

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X		
VALERIE CHAVEZ,	:	
	:	
Plaintiff,	:	Case No.: CV 23-2577
	:	
v.	:	
	:	NOTICE OF REMOVAL
ENHANCED RECOVERY COMPANY, LLC,	:	
	:	
Defendant.	:	
	:	
----- X		

Defendant, Enhanced Recovery Company, LLC (“ERC”), by and through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1441, 1446, hereby files its Notice of Removal of this action from the Civil Court of the City of New York, County of Queens, to the United States District Court for the Eastern District of New York, on the following grounds:

1. On February 14, 2023, Plaintiff, Valerie Chavez (“Plaintiff”), commenced a civil action in the Civil Court of the City of New York, County of Queens, styled *Valerie Chavez v. Enhanced Recovery Company, LLC*, Index No. 003641/2023.

2. On March 15, 2023, a copy of the Complaint was served on ERC. This Notice of Removal is being filed within thirty days of ERC’s receipt through service of Plaintiff’s Complaint and, therefore, under 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely and proper.

3. Additionally, pursuant to 28 U.S.C. § 1446(a), true and legible copies of all process, pleadings, orders, and other papers or exhibits of every kind on file in the state and known to have been served by, or upon ERC, are attached hereto as composite Exhibit “A.” Defendant is not aware of any further proceeding in the above-described civil action.

4. This Court possesses original jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this civil action involves a federal question.

5. Plaintiff alleges that ERC violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”), the New York General Business Law, and New York common law. The FDCPA is a law of the United States and, therefore, pursuant to 28 U.S.C. § 1441(a), these claims are removable to this Court.

6. Additionally, Plaintiff’s state common law claims and claims pursuant to the New York General Business Law arise from the same set of common allegations as her FDCPA claims. Accordingly, this Court has supplemental jurisdiction over these claims and they are properly removable to this Court. *See* 28 U.S.C. §§ 1367, 1441(c).

7. Defendant will promptly file the Notice of Filing Notice of Removal attached hereto as Exhibit “B”,¹ with a copy of this Notice of Removal, in the Office of the Clerk of the Civil Court of the City of New York, Queens County. Defendant will also promptly provide a written copy of the Notice of Removal to Plaintiff.

8. ERC has complied with all conditions precedent to the removal of this action.

WHEREFORE, Defendant, Enhanced Recovery Company, LLC, respectfully gives notice that the above-described civil action now pending in the Civil Court of the City of New York, County of Queens, is removed therefrom to this Court.

Dated: New York, New York
April 4, 2023

¹ The exhibit to the Notice of Filing Notice of Removal, consisting of this Notice of Removal, has been omitted from Exhibit B.

SMITH, GAMBRELL & RUSSELL, LLP

By: /s/ Edward Heppt

Edward J. Heppt

1301 Avenue of the Americas, 21st Floor

New York, New York 10019

Tel: (212) 907-9700

Fax: (212) 907-9800

Email: ehppt@sgrlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that on April 4, 2023, I filed the foregoing with the Clerk of Court using the CM/ECF system and caused to be served a true and correct copy of the foregoing on the person below via electronic and First Class Mail:

David M. Barshay, Esq.
Barshay Rizzo & Lopez, PLLC
445 Broadhollow Road, Suite CL18
Melville, New York 11747
Tel.: (631) 210-7272
Fax: (516) 706-5055
dbarshay@brlfirm.com

Attorney for Plaintiff

/s/ Edward Heppt

Edward J. Heppt

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

Valerie Chavez

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

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

Barshay, Rizzo & Lopez, PLLC; 445 Broadhollow Rd., Suite CL18, Melville, NY 11747; (631) 210-7272

DEFENDANTS

Enhanced Recovery Company, 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)

Smith, Gambrell, & Russell, LLP; 1301 Avenue of the Americas, 21st Flr., New York, NY; (212) 907-9700

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)

Does this action include a motion for temporary restraining order or order to show cause? Yes No

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, PERSONAL PROPERTY, HABEAS CORPUS, 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 (specify), 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 U.S.C. 1692, et seq. Brief description of cause: Alleged violation of the Fair Debt Collection Practices Act

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 April 4, 2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Edward J. Heppt

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 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.

Case is Eligible for Arbitration

I, _____, counsel for _____, 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

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:

Enhanced Recovery Company, LLC is wholly owned by One True Holding Company d/b/a TrueML. No publicly traded company owns 10 percent or more of ERC's stock.

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 1(c)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes 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? Yes 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 No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: Queens County

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? Yes No

(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/ Edward J. Heppt

Exhibit A

CIVIL COURT OF THE CITY OF NEW YORK
QUEENS COUNTY

VALERIE CHAVEZ,

Plaintiff,

v.

ENHANCED RECOVERY COMPANY, LLC,

Defendant.

Index No:

VERIFIED COMPLAINT

Plaintiff Valerie Chavez, by and through the undersigned counsel, complains, states, and alleges against defendant Enhanced Recovery Company, LLC as follows:

PRELIMINARY STATEMENT

1. This is an action to recover damages for negligence and for violations of New York General Business Law § 349 and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over defendant Enhanced Recovery Company, LLC because it regularly transacts business within this district and county ("County"), derives substantial revenue from services rendered in this County, has committed tortious acts within this County and has caused injury to persons within this County as described herein.

3. Venue is proper pursuant to C.C.A. § 301(a) because Defendant resides in this County.

PARTIES

4. Plaintiff Valerie Chavez ("Plaintiff") is a natural person who is a citizen of the State of New York.

5. Defendant Enhanced Recovery Company, LLC ("ERC") is a company existing



under the laws of the State of Florida, with its principal place of business in Jacksonville, Florida.

6. ERC regularly collects or attempts to collect debts asserted to be owed to others.

7. ERC regularly collects or attempts to collect debts asserted to be owed to others by residents in this County.

8. ERC regularly collects or attempts to collect debts asserted to be owed to others by New Yorkers.

9. ERC is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

10. ERC is regularly engaged, for profit, in the collection of debts allegedly owed by consumers in this County.

11. ERC is regularly engaged, for profit, in the collection of debts allegedly owed by New York consumers.

12. The principal purpose of ERC's business is the collection of such debts.

13. The principal purpose of ERC's business in this County is the collection of such debts.

14. The principal purpose of ERC's business in New York is the collection of such debts.

15. ERC uses instrumentalities of interstate commerce, including telephones and the mails, in furtherance of its debt collection business.

16. ERC uses instrumentalities of interstate commerce, including telephones and the mails, in furtherance of its debt collection business in this County.

17. ERC uses instrumentalities of interstate commerce, including telephones and the mails, in furtherance of its debt collection business in New York.



18. ERC derives substantial revenue from its debt collection services rendered in New York.

19. ERC has committed tortious acts within New York that have caused injury to consumers in this County.

20. ERC has committed tortious acts within New York that have caused injury to New Yorkers.

FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

21. ERC alleges Plaintiff owes a debt to Charter (Spectrum) Communications (“Spectrum”) in the amount of \$57.00.

22. In its efforts to collect the alleged debt, on or about February 5, 2023, ERC began furnishing data regarding the alleged debt to the credit reporting agencies.

23. The February 5, 2023 report to the credit reporting agencies was the initial communication regarding the alleged debt.

24. Plaintiff did not owe \$57.00 to Spectrum.

25. Defendant, like many debt collectors, receives large placements portfolios of charged-off consumer debts. Such portfolios rarely include account-level documentation, such as agreements signed by consumers, account notes, complete transaction history, or competent proof that the consumers actually owe the amount attributed to each consumer. These pools of accounts are often transferred with nothing more than a CSV file or Excel spreadsheet.

26. According to data provided by the Consumer Financial Protection Bureau (the “CFPB”), consumer complaints about debt buyers and collectors attempting to collect money not actually owed by the consumer are by far the most common of all complaints received by the CFPB every year.

27. Upon information and belief, ERC does not possess competent proof that Plaintiff owes \$57.00 to Spectrum.

28. Upon information and belief, ERC does not possess any credit agreement between Plaintiff and Spectrum for \$57.00.

29. Upon information and belief, ERC does not possess competent proof that Plaintiff agreed to pay \$57.00 to Spectrum.

30. Upon information and belief, ERC does not possess any competent proof that Plaintiff is obligated to pay \$57.00 to Spectrum.

31. Upon information and belief, ERC does not possess any competent proof that \$57.00 was ever owed by Plaintiff to Spectrum.

32. Plaintiff previously disputed the alleged debt.

33. In fact, Plaintiff filed a lawsuit against I.C. System, Inc. on October 20, 2022, in the Civil Court of the City of New York for Queens County, Index Number 016514, regarding the same alleged debt ERC was attempting to collect.

34. The lawsuit against I.C. System, Inc. was served upon I.C. System, Inc. on November 7, 2022.

35. The lawsuit against I.C. System, Inc. was a matter of public record.

36. In the lawsuit against I.C. System, Inc. Plaintiff disputed owing the alleged debt to Spectrum.

37. Upon information and belief, the contract between I.C. System, Inc. and Spectrum requires I.C. System, Inc. to notify Spectrum of all consumer disputes regarding a Spectrum debt, whether oral or written.

38. Upon information and belief, the contract between I.C. System, Inc. and Spectrum



requires I.C. System, Inc. to notify Spectrum of all consumer lawsuits involving a Spectrum debt.

39. Upon information and belief, Spectrum performs regular monitoring and audits of the debt collectors it transfers, assigns, or places debts with to ensure compliance with its contract and operational manual.

40. Upon information and belief, Spectrum maintain the same or similar contract with ERC.

41. Upon information and belief, I.C. System, Inc. notified Spectrum of Plaintiff's dispute of the debt.

42. Upon information and belief, I.C. System, Inc. notified Spectrum of Plaintiff's lawsuit against I.C. System, Inc. regarding the alleged debt.

43. Upon information and belief, I.C. System, Inc. also notified Spectrum again of Plaintiff's dispute of the alleged debt, on or about January 23, 2023.

44. Upon information and belief, even if I.C. System, Inc. failed to notify Spectrum of Plaintiff's dispute and the lawsuit, Spectrum had access to the disputes and lawsuits through the regular monitoring and audits it performs of I.C. System, Inc.

45. Upon information and belief, Spectrum provided ERC with notice of Plaintiff's disputes when it retained ERC to collect the alleged debt on Spectrum's behalf.

46. Upon information and belief, ERC had access to Plaintiff's disputes via the client portal Spectrum provides to its debt collectors when it retains them to collect debts on its behalf.

47. Alternatively, if ERC did not receive notice of Plaintiff's disputes when the alleged debt was transferred, assigned, or placed with ERC by Spectrum for purposes of collection on behalf of Spectrum and did not have access the dispute via Spectrum's portal it provides to its debt collectors, then ERC failed to inquire with Spectrum prior to reporting the alleged debt to Experian



whether the alleged debt was previously disputed by Plaintiff.

48. ERC failed to report the alleged debt as disputed when it began reporting the alleged debt to the credit reporting agencies.

49. ERC knew or should have known the debt was disputed prior to furnishing data to the credit reporting agencies.

50. ERC intentionally or negligently furnishes false data to the credit reporting agencies, in the hopes that unwitting consumers will pay the debt.

51. ERC's intentional or negligent furnishing of false data to the credit reporting agencies is an attempt to collect debts from unsophisticated consumers, who would normally not pay the alleged debt, or dispute the alleged debt.

52. Under § 1692g of the FDCPA, within five days of an initial communication with a consumer, a debt collector must provide a written notice, known as a "Validation Notice", that contains relevant information about the alleged debt and how to dispute it.

53. Pursuant to the FDCPA § 1692g,

(a)...Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and



(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

54. ERC did not send Plaintiff any written correspondence after the initial communication.

55. ERC failed to provide Plaintiff with the requisite Validation Notice.

56. The acts of ERC as described in this Complaint were performed by ERC or on ERC's behalf by its owners, officers, agents, and/or employees acting within the scope of their actual or apparent authority. As such, all references to "ERC" in this Complaint shall mean ERC or its owners, officers, agents, and/or employees.

57. ERC's conduct as described in this Complaint was willful, with the purpose to either harm Plaintiff or with reckless disregard for the harm to Plaintiff that could result from ERC's conduct.

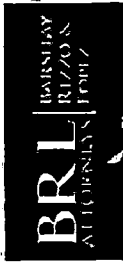
58. Plaintiff justifiably fears that, absent this Court's intervention, ERC will continue to use abusive, deceptive, unfair, and unlawful means in its attempts to collect the alleged debt and other alleged debts.

59. Plaintiff justifiably fears that, absent this Court's intervention, ERC will ultimately cause Plaintiff unwarranted economic harm.

60. Plaintiff justifiably fears that, absent this Court's intervention, ERC will ultimately cause Plaintiff unwarranted harm to Plaintiff's credit rating.

61. Plaintiff justifiably fears that, absent this Court's intervention, ERC will ultimately cause Plaintiff to be sued.

62. A favorable decision herein would serve to deter ERC from further similar conduct.



- FIRST CAUSE OF ACTION -
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

63. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

64. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in this state...” independent of whether these acts and practices constitute violations of any other law.

65. An individual “injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions.” N.Y. Gen. Bus. Law § 349(h). An individual may also be awarded punitive damages.

66. Plaintiff is a consumer protected by New York General Business Law § 349.

67. ERC’s debt collection business in New York, aimed purposefully at New York consumers, constitutes a “business, trade or commerce or the furnishing of a service” as contemplated by New York General Business Law § 349.

68. ERC violated New York General Business Law § 349 by using deceptive acts and unlawful practices in its debt collection business. This includes a pattern and practice of attempting to collect money from New York consumers without sufficient proof and competent business records establishing that the consumer owes the money sought, attempting to collect money from New York consumers without sufficient proof of the legitimate right, title, or interest in such money, attempting to collect money from New York consumers without being in possession of a credit agreement executed by the consumer, attempting to collect money from New York consumers without being in possession of any competent proof that the consumer agreed to pay money, and misrepresenting to New York consumers the amount of money owed and the consumer’s obligation to pay such.



69. ERC's actions are consumer-oriented in that they are directed to, and targeted at, New York consumers. ERC's conduct has a broader impact on consumers at large as ERC has acted similarly with hundreds of other New York consumers and has engaged in the same conduct described herein thousands of times. ERC's recurring conduct potentially impacts hundreds of similarly situated New York consumers, who, like Plaintiff, have been subjected to ERC's same unlawful collection attempts. Without judicial intervention ERC's conduct will likely continue to occur in the future. ERC's conduct is, therefore, harmful to the New York public at large.

70. ERC acted willfully and knowingly in its violations of New York General Business Law § 349. ERC's practices are repeatedly and regularly employed by ERC as part of its business plan. ERC engages in this practice because it is profitable and because it would be more costly for ERC to create a system to verify that the consumer actually owes the money sought and to ensure that ERC holds a legitimate right, title, or interest in the money. ERC engages in this practice for the sole purpose of maximizing its profits.

71. ERC's conduct as described herein was consumer-oriented in that it was directed to, and targeted at, New York consumers. ERC's conduct has a broader impact on consumers at large as ERC has acted similarly with thousands of other New York consumers.

72. As a direct and proximate result of ERC's violations of New York General Business Law § 349, Plaintiff suffered compensable harm and is entitled to preliminary and permanent injunctive relief, and to recover actual, treble, exemplary, and punitive damages, together with costs and attorney's fees.

- SECOND CAUSE OF ACTION -
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

73. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

74. Congress enacted the FDCPA upon finding that debt collection abuse by debt



collectors was a widespread and serious national problem. *See* S. Rep. No. 95-382, at 2 (1977) *reprinted in* U.S.C.C.A.N. 1695, 1696; 15 U.S.C § 1692(a).

75. The purpose of the FDCPA is to protect consumers from deceptive or harassing actions taken by debt collectors, with the aim of limiting the suffering and anguish often inflicted by debt collectors. *Kropelnicki v. Siegel*, 290 F.3d 118, 127 (2d Cir. 2002).

76. To further these ends, “the FDCPA enlists the efforts of sophisticated consumers ... as ‘private attorneys general’ to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.” *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 91 (2d Cir. 2008).

77. The FDCPA is a strict liability statute, and a debt collector’s intent may only be considered as an affirmative defense. *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010). A single violation of the FDCPA is sufficient to establish civil liability against a debt collector. *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62 (2d Cir. 1993).

78. Plaintiff is a “consumer” as that term defined by the FDCPA.

79. ERC is a “debt collector” as that term is defined by the FDCPA.

80. The alleged debt is a “debt” as that term is defined by the FDCPA.

81. The letter is a “communication” as that term is defined by the FDCPA.

82. The actions described herein constitute “an attempt to collect a debt” or “were taken in connection with an attempt to collect a debt” within the meaning of the FDCPA.

83. ERC violated the following sections of the FDCPA: 1692d, 1692e, 1692f and 1692g. By way of example and not limitation, ERC violated the FDCPA by: Using false, deceptive or misleading representations or means; misrepresenting the character, amount, or legal status of



the debt; misrepresenting the services rendered or compensation which may be lawfully received; threatening to take and actually taking an action prohibited by law; communicating or threatening to communicate to any person credit information which is known or which should be known to be false; using any false, deceptive or misleading representation, or means; using unfair or unconscionable means; and collecting or seeking to collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law; engaging in conduct the natural consequence of which is to harass, oppress, or abuse; and failing to provide accurate and clear information in the collection letter.

84. ERC violated the FDCPA and is liable to Plaintiff for statutory damages of up to \$1,000.00 plus costs and attorney's fees as provided for by Section 1692k of the FDCPA.

- THIRD CAUSE OF ACTION -
NEGLIGENCE PER SE

85. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

86. Violation of a statute that imposes a duty of care constitutes negligence *per se*.

87. ERC owed Plaintiff a duty, or obligation, recognized by law.

88. New York General Business Law § 349 sets a standard of care by prohibiting specific practices, such as consumer fraud and deception, and providing for a private right of action.

89. Plaintiff is within the class of persons protected by New York General Business Law § 349.

90. As previously set forth, ERC's conduct violated New York General Business Law § 349 and therefore breached the duty imposed by the statutory standard and constitutes negligence *per se*.



DocuSign Envelope ID: 815E6180-8976-48DA-8B14-07A47D01B52F

91. The FDCPA creates a standard of care because it was designed to protect consumers like Plaintiff from the type of harm which occurred here and provides for a private right of action.

92. Plaintiff is within the class of persons protected by the FDCPA.

93. As previously set forth, ERC's conduct violated the FDCPA and therefore breached the duty imposed by the statutory standard and constitutes negligence *per se*.

94. Plaintiff is a "debtor" as that term is defined by New York General Business Law § 600(2).

95. ERC is a "debt collection agency" and "principal creditor" as those terms are defined by New York General Business Law §§ 600(4) and 600(3), respectively.

96. ERC's owners, officers, agents, and/or employees acting within the scope of their actual or apparent authority are "debt collectors" as that term is defined by defined by New York General Business Law § 600(7).

97. The money that ERC sought to collect from Plaintiff is a "consumer claim" and "debt" as those terms are defined by New York General Business Law §§ 600(1) and 600(6), respectively.

98. The letter is a "communication" as that term is defined by New York General Business Law § 600(5).

99. New York General Business Law § 601 sets a standard of care by prohibiting specific practices, such as claiming or attempting to enforce a right with knowledge or reason to know that the right does not exist, and knowingly collecting, attempting to collect, or asserting a right to any collection fee, attorney's fee, court cost or expense unless such charges are justly due and legally chargeable against the debtor.

100. Plaintiff is within the class of persons protected by New York General Business



Law § 600, et seq.

101. ERC's conduct violated New York General Business Law § 600, et seq. and therefore breached the duty imposed by the statutory standard and constitutes negligence *per se*.

102. As a direct and proximate result of ERC's negligence *per se*, Plaintiff suffered compensable harm and is entitled to recover actual, treble, exemplary, and punitive damages.

- FOURTH CAUSE OF ACTION -
NEGLIGENCE

103. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

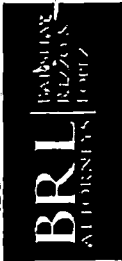
104. Independent of New York General Business Law § 349 and the FDCPA, creditors and debt collectors owe debtors a duty of reasonable care in the collection of debts.

105. ERC owed a duty to Plaintiff to exercise reasonable care in its attempts to collect money from Plaintiff.

106. ERC owed a duty to Plaintiff to exercise reasonable care in making representations of fact to Plaintiff concerning the alleged debt.

107. ERC owed a duty to Plaintiff not to attempt to collect money from Plaintiff that Plaintiff did not owe.

108. ERC owed a duty to Plaintiff not to attempt to collect money from Plaintiff without sufficient proof and competent business records establishing that Plaintiff owed the money sought, not to attempt to collect money from Plaintiff without sufficient proof that ERC holds a legitimate right, title, or interest in such money, not to attempt to collect money from Plaintiff without being in possession of a credit agreement executed by Plaintiff, not to attempt to collect money from Plaintiff without being in possession of any competent proof that Plaintiff agreed to pay the money, and not to misrepresent to Plaintiff the amount of money owed and Plaintiff's obligation to pay such.



109. ERC breached these duties by attempting to collect money from Plaintiff without sufficient proof and competent business records establishing that Plaintiff owed the money sought, by attempting to collect money from Plaintiff without sufficient proof that ERC holds a legitimate right, title, or interest in such money, by attempting to collect money from Plaintiff without being in possession of a credit agreement executed by Plaintiff, by attempting to collect money from Plaintiff without being in possession of any competent proof that Plaintiff agreed to pay the money, by misrepresenting the amount of money owed and Plaintiff's obligation to pay such, by using false, deceptive or misleading representations or means in its attempt to collect money from Plaintiff, by misrepresenting the character, amount, or legal status of the alleged debt, by misrepresenting the services rendered or compensation which may be lawfully received, by threatening to take and actually taking an action prohibited by law, by using unfair or unconscionable means in its attempt to collect money from Plaintiff; by seeking to collect money from Plaintiff not expressly authorized by an agreement or permitted by law, and by failing to provide accurate and clear information in its collection letter.

110. As a direct and proximate result of ERC's negligence, Plaintiff suffered compensable harm and is entitled to recover actual, treble, exemplary, and punitive damages.

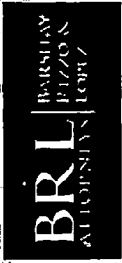
- FIFTH CAUSE OF ACTION -
NEGLIGENT MISREPRESENTATION

111. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

112. ERC owed a duty to Plaintiff to exercise reasonable care in its attempts to collect money from Plaintiff.

113. ERC owed a duty to Plaintiff to exercise reasonable care in making representations of fact to Plaintiff concerning the alleged debt.

114. ERC owed a duty to Plaintiff to ensure that its collection letters contain accurate



information.

115. ERC owed a duty to Plaintiff to exercise reasonable care in making sure its collection letters do not contain inaccurate representations of fact.

116. ERC breached these duties by representing in its letter that Plaintiff owed money when such representation was based on insufficient documentation, by representing in its letter that Plaintiff owed money when such representation was not based on any competent proof that any entity assigned all that entity's interest in the alleged debt, by representing in its letter that Plaintiff owed money when such representation was not based on any credit agreement signed by Plaintiff, by representing in its letter that Plaintiff owed money when such representation was not based on any competent proof that Plaintiff agreed to pay such money, and by representing in its letter that Plaintiff owed money when ERC held no legal right, title or interest in any debt Plaintiff allegedly owed.

117. As a direct and proximate result of ERC's negligent misrepresentations, Plaintiff suffered compensable harm and is entitled to recover actual, treble, exemplary, and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

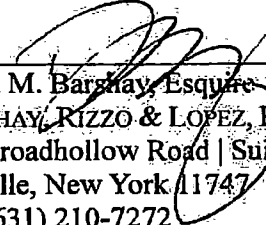
- a. A determination that ERC has committed the violations of law alleged in this action.
- b. Actual, treble, exemplary and punitive damages up to the jurisdictional limits of this Court on Plaintiff's negligence causes of action.
- c. Statutory damages of up to \$1,000.00 pursuant to 15 U.S.C. § 1612k on Plaintiff's FDCPA causes of action.
- d. Statutory and punitive damages up to the jurisdictional limits of this Court on Plaintiff's New York General Business Law § 349 causes of action.



DocuSign Envelope ID: 815E6180-8976-48DA-8B14-07A47D01B52F

- e. The costs of this action and attorneys' fees as allowed by law.
- f. Pre-judgment and post-judgment interest as allowed by law; and
- g. Such other and further relief that the Court determines is just and proper.

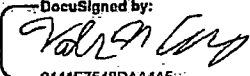
DATED: February 14, 2023

By: 
 David M. Barshay, Esquire
 BARSHAY, RIZZO & LOPEZ, PLLC
 445 Broadhollow Road | Suite CL18
 Melville, New York 11747
 Tel: (631) 210-7272
 Fax: (516) 706-5055
 Our File No.: BRL22275
 Attorneys for Plaintiff

VERIFICATION

Valerie Chavez, being duly sworn, deposes and says that I am the plaintiff in this action against Enhanced Recovery Company, LLC. I have read this complaint and affirm that the contents thereof are true, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

Verified by the undersigned on February 14, 2023.

DocuSigned by:

 0441E7548DAA4A5...
 Valerie Chavez



Index No:

**CIVIL COURT OF THE CITY OF NEW YORK
QUEENS COUNTY**

VALERIE CHAVEZ,

Plaintiff,

-against-

ENHANCED RECOVERY COMPANY, LLC,

Defendant.

SUMMONS AND COMPLAINT

BARSHAY, RIZZO & LOPEZ, PLLC
Attorneys for Plaintiff
445 Broadhollow Road | Suite CL18
Melville, New York 11747
Tel: (631) 210-7272

I hereby certify pursuant to 22 NYCRR § 130-1.1-a that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the papers listed below or the contentions therein are not frivolous as defined in 22 NYCRR § 130-1.1(c):



David M. Barshay, Esquire

Dated: February 15, 2023

Service of the within _____ is hereby admitted.

Dated: _____, 20__

Attorneys for _____

CIVIL COURT OF THE CITY OF NEW YORK
QUEENS COUNTY

VALERIE CHAVEZ,

Plaintiff,

v.

ENHANCED RECOVERY COMPANY, LLC,

Defendant.

Index No: **003641**

SUMMONS

Plaintiff's Residence Address:
4108 Parsons Boulevard
Apt. 3J
Flushing, New York 11355

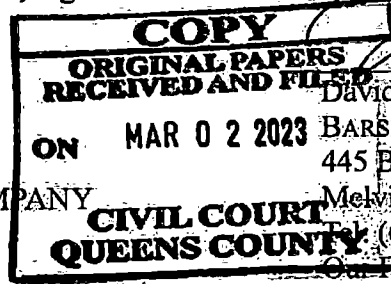
The basis of venue designated is:
C.C.A. § 301(a)

To the Person(s) Named as Defendant(s) Above:

YOU ARE HEREBY SUMMONED and required to appear in the Civil Court of the City of New York, at the office of the Clerk of the said Court at 89-17 Sutphin Boulevard, Jamaica, in the County of Queens, State of New York, within the time provided by law as noted below and to file your answer to the annexed complaint with the Clerk; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: February 15, 2023

Defendant's Address:
Enhanced Recovery Company, LLC
c/o CORPORATION SERVICE COMPANY
80 State Street
Albany, New York 12207



[Signature]
David M. Barshay, Esquire
BARSHAY, RIZZO & LOPEZ, PLLC
445 Broadhollow Road | Suite CL18
Melville, New York 11747
Tel: (631) 210-7272
Case File No.: BRL22275
Attorneys for Plaintiff

NOTE: The law or rules of court provide that:

- (a) if this summons is served by its delivery to you, or (for a corporation) an agent authorized to receive service, personally within the County of Queens you must answer within 20 days after such service; or
- (b) if this summons is served otherwise than as designated in subdivision (a) above, you are allowed 30 days to answer after the proof of service is filed with the Clerk of this Court. (c) You are required to file a copy of your answer together with proof of service with the clerk of the district in which the action is brought within 10 days of the service of the answer.


 COPY

Exhibit B

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

----- X
 VALERIE CHAVEZ, :
 : Index No. 003641/2023
 Plaintiff, :
 - against - : **NOTICE OF FILING**
 : **NOTICE OF REMOVAL**
 ENHANCED RECOVERY COMPANY, LLC, :
 Defendant. :

----- X
PLEASE TAKE NOTICE that Defendant, Enhanced Recovery Company, LLC (“ERC”),
 has on this date filed a Notice of Removal, a copy of which is attached as Exhibit “1,”¹ in the
 Office of the Clerk of the United States District Court for the Eastern District of New York.

ERC has given written notice of the filing of the Notice of Removal to Plaintiff, Valerie Chavez, by notifying her counsel of record. Pursuant to 28 U.S.C. § 1446(d), the above-styled Civil Court action is now removed to the United States District Court for the Eastern District of New York, and all further proceedings in this Court are stayed unless and until the case is remanded.

Dated: New York, New York
 April 4, 2023

¹ Exhibits “A” and “B” to the Notice of Removal, consisting of the documents in this Court and this Notice of Filing Notice of Removal have been omitted from the Notice of Removal.

SMITH, GAMBRELL & RUSSELL, LLP

By: /s/ Edward Heppt

Edward J. Heppt

1301 Avenue of the Americas, 21st Floor

New York, New York 10019

Tel: (212) 907-9700

Fax: (212) 907-9800

Email: ehppt@sgrlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that on April 4, 2023, I filed the foregoing with the Clerk of Court using the CM/ECF system and caused to be served a true and correct copy of the foregoing on the person below via electronic and First Class Mail:

David M. Barshay, Esq.
Barshay Rizzo & Lopez, PLLC
445 Broadhollow Road, Suite CL18
Melville, New York 11747
Tel.: (631) 210-7272
Fax: (516) 706-5055
dbarshay@brlfirm.com

Attorney for Plaintiff

/s/ Edward Heppt

Edward J. Heppt