

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROCHEL STERN on behalf of herself and
all other similarly situated consumers

Plaintiff,

-against-

ZWICKER & ASSOCIATES, P.C.

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff, Rochel Stern, brings this action against Zwicker & Associates, P.C. for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”). The FDCPA prohibits debt collectors from engaging in abusive, deceptive and unfair collection practices while attempting to collect on debts.

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that Defendant sought to collect from Plaintiff a consumer debt.
4. Upon information and belief, Defendant's principal place of business is located in Andover, Massachusetts.
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 Rochel Stern

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 4, 2016, Defendant sent the Plaintiff a collection letter.
11. The said March 4, 2016 letter was an effort to collect on a consumer debt.
12. Prior to Defendant Zwicker & Associates, P.C. collection of the said American Express account, it was previously being collected by GC Services Limited Partnership, who had sent a letter to the Plaintiff on or about January 16, 2016.
13. The balance stated in the said January 16, 2016 letter from GC Services was \$74,073.75, and in addition to that balance, interest was accruing daily as evident from the Defendant’s March 4, 2016 letter, which reflected an increase in the balance to an amount of \$74,110.75.
14. A reasonable consumer could be misled into believing that he or she could pay his or her debt in full by paying the amount as listed in the March 4, 2016 letter.
15. In fact, however, since as shown by the difference in the amount between the March 4, 2016 letter and the new increased amount in the March 4, 2016 letter, which reflected

that interest was accruing daily, a consumer who pays the balance due as stated in the letter, would be left unaware as to whether or not the debt has been paid in full.

16. The debt collector could still seek the interest and fees that had accumulated after the notice was sent, but before the balance was paid, or sell the consumer's debt to a third party, who itself could seek the post charge-off interest and fees from the consumer.¹
17. Where a debt collector mails a debtor various different letters which show that interest is accruing daily, yet the debt collector "is willing to accept a specified amount in full satisfaction of the debt if payment is made by a specific date [it must] simplify the consumer's understanding by so stating, while advising that the amount due would increase by the accrual of additional interest or fees if payment is not received by that date."² However, if the debt collector intended on waiving the interest accruing it must clearly state that the interest is being waived.
18. The said collection letters at issue were increasing daily due to interest, but the March 4, 2016 letter specifically, failed to disclose that the balance would continue to increase due to interest and fees, or in the alternative, the March 4, 2016 letter failed to disclose that the balance was actually not increasing due to the interest being waived.
19. In any event, Defendant's said March 4, 2016 letter was "misleading" and "confusing" within the meaning of Section 1692e of the FDCPA.

Absent a disclosure by the holder of the debt that the interest accruing since the previous letter is waived, even if the debtor pays the "Amount of Debt" the Defendant and or the creditor could still seek the interest accruing since the previous letter, or sell the consumer's debt to a third party, which itself could seek the accrued interest from the consumer.³

¹ See Avila v. Riexinger & Associates, LLC, 817 F.3d 72, 76 (2d Cir. 2016)

² *id.*

³ Avila, at *10-11.

20. Waiver of interest even when it has been made explicitly has not prevented debt-collectors from continuing to illegally charge the waived interest.
21. At the bare minimum, a debt collector must make clear even to the unsophisticated consumer that it intends to waive the accruing post charge-off interest.
22. A debt collector must disclose, that the balance due may change since interest is accruing, or in the alternative, it must disclose any such waiver of interest accrued since the previous letter.
23. 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.
24. Defendant was required to include a disclosure that the automatically accrued interest was accruing, or in the alternative, the Defendant was required to disclose that the creditor has made an intentional decision to waive the automatically accruing interest; nonetheless it did not make any of those disclosures in violation of 1692e.
25. If interest was waived, the letter would need to contain that disclosure and clearly state that no interest is accruing on this account in order to provide full and fair disclosure to consumers of the actual balance as is embodied in Section 1692e.
26. 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."⁴

⁴ Avila v. Riexinger & Associates, LLC, 817 F.3d 72, 76 (2d Cir. 2016)

27. Because the statement of the “Balance” that 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 her account, the FDCPA requires debt collectors, when they notify consumers of their account balance, to expressly disclose that interest has stopped accruing.
28. 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 and it protects them from other debt collectors seeking further interest on this debt in the future.
29. According to the Second Circuit’s finding that the “Balance” 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 unwaived] 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.”⁵
30. The 8th Circuit in *Haney v. Portfolio Recovery Associates*, 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.

⁵ *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016)

31. 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 consumer could not know what the real balance is.
32. The intent to waive a contractual right must be unmistakably manifested and may not be inferred from doubtful or equivocal acts.⁶ A waiver of a contract right does not occur by negligence, oversight or thoughtlessness and cannot be inferred from mere silence.⁷
33. 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.
34. The “Balance” is for an amount that includes original principal, fees, and contractual interest.
35. If interest was waived or stopped accruing the collection notice must disclose “This debt is not accruing interest.”
36. If interest was accruing the collection notice must inform the consumer that the amount of the debt stated in the letter will increase over time.
37. Collection letters failing to reference the accrual of interest or waiver of interest are subject to two different interpretations as to the accumulation of interest, rendering them deceptive under § 1692e(10).
38. “None of the letters provided further detail regarding when or how the balance had been calculated, whether it included interest, or whether interest continued to accrue. The court

⁶ Navillus Tile, Inc. v. Turner Const. Co., 2 A.D.3d 209, 770 N.Y.S.2d 3 (1st Dep’t 2003)

⁷ 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).

finds that the "least sophisticated consumer" could have read these letters in at least two different ways. *On one hand*, an unsophisticated consumer could reasonably conclude that the balance was a fixed amount that would not be subject to further interest, late fees, or other charges. *On the other*, an unsophisticated consumer could just as reasonably determine that the balance would continue to grow over time as interest accrued. *One of those meanings would necessarily be inaccurate*. Therefore, the court finds that Defendants' letters were deceptive as a matter of law. Courts in other districts have reached the same conclusion on similar facts. The court grants Ms. Snyder's motion for summary judgment on this issue." *Snyder v. Gordon*, No. C11-1379 RAJ, 2012 U.S. Dist. LEXIS 120659, at *8-9 (W.D. Wash. Aug. 24, 2012)

39. "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)
40. The said March 4, 2016 letter was deceptive and misleading as it merely identified the

- “Balance,” yet failed to disclose that the balance may increase due to interest and fees.
41. The Plaintiff was left uncertain as to whether the “Balance” was accruing interest as there was no disclosure that indicated otherwise.
 42. A reasonable consumer could read the notice and be misled into believing that he or she could pay her debt in full by paying the amount listed on the notice.
 43. In fact, however, since interest is accruing daily, or since there are undisclosed late fees, a consumer who pays the “Balance” stated on the notice will not know whether the debt has been paid in full.
 44. The debt collector could still seek the 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.
 45. The statement of a “Balance” without notice that the amount is already increasing due to accruing interest or other charges, would mislead the unsophisticated consumer into believing that payment of the amount stated will clear his or her account.
 46. 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.
 47. Collection notices that state only the “Balance,” but do not disclose that the balance might increase due to interest and fees, are “misleading” within the meaning of Section 1692e.

48. The Plaintiff and the least sophisticated consumer would be led to believe that the “Balance” is static and that his or her payment of the amount due would satisfy the debt irrespective of when payment was remitted.
49. A consumer who pays the “Balance” stated on the collection letter will be left unsure as to whether or not the debt has been paid in full, as the Defendant could still attempt to collect on any interest and fees that accumulated after the letter was sent but before the balance was paid.
50. The Defendant violated 15 U.S.C. § 1692e(2)(A) for misrepresenting the amount of the debt owed by the Plaintiff.
51. A debt collector, when notifying a consumer of his or her account balance, must disclose that the balance may increase due to interest and fees.
52. 15 U.S.C. § 1692e provides:

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:

 - (2) The false representation of –
the character, amount, or legal status of any debt; or
 - (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.
53. Defendant's March 4, 2016 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.
54. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the

Defendant.

55. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
56. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.
57. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
58. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
59. Defendant's communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to Defendant's collection efforts.
60. The FDCPA ensures that consumers are fully and truthfully apprised of the facts and of their rights, the act enables them to understand, make informed decisions about, and participate fully and meaningfully in the debt collection process. The purpose of the FDCPA is to provide information that helps consumers to choose intelligently. The Defendant's false representations misled the Plaintiff in a manner that deprived her of hers right to enjoy these benefits, these materially misleading statements trigger liability under section 1692e of the Act.
61. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
62. 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

63. 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.
64. The identities of all class members are readily ascertainable from the records of Zwicker & Associates, P.C. and those business and governmental entities on whose behalf it attempts to collect debts.
65. Excluded from the Plaintiff's Class is the Defendant and all officers, members, partners, managers, directors, and employees of Zwicker & Associates, P.C., and all of their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
66. 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.
67. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.
68. The Plaintiff will fairly and adequately protect the interests of the Plaintiff's Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor her attorneys have any interests, which might cause them not to vigorously pursue this action.

69. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- (a) **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff's Class defined above is so numerous that joinder of all members would be impractical.
- (b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff's Class and those questions predominate over any questions or issues involving only individual class members. The principal issues are whether the Defendant's communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
- (c) **Typicality:** The Plaintiff's claims are typical of the claims of the class members. Plaintiff and all members of the Plaintiff's Class defined in this complaint have claims arising out of the Defendant's common uniform course of conduct complained of herein.
- (d) **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor her counsel have any interests, which might cause them not to vigorously pursue the instant class action lawsuit.

(e) **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender. Certification of a class under Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure is appropriate because adjudications with respect to individual members create a risk of inconsistent or varying adjudications which could establish incompatible standards of conduct for Defendant who, on information and belief, collects debts throughout the United States of America.

70. 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.

71. 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.

72. 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.
73. 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.

74. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through seventy three (73) herein with the same force and effect as if the same were set forth at length herein.
75. This cause of action is brought on behalf of Plaintiff and the members of a class.
76. The class involves all individuals whom Defendant's records reflect resided in the State of New York and who were sent a collection letter in substantially the same form letter as the letter sent to the Plaintiff on or about March 4, 2016; and (a) the collection letter was sent to a consumer seeking payment of a personal debt; and (b) the collection letter was not returned by the postal service as undelivered; and (c) the Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692e, 1692e(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.

Violations of the Fair Debt Collection Practices Act

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

78. 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
November 24, 2016

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

Plaintiff requests trial by jury on all issues so triable.

/s/ Maxim Maximov
Maxim Maximov, Esq.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROCHEL STERN

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

(c) Attorneys (Firm Name, Address, and Telephone Number) MAXIM MAXIMOV, LLP OFFICE: (718) 395-3459 1701 AVENUE P FAX: (718) 408-9570 BROOKLYN, NEW YORK 11229 E-MAIL: M@MAXIMOV.LAW.COM

DEFENDANTS

ZWICKER & ASSOCIATES, P.C.

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. SECTION 1692 -- FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) Brief description of cause: UNLAWFUL AND DECEITFUL DEBT COLLECTION BUSINESS PRACTICES

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/24/2016 SIGNATURE OF ATTORNEY OF RECORD /S/ MAXIM MAXIMOV, ESQ.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

I, N/A, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

N/A

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

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

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

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? NO
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? NO
 - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

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

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

BAR ADMISSION

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

Yes No

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

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /S/ MAXIM MAXIMOV, ESQ.

DEPT. HOVS Case 1:16-cv-06549 Document 1-2 Filed 11/24/16 Page 1 of 4 PageID #: 18
PO BOX 3044
LIVONIA MI 48151-3044
RETURN SERVICE REQUESTED



Please call: (800) 846-6406
Calls may be monitored or recorded.



CORRESPONDENCE AND PAYMENT MAILING ADDRESS:



P5B65200200162 - 127127071 I00646
ROCHEL STERN
5311 NEW UTRECHT AVE
BROOKLYN NY 11219-4140



PO BOX 46960
SAINT LOUIS MO 63146



YOU OWE: AMERICAN EXPRESS
CLIENT ACCOUNT NUMBER: **ENDING 51001**

FILE NUMBER: [REDACTED]
BALANCE DUE: **\$74,073.75**

✂ Please detach and return upper portion of statement with payment ✂

January 30, 2016

File Number: [REDACTED]

American Express Account Number: ENDING 51001
Original Creditor: American Express

Dear Rochel Stern,

We are writing to let you know that your account with American Express, with an overdue balance of \$74,073.75, has been referred to us.

We understand you may not be able to pay the entire balance in one payment. We are here to work with you to find a mutually agreeable solution. We invite you to contact us so that we can discuss your particular financial circumstances, as well as opportunities our client may have available for you. Please contact us at (800) 846-6406 to discuss payment options that may be available to you on your account.

However, if you are able to pay the balance due at this time, please send us your payment using the enclosed envelope. We look forward to helping you resolve your account. Thank you.

Sincerely,

Aubrey Caraway
Account Representative

IF YOU HAVE CONCERNS REGARDING THE HANDLING OF YOUR ACCOUNT BY GC SERVICES, PLEASE CONTACT A. T. CARAWAY, GENERAL MANAGER, AT 800-846-6406.

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

** As of the date of this letter, you owe \$74,073.75. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you.*

NOTICE: SEE REVERSE SIDE AND ADDITIONAL INSERT FOR IMPORTANT CONSUMER INFORMATION

IMPORTANT: BE CERTAIN YOUR ACCOUNT IS CORRECT.

HOME PHONE : _____

NEW ADDRESS : _____

EMPLOYER : _____ PHONE: _____

EMPLOYER ADDRESS : _____

GC Services Limited Partnership

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

CONSUMER INFORMATION:

UNLESS YOU, WITHIN THIRTY (30) DAYS AFTER YOUR RECEIPT OF GC SERVICES' INITIAL WRITTEN NOTICE TO YOU CONCERNING THIS DEBT, DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED TO BE VALID BY GC SERVICES. IF YOU NOTIFY GC SERVICES IN WRITING WITHIN THE ABOVE DESCRIBED THIRTY (30) DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, GC SERVICES WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU AND A COPY OF SUCH VERIFICATION OR JUDGMENT WILL BE MAILED TO YOU BY GC SERVICES. UPON YOUR WRITTEN REQUEST WITHIN THE ABOVE DESCRIBED THIRTY (30) DAY PERIOD, GC SERVICES WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

THE DEMANDS FOR PAYMENT IN THIS LETTER DO NOT REDUCE YOUR RIGHTS TO DISPUTE THIS DEBT, OR ANY PORTION THEREOF, AND/OR TO REQUEST VERIFICATION WITHIN THE THIRTY (30) DAY PERIOD AS SET FORTH ABOVE.



ROCHEL STERN
5311 NEW UTRECHT AVE
BROOKLYN, NY 11219

Personal and Confidential
Creditor: American Express
Account number ending in: 51001 ^{1,2}
Balance: \$74110.75

03/04/2016

File ID: [REDACTED]

Dear ROCHEL STERN:

This law firm has been retained by the above-named creditor to assist it in the collection of the funds you owe on the above-referenced account. As of the date of this letter, you owe \$74110.75.

As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account. This letter is not a threat of suit and should not be construed to be a threat of suit.

Please note that unless you dispute said debt, or any portion thereof, within thirty (30) days after your receipt of this letter, this office shall assume the validity of this debt. Upon your written notification within such thirty-day period that this debt, or any portion thereof, is disputed, this office shall obtain verification of the debt or a copy of a judgment, if any, against you and mail you a copy of such verification or judgment. Furthermore, upon your written request within said thirty-day period, this office shall provide you with the name and address of the original creditor, if different from the current creditor.

Please contact this office to discuss repayment with JOHN GLAZEBROOK, one of our non-attorney account representatives.

Please see the reverse side of this letter for important notices concerning your rights.

Sincerely,

ZWICKER & ASSOCIATES, P.C.

THIS LAW FIRM
EMPLOYS ONE
OR MORE
ATTORNEYS
ADMITTED TO
PRACTICE IN
THE FOLLOWING
STATES:

- ALASKA
- ARIZONA
- CALIFORNIA
- COLORADO
- CONNECTICUT
- FLORIDA
- GEORGIA
- IDAHO
- ILLINOIS
- INDIANA
- KENTUCKY
- MAINE
- MARYLAND
- MASSACHUSETTS
- MICHIGAN
- MINNESOTA
- NEW JERSEY
- NEW HAMPSHIRE
- NEW YORK
- NORTH CAROLINA
- OHIO
- OREGON
- PENNSYLVANIA
- RHODE ISLAND
- SOUTH CAROLINA
- TENNESSEE
- TEXAS
- VERMONT
- VIRGINIA
- WASHINGTON
- WEST VIRGINIA
- DISTRICT OF COLUMBIA

¹ This firm is a debt collector.

² This firm is attempting to collect a debt and any information obtained will be used for that purpose.



IMPORTANT NOTICES

We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

NEW YORK STATE:

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

- (1) The use or threat of violence;
- (2) The use of obscene or profane language; and
- (3) 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.

Federal law or other state laws may also provide you with similar or even greater rights.

Authorizing us by phone to set up payments on your account

If you and this firm agree that you can make a series of monthly payments on your account in specified amounts, you can authorize this firm by phone to initiate those payments electronically from your bank account. By (1) calling us at 800-370-2251 (NY City and Yonkers Residents Only Call 877-368-4531) or taking a call from us; (2) specifying the amounts and dates of payments which you would like to make; (3) identifying the bank account of yours which you wish to use to make the payments; and (4) electronically signing this Authorization, you authorize us to initiate payments from your account in the amounts and on the dates that you specify. You understand that your bank may charge you a fee for any unsuccessful payment and that we have no liability for any such fee. **YOU ARE NOT REQUIRED TO ARRANGE FOR OR AUTHORIZE ANY PAYMENTS OF THIS TYPE. If you choose to provide this authorization, you can cancel it by calling us toll free at 877-220-6665 at least three business days before the day on which you want the cancellation to be effective.**

OFFICE HOURS: Monday through Thursday 8:00 AM – 9:00 PM, Friday 8:00 AM – 7:00 PM, and Saturday 8:00 AM – 12:00 PM. (All times are Eastern).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROCHEL STERN on behalf of herself and
all other similarly situated consumers

Plaintiff,

-against-

ZWICKER & ASSOCIATES, P.C.

Defendant.

SUMMONS IN A CIVIL ACTION

TO: ZWICKER & ASSOCIATES, P.C.
80 MINUTEMAN ROAD
ANDOVER, MASSACHUSETTS 01810-1031

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

MAXIM MAXIMOV, ESQ.
MAXIM MAXIMOV, LLP
1701 AVENUE P
BROOKLYN, NEW YORK 11229

an answer to the complaint which is herewith served upon you, with **21** days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will
be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK