

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

BRENDA HOWE, *on behalf
of herself and all others similarly situated,*

Plaintiff,

v.

POLLACK & ROSEN, P.A.,
a Florida Corporation, and
JOSEPH F. ROSEN, *individually,*

Defendants.

CLASS ACTION COMPLAINT

1. Plaintiff alleges violations of the *Fair Debt Collection Practices Act*, 15 U.S.C. §1692 *et seq.* (“FDCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under the *Fair Debt Collection Practices Act*, pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1692k.

3. Venue in this District is proper because Plaintiff resides here, and Defendants conduct business in this District.

PARTIES

4. Plaintiff, Brenda Howe (“Plaintiff”), is a natural person, and citizen of the State of Florida, residing in Indian River County, Florida.

5. Defendant, Pollack & Rosen, P.A. (“Defendant Law Firm”), is a Florida Corporation and law firm engaged in the business of collecting consumer debts, which operates from offices located at 806 South Douglas Road, Coral Gables, Florida 33134.

6. Defendant Joseph Rosen (“Defendant Rosen”), is an attorney and is engaged in the business of collecting consumer debts, who operates from offices located at 806 South Douglas Road, Coral Gables, Florida 33134.

7. Defendant Law Firm and Defendant Rosen are herein collectively referred to as “Defendants.”

8. Defendants regularly use the United States Postal Service and telephone in the collection of consumer debts.

9. Defendants regularly collect or attempt to collect consumer debts for other parties. Defendants are “debt collectors” as defined by the *FDCPA*.

10. At all times material to the allegations of this Complaint, Defendants were acting as debt collectors with respect to the collection of Plaintiff’s alleged debt.

FACTUAL ALLEGATIONS

11. Defendants sought to collect a consumer debt from Plaintiff arising from an alleged delinquency on a credit card. The debt was incurred primarily for personal, household or family use, more specifically, the debt at issue was a credit card debt which Plaintiff used to purchase personal and household goods, such as food and clothing.

12. On or about June 17, 2017, Defendants mailed Plaintiff a letter seeking payment of the alleged debt. (The “Demand Letter” is attached hereto as “Exhibit 1”).

13. The Demand Letter states in part:

Original Creditor: CAPITAL ONE BANK (USA) N.A.
Original Creditor Acct No: **** * - ****-5856

XXXX

Unless you dispute the validity of this debt or any portion thereof, within thirty (30) days from receipt of this notice, this debt will be assumed to be valid by this office.

If you notify us in writing within thirty (30) days from receipt of this notice that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you. A copy of such verification or judgment will be mailed to you by us.

Upon your written request within thirty (30) days from receipt of this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

14. The Demand Letter was Defendants' initial communication with Plaintiff with respect to the debt alleged therein.

15. *15 U.S.C. §1692g(a)* states:

Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide

the consumer with the name and address of the original creditor, if different from the current creditor.

(Emphasis added).

16. The Demand Letter states “Original Creditor: CAPITAL ONE BANK (USA) N.A.” giving the impression that Plaintiff’s account has been transferred from the “original” creditor to a new subsequent creditor, however the letter does not identify a “current” creditor.

17. Defendants falsely and misleadingly failed to identify the current creditor of the debt.

18. The Demand Letter was signed by Defendant Rosen.

19. Defendant Rosen is the partner of a firm that employs nearly eighty people.¹ On information and belief, Defendant Rosen did not have meaningful or significant involvement in the collection of Plaintiff’s alleged debt.

20. Any potential *bona fide* error defense which relies upon Defendants’ mistaken interpretation of the legal duties imposed upon it by the *FDCPA* would fail as a matter of law.

CLASS ACTION ALLEGATIONS

21. This action is brought on behalf of a Class consisting of (i) all persons with addresses in the Florida Counties that comprise the geographical boundaries of the United States District Court for the Southern District of Florida, namely Miami-Dade, Monroe, Broward, Palm Beach, Martin, Saint Lucie, Indian River, Okeechobee, and Highlands Counties (ii) to whom initial communication letters were mailed, or caused to be mailed, (iii) that stated “Original Creditor: CAPITAL ONE BANK (USA) N.A.” and contained the statement “Please contact our office upon receipt of this communication so that we can make the necessary arrangements

¹ See <https://www.pollackrosen.com/> last accessed October 26, 2017.

regarding the payment of this obligation.” (iv) by the Defendants (v) in connection with the collection of a debt incurred for personal, family, or household purposes (vi) that were not returned undeliverable by the U.S. Post Office (vii) during the one year period prior to the filing of the original Complaint in this action through the date of certification.

22. Plaintiff alleges on information and belief that Defendants’ practice of sending initial communication letters that did not identify the current creditor of the underlying debt in the initial communication letter served upon the Class is so numerous that joinder of all members of the Class is impractical.

23. Plaintiff alleges on information and belief that Defendants’ practice of sending initial communication letters that stated “Please contact our office upon receipt of this communication so that we can make the necessary arrangements regarding the payment of this obligation.” in the initial communication letter served upon the Class is so numerous that joinder of all members of the Class is impractical.

24. There are questions of law or fact common to the Class. The common issues predominate over any issues involving only individual Class members. The common legal and factual issue to each Class member is that each was served with an initial communication letter by Defendants that did not identify the current creditor of the debt and contained the statement “Please contact our office upon receipt of this communication so that we can make the necessary arrangements regarding the payment of this obligation.”

25. Plaintiff’s claim is typical of those of the Class members. All are based on the same facts and legal theories.

26. Plaintiff will fairly and adequately protect the interests of the Class. She has retained counsel experienced in handling actions involving unlawful practices under the *FDCPA*

and Class actions. Neither Plaintiff nor her counsel has any interests which might cause them not to vigorously pursue this action.

27. Certification of the Class under *Rule 23(b)(3)* of the *Federal Rules of Civil Procedure* is also appropriate in that:

(1) The questions of law or fact common to the members of the class predominate over any questions affecting an individual member.

(2) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

28. Plaintiff requests certification of a Class under *Rule 23(b)(3)* of the *Federal Rules of Civil Procedure* for monetary damages; her appointment as Class Representative; and that her attorney, Leo W. Desmond, be appointed Class Counsel.

COUNT I CLASS CLAIM
VIOLATION OF 15 U.S.C. §1692g(a)

29. Plaintiff re-alleges Paragraphs 1 through 20.

30. After an initial communication with Plaintiff and the Class, pursuant to *15 U.S.C. §1692g(a)*, the Defendants must provide the Plaintiff and the Class with:

Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(Emphasis added).

31. Defendants sent the Demand Letter to Plaintiff in an attempt to collect a consumer debt, namely to collect a past due balance on a credit card debt.

32. Pursuant to the *FDCPA*, the Demand Letter is an initial communication between Defendants and Plaintiff.

33. The Demand Letter only indicates that the "original creditor" is Capital One Bank (USA) N.A.

34. Defendants' use of the term "original" would lead Plaintiff and the Class to believe that the debt has been transferred and Capital One Bank (USA) N.A. is not the current creditor of the debt.

35. Defendants' Demand Letter does not identify the current creditor of the debt in violation of *15 U.S.C. §1692g(a)(2)*.

36. As a result of Defendants' conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. §1692k*.

37. As a result of Defendants' conduct Plaintiff and the Class are entitled to an award of costs and attorney's fees pursuant to *15 U.S.C. §1692k*.

COUNT II CLASS CLAIM
VIOLATION OF 15 U.S.C. §1692g(b)

38. Plaintiff re-alleges Paragraphs 1 through 20 and Paragraphs 29 through 35.

39. *15 U.S.C. §1692g(b)* states:

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) of this section unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. **Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.**

(Emphasis added).

40. Pursuant to the *FDCPA*, the Demand Letter was an initial communication between Defendants and Plaintiff.

41. Defendants' statement "Please contact our office **upon receipt of this communication** so that we can make the necessary arrangements regarding the payment of this obligation" overshadows Plaintiff's verification right as provided by *15 U.S.C. §1692g*. (Emphasis added).

42. Defendants' statement instructing Plaintiff to contact the office "upon receipt" to make arrangements for payment creates a sense of urgency that overshadows the notice

requirement of *15 U.S.C. §1692g(a)* by encouraging the Plaintiff and members of the Class to disregard the required debt validation notice prescribed by *15 U.S.C. §1692(g)* and call Defendant Law Firm immediately upon receiving the Demand Letter to arrange for payment.

43. The verification rights provided by *15 U.S.C. §1692g* must be effectively conveyed to the consumer.

44. Defendants' demand that immediate arrangements be made for payment of the debt by use of the phrase in Defendants' Demand Letter "Please contact our office upon receipt so that we can make the necessary arrangements regarding the payment of this obligation" overshadows and contradicts Plaintiff's verification rights as provided by *15 U.S.C. §1692g(a)*.

45. As a result of Defendants' conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. §1692k*.

46. As a result of Defendants' conduct, Plaintiff and the Class are entitled to an award of costs and attorney's fees pursuant to *15 U.S.C. §1692k*.

COUNT III CLASS CLAIM
VIOLATION OF 15 U.S.C. §1692e

47. Plaintiff re-alleges Paragraphs 1 through 20, Paragraphs 29 through 35, and Paragraphs 38 through 44.

48. Pursuant to *15 U.S.C. §1692g(a)(2)* the Defendants must provide the Plaintiff and the Class with:

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

XXXX

(2) the name of the creditor to whom the debt is owed;

49. *15 U.S.C. §§1692e(3)* and (10) state:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

xxxx

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

50. Defendants sent a Demand Letter to Plaintiff in an attempt to collect a consumer debt, namely to collect the balance owed on a credit card debt.

51. The Demand Letter was an initial communication used in the collection of a debt between Defendants and Plaintiff.

52. Defendants' Demand Letter is misleading and false and therefore in violation of *15 U.S.C. §1692e(10)* as it does not identify the creditor of the debt.

53. The Demand Letter only indicates that the "original creditor" is Capital One Bank (USA) N.A.

54. Defendants' use of the term "original" leads Plaintiff and the Class to believe that the debt has been transferred and Capital One Bank (USA) N.A. is not the current creditor of the debt.

55. Defendants' Demand Letter is signed by Defendant Rosen which misleadingly leaves the Plaintiff and Class to believe that Defendant Rosen has meaningful involvement in the collection of the debt and therefore is in violation of *15 U.S.C. §1692e(3)*. See *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993) (Misrepresenting that a communication is from a lawyer when the

lawyer had no significant involvement in the collection of the debt is a violation of *15 U.S.C. §1692e(3).*

56. Defendants' Demand Letter would be deceptive to the least sophisticated consumer with regard to his/her legal rights.

57. As a result of Defendants' conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. §1692k*.

58. As a result of Defendants' conduct, Plaintiff and the Class are entitled to an award of costs and attorney's fees pursuant to *15 U.S.C. §1692k*.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

- a. An Order certifying the *FDCPA* matter as a Class Action and appointment of Plaintiff as Class Representative;
- b. An Order appointing Leo W. Desmond as Class Counsel;
- c. An award of statutory damages for Plaintiff and the Class pursuant to *15 U.S.C. §1692k* for all Class claims;
- d. An award of attorney's fees, litigation expenses and costs of the instant suit;
- e. Any and all prejudgment interest rendered by law; and
- f. Such other and further relief as the Court deems proper.

Dated: November 21, 2017.

Respectfully submitted,

By: /s/ Leo W. Desmond
Leo W. Desmond, Esq.
Florida Bar Number 0041920
DESMOND LAW FIRM, P.C.
5070 Highway A1A, Suite D

Vero Beach, Florida 32963
Telephone: 772.231.9600
Facsimile: 772.231.0300
lwd@desmondlawfirm.com
Attorney for Plaintiff

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS BRENDA HOWE **DEFENDANTS** POLLACK & ROSEN, P.A.a Florida Corporation, and JOSEPH F. ROSEN, individually

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Attorneys (If Known)
Leo W. Desmond, Desmond Law Firm, P.C. IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
5070 Highway A1A, Suite D, Vero Beach, FL 32963 772-231-9600

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☒ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> PTF Citizen of This State	<input type="checkbox"/> DEF Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> PTF Citizen of Another State	<input type="checkbox"/> DEF Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
		<input type="checkbox"/> PTF Citizen or Subject of a Foreign Country	<input type="checkbox"/> DEF Foreign Nation	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT		TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	LABOR	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Mgmt. Relations	SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise		PRISONER PETITIONS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 864 SSID Title XVI	<input checked="" type="checkbox"/> 890 Other Statutory Actions
	REAL PROPERTY	Habeas Corpus:		<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 463 Alien Detainee			<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 510 Motions to Vacate Sentence		FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 230 Rent Lease & Ejectment	Other:		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 530 General		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 535 Death Penalty	IMMIGRATION		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		
		<input type="checkbox"/> 555 Prison Condition			
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Re-filed (See VI below)	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation Transfer	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File	<input type="checkbox"/> 9 Remanded from Appellate Court
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VI. RELATED/ RE-FILED CASE(S)	(See instructions): a) Re-filed Case <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	b) Related Cases <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
JUDGE:	DOCKET NUMBER:	

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq. Violation of the Fair Debt Collection Practices Act.
LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 500,000.00 **CHECK YES only if demanded in complaint:**
JURY DEMAND: ☐ Yes ☒ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE November 21, 2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Leo W. Desmond Fla. Bar 0041920

FOR OFFICE USE ONLY	AMOUNT	IFP	JUDGE	MAG JUDGE
RECEIPT #				

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

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:

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BRENDA HOWE, on behalf
of herself and all others similarly situated,

Plaintiff(s)

v.

POLLACK & ROSEN, P.A.
a Florida Corporation, and
JOSEPH F. ROSEN, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Joseph F. Rosen
806 Douglas Road
South Tower Suite 200
Coral Gables, FL 33134

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:

Leo W. Desmond, Esq.
Desmond Law Firm, P.C.
5070 Highway A1A
Suite D
Vero Beach, FL 32963

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:

The Law Offices

Pollack & Rosen P.A.

806 S. Douglas Road
Suite 200, South Tower
Coral Gables, FL 33134-3157

Toll Free: (888) 448-1557
Phone: (305) 448-0006
Facsimile: (305) 569-0101

June 17, 2017

ACCOUNT IDENTIFICATION

BRENDA HOWE
4805 38th Cir Apt 102
Vero Beach FL 32967-0956

Original Creditor: CAPITAL ONE BANK (USA) N.A.
Original Creditor Acct No: ****-****-****-5856
Consumer: BRENDA HOWE
File No: 3073083
Amount Due: \$2,084.49

Dear BRENDA HOWE,

As a result of your failure to make payments on the above statement amount, your account has been referred to us for resolution. For your convenience, you can now make payments via our website at www.pollackrosen.com.

Please contact our office upon receipt of this communication so that we can make the necessary arrangements regarding the payment of this obligation.

Unless you dispute the validity of this debt or any portion thereof, within thirty (30) days from receipt of this notice, this debt will be assumed to be valid by this office.

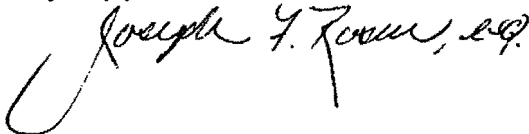
If you notify us in writing within thirty (30) days from receipt of this notice that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you. A copy of such verification or judgment will be mailed to you by us.

Upon your written request within thirty (30) days from receipt of this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

If you have any questions, please contact this office.

Your cooperation is essential in order to resolve this matter promptly.

Very truly yours,



Joseph F. Rosen, Esq.

Your Account Representative is: JACKIE ESPINOZA

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




1142-HWPORO10-CAP1DEM-05/18/17

*** Please detach the lower portion and return with your payment ***

Y1E24A9DA3




806 S Douglas Rd, South Tower Ste 200
Coral Gables FL 33134-3157
ADDRESS SERVICE REQUESTED

IF YOU WISH TO PAY BY CREDIT CARD, CIRCLE ONE AND FILL IN THE INFORMATION BELOW		
		
CARD NUMBER		EXP. DATE
CARD HOLDER NAME		CVV
SIGNATURE		
STATEMENT DATE 06/17/17	ACCOUNT # 3073083	PAY THIS AMOUNT \$2084.49



000812002400354920632967095627-1YA1-Y1E24A9DA3 1142
CAP1DEM - 1142
BRENDA HOWE
4805 38th Cir Apt 102
Vero Beach FL 32967-0956




Pollack & Rosen
806 S Douglas Rd
South Tower Ste 200
Coral Gables FL 33134-3157



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Debt Collection Pollack & Rosen Failed to Identify 'Current' Creditor](#)
