

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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OKSANA TIMOSHENKO on behalf of herself and  
all other similarly situated consumers

Plaintiff,

Case No.

-against-

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP

Defendant.

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**CLASS ACTION COMPLAINT**

**Introduction**

Plaintiff, Oksana Timoshenko, brings this action against Mullooly, Jeffrey, Rooney & Flynn LLP 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**

1. Plaintiff is a citizen of the State of New York who resides within this District.
2. 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.
3. Upon information and belief, Defendant's principal place of business is located in Syosset, New York
4. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
5. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

**Jurisdiction and Venue**

6. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
7. 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 Oksana Timoshenko**

8. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.
9. On or about July 11<sup>th</sup>, 2017 Defendant sent the Plaintiff a collection letter.
10. The July 11<sup>th</sup>, 2017 letter stated in part: “As of this date your balance is \$2,435.48. Because of the interest or fees 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 before depositing the check for collection.”
11. A debt collector has the obligation not just to convey the amount of the debt, but to convey such clearly.
12. A debt collector has the obligation not just to convey the amount of the debt, but to convey such clearly.
13. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.
14. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”
15. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.
16. A collection letter is deceptive under 15 U.S.C. § 1692e if it can reasonably be read by

the least sophisticated consumer to have two or more meanings, one of which I inaccurate.

17. A collection letter is also deceptive under 15 U.S.C. § 1692e if it is reasonable susceptible to an inaccurate reading by the least sophisticated consumer.
18. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff whether the amount listed is the actual amount of the debt due.
19. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff whether the amount listed already includes “interest.”
20. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff whether the amount listed already includes “fees.”
21. The July 11<sup>th</sup>, 2017 letter failed to advise Plaintiff what portion of the amount listed is principal.
22. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff what “fees” might apply.
23. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if “fees” are applied, when such “fees” will be applied.
24. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if “fees” are applied, what the amount of those “fees” will be.
25. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff of the nature of the “fees.
26. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” what the amount of the interest will be.
27. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” when such interest will be applied.
28. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” what the interest rate is.

29. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” the amount of money the amount listed will increase per day.
30. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” the amount of money the amount listed will increase per week.
31. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” the amount of money the amount listed will increase per month.
32. The July 11<sup>th</sup>, 2017 letter failed to inform Plaintiff if there is “interest,” the amount of money the amount listed will increase per any measurable period.
33. The July 11<sup>th</sup>, 2017 letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.
34. If interest is continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate the applicable interest rate.
35. If interest is continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate what the amount of the accrued interest will be.
36. If interest is continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate when such interest will be applied.
37. If interest is continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate the amount of money the amount listed will increase at any measurable period.
38. If “fees” are continuing to accrue, the least sophisticated consumer would not know the amount of the debt because the letter fails to indicate the nature of the “fees.”<sup>1</sup>

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<sup>1</sup> 1 Carlin v. Davidson Fink LLP, 852 F.3d 207 (2d Cir. 2017), Balke v. All. One Receivables Mgmt., No. 16-cv-5624(ADS)(AKT), 2017 U.S. Dist. LEXIS 94021, at \*14 (E.D.N.Y. June 19, 2017) (“[T]he Collection Letter in this case refers with vagueness to “accrued interest or other charges,” without providing any information regarding the rate of interest; the nature of the “other charges”; how any such charges would be calculated; and what portion of the balance due, if any, reflects already-accrued interest and other charges. By failing to provide even the most

39. The Defendant's failures are purposeful.
40. In order to induce payments from consumers that would not otherwise be made if the consumer knew the true amount due, Defendant does not inform the consumer whether the amount listed will increase.
41. In order to induce payments from consumers that would not otherwise be made if the consumer knew the true amount due, Defendant does not inform the consumer what "fees" might apply.
42. In order to induce payments from consumers that would not otherwise be made if the consumer knew the true amount due, Defendant does not inform the consumer when such "fees" will be applied.
43. Defendant's conduct constitutes a false, deceptive and misleading means and representation in connection with the collection of the debt, in violation of 15 U.S.C. § 1692e.
44. The July 11<sup>th</sup>, 2017 letter can reasonably be read by the least sophisticated consumer to have two or more meanings concerning the actual balance due, one of which must be inaccurate, in violation of 15 U.S.C. § 1692e.
45. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.
46. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
47. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.

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basic level of specificity in this regard, the Court "cannot say whether those amounts are properly part of the amount of the debt," for purposes of section 1692g. Carlin, 852 F.3d at 216. Further, as set forth in Carlin, without any clarifying details, the Collection Letter states only that these unspecified assessments may be added to the balance due, which the Court finds to be insufficient to "accurately inform[ ] the [Plaintiff] that the amount of the debt stated in the letter will increase over time.")

48. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
49. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
50. 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.
51. 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 him of his right to enjoy these benefits, these materially misleading statements trigger liability under section 1692e of the Act.
52. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
53. 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**

54. 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.
55. The identities of all class members are readily ascertainable from the records of Mullooly,

Jeffrey, Rooney & Flynn LLP and those business and governmental entities on whose behalf it attempts to collect debts.

56. Excluded from the Plaintiff's Class is the Defendant and all officers, members, partners, managers, directors, and employees of Mullooly, Jeffrey, Rooney & Flynn LLP, and all of their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
57. 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 Defendant's communications with the Plaintiff, such as the above stated claims, violate provisions of the Fair Debt Collection Practices Act.
58. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.
59. 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.
60. 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.

61. 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.
62. 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.
63. 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.
64. 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.**

65. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered one (1) through sixty-four (64) herein with the same force and effect as if the same were set forth at length herein.
66. This cause of action is brought on behalf of Plaintiff and the members of a class.
67. 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 July 11<sup>th</sup>, 2017; 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 for the use of any false representation or deceptive means to collect or attempt to collect any debt, for misrepresenting the amount of the debt owed by Plaintiff.

### **Violations of The Fair Debt Collection Practices Act**

68. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
69. 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  
July 28<sup>th</sup>, 2017

/s/ Igor Litvak  
Igor Litvak, Esq.  
Attorneys for the Plaintiff  
The Litvak Law Firm, PLLC  
1701 Avenue P  
Brooklyn, New York 11229  
Office: (718) 989-2908  
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E-mail: [Igor@LitvakLawNY.com](mailto:Igor@LitvakLawNY.com)

Plaintiff requests trial by jury on all issues so triable.

/s/ Igor Litvak  
Igor Litvak, Esq.

Law Office  
MULLOOLY,JEFFREY,ROONEY & FLYNN LLP  
6851 JERICHO TPKE-SUITE 220  
PO BOX 9036  
SYOSSET,NEW YORK 11791-9036  
Tel 516-656-5300  
Toll Free 888-762-6573  
NYC DEPT of Consumer Affairs,License# 2045157

July 11, 2017

OKSANA TIMOSHENKO  
[REDACTED]  
[REDACTED]

Current Creditor:VELOCITY INVESTMENTS, LLC

MJRF File #: [REDACTED]  
Acct# Ending in: 9030  
Orig Creditor:TD RETAIL CARD SERVICES

Dear OKSANA TIMOSHENKO

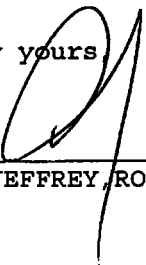
Please be advised that this office has received payments totaling \$.00 towards your account.

As of this date your balance is \$2,435.48. Because of the interest or fees 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 before depositing the check for collection. For further information, please write or call G.BRICKMAN- (516)656-5339.

If you have any questions please feel free to contact,Glenn Brickman at (516)656-5339.

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

Very truly yours

  
MULLOOLY,JEFFREY,ROONEY & FLYNN LLP

0042VI  
BD

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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OKSANA TIMOSHENKO on behalf of herself and  
all other similarly situated consumers

Plaintiff,

Case No.

-against-

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP

Defendant.

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**SUMMONS IN A CIVIL ACTION**

TO: MULLOOLY, JEFFREY, ROONEY & FLYNN LLP  
6851 JERICHO TPKE-SUITE 220  
SYOSSET, NEW YORK 11791-9036

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

IGOR B. LITVAK, ESQ.  
THE LITVAK LAW FIRM, PLLC  
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.

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CLERK

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DATE

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BY DEPUTY CLERK

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

OKSANA TIMOSHENKO

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

(c) Attorneys (Firm Name, Address, and Telephone Number) IGOR B. LITVAK, ESQ. THE LITVAK LAW FIRM, PLLC 1701 AVENUE P PHONE / FAX: (718) 989-2908 BROOKLYN, NEW YORK 11229 E-MAIL: IGOR@LITVAKLAWNY.COM

DEFENDANTS

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP

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
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 (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
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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 (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 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 07/28/2017 SIGNATURE OF ATTORNEY OF RECORD /S/ IGOR B. LITVAK, ESQ.

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

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

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

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

N/A

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

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

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

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

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

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

**BAR ADMISSION**

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

Yes  No

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

Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: /S/ IGOR B. LITVAK, ESQ.

# 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 Collector Misleads Consumers in Collection Letters](#)

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