

FILED by ELECTRONIC	VT	D.C.
May 5, 2008		
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.

THOMAS E. BERG, JR.,

Plaintiff,

08-cv-60660-Dimitrouleas-Rosenbaum

v.

MERCHANTS ASSOCIATION
COLLECTION DIVISION, INC. d/b/a
MAF COLLECTION SERVICES,

Defendant.

COMPLAINT
JURY DEMAND

1. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA") and the Florida Consumer Collection Practices Act, Fla. Stat. §559.55 *et seq.* ("FCCPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§1331, 1337 and 15 U.S.C. §1692k. Venue in this District is proper because Plaintiff resides here and Defendant placed telephone calls into this District.

PARTIES

3. Plaintiff, THOMAS E. BERG, JR., is a natural person who resides in Broward County, Florida.

4. Defendant, MERCHANTS ASSOCIATION COLLECTION DIVISION, INC. d/b/a MAF COLLECTION SERVICES, is believed to be a corporation with its principal place of business at 134 South Tampa Street, Tampa, Florida 33602.

5. Defendant regularly uses the mail and telephone in a business the principal purpose of which is the collection of debts.

6. Defendant regularly collects or attempts to collect debts for other parties. It is a "debt collector" as defined in the FDCPA.

FACTUAL ALLEGATIONS

7. Defendant sought to collect from Plaintiff for an alleged debt arising from transactions incurred for medical care for Plaintiff.

8. Defendant left the following pre-recorded message on Plaintiff's voice mail at his residence at least 11 times within the one-year period prior to the filing of this complaint:

Hello. This message is for Thomas Berg. If you are not the person requested, disconnect this recording now. By continuing to listen to this recording you acknowledge you are the person requested. This is MAF Collection Services. We are expecting your call at 1-800-749-7710. This is an attempt to collect a debt. Any information obtained will be used for that purpose. 1-800-749-7710.

9. Based upon information and belief, Defendant left identical messages on numerous other occasions within one year of the filing of this complaint.

(Collectively, "the telephone messages").

10. The messages are “communications” as defined by 15 U.S.C. §1692a(2).

11. The following parties heard the message while at or visiting Plaintiff’s residence on one or more occasions: Plaintiff’s father, Thomas E. Berg, Sr., Plaintiff’s step-mother, Plaintiff’s step-mother’s ex-spouse, Plaintiff’s girlfriend, and Plaintiff’s neighbor. (Collectively, “the third-parties”).

12. Plaintiff did not authorize Defendant to communicate with the third parties.

13. No court authorized Defendant to communicate with the third parties.

14. The third parties had no legitimate business need for the information communicated in the telephone messages.

15. Defendant knew or had reason to know that the third parties had no legitimate business need for the information communicated in the telephone messages.

16. The messages communicate information affecting Plaintiff’s reputation.

17. Defendant knew or had reason to know that persons other than Plaintiff may hear its telephone messages left at Plaintiff’s residence.

COUNT I
UNAUTHORIZED COMMUNICATION WITH A THIRD PARTY IN
VIOLATION OF THE FDCPA

18. Plaintiff incorporates Paragraphs 1 through 17.
19. Defendant communicated with a third party in connection the collection of the alleged debt in violation of 15 U.S.C. §1692c(b).

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendant for:

- a. Damages;
- b. Attorney's fees, litigation expenses and costs of suit; and
- c. Such other or further relief as the Court deems proper.

COUNT II
UNAUTHORIZED COMMUNICATION WITH A THIRD PARTY IN VIOLATION OF THE FCCPA

20. Plaintiff incorporates Paragraphs 1 through 17.
21. Defendant communicated information affecting Plaintiff's reputation to third parties who had no legitimate business need for the information in violation of Fla. Stat. §559.72(5).

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendant for:

- a. Damages;
- b. Attorney's fees, litigation expenses and costs of suit; and
- c. Such other or further relief as the Court deems proper.

COUNT III
DECLARATORY RELIEF AND PERMANENT INJUNCTION

22. Plaintiff incorporates Paragraphs 1 through 17.
23. Pursuant to 28 U.S.C §§2201 and 2202, Plaintiff seeks a declaration that Defendant's communications to unauthorized persons are in violation of the FDCPA and FCCPA.
24. Plaintiff seeks a permanent injunction prohibiting Defendant from communicating with unauthorized persons.

WHEREFORE, Plaintiff requests that the Court enter judgment:

- a. declaring that Defendant's practices violate the FDCPA and FCCPA;
- b. permanently injoining Defendant from engaging in the violative practices;
- c. Attorney's fees, litigation expenses and costs of suit; and
- d. Such other or further relief as the Court deems proper.

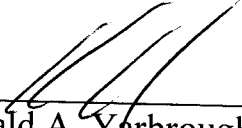
JURY DEMAND

Plaintiff demands trial by jury.

Dated this 2 day of May, 2008.

DONALD A. YARBROUGH, ESQ.
Attorney for Plaintiff
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Facsimile: 954-566-2235
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By: 
Donald A. Yarbrough, Esq.
Florida Bar No. 0158658

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading 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 THE REVERSE OF THE FORM.)

I(a) PLAINTIFFS

Thomas E. Berg, Jr.

DEFENDANTS

Merchants Association Collection Division, Inc. d/b/a MAF Collection Services

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) **BROWARD**

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

**DONALD A. YARBROUGH, ESQ. POST OFFICE BOX 11842
FORT LAUDERDALE, FL 33339, TELEPHONE (954) 537-2000**

ATTORNEYS (IF KNOWN)

0108CV 60660-WPD-Rosenbaum

(d) **CIRCLE COUNTY WHERE ACTION AROSE:**

DADE, MONROE, (BROWARD), PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

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

(For Diversity Case Only)

- Citizen of This State 1 1
- Citizen of Another State 2 2
- Citizen or Subject of a Foreign Country 3 3

- PTF DEF (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
- Incorporation and Principal Place of Business in This State 1 1
 - Incorporation and Principal Place of Business in Another State 2 2
 - Foreign Nation 3 3

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

IVa. 1-2 days estimated (for both sides) to try entire case 15 U.S.C. §1692 et. Seq. Violations of Fair Debt Collection Practices Act

NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

A CONTRACT	A TORTS	B FORFEITURE PENALTY	A BANKRUPTCY	A OTHER STATUS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl Veterans) B <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<p style="text-align: center;">PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">A PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">B SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;">A FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26b USC 7609	<input type="checkbox"/> 400 States Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc B <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities /Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions* *A or B
<p style="text-align: center;">A REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure B <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p style="text-align: center;">A CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<p style="text-align: center;">B PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General* <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other* <input type="checkbox"/> 550 Civil Rights *A or B	<p style="text-align: center;">A LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations B <input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	

VI. ORIGIN

- 1. Original Proceeding
- 2. Removed from State Court
- 3. Remanded from Appellate Court
- 4. Refiled
- 5. Transferred from another district (specify)
- 6. Multidistrict Litigation
- 7. Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION No DEMAND \$ N/A

UNDER F.R.C.P. 23 Check YES only if demanded in complaint YES NO

VIII. RELATED CASE(S) IF ANY

(See Instructions): JUDGE DOCKET NUMBER JURY DEMAND:

DATE: May 2, 2008 SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR OFFICE USE ONLY: Receipt No. _____

Amount: *36000*

Date Paid: _____

M/Ifp: _____

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