

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

FRANCISCO TINEO, on behalf of  
himself and all others similarly situated,

Plaintiffs,

-against-

ASSET RECOVERY SOLUTIONS,  
LLC,

Defendant.

**CIVIL ACTION**

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

Plaintiff FRANCISCO TINEO (hereinafter, “Plaintiff”), a New York resident, brings this class action complaint by and through his attorneys, Joseph H. Mizrahi Law, P.C., against Defendant ASSET RECOVERY SOLUTIONS, 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.

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re inadequate to protect consumers,” and that “the effective collection of debts” does not require “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).
2. Congress explained that the purpose of the Act was not only to eliminate abusive debt

collection practices, but also to “insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

### **JURISDICTION AND VENUE**

3. 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).
4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

### **NATURE OF THE ACTION**

5. 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.
6. 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.
7. Plaintiff is seeking damages, and declaratory and injunctive relief.

### **PARTIES**

8. 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).
9. Defendant is a Delaware corporation with a principal office located in Des Plaines, Illinois.
10. 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.
11. Defendant is a “debt collector,” as defined under the FDCPA under 15 U.S.C. § 1692a(6).

**CLASS ALLEGATIONS**

12. 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”):

- Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendant attempted to collect a consumer debt using the same unlawful form letter herein, from one year before the date of this Complaint to the present.
- The Class period begins one year to the filing of this Action.

13. 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 FRANCISCO TINEO**

14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “13” herein with the same force and effect as if the same were set forth at length herein.
15. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and Internet.
16. Upon information and belief, within the last year Defendant commenced efforts to collect an alleged consumer “debt” as defined by 15 U.S.C. 1692a(5), when it mailed a Collection Letter to Plaintiff seeking to collect on an unpaid account allegedly owed to Bureaus Investment Group Portfolio No 15, LLC.
17. On or around December 21, 2016, Defendant sent Plaintiff a collection letter (hereinafter, the “Letter”). *See Exhibit A.*
18. 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).
19. The Letter is a “communication” as defined by 15 U.S.C. §1692a(2).
20. The Letter was an initial communication between Plaintiff and Defendant.
21. The Letter states in pertinent part: “Total Current Balance: \$464.47.”
22. As a result of the following Counts Defendant violated the FDCPA.

**First Count**  
**15 U.S.C. §1692e et seq.**  
**False or Misleading Representations as to Status of Debt**

23. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “22” herein with the same force and effect as if the same were set forth at length herein.
24. Defendant’s debt collection efforts attempted and/or directed towards Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.
25. Pursuant to 15 U.S.C. §1692e, a debt collector is prohibited from using false, deceptive, or misleading representation in connection with the collection of a debt.
26. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on non-enumerated practice.
27. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.
28. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”
29. By stating a “Current Balance” without further clarification, “Defendant did not meet the minimum standard set out by *Avila*, because the letter does not state when, if ever, the amount owed by the Plaintiff would increase.”<sup>1</sup>
30. Plaintiff’s account was not subject to the accrual of interest, but by stating a “Current Balance,” Defendant falsely suggested that immediate payment of the balance would benefit Plaintiff by implying that the Balance would be subject to change, and could be subject to additional interest.

---

<sup>1</sup> *Thomas v. Midland Credit Management, Inc.*, 217CV00523ADSARL, 2017 WL 5714722, at \*4 (E.D.N.Y. Nov. 27, 2017), stating that “[h]ere, the Defendant argues that *Avila* is inapplicable because the letter is clear that interest is not accruing. The Court disagrees...while the letter states that interest and fees are zero at the time the letter was sent, it does not state whether interest would accrue at a later date. This is further clouded by the fact that the letter classifies the amount owed as the “current balance,” implying that interest may accrue.

31. In the alternative, Plaintiff's account was accruing contractual interest, but Defendant's communication failed to adequately disclose same in light of *Avila*.
32. The 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.
33. 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.
34. Defendant's debt collection efforts attempted and/or directed towards Plaintiff violated various provisions of the FDCPA, including but not limited to § 1692(e).
35. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

**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 Joseph H. Mizrahi Law, P.C., 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.

Respectfully submitted,

By: /s/ Joseph H. Mizrahi  
Joseph H. Mizrahi, Esq.  
Joseph H. Mizrahi Law, P.C.  
300 Cadman Plaza West. 12th Floor  
Brooklyn, New York 11201  
Phone: (917) 299-6612  
Fax: (718) 425-8954  
Email: Joseph@Jmizrahilaw.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/ Joseph H. Mizrahi  
Joseph H. Mizrahi, Esq.

Dated: Brooklyn, New York  
December 15, 2017



Statement Date:	12/21/16
ID Number:	934
Original Creditor:	CAPITAL ONE N.A.
Current Creditor:	BUREAUS INVESTMENT GROUP PORTFOLIO NO 15 LLC
Account Number:	XXXXXXXXXXXX6702
Total Current Balance:	\$464.47
Amount Due at Charge Off:	\$464.47
Interest Accrued Since Charge Off:	\$0.00
Miscellaneous Fees Since Charge Off:	\$0.00
Total Payments Since Charge Off:	\$0.00



888-678-9006

Francisco Tineo Sr

We would like to take this opportunity to inform you that BUREAUS INVESTMENT GROUP PORTFOLIO NO 15 LLC has purchased your account from CAPITAL ONE N.A.. If you wish to resolve your obligation, call us toll free at 888-678-9006. All payments must come to our office to ensure proper credit to your account.

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, that the debt or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from current creditor.

Sincerely,

Asset Recovery Solutions, LLC  
888-678-9006, Ext. 295

Licensed by the New York City Department of Consumer Affairs, license # 1309086

In accordance with the Fair Debt Collection Practices Act, 15 U.S.C.

§ 1692 et seq., Asset Recovery Solutions, LLC. is prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to: (i) the use or threat of violence; (ii) the use of obscene or profane language; and (iii) 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.

**Asset Recovery Solutions, LLC Contacts**



**Hours of Operation:**

Monday- Thursday 8 AM- 9 PM CT  
Friday: 8 am – 5 pm CT  
Saturday: 8 AM-12 CT



**Send Mail To:**

Asset Recovery Solutions, LLC  
2200 E. Devon Ave Ste 200  
Des Plaines, IL 60018-4501



**Find us Online at:**

[www.assetrecoveryolutions.com](http://www.assetrecoveryolutions.com)

Detach and Return with Payment

2200 E. Devon Ave Ste 200  
Des Plaines, IL 60018-4501

**IF PAYING BY CREDIT CARD, FILL OUT BELOW.**

<input checked="" type="checkbox"/> <b>VISA</b> <small>VISA</small>		<input type="checkbox"/> <b>MasterCard</b>
CARD NUMBER		
SIGNATURE		EXP DATE
<b>ID NUMBER</b> 934	<b>PAY THIS AMOUNT</b> \$464.47	<b>AMOUNT PAID</b> \$
<b>ACCOUNT NUMBER</b> XXXXXXXXXXXX6702	<b>CURRENT CREDITOR</b> BUREAUS INVESTMENT GROUP PORTFOLIO NO 15 LLC	

**Please send payments and correspondence to:**

Asset Recovery Solutions, LLC  
2200 E. Devon Ave Ste 200  
Des Plaines, IL 60018-4501



Francisco Tineo Sr

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Alleged FDCPA Violations Surface in Class Action Against Asset Recovery Solutions](#)

---