

Claim One For Relief
[Fair Debt Collection Practices Act]

Jurisdiction

1. This is a claim brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* [hereinafter referred to as the "Act"].

2. This claim is for damages brought by Named Plaintiff for Defendants' violations of the Act, which expressly prohibit a debt collector from engaging in abusive, unconscionable, deceptive and unfair debt collection practices.

3. The jurisdiction of this Court is invoked pursuant to 15 U.S.C. 1692k(d), 28 U.S.C. §1337. Venue is proper in view of the fact that the cause of action has accrued in this Judicial District.

Parties

4. Named Plaintiff, **Robert S. Potts** [hereinafter referred to as "**Potts**" or "**Named Plaintiff**"] is, and was at all times relevant herein, a "consumer" as defined in the Act, 15 U.S.C. §1692a(3) and who, at all times referenced herein, was and is a resident of Adams County, Ohio.

5. Defendant, **Levy & Associates, LLC** [hereinafter referred to collectively as "**Defendants**"] is a law firm located in Columbus, Ohio which, in the ordinary course of its business, files suits on behalf of numerous creditors in Ohio Courts and which specializes in the collection of consumer debt and, therefore, is a "**debt collector**", as defined in the Act at 15 U.S.C. §1692a.(6).

6. Defendant, **Yale R. Levy** [hereinafter referred to individually as “**Levy**” and collectively as “**Defendants**”], is an attorney purportedly licensed in the state of Ohio and employed as a principal and owner at Levy & Associates, LLC. who regularly collects or attempts to collect debts owed or due or asserted to be owed or due another and is, therefore, a debt collector within the meaning of 15 U.S.C. 1692a(6).

7. Defendant Levy, at all times referenced herein, supervised, directed and formulated the policies, activities and practices of all persons employed at Defendant, Levy & Associates.

8. Defendants regularly engage in and transact business in the state of Ohio through the use of the United States mail, telephone or other instrumentality of interstate commerce and/or through the initiation of litigation and use of the judicial system in Ohio and are subject to the jurisdiction of this Court.

9. The debt in question, if owed by the Named Plaintiff, was incurred for personal, household or family purposes.

Allegations

10. On March 13, 2007 Defendants, on behalf of Capital One Bank, filed a collection action against the Named Plaintiff in the Adams County, Ohio Court which was assigned case no. CVF0700123.

11. On or about May 18, 2007 Defendants obtained a judgment against the Named Plaintiff in the Adams County, Ohio Court in connection with that case.

12. Thereafter, on or about September 16, 2011 Defendants served a “Notice of Deposition in Aid of Execution Pursuant to Ohio Civil Rule 69” [hereinafter the “notice”] for Plaintiff to appear at Defendants offices at 4645 Executive Dr., in Columbus, Ohio on October 5, 2011 at 10:00am purportedly for the purpose of testifying concerning his assets in order to satisfy the judgment that had been taken against him [see attached exhibit “A”].

13. Plaintiff resides in West Union, Ohio which is in Adams County, Ohio which is a considerable distance from Columbus.

14. The contract or debt sued upon was not signed in Franklin County, Ohio.

15. The receipt of this notice from Defendants caused upset and worry to the Named Plaintiff.

16. Plaintiff is elderly and his ability to drive is somewhat limited by a serious arthritic condition in his knees.

17. Without limiting the scope of any violation which may have been committed, Defendants' conduct described herein above constituted the following abusive, deceptive, unfair, and unconscionable debt collection activity in violation of the Fair Debt Collection Practices Act:

(a) the false representation of the character, amount or legal status of the debt in violation of 15 U.S.C. § 1692e(2)(A)&(B);

(b) the taking of action that cannot be legally taken in violation of 15 U.S.C. §1692e(5);

(c) the utilization of false and deceptive means to collect or to attempt to collect a debt in violation of 15 U.S.C. §1692e(10) and 15 U.S.C. §1692e.;

(d) the issuance of a command to appear in a distant and inconvenient forum far from the Plaintiff's residence in violation of 15 U.S.C. § 1692i.

(e) engaging in conduct with has the natural consequence of harassing, abusing and oppressing the plaintiff in violation 15 U.S.C. §1692d; and,

(f) the use of an unfair and unconscionable means to collect a debt in violation of 15 U.S.C. §1692f.

Class Action Allegations

18. The named Plaintiff listed is bringing this action on behalf of himself and all other members of a general class of consumers consisting of all persons to whom Defendants mailed or communicated in any manner or fashion a "Notice of Deposition in Aid of Execution Pursuant to Ohio Civil Rule 69" [exhibit "A" attached] noticing them to appear for a deposition at Defendants' Franklin County, Ohio (Columbus, Ohio) office where a judgment was not rendered or obtained or where each consumer either didn't reside and where the underlying debt was not contracted for between December 1, 2010 and the present date and continuing thereafter until Defendants have ceased such unlawful activity.

19. This class action claim is made pursuant to the provisions of Rule 23(a) and 23(b)(3) for monetary relief consistent and subordinate thereto, including costs and expenses of investigation and litigation and attorney fees.

20. The general class so represented by named Plaintiff in this action, and of which he is a member, consists of those persons defined above and is so numerous that joinder of individual members is impracticable.

21. There are common questions of law and fact in the action that relate to and affect the rights of each member and the relief sought is common to the entire class.

22. Named Plaintiff's claims are typical of the claims of the class in that the claims of all members depend on a showing of the acts and omissions of Defendants giving rise to the relief sought herein.

23. There is no known conflict between the named Plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

24. Named Plaintiff is a representative party and is able to, and will, fairly and adequately protect the interests of the class.

25. Named Plaintiff's attorney is experienced and capable in the field of consumer rights and protection and have successfully represented claimants in similar litigation.

26. This action is properly maintained as a class action in that the prosecution of separate actions by individual class members creates risk of individual adjudications, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

27. This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create risk of varying individual adjudications, which would establish incompatible standards of conduct for Defendants, who are expected to oppose them.

28. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the class members predominate over any questions affecting only individual members; a class action is superior to other methods available for the efficient adjudication of the controversy; the relief sought by all members will be effective and appropriate for the entire class; and all members of the class have a right to damages or other relief which may be readily computed in each case or otherwise readily determined.

29. The identity of each individual member of the class can be ascertained from the books and records maintained by Defendants.

30. Because many of persons with whom Defendants have dealt, or who were affected by their activities, may not be aware of their rights, or may not be in a financial position to assert such rights readily, and because relegation of their claims to individual actions would result in an unreasonable multiplicity of suits and a corresponding burden on this and other Courts, a class action is far superior to all other methods for a fair and efficient adjudication of this controversy.

Prayer for Relief

Plaintiff prays for the following relief:

- (a) for a determination that class treatment for this claim is appropriate;
- (b) for statutory damages in the amount of \$500,000.00;
- (c) for reasonable attorney fees for all services performed by counsel in the prosecution of this claim as provided by law;
- (d) for reimbursement for all costs and expenses incurred in connection with the prosecution of these claims;
- (e) for a trial by jury on all appropriate issues; and,
- (f) for any and all other relief this Court may deem appropriate.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted by:

/s/Steven C. Shane _____
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