

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JULIAN FRANKEL on behalf of herself and
all other similarly situated consumers

Plaintiff,

-against-

DIVERSIFIED ADJUSTMENT SERVICE,
INCORPORATED

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff, Julian Frankel, brings this action against Diversified Adjustment Service, Incorporated 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 Defendant sought to collect from Plaintiff a consumer debt.
4. Upon information and belief, Defendant's principal place of business is located in Coon Rapids, Minnesota.
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 Julian Frankel

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 or about September 14, 2016, Defendant sent the Plaintiff a collection letter.
11. The said letter was an effort to collect on a consumer debt.
12. The said letter misstated the actual amount of the debt by stating that \$143.90 was owed, yet the letter did not itemize the expenses or explain the amount of the debt in any way.
13. The September 14, 2016 letter did not disclose that Defendant was in fact attempting to collect a collection fee.
14. Since the collection fee that the Defendant is attempting to collect is a fee in excess of the actual debt, it must be explicitly itemized as such, yet the Defendant chose to withhold such information.
15. The September 14, 2016 letter, by unilaterally determining that \$143.90 was the amount owed, misstated the actual amount of the debt as it did not indicate that included in the amount due was a collection fee of \$21.95 that the Defendant was attempting to collect.
16. The Defendant necessarily had to specify separately, an amount that it intended to charge

(or had already charged) as collection fees and not merely lump it together with the total amount due.¹

17. 15 U.S.C. § 1692e of the FDCPA states: “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” (2)(A) “the character, amount, or legal status of any debt[.]”
18. 15 U.S.C. § 1692f of the FDCPA states: “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.”
19. The said September 14, 2016 letter does mislead the least sophisticated consumer, as nowhere does the Defendant explain that it is seeking to collect collection fees.
20. The only way for a consumer to ascertain as to how the total amount due had been calculated by the Defendant would be to call up the Defendant and have the Defendant clarify it accordingly.
21. By stating “Balance Due: \$143.90” not only did the Defendant lump the amount together, but the Defendant led the Plaintiff to believe that amount stated in the letter was solely the amount of the bill incurred.
22. The said September 14, 2016 letter is misleading because it gives a false impression of the character of the debt.
23. The Defendant was supposed to itemize the various charges that comprise the total amount of the debt.
24. Such a representation would likely confuse the least sophisticated consumer as to whether the amounts stated in the letter may increase due to interest, fees or some other reason,

¹ See *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 564 (7th Cir. 2004) (failed to disclose that \$388.54 debt included claim for \$250 attorney collection fee) *Dowdy v. Solutia Healthcare TAS, Inc.*, No. 1:05-0090, 2006 U.S. Dist. LEXIS 88899, 2006 WL 3545047 at *7-9 (M.D. Tenn. Dec. 7, 2006) (citing *Fields* and concluding that defendant's collection letter violated § 1692e when it failed to clearly reflect the addition of the collection costs to the "principal balance" owed.); *Richard v. Oak Tree Group, Inc.*, 614 F. Supp. 2d 814 (W.D. Mich. 2008) (The inclusion of unaccrued collection agency fees hidden within the stated amount of the debt violated §1692e(2)(A), (B), and § 1692f(1).)

- after the date of the letter.
25. Such a representation would likely lead the least sophisticated consumer to be uncertain as to whether the amounts stated in the letter may increase due to interest, fees or some other reason, after the date of the letter.
 26. Upon information and belief, it is the Defendant's pattern and practice to use false, deceptive, or misleading representations when collecting debts from debtors.
 27. Upon information and belief, it is the Defendant's pattern and practice to not itemize the expenses or explain the amount of the debt in any way.²
 28. Defendant falsely represented the amount of the debt in violation of 15 U.S.C. § 1692e(2)(A).
 29. In addition, the \$21.95 collection fee the Defendant unfairly sought to collect was unauthorized in violation of 15 U.S.C. § 1692f(1).
 30. The collection fee was not expressly authorized by the agreement, nor permitted by law.
 31. Defendant's September 14, 2016 letter is in violation of 15 U.S.C. §§ 1692e, 1692e(10), 1692e(2)(A), 1692f and 1692f(1) for failing to specify the amount of the collection fee, and for failing to disclose that Defendant was attempting to collect a collection fee.
 32. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.
 33. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
 34. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.

² Acik v. IC System, Inc., 640 F. Supp. 2d 1019 (N.D. Ill. 2009) (The court held that the debt collector's letter would leave even a sophisticated consumer guessing as to what the "Additional Client Charges" label represented. The question under 15 U.S.C.S. § 1692e was not whether these charges were fair or proper, but whether the fees were clearly and fairly communicated so that the consumer could ascertain the fees' validity.)

35. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
36. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
37. Defendant's communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to the Defendant's collection efforts.
38. 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 her of her right to enjoy these benefits, these materially misleading statements trigger liability under section 1692e of the Act.
39. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
40. 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

41. This action is brought as a class action. Plaintiff brings this action on behalf of herself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.

42. The identities of all class members are readily ascertainable from the records of Diversified Adjustment Service, Incorporated and those business and governmental entities on whose behalf it attempts to collect debts.
43. Excluded from the Plaintiff's Class is the Defendant and all officers, members, partners, managers, directors, and employees of Diversified Adjustment Service, Incorporated, and all of their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
44. 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 Defendant's communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
45. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.
46. 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 her attorneys have any interests, which might cause them not to vigorously pursue this action.
47. 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 Defendant's 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 Defendant's 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 her 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 Defendant who, on information and belief, collects debts throughout the United States of America.

48. 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.
49. 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.
50. Further, Defendant has 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.

51. 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 herself and the members of a class, as against the Defendant.

52. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through fifty one (51) herein with the same force and effect as if the same were set forth at length herein.
53. This cause of action is brought on behalf of Plaintiff and the members of a class.
54. The class involves all individuals whom Defendant's 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 September 14, 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(10), 1692e(2)(A), 1692f and 1692f(1) for failing to specify the amount of the collection fee, and for failing to disclose that Defendant was attempting to collect a collection fee.

Violations of the Fair Debt Collection Practices Act

55. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
56. 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 Plaintiff's 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: Brooklyn, New York
May 30, 2017

/s/ Maxim Maximov
Maxim Maximov, Esq.
Attorneys for the Plaintiff
Maxim Maximov, LLP
1701 Avenue P
Brooklyn, New York 11229
Office: (718) 395-3459
Facsimile: (718) 408-9570
E-mail: m@maximovlaw.com

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

JULIAN FRANKEL

(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

DIVERSIFIED ADJUSTMENT SERVICE, INCORPORATED

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, Labor, 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

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 05/30/2017 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.

600 Coon Rapids Blvd
Coon Rapids, MN 55433



DIVERSIFIED
ADJUSTMENT SERVICE, INC.
The Collection Specialists

Local: 763-780-1042
Toll Free: 1-800-474-3743

Mail To:
PO Box 32145
Fridley MN 55432

Office Hours: Monday thru Thursday 8 A.M. to 9 P.M., Friday 8 A.M. to 4:30 P.M. CST

SEPTEMBER 14, 2016

Re: VERIZON WIRELESS
Client Ref #: [REDACTED]

Account #: [REDACTED]
Balance Due: \$143.90

SETTLEMENT OPPORTUNITY

Dear JULIAN FRANKEL,

YOU WON'T WANT TO MISS THIS SETTLEMENT OPPORTUNITY!

Recognizing you may have gone through some financial difficulty and have been unable to satisfy this account, we would like to offer you a **positive and flexible option** to resolve your account for 50% of the current balance.

If we receive payment of \$71.95, we will consider the account balance settled in full!

CALL NOW! To take advantage of this opportunity, please contact us **TOLL-FREE** at 1-800-474-3743 and an Account Representative will assist you.

MAIL! You may prefer to settle your account balance by using the Acceptance Certificate below. Simply detach the form and enclose it with your \$71.95 payment in the envelope provided. Please mail no later than 10-04-16.

Please call me today to discuss this offer or mail your payment today.

An Account Representative

To pay your bill by credit card or phone check call: 1-800-474-3743.

Pay online at: www.EasyPayment.com

Maximum state allowed service charge on all returned checks.

This is a communication from a debt collector attempting to collect a debt.

Any information obtained will be used for that purpose.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Detach and Return the Bottom Portion of this Notice with Your Payment



PO Box 32145
Fridley MN 55432-0145

ADDRESS SERVICE REQUESTED

SEPTEMBER 14, 2016
1-800-474-3743



PERSONAL & CONFIDENTIAL
Julian Frankel
4009 16th Ave
Brooklyn NY 11218-5509

Re: VERIZON WIRELESS

Client Ref #: [REDACTED]

Balance Due: \$143.90

Please include account number [REDACTED] on your check.

Please send all payments to:

Diversified Adjustment Service, Inc.
PO Box 32145
Fridley MN 55432-0145



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JULIAN FRANKEL on behalf of herself and
all other similarly situated consumers

Plaintiff,

-against-

DIVERSIFIED ADJUSTMENT SERVICE,
INCORPORATED

Defendant.

SUMMONS IN A CIVIL ACTION

TO: DIVERSIFIED ADJUSTMENT SERVICE, INCORPORATED
600 COON RAPIDS BOULEVARD NW
COON RAPIDS, MINNESOTA 55433

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.

CLERK

DATE

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: [Diversified Adjustment Service Sued Over 'Secret Fees'](#)
