

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TAMARA GASHILOVA on behalf of herself and all
other similarly situated consumers

Case No.

Plaintiff,

-against-

ARS NATIONAL SERVICES INC

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff, Tamara Gashilova, brings this action against ARS National Services Inc 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 citizens of the State of New York who reside 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 Escondido, California.
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 Tamara Gashilova

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 March 30, 2016, Defendant sent Plaintiff Gashilova a collection letter.
11. The said March 30th, 2016 collection letter stated a “Balance” of \$8,264.53 and offered Plaintiff Gashilova to settle the “Balance” for \$5,785.18 if payment was received by May 4th, 2016.
12. In addition, the letter also stated “Citibank NA/CITI LOAN will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulation.”
13. The said letter was sent in an effort to collect on a defaulted consumer debt.
14. Upon affirmation and belief, the said letter was Defendant’s initial communication with the Plaintiff.
15. Such a collection letter is open to one of multiple interpretations and would likely be misunderstood by an unsophisticated consumer.
16. § 1692e requires debt collectors, when informing debtors of their account balance, to disclose whether the balance may increase due to interest and fees. Avila v. Riexinger

Associates, LLC, 817 F.3d 72, 76 (2d Cir. 2016).

17. Defendant's collection letter fail to include the safe harbor language set out in Avila v. Riexinger Associates, LLC, 817 F.3d 72, 76 (2d Cir. 2016).
18. An unsophisticated consumer would be left uncertain by the said letter as to whether the accounts were accruing interest or not.
19. The "Balance" in the case at hand was for an amount that included original principal, fees, and contractual interest.
20. The said letter failed to correctly state the in full the amount of the debt allegedly owed.
21. Though the collection letter to Plaintiff Gashilova stated a "Balance," the letter did not state on which date the "Balance" was calculated, and did not explain that contractual or statutory interest and/or legal fees would continue to accrue on the unpaid principal in the event payment was not made according to the proposed settlement terms; thus, the Plaintiff's Gashilova total balance might be greater on the date she makes a payment.
22. A reasonable consumer could read the notices and be misled into believing that he or she could pay her debt in full by paying the amount listed on the notice.
23. However, since contractual or statutory interest is automatically accruing daily, and since there are undisclosed legal fees that will accrue, a consumer who pays the "Balance" stated on the notices will be unaware as to whether or not the debt has been paid in full.
24. The debt collector could still seek the automatically accrued contractual or statutory interest that accumulated after the notices were 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.
25. A letter that states "Balance," without notice that the amount is already increasing due to automatically accruing contractual or statutory interest or other charges, would mislead

- the unsophisticated consumer into believing that payment of the amount stated will clear his or her account.
26. 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.
 27. Pursuant to New York state law, statutory interest starts to accrue on the debt from the date of the breach of contract at the rate of 9% per annum.
 28. The amount of the contractual or statutory interest, automatically increases each day that the defaulted debt remains unpaid due to the automatically contractual or statutory accrued interest.
 29. Collection notices that state only the “Balance” but fail to disclose that the balance might increase due to interest and fees, are “misleading” within the meaning of Section 1692e.
 30. 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.
 31. ARS National Services Inc was required to include a disclosure that the automatically accrued interest was accruing, or in the alternative, ARS National Services Inc was required to disclose that the creditor has made an intentional decision to waive the automatically accruing interest; yet the Defendant failed to make any such disclosures, violating Section 1692e of the FDCPA.
 32. Failure to disclose such a waiver of the automatically accruing interest is in of itself

deceptive and “misleading” within the meaning of Section 1692e of the FDCPA.

33. ARS National Services Inc knew that balances would increase due to interest, fees and/or disbursements.
34. 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.” Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)
35. Because the statement of the “Balance” 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 his or her account, the FDCPA requires debt collectors, when they notify consumers of their account balance, to expressly disclose that interest has stopped accruing.
36. According to the Second Circuit’s finding that the “Amount Due” 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 un-waived] 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.” Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)
37. 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.

38. 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 consumers could not know what the real balance is.
39. The intent to waive a contractual right must be unmistakably manifested and may not be inferred from doubtful or equivocal acts. Navillus Tile, Inc. v. Turner Const. Co., 2 A.D.3d 209, 770 N.Y.S.2d 3 (1st Dep't 2003). A waiver of a contract right does not occur by negligence, oversight or thoughtlessness and cannot be inferred from mere silence. 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).
40. The 8th Circuit Court of Appeals found that the fact that the debt was charged off and that the creditor or debt buyer did not charge statutory or prejudgment interest in its statements post charge off does not constitute an express waiver and statutory or prejudgment interest is still continuing to accrue and may be charged at a future time.
41. According to the Second Circuit in *Avila*, any such a debt would need full and complete disclosure. See Haney v. Portfolio Recovery Assocs., No. 15-1932, 2016 U.S. App. LEXIS 17287 (8th Cir. Sep. 21, 2016) ("Nothing inherent in the process of charging off a debt precludes a claim for statutory interest, and [the states] prejudgment interest statute does not expressly preclude statutory prejudgment interest following a waiver of contractual interest...[The debtor] received monthly periodic statements from the original

creditors prior to charge-off, and at least as to the *Wal-Mart* account, the charge-off statement itself is attached to the pleadings. [The debtor] received a demand for payment of his accounts when due. We conclude any demand requirement that exists as a precondition to the accrual of statutory prejudgment interest was satisfied by the original creditors' demands upon [the debtor].")

42. 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.
43. Since the "Amount Due" is for an amount that includes original principal, fees, and contractual interest, the collection notice must accurately inform the consumer that interest is accruing daily or that interest has stopped accruing. "Applying these principles, we hold that Plaintiffs have stated a claim that the collection notices at issue here are misleading within the meaning of Section 1692e... a consumer who pays the "current balance" stated on the notice will not know whether the debt has been paid in full." Avila v. Riexinger & Assocs., LLC, Nos. 15-1584(L), 15-1597(Con), 2016 U.S. App. LEXIS 5327, at *10-11 (2d Cir. Mar. 22, 2016)
44. Although Defendant's collection letter stated a "Balance" the letters failed to disclose to the Plaintiff that the Defendant may collect the additional accruing interest at a later date.
45. "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)

46. Absent a disclosure by the holder of the debt that the automatic interest is waived, even if the debtors pays the “Amount Due” 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.
47. A waiver of interest, even when made explicitly, has not prevented debt collection agencies from continuing to illegally charge the waived interest. At the bare minimum a debt collection agency must clearly convey, even to the unsophisticated consumer that it intends to waive the automatically accruing interest, or that the debt has stopped accruing interest.
48. Upon receiving Defendant’s collection letter, the Plaintiff was uncertain whether the “Balance” was accruing interest as there was no disclosure or admonition indicating otherwise.
49. Defendant’s letter would cause an unsophisticated consumer uncertainty and force him or her to guess how much money is allegedly owed to the Defendant, how much money would accrue daily on the alleged debt, how much additional money would be owed if “Balance” stated in the collection letters was paid, and if or when the Defendant’s collection efforts would actually discontinue if the “Balance” was remitted that the

Defendant.

50. Section 1692e of the FDCPA prohibits a debt collector from using any false, or any deceptive or misleading representation or means in connection with the collection of a debt, including the false representation of the character, amount or legal status of any debt, see, 15 U.S.C. § 1692e(2)(A) and § 1692e(10).
51. Under 26 C.F.R. §1.6050P-1(d)(2) and (3), only the discharge of principal need be reported:
 - (2) Interest. The discharge of an amount of indebtedness that is interest **is not required to be reported** under this section.
 - (3) Non-principal amounts in lending transactions. In the case of a lending transaction, the discharge of an amount other than stated principal **is not required to be reported** under this section. For this purpose, a lending transaction is any transaction in which a lender loans money to, or makes advances on behalf of, a borrower (including revolving credits and lines of credit).
52. In addition, it is highly improbable for one who is in debt to have income as a result of settling a debt, as that person is more likely to be insolvent; so such a discharge would not be considered as income.
53. A collection notice is deceptive when it reasonably can be read to have two or more different meanings, one of which is inaccurate.¹
54. The language in the letter that states “Citibank NA/CITI LOAN will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulation” could reasonably be understood by the least sophisticated consumer to mean that IRS regulations require the creditor to always report forgiveness of debt.

¹ Pipiles v. Credit Bureau of Lockport, Inc., 886 F.2d 22, 25 (2d Cir. 1989) (Because the collection notice was reasonably susceptible to an inaccurate reading, it was deceptive within the meaning of the Act.); Clomon v. Jackson, 988 F.2d 1314, 1319 (2d Cir. 1993) (Collection notices are deceptive if they are open to more than one reasonable interpretation, at least one of which is inaccurate.); Russell v. Equifax A.R.S., 74 F.3d 30, 34 (2d Cir. N.Y. 1996) (A collection notice is deceptive when it can be reasonably read to have two or more different meanings, one of which is inaccurate. The fact that the notice's terminology was vague or uncertain will not prevent it from being held deceptive under § 1692e(10) of the Act.)

55. The least sophisticated consumer would understand this statement to mean that the creditor is required by IRS regulations to report forgiveness of debt
56. Although the Defendant had no duty to disclose any potential tax ramifications,² when Defendant chooses to give tax disclosures, it must do so in a way that it will not mislead the least sophisticated consumer as to his or her tax consequences.
57. Current case law has made clear, that if debt collectors are providing tax advice with regards to the reporting of forgiveness of debt, they cannot provide vague, incomplete and misleading disclosures that leaves out the essential element that the reporting of forgiveness of a debt happens only if the **principal** forgiven exceeds \$600, and that reporting of forgiveness of a debt would not happen even if the amount is greater than \$600, if the amount forgiven contained interest forgiveness so long as the principal was less than \$600.
58. The statement “Citibank NA/CITI LOAN will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulation” is ambiguous, yet the vagueness and uncertainty does not erase the fundamental mischief and deception that the statement intends to cause to the consumer. A consumer reading this statement will be led to believe that if a settlement erases any amount of the debt, then the creditor is required to report the forgiveness of debt to the IRS, as per the IRS regulations. This creates a fear of IRS consequences in order to pressure consumers to pay the debt without erasing any amount through settlement). However, this statement is inherently deceptive and misleading, by giving erroneous and incomplete tax information – because according to IRS regulations, the creditor "**will not**" be required to report to the IRS, forgiveness of

² Altman v. J.C. Christensen & Assocs., 786 F.3d 191, 194, 2015 U.S. App. LEXIS 7980, *7 (2d Cir. N.Y. 2015) (“[T]he FDCPA does not require a debt collector to make any affirmative disclosures of potential tax consequences when collecting a debt.”)

debt less than \$600, nor would the creditor be required to report an amount greater than \$600 in forgiveness, if the amount contained interest.

59. If the creditor wishes to legitimately give tax advice in a sincere manner, one that does not mislead the consumer, then that creditor should specify and make clear to the least sophisticated consumer that only certain amounts require reporting, and that this applies only to principle and not to interest forgiveness.
60. The creditor or debt collector should also specify what amounts are principle and what part of is interest in the amounts owed. Any tax advice that does not specify the tax consequences as it applies to the consumer's circumstances is nothing more than a ploy to elicit a more substantial payment from the consumer than the consumer would have paid, had he or she understood the tax reporting consequences.
61. The use of the words "Citibank NA/CITI LOAN will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulation" is an attempt by the debt collector to make the debtor think that the IRS regulations always require the reporting of forgiveness of debt. The least sophisticated consumer would reasonably read the letter to mean that the creditor, in all circumstances, will report forgiveness of debt as is required by IRS regulations.³
62. In a recent decision, this court found in the case of *Kaff v. Nationwide Credit, Inc.*, 1:13-cv-05413, No. 32 (E.D.N.Y. Mar. 31, 2015) (Townes, J.) that a statement regarding the requirement to report debt forgiveness to IRS: "was not strictly true under all circumstances because **it failed to apprise debtors** that possible exceptions could apply to the creditor's mandatory reporting requirement, such as the exceptions **for interest and**

³ *Russell v. Equifax A.R.S.*, 74 F.3d 30, 35, 1996 U.S. App. LEXIS 1042, *13 (2d Cir. N.Y. 1996) (That a notice's terminology is vague or uncertain will not prevent it from being held deceptive under 1692e.)

other non-principal debts." Kaff v. Nationwide Credit, Inc., 1:13-cv-05413, No. 32 (E.D.N.Y. Mar. 31, 2015) (Towns, J.) (emphasis added); see also Good v. Nationwide Credit, Inc., No. 14-4295, 2014 BL 302150 (E.D. Pa. Oct. 24, 2014) (Finding that the statement "American Express is required to file a form 1099C with the Internal Revenue Service for any cancelled debt of \$600 or more. Please consult your tax advisor concerning any tax questions" is not true and does not accurately reflect the relevant law the court also found that the statement's invocation of the IRS was deceptive and materially misleading in violation of the FDCPA.)

63. The Defendant tends to give erroneous and/or incomplete tax advice to consumers.
64. The FDCPA does not require that tax consequences be identified in collection letters sent to consumers; but where a debt collector has chosen to threaten the debtor with tax consequences, and has done so inaccurately, the false representation causes detrimental harm to the consumer since it concretely thwarts the consumer's ability to freely navigate a course of action in response to the collection notice. The risk in this type of harm is the detrimental impact to the consumer. And such harm is precisely the kind of infringement of the consumer's best interests that the FDCPA seeks to combat.
65. Such a statement in a collection letter suggests to the least sophisticated consumer that failure to pay will get the consumer into trouble with the IRS.⁴
66. The statement in the said letter is false and misleading, in violation of 15 U.S.C. §§ 1692e, 1692e(2), and 1692e(10).
67. Upon information and belief, such actions are part of a scheme or business of the Defendant when attempting to collect alleged debts from consumers in the State of New

⁴ Kaff v. Nationwide Credit, Inc., 1:13-cv-05413, No. 32 (E.D.N.Y. Mar. 31, 2015) (Towns, J.); Wagner v. Client Services, Inc., No. 08-5546, 2009 WL 839073, 2009 U.S. Dist. LEXIS 26604 (E.D.Pa., March 26, 2009); Sledge v. Sands, 182 F.R.D. 255 (N.D.Ill. 1998).

York.

68. Upon information and belief, the Defendant's collection letter, such as the said March 30th, 2016 collection letter, number in at least the hundreds.
69. Defendant's collection 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.
70. Defendant's collection letter also contained violations of 15 U.S.C. §§ 1692d, 1692e, 1692e(5), 1692e(8), 1692e(10), and 1692f, for harassment and by threatening to engage in an act which is legally prohibited.
71. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.
72. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communication.
73. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.
74. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
75. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
76. Defendant's communications were designed to cause debtors to suffer a harmful disadvantage in charting a course of action in response to the Defendant's collection efforts.
77. 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 them of their right to enjoy these benefits, these materially misleading statements trigger liability under section 1692e of the Act.

78. These deceptive communications additionally violated the FDCPA since they frustrate the consumers' ability to intelligently choose his or her response.
79. 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

80. 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.
81. The identities of all class members are readily ascertainable from the records of ARS National Services Inc and those business and governmental entities on whose behalf it attempts to collect debts.
82. Excluded from the Plaintiff's class is the Defendant and all officers, members, partners, managers, directors, and employees of ARS National Services Inc, and all of their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
83. 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.

84. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.
85. 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 their attorneys have any interests, which might cause them not to vigorously pursue this action.
86. 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 allege, 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 their 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.

87. 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.

88. 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.
89. 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.
90. 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.**

91. Plaintiff Gashilova repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through ninety (90) herein with the same force and effect as if the same were set forth at length herein.
92. This cause of action is brought on behalf of Plaintiff Gashilova and the members of a class.
93. 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 Gashilova on or about March 30th, 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 Gashilova 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.

AS AND FOR A SECOND 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.

94. Plaintiff Gashilova repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through ninety-three (93) herein with the same force and effect as if the same were set forth at length herein.
95. This cause of action is brought on behalf of Plaintiff Gashilova and the members of a class.
96. 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 Gashilova on or about March 30th, 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 Gashilova asserts that the letter contained violations of 15 U.S.C. §§ 1692d, 1692e, 1692e(5), 1692e(8), 1692e(10), and 1692f, for harassment and by threatening to engage in an act which is legally prohibited.

Violations of the Fair Debt Collection Practices Act

97. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.

98. 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
March 28th, 2017

/s/ Daniel Cohen
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NY Bar No. 5481460
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Plaintiff requests trial by jury on all issues so triable.

/s/ Daniel Cohen
Daniel Cohen, Esq.

Department #127199
P.O. Box 3005
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ARS National Services Inc.

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(800) 976-0960
FAX: (866) 422-0765
www.PayARS.com

March 30, 2016

ACCOUNT IDENTIFICATION

Creditor: Citibank NA/CITI LOAN
Account No.: *****6549
ARS Reference No.: [REDACTED]
Balance: \$8,264.53



TAMARA GASHILOVA
2960 W 29TH ST APT 4A
BROOKLYN NY 11224-2177

01-1308

Welcome to ARS!

Dear Sir/Madam,

ARS is a national organization experienced in helping customers resolve their outstanding balances. Citibank has placed your account referenced above with ARS. We look forward to working with you to find a repayment plan that fits your financial situation.

We may have payment options that weren't available to you in the past. Right now we are offering to settle your account for the reduced amount of \$5,785.18. That's a savings of \$2,479.35.

If you cannot make the settlement payment by 5/4/2016, please contact us to discuss alternative arrangements. We reserve the right to treat any missed or late payment as a cancellation of the agreement. We are not obligated to renew this offer.

To review a range of payment options 24 hours a day, please visit our website at www.PayARS.com. To access your account, you'll be asked to provide your ARS Reference Number (32726795).

ARS also offers "Quick Check" by phone, Western Union "Quick Collect" (Code City: ARS 32726795), and Moneygram "Express Payment" (Receive Code: 2471). Payments, made payable to Citibank, can be mailed to the ARS Escondido, CA address above.

Citibank NA/CITI LOAN will report any discharge of indebtedness as required by the Internal Revenue Code and corresponding IRS regulations. Please contact your tax advisor if you have any questions.

Unless you notify this office within 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 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, 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 of 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.

We are committed to helping you resolve your balance. Please call us at (800) 976-0960 with any questions or to discuss all your payment options. Office hours are Monday through Friday, 6:00 a.m. - 7:00 p.m. and Saturday 6:00 a.m. - 10:00 a.m. (Pacific Time).

Sincerely,
CHRIS BALCOM X1203

Account Representative

<u>Account History</u>	
Total Amount Due as of Charge-Off:	\$8,264.53
Total Amount of Interest accrued since Charge-Off:	\$0.00
Total Amount of Non-Interest Charges or Fees Accrued Since Charge-Off:	\$0.00
Total Amount of Payments Since Charge-Off:	\$0.00

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



We are required under certain Federal, State and Local laws to notify consumers of certain rights. This list does not contain a complete list of the rights for consumers under Federal, State, or Local laws.

New York City Department of Consumer Affairs License numbers 2000745, 2000744, and 2000742.

Debt collectors, in accordance with the federal Fair Debt Collection Practices Act, 15 USC §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.”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TAMARA GASHILOVA on behalf of herself
and all other similarly situated consumers

Case No.

Plaintiffs,

-against-

ARS NATIONAL SERVICES INC

Defendant.

SUMMONS IN A CIVIL ACTION

TO: ARS NATIONAL SERVICES INC
PO BOX 469100
ESCONDIDIO, CA 92046-9100

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

DANIEL COHEN ESQ
DANIEL COHEN, PLLC
300 CADMAN PLAZA W, 12TH FLOOR
BROOKLYN, NEW YORK 11201

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

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

TAMARA GASHILOVA

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

(c) Attorneys (Firm Name, Address, and Telephone Number) DANIEL COHEN, ESQ. DANIEL COHEN PLLC 300 CADMAN PLAZA W, 12th Fl. PHONE: (646) 645-8482 BROOKLYN, NEW YORK 11201 E-MAIL: dan@dcohen.com

DEFENDANTS

ARS NATIONAL SERVICES INC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

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

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. SECTION 1692 -- FAIR DEBT COLLECTION PRACTICES ACT (FDCA) 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 03/28/2017 SIGNATURE OF ATTORNEY OF RECORD /S/ DANIEL COHEN, ESQ.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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Reset

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, 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 or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

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

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

BAR ADMISSION

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

Yes No

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

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /S/ DANIEL COHEN ESQ.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FDCPA Class Action Filed Against ARS National Services](#)
