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CLERK OF THE WYANDOTTE COUNTY DISTRICT COURT
CASE NUMBER: 2014-CV-001023

In the District Court of Wyandotte County, Kansas

Mary Tripp,

Plaintiff,

vs.

Berman & Rabin P.A.

And

Velocity Investments, LLC

Defendant.

Case Number: _____

Division: _____

Class Action Petition

PETITION

COMES NOW Plaintiff, by and through counsel, and for Plaintiff's causes of action against Defendants states as follows:

1. Plaintiff is a resident of Kansas.
2. Defendant Berman & Rabin P.A. is a Kansas corporation.
3. Defendant Velocity Investments, LLC is a New Jersey Corporation. Defendant Velocity is in the business of purchasing consumer debts that are in default for the purpose of collecting on those accounts.
4. At all times relevant hereto, Defendants were and are engaged in the business of consumer debt collection, all within Kansas.
5. The Court has concurrent jurisdiction over the Fair Debt Collection Practices Act pursuant to 15 USC §1692k(d).

COUNT I
FAIR DEBT COLLECTION PRACTICES ACT

COMES NOW Plaintiff Mary Tripp , and as for Count I against Defendants Berman & Rabin P.A. and Velocity Investments, LLC, states and alleges as follows:

6. Plaintiff incorporates herein the preceding paragraphs as though fully set forth hereunder.

7. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter FDCPA), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

8. Plaintiff is a consumer as defined by 15 USC §1692a(3) of the FDCPA.

9. The principal purpose of Defendants' business is the collection of consumer debts using the mails and telephone, and Defendants regularly attempt to collect debts alleged to be due another.

10. Defendants are debt collectors as defined by 15 USC §1692a(3), who use an instrumentality of interstate commerce or the mails in any business, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another or by taking of assignment of a debt already declared to be in default by the originating creditor.

11. The Defendants were attempting to collect a consumer debt as defined by 15 USC §1692a(5) as an obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are

the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

12. The standard in determining whether the Defendants violated the FDCPA is the least sophisticated consumer standard. Claims should be viewed from the perspective of a consumer whose circumstances make him relatively more susceptible to harassment, oppression or abuse. *Schweizer v. Trans Union Corp.*, 136 F.3d 233, 237 (2nd Cir. 1998); *Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222, 1225-27 (9th Cir. 1988); *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1172 -75 (11th Cir. 1985); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991).

13. On January 29, 2014, as a pre-litigation demand, Defendant Velocity Investments, LLC, through its attorney and agent Defendant Berman & Rabin, sent Plaintiff a letter demanding payment on a consumer debt.

14. That letter is attached hereto as Exhibit A and incorporated by reference.

15. Exhibit A states, in pertinent part, that the alleged indebtedness to Defendant Velocity Investments LLC is “Balance: \$10,717.97, \$2,959.92 accrued interest and/or late charges, attorney fees (where applicable), the exact amount to be determined by agreement between you and us or by a court, 10% interest per annum from April 27, 2011.”

16. 15 U.S.C. §1692g(a)(1) of the Fair Debt Collection Practices Act requires that in its initial demand or within five days thereafter, a debt collector must send the consumer a written notice containing the amount of the debt, to enable the debtor to timely dispute the debt.

17. This requires the debt collector to state the entire amount the collector is authorized to collect *at the time a collection demand is sent*. *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000).

18. This notice is designed to avoid confusing, fraudulent, and coercive debt collection practices. *Miller* at 875. In order for the required disclosures to be meaningful, the information must be conveyed in a manner that the unsophisticated consumer understands. *Bartlett v. Heibl*, 128 F.3d 497, 500 (7th Cir. 1997).

19. Thus, to meet the notice requirements of the statute, a debt collector must be explicit regarding the exact amount owed. *Miller* at 876. The statement of the amount owed must be effective, and not be “cleverly couched in such a way as to eviscerate its message.” *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996).

20. To protect the uniformed, the naive, and the trusting – the sort of people who easily fit under the umbrella of the “unsophisticated consumer” – the notice cannot be “misleading and tricky.” *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols & Clark, L.L.C.*, 214 F.3d 875.

21. In no way would Exhibit A inform Plaintiff, or anyone for that matter, the total amount being demanded for payment as of January 29, 2014. It says the debt includes unspecified “attorney fees (where applicable).”

22. The language regarding attorney’s fees in the statement of the balance violates 15 USC 1692g. *Matthew Kalebaugh v. Berman & Rabin, P.A.*, 13-2288-DDC-TJJ (Kan. 2014); *Jessie L. Ray v. Berman & Rabin, P.A.* 13-2289-DDC-TJJ (Kan. 2014).

23. Defendants have further violated 15 U.S.C. §1692e(2)(A)(3) of the Fair Debt Collection Practices Act which states: A debt collector cannot falsely represent the character, amount, or legal status of any debt.

24. Defendants violated the above mentioned provision because the language of the letter does not give the consumer an accurate accounting of the amount owed as required by law and which also misstate s the character of the debt, which is precluded by law.

25. The above-described acts are misleading to the least sophisticated consumer.

26. Defendants' acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

27. As a result of the above violations of the stated Act, the Defendants are liable to the Plaintiff for actual damages; statutory damages up to \$1,000.00 pursuant to 15 U.S.C. §1692k; costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k.

Class Allegations

28. Plaintiff brings this action as a class action on behalf of the following Classes:

Class A - all Kansas persons to whom Defendant Berman & Rabin, P.A. sent a letter containing the language quoted in Exhibit A above within one year of the filing of this petition.

Class B - all Kansas persons to whom Defendant Berman & Rabin, P.A. on behalf of Defendant Velocity Investments, LLC sent a letter containing the language quoted in

Exhibit A above within one year of the filing of this petition. Class B is a sub-class of Class A.

29. Class actions in Kansas are governed by K.S.A. §60-223. Subsection(a) of §60-223 sets out four requirements for class certification:

“One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) The class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.”

30. The proposed class is so numerous that joinder of all members would be impracticable. On information and belief, during the class period Defendant Berman & Rabin, P.A. sent a form letter containing the language at issue to collect a debt for Velocity Investments from at least 100 persons in the State of Kansas during the class period.

31. The case presents a common question of law or fact because the case turns on whether the form letter’s statement that the debt includes “attorney fees (where applicable)” violates the FDCPA in the manner alleged. In addition, the amount of statutory damages to be awarded to the class under §1692k of the FDCPA is also a common question.

32. Plaintiff’s claims are typical of the class members claims because they all arise from the use of the same “attorney fees (where applicable)” language to describe the amount of the debt, they all turn on whether that language violates the FDCPA in the manner alleged, and they all seek to recover statutory damages for Defendant’s violation of the FDCPA.

33. Plaintiff will fairly and adequately represent the class members because their claims are based on the same material facts and the same law, Plaintiff has no material conflicts with the class members, and her attorneys' are experienced in class litigation and well qualified to prosecute this case.

34. The proposed class must meet one requirement of §60-223(b). This section is met if "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

35. Here, the common questions of law or fact presented by this case predominate over any questions affecting only individual members because the success or failure of this case turns on the common legal question of whether the "attorney fees (where applicable" language violates the FDCPA in the manner alleged.

36. A class action is a superior method for proceeding because the class members have materially identical claims and thus it is more efficient to resolve them all in one case instead of numerous individual cases, the class members' claims are relatively small and thus there is little incentive and great difficulty for most class members to bring their claims on their own, concentrating the claims in this forum is ideal because all of the class members reside in Kansas, and there will be no material difficulties because the claims at issue turn on the legality of certain language in a form letter.

WHEREFORE, Plaintiff respectfully prays that the proposed class be certified, that Plaintiff be appointed representative of the class and that her attorneys be appointed class counsel, and that judgment be entered against the Defendants for actual damages; statutory damages pursuant to 15 U.S.C. §1692k; costs and reasonable attorney's fees

pursuant to 15 U.S.C. §1692k; and for such other and further relief as may be just and proper.

Respectfully Submitted,

By: /s/ A.J. Stecklein _____
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January 29, 2014

MARY TRIPP
5947 RICHMOND AVE
KANSAS CITY KS 66102

Re: Your indebtedness to: Velocity Investments, LLC
Balance: \$10,717.97, \$2,959.92 accrued interest and/or late charges,
attorney fees (where applicable), the exact amount to be determined by agreement between
you and us or by a court, 10% interest per annum from April 27, 2011.
Our File No. 1165363-17

MARY TRIPP

This office represents the above referenced creditor. At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. This law firm has not been authorized or directed to file a lawsuit against you.

Unless you dispute this debt, or any portion of it, within 30 days after you receive this notice, we will assume that it is valid. If you notify us in writing within the 30 day period that you dispute this debt or any portion of it, we will obtain verification of the debt or a copy of any judgment and mail it to you. If the above creditor is not your original creditor and you submit a written request within the 30 day period for the name and address of the original creditor, we will supply such information to you.

If you do dispute this debt in writing in the 30 day period, we will suspend collection until we send you verification.

If you contact our office please call Mrs. Hurley @ (913) 777-7216 or toll free at (877) 557-1394

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.

Sincerely,

BERMAN & RABIN, P.A.

Please return with your payment.

MARY TRIPP
Account No.: 1165363-17

