

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

BRIA WILLIAMS, on behalf of herself and
all others similarly situated,

Plaintiffs,

-against-

RECEIVABLES PERFORMANCE
MANAGEMENT, LLC

Defendant.

CIVIL ACTION

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

Plaintiff BRIA WILLIAMS (hereinafter, “Plaintiff”), a New York resident, brings this class action complaint by and through her attorneys, Daniel Cohen, PLLC, against Defendant RECEIVABLES PERFORMANCE MANAGEMENT, 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 illegal practices, in connection with the collection of a debt allegedly owed by Plaintiff.
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’s principal place of business is located in Lynnwood, Washington.
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 nationwide consumer class (the “Class”):

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

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 proceed to 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 BRIA WILLIAMS

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 an unpaid debt allegedly owing to AT&T.
17. On or around October 13, 2016, Defendant sent Plaintiff a collection 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. 15 U.S.C. § 1692e(5) prohibits debt collectors from making a “threat to take any action that cannot legally be taken or that is not intended to be taken.”
21. Said letter states in pertinent part: “We are willing to accept 60% of the ‘total due’ shown above as settlement in full. The remaining 40% of your outstanding balance will be forgiven if your payment of \$1053.59 is received on or before 10-25-16.”
22. This is effectively a threat to take action that Defendant does not intend to take, precisely because Defendant is authorized, and upon information and belief, will accept the proffered

settlement at any time.

23. Congress adopted the provisions of section 1692e(5) with the stated intent to prohibit debt collectors from making a “threat to take any action that cannot legally be taken or that is not intended to be taken.”
24. Defendant’s violations of the FDCPA created the risk of real harm that the Plaintiff would perceive Defendant’s statement as a threat to take further action on the account when in reality Defendant’s offer is not a “take it or leave it” offer as it implies by its communication.
25. Defendant’s actions as described herein are part of a pattern and practice used to collect debts.
26. As a result of the following Counts Defendant violated the FDCPA.

First Count
Violation of 15 U.S.C. §§ 1692e, *et seq*
False or Misleading Representations as to the Rights of the Consumer

27. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “26” herein with the same force and effect as if the same were set forth at length herein.
28. 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.
29. 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.
30. Collection letters are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.
31. Said offer falsely states or implies that the respective settlement offer is valid only if first payment is “received on or before 10-25-16.”
32. Statements that a settlement offer is a “limited time offer,” or that the offer expires on a specific date, or that payments must be received by that date, are false and misleading because the same

offer is, upon information and belief, available at any time.

33. Such false statements are materially false statements, as they impart in the unsophisticated consumer, a false belief that he or she must hurry to take advantage of a limited time opportunity, when in reality, there is no such time limit.
34. The Seventh Circuit has established “safe harbor” language regarding settlement offers in collection letters: As in previous cases in which we have created safe-harbor language for use in cases under the Fair Debt Collection Practices Act, we think the present concern can be adequately addressed yet the unsophisticated consumer still be protected against receiving a false impression of his options by the debt collector's including with the offer the following language: “We are not obligated to renew this offer.” The word “obligated” is strong and even the unsophisticated consumer will realize that there is a renewal possibility but that it is not assured. *Evory v. RJM Acquisitions Funding L.L.C.*, 505 F.3d 769, 775-76 (7th Cir. 2007).
35. Defendant did not use the safe harbor language in its communication to Plaintiff.
36. Upon information and belief, the deadline in **Exhibit A** to respond to the settlement offer is a sham. There is no actual deadline. The sole purpose of the purported deadline is to impart in the consumer a false sense of urgency.
37. 15 U.S.C. § 1692e generally prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”
38. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”
39. 15 U.S.C. § 1692f generally prohibits “unfair or unconscionable means to collect or attempt to collect any debt.”

40. The statement in Defendant's October 13, 2016 Letter is false and misleading, in violation of 15 U.S.C. §§ 1692e, 1692e(2), and 1692e(10).

41. Defendant could have taken the steps necessary to bring its actions within compliance of the FDCPA, but neglected to do so and failed to adequately review its actions to ensure conformance to the law.

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

Dated: Brooklyn, New York
April 23, 2017

Respectfully submitted,

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

DEMAND FOR TRIAL BY JURY

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

/s/ Daniel Cohen _____

Daniel Cohen, Esq.

Dated: Brooklyn, New York
April 23, 2017

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

BRIA WILLIAMS, on behalf of herself and all others similarly situated

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

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

DANIEL COHEN, PLLC, 300 Cadman Plaza West, 12th Floor, Brooklyn, NY 11201, (646) 645-8482

DEFENDANTS

RECEIVABLES PERFORMANCE MANAGEMENT, LLC

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

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

Attorneys (If Known)

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

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

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

- 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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1692

Brief description of cause: Defendant violated the FDCPA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/23/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel Cohen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

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

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

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

NONE

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

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

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

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? 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/ Daniel Cohen

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

BRIA WILLIAMS, on behalf of herself and all others
similarly situated

Plaintiff(s)

v.

RECEIVABLES PERFORMANCE MANAGEMENT,
LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) RECEIVABLES PERFORMANCE MANAGEMENT, LLC
C/O CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK 10011

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:

DANIEL COHEN, PLLC
300 CADMAN PLAZA WEST
12TH FLOOR
BROOKLYN, NEW YORK 11201

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.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RPM
 Receivables Performance Management LLC
 20816 44th Ave W
 Lynnwood, WA 98036

Notice Date:	10-13-16
Creditor Account#:	512077826676
Creditor:	AT&T
Original Creditor:	AT&T
Due Date:	10-25-16
Amount:	\$1755.98
Collection Fee:	\$0.00
Total Due:	\$1755.98

**ACT NOW AND SAVE MONEY
 SETTLEMENT OFFER: \$1053.59**

Dear Williams, Bria:

Due to our client's desire to aid you in removing your account from collections, we are willing to accept 60% of the "total due" shown above as settlement in full. The remaining 40% of your outstanding balance will be forgiven if your payment of \$1053.59 is received on or before 10-25-16.

Call us toll free at 855.268.4094 between the hours of Mon - Fri 6 AM to 5 PM Pacific time, Sat - Sun 8 AM to 1 PM Pacific time, to arrange payment terms. Otherwise, full payment of the settlement offer can be mailed to us at:

Receivables Performance Management LLC
 PO Box 1548
 Lynnwood, WA 98046-1548

This communication is from a debt collector. The purpose of this notice is to collect a debt. Any information obtained will be used for that purpose.

To inquire about your account with AT&T, please call 866-212-7408 and ask for Calvin Nelson. New York City Department of Consumer Affairs License Number 1291891.

PAYMENT OPTIONS

(1) Single Payment Option:


- Pay **\$1053.59** no later than **10-25-16**.
- Your account will be considered **"Settled in Full"** after we post your payment.


(2) Financial Hardship Plan:


- Contact one of our Professional Representatives to qualify for our various payment options.
- Your account will be considered **"Settled in Full"** once the account reaches a zero balance.


IMPORTANT NOTICE

RECEIVABLES PERFORMANCE MANAGEMENT LLC CONTACT INFORMATION

 Call Toll-Free 855.268.4094 to discuss payment arrangements. Let us prove how committed we are to working with you!

 Pay by mail to: Receivables Performance Management LLC, PO Box 1548, Lynnwood, WA 98046-1548

 You can now pay online at: www.rpmpayments.com

 Office Hours: Mon - Fri 6 AM to 5 PM Pacific time, Sat - Sun 8 AM to 1 PM Pacific time.

SOX/355326430855

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

96250076230029

Undeliverable Mail Only:
 PO Box 2630
 Southgate, MI 48195-4630

10-13-16



Williams, Bria
 1371 Dean St
 Brooklyn, NY 11216-3418

IF PAYING BY CREDIT CARD, FILL OUT BELOW.	
ZIP CODE	VISA <input type="checkbox"/>  <input type="checkbox"/> <input type="checkbox"/>
CC#	CC# (ON BACK OF CARD) EXP. DATE
SIGNATURE	
Name as it appears on card	REFERENCE NUMBER 45760924
CREDITOR AT&T	AMOUNT PAID \$

Receivables Performance Management LLC
 PO Box 1548
 Lynnwood, WA 98046-1548

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Debt Collector Sets 'Sham' Settlement Deadline](#)
