

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.

TAMYKA M. LEE,
on behalf of herself and
all others similarly situated,

Plaintiff,

v.

POLLACK & ROSEN, P.A. and
JOSEPH F. ROSEN,

Defendants.

CLASS ACTION COMPLAINT
JURY DEMAND

1. Plaintiff Tamyka M. Lee alleges Defendants Pollack & Rosen, P.A. and Joseph F. Rosen violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (“FDCPA”) by failing to provide notification of the right to request validation of the alleged debt.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§1331, 1337, 1367 and 15 U.S.C. §1692k. Venue in this District is proper because Plaintiff resides here and Defendants are located into this District.

PARTIES

3. Plaintiff Tamyka M. Lee is a natural person, and citizen of the State of Florida, residing in Hollywood, Florida.

4. Defendant, Pollack & Rosen, P.A., is a professional association and citizen of the State of Florida with its principal place of business at North Tower Suite 450, 800 Douglas Road, Coral Gables, Florida 33134.

5. Defendant Joseph F. Rosen is a lawyer and a principal of the law firm Pollack & Rosen, P.A. and is located at North Tower Suite 450, 800 Douglas Road, Coral Gables, Florida 33134.

6. Defendants regularly use the mail and telephone in a business the principal purpose of which is the collection of debts.

7. Defendants regularly collects or attempts to collect debts for other parties.

8. Defendants are “debt collectors” as defined in the FDCPA.

9. Defendants were acting as debt collectors with respect to the collection of Plaintiff’s alleged debt.

FACTUAL ALLEGATIONS

10. Plaintiff Tamyka M. Lee incurred an alleged debt to Memorial Regional Hospital for medical services which was a transaction incurred for personal, family or household purposes. (Hereinafter, “Debt”).

11. Memorial Regional Hospital is a part of Memorial Healthcare System, which includes the following hospitals: Memorial Regional Hospital, Memorial Regional Hospital South, Joe DiMaggio Children’s Hospital, Memorial Hospital West, Memorial Hospital Miramar and Memorial Hospital Pembroke.

12. Defendants Pollack & Rosen, P.A. and Joseph F. Rosen sought to collect Plaintiff's alleged Debt by sending here a letter dated April 26, 2016, attached hereto as Exhibit A.

13. Exhibit A states in pertinent part:

Unless you dispute the validity of this debt, or any portion thereof within (30) days of receipt of this notice, our office will assume the debt is valid. If you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, we will, upon written request within thirty (30) days after receipt of notice, provide you with the name and address of the original creditor, if different from the current creditor.

14. Exhibit A did not include 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.

15. Exhibit A concludes with the typewritten signature of Joseph F. Rosen, Esq.

16. Defendant Rosen participated in the creation of the content of Exhibit A and when it was to be sent.

17. Exhibit A is a "communication" as defined by 15 U.S.C. §1692a(2).

18. Defendants regularly send lend letters in the form of Exhibit A to collect obligations incurred for medical services.

COUNT I

CLASS ACTION ALLEGATIONS

19. Plaintiff incorporates the foregoing paragraphs.

20. This action is brought on behalf of one FDCPA class.

21. The class is defined as:

a. all natural persons to whom Defendants sent, or caused to be sent, a letter in the form of Exhibit A, to a mailing address located within the State of Florida,

b. in an attempt to collect a debt arising from medical care at Memorial Healthcare System, including Memorial Regional Hospital, Memorial Regional Hospital South, Joe DiMaggio Children's Hospital, Memorial Hospital West, Memorial Hospital Miramar and Memorial Hospital Pembroke,

c. during the one-year period prior to the filing of the complaint.

22. Plaintiff alleges on information and belief based on Defendants' use of letters in the form of Exhibit A that the class is so numerous that joinder of all members is impractical.

23. There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members. Each purported class member was sent a letter in the form of Exhibit A by Defendants. The principal issues are:

a. whether Defendants' letters in the form of Exhibit A violate the FDCPA

b. whether Defendants are debt collectors.

24. The claims of Plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

25. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling actions involving unlawful debt collection practices under the FDCPA and class actions. Neither Plaintiff nor her counsel have any interest which might cause them not to vigorously pursue this action.

26. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate in that:

a. The questions of law or fact common to the members of the classes predominate over any questions affecting an individual member.

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

VIOLATIONS OF THE FDCPA 15 U.S.C. §§ 1692g(a)(4), 1692e, AND e(10)
BROUGHT BY PLAINTIFF INDIVIDUALLY AND
ON BEHALF OF THE CLASS

27. PLAINTIFF repeats, re-alleges, and incorporates by reference the foregoing paragraphs.

28. Debt collectors are required in their initial communication, or within five (5) days thereof, to include 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 pursuant to 15 U.S.C. § 1692g(a)(4).

29. Debt collectors are forbidden from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt” pursuant to 15 U.S.C. § 1692e.

30. Debt collectors are forbidden from “the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer pursuant to 15 U.S.C. § 1692e(10).

31. Exhibit A was Defendants’ initial communication to Plaintiff.

32. Exhibit A did not include 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..

33. Therefore, Defendants violated 15 U.S.C. § 1692g(a)(4) as well as 1692e and e(10).

34. As a result of the FDCPA violations by Defendants, Plaintiff and the class are entitled to an award of statutory damages.

WHEREFORE, Plaintiff Tamyka M. Lee requests that the Court enter judgment in favor of herself and the class and against Defendants Pollack & Rosen, P.A. and Joseph F. Rosen for:

- a. Certification of this matter to proceed as a class action;

- b. Statutory damages pursuant to 15 U.S.C. §1692k(a)(2)(B) for the FDCPA class;
- c. Attorney's fees, litigation expenses and costs of suit; and
- d. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff Tamyka M. Lee demands trial by jury.

Respectfully submitted,

DONALD A. YARBROUGH, ESQ.
Attorney for Plaintiff
Post Office Box 11842
Fort Lauderdale, Florida 33339
Telephone: (954) 537-2000
Facsimile: (954) 566-2235
donyarbrough@mindspring.com

s/Donald A. Yarbrough
Donald A. Yarbrough, Esq.
Florida Bar No. 0158658

O. Randolph Bragg
HORWITZ, HORWITZ & ASSOCIATES
25 East Washington Street, Suite 900
Chicago, IL 60602
(312) 372-8822
rand@horwitzlaw.com

(Mr. Bragg will be seeking admission by separate motion)

Attorneys for Plaintiff

EXHIBIT “A”

Law Offices

Pollack & Rosen, P.A.

806 S. Douglas Rd., South Tower Suite 200 • Coral Gables, FL 33134-3157
Telephone (305) 448-0006 • Toll Free (888) 448-1557 • Facsimile: (305) 569-0101

April 26, 2016

ACCOUNT IDENTIFICATION

TAMYKA MAKEDA LEE
2510 Harding St
Hollywood FL 33020-2351

Re: MEMORIAL REGIONAL HOSP.
Patient: TAMYKA MAKEDA LEE
Treatment Date: 08-22-15
File No: 2505836
Amount Due: \$948.00

Dear TAMYKA MAKEDA LEE,

In view of your failure to make payments on the above bill, your account has been referred to us for resolution.

You can now make payments via our website at www.pollackrosen.com.

Your account is long past due and must be paid in full.

The above stated balance is due in full. Please contact our office upon receipt 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 of receipt of this notice, our office will assume this debt is valid. If you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, we will, upon written request within thirty (30) days after receipt of notice, 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. **This is an attempt to collect a debt by a debt collector and any information obtained will be used for that purpose.**

Very truly yours,

Joseph F. Rosen, Esq.
Your Account Representative is: DENNISE BENITEZ

This communication is from a debt collector.

1963-HWPORO10-WPR-MED-1/06/10

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

Y1B0D247A9



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 04/26/16	ACCOUNT # 2505836	PAY THIS AMOUNT \$948.00



0008120024020126397033020235110-1YA1-Y1B0D247A9 1963
WPR-MED - 1963
TAMYKA MAKEDA LEE
2510 Harding St
Hollywood FL 33020-2351



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

12345678-001809-01-1-AA



CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing 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. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I(a) PLAINTIFFS

TAMYKA M. LEE,
on behalf of herself and
all others similarly situated,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
 (EXCEPT IN U.S. PLAINTIFF CASES) **BROWARD**

DEFENDANTS

Pollack and Rosen, P. A. and Joseph F. Rosen

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

DONALD A. YARBROUGH, ESQ. POST OFFICE BOX 11842
FORT LAUDERDALE, FL 33339, TELEPHONE (954) 537-2000

ATTORNEYS (IF KNOWN)

(d) **CIRCLE COUNTY WHERE ACTION AROSE:**
DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Case Only)

- | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | PTF DEF (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) | <input type="checkbox"/> 1 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporation and Principal Place of Business in This State | <input type="checkbox"/> 1 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Incorporation and Principal Place of Business in Another State | <input type="checkbox"/> 2 |
| | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> |
| | 3 | 3 | | 3 |

IV. 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.)

IVa. 1-2 days estimated (for both sides) to try entire case Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq.

NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

A CONTRACT	A TORTS	B FORFEITURE PENALTY	A BANKRUPTCY	A OTHER STATUS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl Veterans) B <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<p style="text-align: center;">PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">A PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">B SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 States Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. B <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities /Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions* *A or B
<p style="text-align: center;">A REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure B <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p style="text-align: center;">A CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<p style="text-align: center;">B PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General* <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other* <input type="checkbox"/> 550 Civil Rights *A or B	<p style="text-align: center;">A LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations B <input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	<p style="text-align: center;">A FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26b USC 7609

VI. ORIGIN

1. Original Proceeding
2. Removed from State Court
3. Remanded from Appellate Court
4. Refiled
5. Transferred from another district (specify)
6. Multidistrict Litigation
7. Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT

- CHECK IF THIS IS A UNDER F.R.C.P.23
- CLASS ACTION** Yes
- DEMAND \$** N/A
- JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY

(See Instructions): JUDGE _____ DOCKET NUMBER _____

DATE: March 27, 2017 SIGNATURE OF ATTORNEY OF RECORD

s/ Donald A. Yarbrough

UNITED STATES DISTRICT COURT

S/F 1-2
 REV9/94

FOR OFFICE USE ONLY: Receipt No. _____ Amount: _____
 Date Paid: _____ M/IFP: _____

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

TAMYKA M. LEE,
on behalf of herself and
all others similarly situated,

Plaintiff,

v.

POLLACK & ROSEN, P.A. and
JOSEPH F. ROSEN,

Defendants.

SUMMONS IN A CIVIL ACTION

TO:

**POLLACK AND ROSEN, PA
C/O Neal Farr, REGISTERED AGENT
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:

**Donald A. Yarbrough
Post Office Box 11842
Fort Lauderdale, FL 33339**

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

AO 440 (Rev. 02/09) Summons in a Civil Action (Page 2)

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 \$ _____.

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. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

TAMYKA M. LEE,
on behalf of herself and
all others similarly situated,

Plaintiff,

v.

POLLACK & ROSEN, P.A. and
JOSEPH F. ROSEN,

Defendants.

SUMMONS IN A CIVIL ACTION

TO:

**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:

**Donald A. Yarbrough
Post Office Box 11842
Fort Lauderdale, FL 33339**

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

AO 440 (Rev. 02/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

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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 \$ _____.

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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pollack & Rosen, P.A., One Individual Hit with FDCPA Class Action](#)
