

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MICHAEL FELENDLER  
on behalf of himself and  
all other similarly situated consumers

Plaintiff,

-against-

WILLIAM C. GROSSMAN LAW, PLLC

Defendant.

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**CLASS ACTION COMPLAINT**

***Introduction***

1. Plaintiff Michael Felendler seeks redress for the illegal practices of William C. Grossman Law, PLLC concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).

***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 Defendant sought to collect from Plaintiff is a consumer debt.
4. Upon information and belief, Defendant's principal place of business is located in East Amherst, New York.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

*Jurisdiction and Venue*

7. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. 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 Michael Felendler*

9. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.
10. On many occasions within the past year, Defendant left messages on Plaintiff's voice mail stating:

**“This is Joane Labi, we have an important message from the Law office of William C. Grossman. This call is from a debt collector. Please call [888-201-6643](tel:888-201-6643). Thank you.”** (emphasis added)

11. Said messages communicate to the least sophisticated consumer that the communications came from a law firm in a practical sense, hence these messages violate 15 U.S.C. § 1692e(3).<sup>1</sup>
12. In a recent case of Bard v. Law Offices of Harold E. Scherr, P.C., No 19 Docket No. 1:13-cv-01411 (E.D.N.Y. June 6 2014) the Chief Judge in the Eastern District of New York Judge Carol Bagley Amon already found that a voicemail message that included the words "law office" or "attorney," can imply a level of attorney or firm involvement in the debt collection process. The court stated that it "can find no principle that would justify a distinction between a voicemail message and a letter for purposes of FDCPA liability; in either case, the communication must not misrepresent the extent to which an

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<sup>1</sup> See, e.g. Suquilanda v. Cohen & Slamowitz, LLP, No. 1:10-cv-05868 (S.D.N.Y. SEP 08, 2011). (" Absent any disclaimer and without an attorney conducting any meaningful review ,Using a "Law Office" Letterhead States a Claim for Relief under Section 1692e(3).")

attorney has become involved in the debt collection process.")

13. The FDCPA prohibits the use of any "false, deceptive, or misleading representation or means in connection with the collection of any debt." - 15 U.S.C. § 1692e. It enumerates a non-exhaustive list of sixteen debt-collection practices that run afoul of this proscription, including "the false representation or implication that [a] communication is from an attorney." Id. § 1692e(3). The Second circuit has held that a debt-collection letter from a law firm or lawyer violates Section 1692e(3) if an attorney was not "directly and personally involved" with the debtor's account — such as by reviewing the debtor's file — before the letter was sent. Clomon v. Jackson, 988 F.2d 1314, 1320-21 (2d Cir. 1993).
14. The same applies to a prerecorded or human voice-mail message because a voice mail message containing a law-firm audio caption such as: **“This is Joane Labi, we have an important message from the Law office of William C. Grossman”** would imply meaningful attorney involvement, which does not exist absent participation by an attorney in the debt-collection process.
15. When a debt collection law firm like William C. Grossman chooses to leave a voice mail message on the debtors answering machine which uses the words **“the Law Office of William C. Grossman”** before any direct and personal involvement (with the debtor's account — such as reviewing the debtor's file) - then - (absent any clear disclosure that no attorney has reviewed the particular account) this message violates Section 1692e(3).<sup>2</sup>
16. The Second Circuit held in Greco v. Trauner, Cohen & Thomas, L.L.P., 412 F.3d 360,

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<sup>2</sup> See also e.g. Gonzalez v. Kay, 577 F.3d 600 (5th Cir. 2009). ("Debt collectors acting solely as debt collectors must not send the message that a lawyer is involved, because this deceptively sends the message that the 'price of poker has gone up.'")

364, No. Docket No. 04-4605-cv (2d Cir. June 21, 2005), that an attorney can, in fact, communicate with a debtor without being meaningfully involved as an attorney within the collection process, so long as that communication includes disclaimers that makes clear even to the “least sophisticated consumer “that the law firm or attorney is not, at the time of the communication’s transmission, acting as an attorney.

17. Defendant would surely admit that the message mentioned above did not include any such disclaimer, yet the Defendant did send out letters after these messages were left, and in those letters, Defendant admitted that in fact at the time the phone messages were left, no attorney had reviewed the file.
18. Defendant, as a matter of pattern and practice, leaves messages, or causes voice mail messages to be left on debtor’s answering machines, using language substantially similar or materially identical to that utilized by Defendant in the above-cited messages which were left on the Plaintiff’s answering machine on many occasions.
19. Defendant leaves thousands of messages like the ones left for the Plaintiff without conducting any meaningful review of the accounts.
20. The human and or prerecorded messages Defendant leaves, or causes to be left on debtor’s answering machines, are produced by Defendant’s concerted efforts and integrated or shared technologies including computer programs, *Robo* calling technologies, dialers, and electronic databases.
21. The voicemail communications from the Defendant that say: “**we have an important message from the Law office of William C. Grossman**” are standardized pre-scripted voice mails.
22. Although Defendant may technically be a law firm, it was not acting in the capacity of a

law firm with respect to the said voicemails. The inclusion of “**we have an important message from the Law office of William C. Grossman.**” is therefore materially deceptive and misleading in that it communicates to the least sophisticated consumer that the communications came from a law firm in a practical sense, when they did not.

23. If the Defendant, William C. Grossman desires to take advantage of the additional collection leverage as provided by the use of a law firm's name in connection with purely identical and standardized debt-collection related activities, it is free to do so under the law of the Second Circuit; so long as its each and every one of its standardized communications including letters and voice mail messages do not give the least sophisticated consumer the impression that the communications are from an attorney or law firm in the practical sense.<sup>3</sup>
24. The representatives that left the messages are not attorneys and, are not licensed to practice law in the State of New York or any other State.
25. At no time did any of the representatives indicate in the messages that they are actually non-attorney debt collectors.
26. The telephone number (716) 995-4080 is answered by persons, employed by Defendant as non-attorney “debt collectors” as that term is defined by 15 U.S.C. § 1692a(6).
27. Said messages are in violation of 15 U.S.C. §§ 1692e, 1692e(3), and 1692e(10) for failing to qualify that the messages were from a non-attorney, for failing to qualify that no attorney from the firm had reviewed the debt, for implying meaningful attorney involvement, and that the communications came from an attorney in the practical sense.

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<sup>3</sup> See e.g. Clomon v Jackson, 988 F.2d 1314, 1320 (2d Cir. 1993). See e.g. Gonzalez v. Kay, 577 F.3d 600 (5th Cir. 2009). (“Debt collectors acting solely as debt collectors must not send the message that a lawyer is involved, because this deceptively sends the message that the ‘price of poker has gone up.’”). See also Sparkman v. Zwicker & Assocs., P.C., 374 F. Supp. 2d 293 (E.D.N.Y. 2005). (The court found that the collector’s letter with text on the front and back regarding attorney involvement was confusing to the least sophisticated consumer and violated 15 U.S.C. § 1692e.)

28. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.
29. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
30. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.
31. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
32. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
33. Defendant's communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to Defendant's collection efforts.
34. 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 Defendant's 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.
35. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
36. As an actual and proximate result of the acts and omissions of William C. Grossman Law, PLLC, Plaintiff has suffered including but not limited to, fear, stress, mental anguish, emotional stress and acute embarrassment for which he should be compensated

in an amount to be established by a jury at trial.

**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 Defendant.***

37. Plaintiff re-states, re-alleges, and incorporates herein by reference, paragraphs one (1) through thirty six (36) as if set forth fully in this cause of action.
38. This cause of action is brought on behalf of Plaintiff and the members of a class.
39. The class consists of all persons whom Defendant's records reflect resided in the New York State and who received telephone messages from the Defendant's collection representatives within one year prior to the date of the within complaint up to the date of the filing of the complaint; (a) which stated that the messages were from “the Law Office of William C. Grossman” but which failed to qualify that the debt had not been reviewed by an attorney and / or that the telephone messages did not qualify that the persons leaving the messages were non-attorneys at the firm; (b) the messages were left concerning the seeking payment of an alleged debt; and (c) that Plaintiff asserts that the messages contained violations of 15 U.S.C. §§ 1692e, 1692e(3) and 1692e(10).
40. 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 form telephonic communications are at the heart of this litigation, the class is so numerous that joinder of all members is impracticable.
  - 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 the Defendant violated the FDCPA.

- C. The only individual issue is the identification of the consumers who received such telephonic communications (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.
- D. The claims of the Plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- E. The Plaintiff will fairly and adequately represent the class members' interests. The Plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The Plaintiff's interests are consistent with those of the members of the class.

- 41. 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. 15 U.S.C. § 1692(k). 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 classes 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.
- 42. If the facts are discovered to be appropriate, the Plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.
- 43. Collection attempts, such as those made by the Defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."



*Violations of the Fair Debt Collection Practices Act*

44. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
45. Because the Defendant 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 his favor and against the Defendant 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: Woodmere, New York  
March 17, 2017

/s/ Adam J. Fishbein  
Adam J. Fishbein, P.C. (AF-9508)  
Attorney At Law  
**Attorney for the Plaintiff**  
735 Central Avenue  
Woodmere, New York 11598  
Telephone: (516) 668-6945  
Email: fishbeinadamj@gmail.com

Plaintiff requests trial by jury on all issues so triable.

/s/ Adam J. Fishbein  
Adam J. Fishbein (AF-9508)

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

MICHAEL FELENDLER

Plaintiff(s)

v.

WILLIAM C. GROSSMAN LAW, PLLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) WILLIAM C. GROSSMAN LAW, PLLC
51 APPLEFIELD DRIVE
WILLIAMSVILLE, NEW YORK, 14221

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: Adam J. Fishbein, P.C. 735 Central Avenue Woodmere NY 11598

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.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**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...**

**Reset**

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

MICHAEL FELENDLER

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Adam J. Fishbein 735 Central Avenue Woodmere NY 11598 516 668 6945 fishbeinadamj@gmail.com

DEFENDANTS

WILLIAM C. GROSSMAN LAW, PLLC

County of Residence of First Listed Defendant Erie (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. Contains various legal categories and checkboxes.

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 USC 1692 Fair Debt Collection Practices Act. Brief description of cause: Improper messages left

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 04/07/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Adam J. Fishbein

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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, Adam J. Fishbein, 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:

None

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/ Adam J. Fishbein

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Law Office Sued for 'Misleading' Debt Collection Practices](#)

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