

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

POLINA KORCHAGINA, on behalf of
herself and all others similarly situated,

Plaintiffs,

-against-

ENHANCED RECOVERY COMPANY,
LLC

Defendant.

CIVIL ACTION

**CLASS ACTION COMPLAINT
AND
DEMAND FOR JURY TRIAL**

Plaintiff POLINA KORCHAGINA (hereinafter, “Plaintiff”), a New York resident, brings this class action complaint by and through her attorneys, Daniel Cohen, PLLC, against Defendant ENHANCED RECOVERY COMPANY, LLC (hereinafter “Defendant”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

NATURE OF THE ACTION

3. Plaintiff brings this class action on behalf of a class of New York consumers seeking redress for Defendant’s actions of using an unfair and unconscionable means to collect a debt.
4. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”) which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

5. Plaintiff is seeking damages, and declaratory and injunctive relief.

PARTIES

6. Plaintiff is a natural person and a resident of the State of New York, and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).
7. Defendant’s principal place of business is located in Jacksonville, Florida.
8. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.
9. Defendant is a “debt collector,” as defined under the FDCPA under 15 U.S.C. § 1692a(6).

CLASS ALLEGATIONS

10. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter “FRCP”) Rule 23, individually and on behalf of the following consumer class (the “Class”):

- All New York consumers who were sent collection letters and/or notices from Defendant attempting to collect an obligation owed to or allegedly owed to Barclays Bank Delaware, in which Defendant improperly attempted to collect same, in violation of 15 U.S.C. §1692 *et seq.*
- The Class period begins one year to the filing of this Action.

11. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons (*See **Exhibit A***, except that the

undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);

- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
 - a. Whether Defendant violated various provisions of the FDCPA;
 - b. Whether Plaintiff and the Class have been injured by Defendant's conduct;
 - c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
 - d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.
- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed to proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.
- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

ALLEGATIONS PARTICULAR TO POLINA KORCHAGINA

12. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "11" herein with the same force and effect as if the same were set forth at length herein.
13. Some time prior to June 15, 2017, an obligation was allegedly incurred by Plaintiff to Barclays Bank Delaware.
14. The aforesaid obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.
15. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) of the FDCPA.
16. The alleged Barclays Bank Delaware obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).
17. Barclays Bank Delaware is a "creditor" as defined by 15 U.S.C. § 1692a(4).

18. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) of the FDCPA.
19. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) of the FDCPA.
20. At a time better known to Defendant, Barclays Bank Delaware, directly or through an intermediary, contracted Defendant to collect the Barclays Bank Delaware debt.
21. In its effort to collect on the Barclays Bank Delaware obligation, Defendant contacted Plaintiff by written correspondence on June 15, 2017. *See Exhibit A.*
22. The Letter was sent or caused to be sent by persons employed by Defendant as a “debt collector” as defined by 15 U.S.C. §1692a(6).
23. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).
24. The Letter states in pertinent part: “Upon receipt of your payment and clearance of funds...collection efforts will cease.”
25. As set forth in the following Counts, Defendant’s communication violated the FDCPA.

First Count
Violation of 15 U.S.C. § 1692g
Validation of Debts

26. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “25” herein with the same force and effect as if the same were set forth at length herein.
27. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.
28. The written notice must contain the amount of the debt.
29. The written notice must contain the name of the creditor to whom the debt is owed.

30. The written notice must contain 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.
31. The written notice must contain 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.
32. The written notice must contain 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.
33. 24. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly.
34. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication.
35. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed by other collection activities during the 30-day validation period following the communication.
36. The Letter makes a settlement offer and states in pertinent part: "Upon receipt of your payment and clearance of funds...collection efforts will cease"
37. This statement overshadows Plaintiff's absolute right to dispute the debt.
38. This statement overshadows Plaintiff's absolute right to seek validation of the debt.
39. This statement overshadows Plaintiff's absolute right to request the name of the original creditor.

40. Pursuant to 15 U.S.C. § 1692g(b), if Plaintiff exercises the foregoing rights, Defendant must stop its collection efforts as a matter of law until Defendant satisfies Plaintiff's validation requests.
41. Such duty to stop collection efforts is not contingent upon Plaintiff making any payment to Defendant.
42. Defendant's letter would likely make the unsophisticated consumer uncertain as to her rights.
43. Defendant's letter would likely lead the unsophisticated consumer to believe that the only way to make Defendant stop its collection efforts is to make payment in full, contrary to law.
44. Defendant has therefore violated 15 U.S.C. § 1692g.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and Daniel Cohen, PLLC, as Class Counsel;
- (b) Awarding Plaintiff and the Class statutory damages;
- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
January 26, 2018

Respectfully submitted,

By: /s/ Daniel Cohen
Daniel Cohen, Esq.
Daniel Cohen, PLLC
300 Cadman Plaza W, 12th floor
Brooklyn, New York 11201
Phone: (646) 645-8482
Fax: (347) 665-1545
Email: Dan@dccohen.com
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

/s/ Daniel Cohen
Daniel Cohen, Esq.

Dated: Brooklyn, New York
January 26, 2018

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

POLINA KORCHAGINA, on behalf of herself and all others similarly situated,

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

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

DANIEL COHEN PLLC, 300 Cadman Plz W, 12 Fl., Brooklyn, NY 11201, (646) 645-8482

DEFENDANTS

ENHANCED RECOVERY COMPANY, LLC

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 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 USC 1692

Brief description of cause: Defendant violated the FDCPA

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 01/26/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel Cohen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, DANIEL COHEN, counsel for PLAINTIFF, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason Question of law rather than questions of fact predominates

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

NONE

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes 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? Yes 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 No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: Queens County .

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? Yes No

(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

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:



June 15, 2017

Creditor: Barclays Bank Delaware
Product: Barclaycard Visa with Apple Rewards
Account Number: XXXXXXXXXXXX0542
Amount of Debt: \$1,342.65
Reference Number: 172914490

Original Creditor: Barclaycard Visa with Apple Rewards
Original Balance: \$1,342.65
Interest Accrued: \$0.00
Non-interest Charges & Fees: \$0.00
Payments: -\$0.00

COLLECTION NOTICE

POLINA KORCHAGINA

Our records indicate that your balance with Barclays Bank Delaware remains unpaid; therefore your account has been placed with ERC for collection efforts.

Upon receipt of your payment and clearance of funds in the amount of \$1,342.65, your account will be considered paid in full and collection efforts will cease.

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



View statements, pay your balance, and manage your account online at www.payerc.com.



Telephone: (800) 631-6702 Toll Free. All calls are recorded and may be monitored for training purposes.



Send correspondence to: ERC, P.O. Box 57610, Jacksonville, FL 32241



Office Hours (Eastern Time): Mon-Thurs: 8:00 am-11:00pm, Fri: 8:00 am-10:00 pm, Sat: 8:00 am-8:00 pm

**This communication is from a debt collector and is an attempt to collect a debt.
Any information obtained will be used for that purpose.**

NOTICE - SEE REVERSE SIDE FOR IMPORTANT NOTICES AND CONSUMER RIGHTS



PAP-16R06-P-0

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Enhanced Recovery Accused of Miscommunicating Consumer's Debt Dispute Rights](#)
