief, Defendant Phillips & Cohen Associates, Ltd’s principal place of business is located in Wilmington, Delaware.

5. Upon information and belief, Defendant PCA Acquisitions V, LLC d/b/a Portfolio Asset Group's principal place of business is also located in Wilmington, Delaware.
6. Defendants are regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
7. Defendants are "debt collectors" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

#### **Jurisdiction and Venue**

8. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

#### **Allegations Particular to Aron Felberbaum**

10. Defendant Portfolio Asset Group hired Defendant Phillips & Cohen Associates to collect the debt on its behalf.
11. Portfolio Asset Group uses the instrumentality of interstate commerce as well as the mails in its business which the principal purpose of which is the collection of debts.
12. Portfolio Asset Group regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
13. The principal purpose of Portfolio Asset Group's business is the purchase of defaulted consumer debts originally owed or due or alleged to be originally owed or due to others.
14. Portfolio Asset Group purchased Plaintiff's defaulted debt from Synchrony Bank, placed it with Phillips & Cohen Associates, and sought to collect on it.

15. Portfolio Asset Group uses the mail in purchasing defaulted consumer debts, usually at a significant discount to their face value, and then seeks to collect on such debts.
16. Portfolio Asset Group, directed, controlled and instructed Phillips & Cohen Associates to use collection letters and phone messages when communicating with the Plaintiff.<sup>1</sup>
17. Upon information and belief, on a date better known by Defendants, Defendants began to attempt to collect an alleged consumer debt from the Plaintiff.
18. On or about June 21, 2016, Phillips & Cohen Associates sent the Plaintiff a collection letter on behalf of its client, Portfolio Asset Group.
19. The said June 21, 2016 letter was an effort to collect on a consumer debt.
20. The said collection letter was confusing to the Plaintiff and is likely to be misconstrued by the “least sophisticated consumer” since it is open to more than one reasonable interpretation, at least one of which is inaccurate.
21. The Second Circuit stated in Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 74 (2d Cir. 2016)

“The question presented is whether a collection notice that states a consumer's "current balance," but does not disclose that the balance may increase due to interest and fees, complies with this provision. We hold that Section 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.
22. The holding of the Second Circuit is that Section 1692e of the FDCPA requires every debt collector in every collection letter “to disclose that the balance may increase due to interest and fees”.
23. However if the “Current Balance Owing” will never increase and the holder of the debt

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<sup>1</sup> Janetos v. Fulton Friedman & Gullace, LLP, No. 15-1859, 2016 U.S. App. LEXIS 6361, at \*19 (7th Cir. Apr. 7, 2016). (“A debt collector should not be able to avoid liability for unlawful debt collection practices simply by contracting with another company to do what the law does not allow it to do itself. Like the Third Circuit, we think it is fair and consistent with the Act to require a debt collector who is independently obliged to comply with the Act to monitor the actions of those it enlists to collect debts on its behalf.”)

will always accept payment of the amount set forth in full satisfaction of the debt then the

Second Circuit alternatively stated:

“We hold that a debt collector will not be subject to liability under Section 1692e for failing to disclose that the consumer's balance may increase due to interest and fees if the collection notice *either* accurately informs the consumer that the amount of the debt stated in the letter will increase over time, *or* clearly states that the holder of the debt will accept payment of the amount set forth in full satisfaction of the debt.” *Id.* at 817.

24. The Second Circuit in *Avila* did not “hold that a debt collector must use any particular disclaimer” *Id.*
25. However, the Second Circuit did address all the possible scenarios: 1) If the “current balance” could increase over time, then the collection notice must disclose that the “balance might increase due to interest and fees”. *Id.* 2) If the “current balance” is currently increasing, then the collection notice must disclose that the amount of the debt stated, “in the letter will increase over time”. *Id.* 3) If the “current balance” will never increase and the debt collector is always willing to accept this “specified amount” in “full satisfaction” of the debt, then the debt collector must state so clearly. However, if a debt collector is willing to accept a “specified amount” in full satisfaction of the debt only if payment is made by a specific date, then the debt collector must simplify the consumer's understanding by so stating, while advising that the amount due could increase by the accrual of additional interest or fees if payment is not received by that date.
26. In this case, the “Current Balance Owing” was increasing due to interest per the creditor’s contract. Nevertheless, the collection notice did not disclose that the amount of the debt stated in the letter “could” or “will” increase over time.
27. The Plaintiff, as well as the “least sophisticated consumer” was unsure as to whether or

- not the said account was accruing interest.
28. The “Current Balance Owing” in this case was for an amount that included original principal, fees, and contractual interest.
  29. The Plaintiff was left uncertain as to whether the “Current Balance Owing” was accruing interest as there was no disclosure that indicated otherwise.
  30. The FDCPA requires debt collectors, when notifying consumers of their account balance, to disclose that the balance may increase due to interest and fees; failure to include such disclosures would harm consumers such as the Plaintiff who may hold the reasonable but mistaken belief, that timely payment will satisfy their debts and it would abrogate the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e.
  31. Prior to the acquisition and subsequent collection by the Defendants, of the said Synchrony Bank (f/k/a GE Capital Retail Bank) account, the account was previously being collected by Advanced Call Center Technologies, LLC, ("ACCT" )who had also sent a letter to the Plaintiff on or about August 31, 2013.
  32. The account balance stated in the August 31, 2013 letter from ACCT was \$13,896.00, and in addition to that balance, interest was accruing daily as evident from the Phillips & Cohen June 21<sup>st</sup> letter, which reflected an increase in the balance to an amount of \$14,434.65.
  33. A reasonable consumer could be misled into believing that he or she could pay his or her debt in full by paying the amount as listed in the June 21, 2016 letter.
  34. In fact, however, since as shown by the difference in the amount between the June 21, 2016 letter and the new increased amount in the June 21, 2016 letter, which reflected that

interest was accruing daily, a consumer who pays the balance due as stated in the letter, would be left unaware as to whether or not the debt has been paid in full.

35. The debt collector could still seek the interest and fees that had accumulated after the notice was sent, but before the balance was paid, or sell the consumer's debt to a third party, who itself could seek the post charge-off interest and fees from the consumer.<sup>2</sup>
36. Where a debt collector mails a debtor various different letters which show that interest is accruing daily, yet the debt collector "is willing to accept a specified amount in full satisfaction of the debt if payment is made by a specific date [it must] simplify the consumer's understanding by so stating, while advising that the amount due would increase by the accrual of additional interest or fees if payment is not received by that date."<sup>3</sup> However, if the debt collector intended on waiving the interest accruing it must clearly state that the interest is being waived.
37. The said collection letters at issue were increasing daily due to interest, but the June 21, 2016 letter specifically, failed to disclose that the balance would continue to increase due to interest and fees, or in the alternative, the June 21, 2016 letter failed to disclose that the balance was actually not increasing due to the interest being waived.
38. In any event, Defendant's said June 21, 2016 letter was "misleading" and "confusing" within the meaning of Section 1692e of the FDCPA.

Absent a disclosure by the holder of the debt that the interest accruing since the previous letter is waived, even if the debtor pays the "Amount of Debt" the Defendant and or the creditor could still seek the interest accruing since the previous letter, or sell the consumer's debt to a third party, which itself could seek the accrued interest from the consumer.<sup>4</sup>

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<sup>2</sup> See Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)

<sup>3</sup> *id.*

<sup>4</sup> Avila, at \*10-11.

39. Waiver of interest even when it has been made explicitly has not prevented debt-collectors from continuing to illegally charge the waived interest.
40. At the bare minimum, a debt collector must make clear even to the unsophisticated consumer that it intends to waive the accruing post charge-off interest.
41. A debt collector must disclose, that the balance due may change over time.
42. To the extent that the Creditor or the Defendant intended to waive the automatically accrued and accruing interest, it was required to disclose that in the most conspicuous of terms.
43. If the "Current Balance Owing," will never increase and the debt collector is always willing to accept this "specified amount" in "full satisfaction" of the debt, then the debt collector must clearly state that the holder of the debt will always accept payment of the amount set forth in "full satisfaction" of the debt.
44. Defendant was required to include a disclosure that the automatically accrued interest was accruing, or in the alternative, the Defendant was required to disclose that the creditor has made an intentional decision to waive the automatically accruing interest and will always accept this "specified amount" in "full satisfaction" of the debt nonetheless it did not make any of those disclosures in violation of 1692e.
45. If interest was waived, the letter would need to contain that disclosure and clearly state that no interest is accruing on this account in order to provide full and fair disclosure to consumers of the actual balance as is embodied in Section 1692e.
46. The Second Circuit adopted a safe harbor disclaimer stating "that requiring such disclosure best achieves the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e. It also protects consumers such as the

Plaintiff, who may hold the reasonable but mistaken belief that timely payment will satisfy their debts."<sup>5</sup>

47. Because the statement of the “Current Balance Owing” that included original principal, fees, and contractual interest, without notice that the accruing interest was expressly waived can mislead the least sophisticated consumer into believing that payment of the amount stated will clear her account, the FDCPA requires debt collectors, when they notify consumers of their account balance, to expressly disclose that the amount of the debt stated in the letter will increase over time, *or* clearly state that the holder of the debt will always accept payment of the amount set forth in full satisfaction of the debt. *Id.* at 817.
48. Requiring such disclosure best achieves the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e. It also protects consumers such as the Plaintiff, who may hold the reasonable, but mistaken belief that timely payment will satisfy their debts and it protects them from other debt collectors seeking further interest on this debt in the future.
49. According to the Second Circuit’s finding that the “Current Balance Owing” must contain a full and fair disclosure, if a credit card account was being charged interest, pursuant to a contract and the interest was intended to be waived, disclosure of such a waiver is necessary or the consumer would not know what the balance is. “[i]n fact, however, if interest is accruing daily, [or was not expressly waived] a consumer who pays the ‘current balance’ stated on the notice will not know whether the debt has been paid in full. The debt collector could still seek the [accruing or unwaived] interest and fees that accumulated after the notice was sent but before the balance was paid, or sell the

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<sup>5</sup> Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)



consumer's debt to a third party, which itself could seek the interest and fees from the consumer."<sup>6</sup>

50. The 8th Circuit in Haney v. Portfolio Recovery Assocs., No. 15-1932, 2016 U.S. App. LEXIS 17287 (8th Cir. Sep. 21, 2016) clearly explains that merely not including interest in post charge off statements is not express waiver of interest, and the debt collector or creditor can seek the interest in the future.
51. In fact, in this case the Plaintiff is still not sure whether there was any intent to waive the interest. There was definitely no express waiver and disclosure of waiver is mandatory if interest was originally accruing per the contract. The consumer could not know what the real balance is.
52. The intent to waive a contractual right must be unmistakably manifested and may not be inferred from doubtful or equivocal acts.<sup>7</sup> A waiver of a contract right does not occur by negligence, oversight or thoughtlessness and cannot be inferred from mere silence.<sup>8</sup>
53. Failure to disclose such a waiver of the automatically accruing interest is in of itself deceptive and “misleading” within the meaning of Section 1692e. The Defendant knew that the balance would increase due to interest, fees and/or disbursements.
54. According to the Second Circuit in Avila, any debt that was accruing interest and fees would need full and complete disclosure which would either clearly state that the balance “may” or “will” increase over time or clearly state that the debt is “static” and holder of the debt will always accept payment of the amount set forth in “full satisfaction” of the

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<sup>6</sup> Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)

<sup>7</sup> Navillus Tile, Inc. v. Turner Const. Co., 2 A.D.3d 209, 770 N.Y.S.2d 3 (1st Dep’t 2003)

<sup>8</sup> Acumen Re Management Corp. v. General Sec. Nat. Ins. Co., 2012 WL 3890128, at \*6 (S.D. N.Y. 2012), reconsideration denied, motion to certify appeal granted, 2012 WL 6053936 (S.D. N.Y. 2012).

debt.

55. The “Current Balance Owing” is for an amount that includes original principal, fees, and contractual interest.
56. Since interest was accruing on this debt, the collection notice must inform the consumer that the amount of the debt stated in the letter may increase over time.
57. Collection letters failing to reference the accrual of interest or waiver of interest are subject to two different interpretations as to the accumulation of interest, rendering them deceptive under § 1692e(10).
58. “None of the letters provided further detail regarding when or how the balance had been calculated, whether it included interest, or whether interest continued to accrue. The court finds that the “least sophisticated consumer” could have read these letters in at least two different ways. *On one hand*, an unsophisticated consumer could reasonably conclude that the balance was a fixed amount that would not be subject to further interest, late fees, or other charges. *On the other*, an unsophisticated consumer could just as reasonably determine that the balance would continue to grow over time as interest accrued. *One of those meanings would necessarily be inaccurate*. Therefore, the court finds that Defendants' letters were deceptive as a matter of law. Courts in other districts have reached the same conclusion on similar facts. The court grants Ms. Snyder's motion for summary judgment on this issue.” *Snyder v. Gordon*, No. C11-1379 RAJ, 2012 U.S. Dist. LEXIS 120659, at \*8-9 (W.D. Wash. Aug. 24, 2012); *Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72, 75 (2d Cir. 2016) (“[I]n considering whether a collection notice violates Section 1692e, we apply the “least sophisticated consumer” standard ... **Under this standard, a collection notice is misleading if it is “open to more than one**

**reasonable interpretation, at least one of which is inaccurate.”)**

59. “The Court therefore finds that [the debt collectors] letters to [the debtor] are subject to two different interpretations as to the accumulation of interest, rendering them deceptive under § 1692e(10) ... The logic [applies] to stated outstanding debt and the need for consumers to be aware that this debt may be dynamic or static. They are concerned with a consumer's inability to discern whether an amount owed may grow with time, regardless of whether offers to settle are on the table or not. As [plaintiff] states, this information is relevant in a consumer's payment calculus, especially when some debts must be paid at the expense of others. And, of course, the existence of settlement offers would be entirely irrelevant to these considerations for the many consumers who are unable to take advantage of them...Plaintiff's claim is not that the stated balance was not itemized, but that it was unclear whether it was subject to future interest.” Michalek v. ARS Nat'l Sys., No. 3:11-CV-1374, 2011 U.S. Dist. LEXIS 142976, at \*16-17 (M.D. Pa. Dec. 13, 2011).
60. The Plaintiff and the least sophisticated consumer could conclude from the said collection letter, that the “Current Balance Owing” is static and that his or her payment of the amount due would satisfy the debt irrespective of when payment was remitted. However, absent a disclosure by the holder of the debt that clearly stated that the holder of the debt would accept payment of the amount set forth in “full satisfaction” of the debt then even if the debtor pays the “Current Balance Owing” the Defendant and or the creditor could still seek the automatic interest that accumulated after the breach of contract, or sell the consumer's debt to a third party, which itself could seek the automatic interest and from the consumer. (Avila, at \*10-11.)
61. The said June 21, 2016 letter was deceptive and misleading as it merely identified the

“Current Balance Owing,” yet failed to disclose that the balance may increase due to interest and fees.

62. The Plaintiff was left uncertain as to whether the “Current Balance Owing” was accruing interest as there was no disclosure that indicated otherwise.
63. A reasonable consumer could read the notice and be misled into believing that he or she could always pay his or her debt in full by paying the amount listed on the notice.
64. In fact, however, since interest is accruing daily, or since there are undisclosed late fees, a consumer who pays the “Current Balance Owing” stated on the notice will not know whether the debt has been paid in full.
65. The debt collector could still seek the interest and fees that accumulated after the notice was sent but before the balance was paid, or sell the consumer’s debt to a third party, which itself could seek the interest and fees from the consumer.
66. The statement of a “Current Balance Owing” without notice that the amount is already increasing due to accruing interest or other charges, would mislead the unsophisticated consumer into believing that payment of the amount stated will clear his or her account.
67. The FDCPA requires debt collectors, when notifying consumers of their account balance, to disclose that the balance may increase due to interest and fees; failure to include such disclosures would harm consumers such as the Plaintiff who may hold the reasonable but mistaken belief, that timely payment will satisfy their debts and it would abrogate the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e.
68. Collection notices that state only the “Current Balance Owing,” but do not disclose that the balance might increase due to interest and fees, are “misleading” within the meaning

of Section 1692e.

69. The Plaintiff and the least sophisticated consumer would be led to believe that the “Current Balance Owing” is static and that his or her payment of the amount due would satisfy the debt irrespective of when payment was remitted.
70. A consumer who pays the “Current Balance Owing” stated on the collection letter will be left unsure as to whether or not the debt has been paid in full, as the Defendant could still attempt to collect on any interest and fees that accumulated after the letter was sent but before the balance was paid.
71. The Defendant violated 15 U.S.C. § 1692e(2)(A) for misrepresenting the amount of the debt owed by the Plaintiff.
72. A debt collector, when notifying a consumer of his or her account balance, must disclose that the balance may increase due to interest and fees.
73. 15 U.S.C. § 1692e provides:

A 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 –  
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.
74. Defendants’ June 21, 2016 letter is in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10) of the FDCPA for the use of any false representation or deceptive means to collect or attempt to collect any debt and for misrepresenting the amount of the debt owed by the Plaintiff.

75. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendants.
76. Plaintiff suffered actual harm by being the target of the Defendants' misleading debt collection communications.
77. Defendants violated the Plaintiff's right not to be the target of misleading debt collection communications.
78. Defendants violated the Plaintiff's right to a truthful and fair debt collection process.
79. Defendants used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
80. Defendants' communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to Defendants' collection efforts.
81. The FDCPA ensures that consumers are fully and truthfully apprised of the facts and of their rights, the act enables them to understand, make informed decisions about, and participate fully and meaningfully in the debt collection process. The purpose of the FDCPA is to provide information that helps consumers to choose intelligently. The Defendants' false representations misled the Plaintiff in a manner that deprived him of his right to enjoy these benefits, these materially misleading statements trigger liability under section 1692e of the Act.
82. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
83. Plaintiff seeks to end these violations of the FDCPA. Plaintiff has suffered damages including but not limited to, fear, stress, mental anguish, emotional stress and acute embarrassment. Plaintiff and putative class members are entitled to preliminary and

permanent injunctive relief, including, declaratory relief, and damages.

### **CLASS ALLEGATIONS**

84. This action is brought as a class action. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.
85. The identities of all class members are readily ascertainable from the records of the Defendants and those business and governmental entities on whose behalf it attempts to collect debts.
86. Excluded from the Plaintiff's Class are the Defendants and all officers, members, partners, managers, directors, and employees of the Defendants, and all of their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
87. There are questions of law and fact common to the Plaintiff's Class, which common issues predominate over any issues involving only individual class members. The principal issues are whether the Defendants' communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
88. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.
89. The Plaintiff will fairly and adequately protect the interests of the Plaintiff's Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor his attorneys have any interests, which might cause them not to vigorously pursue this action.

90. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- (a) **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff's Class defined above is so numerous that joinder of all members would be impractical.
- (b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff's Class and those questions predominate over any questions or issues involving only individual class members. The principal issues are whether the Defendants' communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
- (c) **Typicality:** The Plaintiff's claims are typical of the claims of the class members. Plaintiff and all members of the Plaintiff's Class defined in this complaint have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- (d) **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor his counsel have any interests, which might cause them not to vigorously pursue the instant class action lawsuit.



(e) **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender. Certification of a class under Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure is appropriate because adjudications with respect to individual members create a risk of inconsistent or varying adjudications which could establish incompatible standards of conduct for Defendants who, on information and belief, collect debts throughout the United States of America.

91. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that a determination that the above stated claims, violate provisions of the Fair Debt Collection Practices Act, and is tantamount to declaratory relief and any monetary relief under the FDCPA would be merely incidental to that determination.

92. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff's Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

93. Further, Defendants have acted, or failed to act, on grounds generally applicable to the Rule (b)(1)(A) and (b)(2) Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.
94. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify one or more classes only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

**AS AND FOR A FIRST CAUSE OF ACTION**

**Violations of the Fair Debt Collection Practices Act brought by Plaintiff on behalf of himself and the members of a class, as against the Defendants.**

95. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through ninety four (94) herein with the same force and effect as if the same were set forth at length herein.
96. This cause of action is brought on behalf of Plaintiff and the members of a class.
97. The class involves all individuals whom Defendants' records reflect resided in the State of New York and who were sent a collection letter in substantially the same form letter as the letter sent to the Plaintiff on or about June 21, 2016; and (a) the collection letter was sent to a consumer seeking payment of a personal debt; and (b) the collection letter was not returned by the postal service as undelivered; and (c) the Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10) of the FDCPA for the use of any false representation or deceptive means to collect or attempt to collect any debt and for misrepresenting the amount of the debt owed by the Plaintiff.

**Violations of the Fair Debt Collection Practices Act**

98. The Defendants' actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.

99. Because the Defendants violated the Fair Debt Collection Practices Act, the Plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests preliminary and permanent injunctive relief, and that this Court enter judgment in Plaintiff's favor and against the Defendants and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. § 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Brooklyn, New York  
April 21, 2017

/s/ Maxim Maximov  
Maxim Maximov, Esq.  
Attorneys for the Plaintiff  
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Plaintiff requests trial by jury on all issues so triable.

/s/ Maxim Maximov  
Maxim Maximov, Esq.

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

ARON FELBERBAUM

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

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

MAXIM MAXIMOV, LLP OFFICE: (718) 395-3459
1701 AVENUE P FAX: (718) 408-9570
BROOKLYN, NEW YORK 11229 E-MAIL: M@MAXIMOV.LAW.COM

DEFENDANTS

PHILLIPS & COHEN ASSOCIATES, LTD. &
PCA ACQUISITIONS V, LLC D/B/A PORTFOLIO ASSET GROUP
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

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. SECTION 1692 -- FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)
Brief description of cause:
UNLAWFUL AND DECEITFUL DEBT COLLECTION BUSINESS PRACTICES

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 04/21/2017 SIGNATURE OF ATTORNEY OF RECORD /S/ MAXIM MAXIMOV, ESQ.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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, N/A, counsel for \_\_\_\_\_, 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

**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

**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 of 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/ MAXIM MAXIMOV, ESQ.

**ADVANCED CALL CENTER TECHNOLOGIES, LLC**

PO Box 9091  
Gray, TN 37615-9091  
866-445-6548

August 31, 2013

ACCOUNT #: ENDING IN 6836  
ACCOUNT BALANCE: \$13,896.00  
AMOUNT CURRENTLY DUE: \$950.00

RE: "R" Us Mastercard @ Account

**FIRST NOTICE**

Dear Aron Felberbaum:

This account has been listed with our office for collection.

This notice has been sent by a collection agency. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

If the Amount Currently Due is paid to GE Capital Retail Bank and your account is brought up to date, we will stop our collection activity. All payments should be made directly to GE Capital Retail Bank using the enclosed envelope. Do not send payments to this office.

If circumstances are preventing you from paying the Amount Currently Due referenced above, please call our office today at 866-445-6548 so that we may assist you in resolving this matter. Our office hours are Monday – Friday 8:00 AM – 10:00 PM, Saturdays 8:00 AM – 4:00 PM and Sundays 1:00 PM – 10:00 PM, all times represented in Eastern Times Zone (EST).

GE Capital Retail Bank may continue to add interest and fees as provided in your agreement.

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

Very truly yours,  
Advanced Call Center Technologies, LLC  
866-445-6548

New York City Department of Consumer Affairs license number: 1161257, 1276059, 1161258

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

011

PO Box 9091  
Gray, TN 37615-9091



STATEMENT DATE: 08/31/13  
URL: [www.Toysrus.com/creditcard](http://www.Toysrus.com/creditcard)  
ACCOUNT #: ENDING IN 6836  
ACCOUNT BALANCE: \$13,896.00  
AMOUNT CURRENTLY DUE: \$950.00



Aron Felberbaum  
1346 43rd St  
Brooklyn, NY 11219-1407



GE Capital Retail Bank/TRU  
PO Box 530939  
Atlanta, GA 30353-0939

PO Box 5790  
Hauppauge, NY 11788-0164  
RETURN SERVICE REQUESTED

Ph 866-321-2195 • Fx 302-368-0970  
Office Hours: M-Th: 8am-9pm, Fri: 8am-6pm  
Sat: 8am-12pm

June 21, 2016

Phillips & Cohen Associates, Ltd.  
Mail Stop: 543  
1002 Justison Street  
Wilmington, DE 19801-5148

ARON FELBERBAUM  
77 Reagan Rd Apt 5  
Spring Valley NY 10977-1988

Reference #: [REDACTED]  
Balance: \$14,434.65

\*\*\*PLEASE DETACH AND RETURN IN THE ENCLOSED ENVELOPE WITH YOUR PAYMENT\*\*\*

<b>Re: Our Client:</b>	PORTFOLIO ASSET GROUP
<b>Original Creditor:</b>	Synchrony Bank
<b>Original Account #:</b>	*****6836
<b>Reference #:</b>	[REDACTED]
<b>Balance at Charge-Off:</b>	14434.65
<b>Interest Since Charge-Off:</b>	.
<b>Additional Charges Since Charge-Off:</b>	.
<b>Payment Credited Since Charge-Off:</b>	0.00
<b>Current Balance Owning:</b>	14434.65

Dear ARON FELBERBAUM:

Your account has now been purchased by our client, PCA Acquisitions V, LLC. d/b/a PORTFOLIO ASSET GROUP and they have referred to our office for collection on their behalf. To resolve this matter and prevent any further collection activity, full payment should be sent to this office at the address above.

IT IS NOT IN YOUR BEST INTEREST TO NEGLECT THIS ACCOUNT! YOU MAY CONTACT OUR OFFICE AT THE ABOVE TELEPHONE NUMBER.

Sincerely,

Phillips & Cohen Associates, Ltd.

**\*\* IMPORTANT CONSUMER INFORMATION \*\***

Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty (30) days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such verification or judgment. If you request this office in writing within thirty (30) days of receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor. This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.

Additional notices and information are contained on the reverse side of this letter and on any attachments that may be included.

**IMPORTANT CONSUMER INFORMATION (continued) \*\***

**If you are a resident of New York State:**

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

- (i) the use or threat of violence;
- (ii) the use of obscene or profane language; and
- (iii) repeated phone calls made with the intent to annoy, abuse, or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits;
10. Federal student loans, federal student grants, and federal work study funds; and
11. Ninety percent of your wages or salary earned in the last sixty days.

We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice: Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. It is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., to sue on a debt for which the statute of limitations has expired. However, if the creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell the court that the statute of limitations has expired. Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again.

If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ARON FELBERBAUM on behalf of himself and  
all other similarly situated consumers

Plaintiff,

-against-

PHILLIPS & COHEN ASSOCIATES, LTD. &  
PCA ACQUISITIONS V, LLC D/B/A  
PORTFOLIO ASSET GROUP

Defendants.

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**SUMMONS IN A CIVIL ACTION**

TO: PHILLIPS & COHEN ASSOCIATES, LTD.  
1002 JUSTISON STREET  
WILMINGTON, DELAWARE 19801

PCA ACQUISITIONS V, LLC  
D/B/A PORTFOLIO ASSET GROUP  
1002 JUSTISON STREET  
WILMINGTON, DELAWARE 19801

**YOU ARE HEREBY SUMMONED** and required to file with the Clerk of this Court  
and serve upon PLAINTIFF'S ATTORNEY:

MAXIM MAXIMOV, ESQ.  
MAXIM MAXIMOV, LLP  
1701 AVENUE P  
BROOKLYN, NEW YORK 11229

an answer to the complaint which is herewith served upon you, with **21** days after service of this  
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will  
be taken against you for the relief demanded in the complaint.

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CLERK

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DATE

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BY DEPUTY CLERK

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumer Files Suit Against 'Abusive' Debt Collectors](#)

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