UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

DARRYL ROCK,

Plaintiff,

1:08-CV-0853 (GTS/RFT)

SUZANNE M. MESSER, ESQ.

v.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.; AEGIS RECEIVABLES MANAGEMENT INC.; and RICHARD FERRY,

Defendants.

APPEARANCES: OF COUNSEL

LAW OFFICE OF RICHARD DIMAGGIO RICHARD L. DIMAGGIO, JR., ESQ.

Counsel for Plaintiff

6 Berkley Road Glenville, NY 12302

GOLDBERG & ASSOCIATES JACK GROSS, ESQ.

Counsel for Defendant American Express

39 Broadway

New York, NY 10006

BOND SCHOENECK & KING, PLLC THOMAS KELEHER, ESQ.

Counsel for Defendants Aegis and LILLIAN A. ABBOTT-PFOHL, ESQ.

Richard Ferry

One Lincoln Center Syracuse, NY 13202-13455

HON. GLENN T. SUDDABY, United States District Judge

ORDER

In accordance with the Court's rulings in this action made on the record after oral argument on March 18, 2009, 2008, with regard to the parties' motions in this action, it is

ORDERED that Plaintiff's motion for leave to file a "Second Amended Complaint" (Dkt. No. 33) is **GRANTED** in part, and **DENIED** in part, as set forth below; and it is further

ORDERED that Defendant American Express' cross-motion to dismiss for failure to state a claim (Dkt. No. 34) is **GRANTED** in part, and **DENIED** in part, as set forth below; and it is further

ORDERED that Defendants Aegis' and Richard Ferry's cross-motion to dismiss for failure to state a claim (Dkt. No. 35) is **GRANTED** in part, and **DENIED** in part, as set forth below; and it is further

ORDERED that all claims as against Defendant Richard Ferry are **<u>DISMISSED</u>** in their entirety; and it is further

ORDERED that Plaintiff's breach-of-contract claim is <u>DISMISSED</u> as against

Defendant Richard Ferry only, but <u>NOT DISMISSED</u> as against Defendants American

Express and Aegis; and it is further

ORDERED that Plaintiff's negligent-hiring claim against Defendant American Express is **DISMISSED**; and it is further

ORDERED that Plaintiff's claim under Section 349 of the New York General Business

Law is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's negligence claim is <u>**DISMISSED**</u> against all defendants; and it is further

ORDERED that Plaintiff's claims against Defendant Aegis under the Fair Debt Collection Practices Act, including his claim of telephonic harassment, are **NOT DISMISSED** at this time; and it is further

ORDERED that Plaintiff's conversion claim is **DISMISSED** against all defendants; and it

is further

ORDERED that Plaintiff's claim of breach of fiduciary duty is **DISMISSED** against all

defendants; and it is further

ORDERED that Plaintiff's gross-negligence claim is **DISMISSED** against all defendants;

and it is further

ORDERED that Plaintiff's claim of a breach of the implied covenant of good faith and

fair dealing is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's claim of defamation of credit is **DISMISSED** against all

defendants and it is further

ORDERED that, within **FOURTEEN** (14) **DAYS** of the date of this Order, Plaintiff shall

file, for the review and acceptance of this Court, a signed Third Amended Complaint containing

only the following claims, as they are articulated in his proposed Second Amended Complaint:

(1) his breach-of-contract claim against Defendants American Express and Aegis; (2) his claims

against Defendant Aegis under the Fair Debt Collection Practices Act, including his claim of

telephonic harassment.

Dated: March 18, 2009

Syracuse, New York

Hon. Glenn T. Suddaby

U.S. District Judge

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