

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOEL LEVI,

Plaintiff,

vs.

CAVALRY PORTFOLIO SERVICES,
LLC,

Defendant.

Civil Action No.: 23-3363

**NOTICE OF REMOVAL OF
CIVIL ACTION FROM STATE COURT**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Cavalry Portfolio Services, LLC (“Cavalry”), hereby removes this action from the Supreme Court of the State of New York, County of Orange. As grounds for removal, Cavalry states as follows:

1. Cavalry is the named Defendant in the above-entitled action.
2. On March 17, 2023, the Plaintiff, Joel Levi, filed a Complaint captioned *Joel Levi v. Cavalry Portfolio Services, LLC*, Index No. EF001789-2023, in the Supreme Court of the State of New York, Orange County (“Complaint”). A true copy of the Case Summary for the Complaint is attached hereto as **Exhibit A**; a true and correct copy of the Complaint is attached hereto as **Exhibit B**.
3. The Complaint seeks damages for alleged violations of the Fair Debt Collection Practices Act (“FCDPA”) 15 U.S.C. § 1692 et seq. and specifically asserts that “Plaintiff expended time and money in determining the proper course of action,” “expended time and money in an effort to mitigate the risk of reputational harm,” and “Plaintiff suffered emotional and physical harm because of Defendants’ improper acts, including, but not limited to, mental strain, emotional

fatigue and increased heartrate.” See, *Exhibit B*, ¶ 39, 40, 43.

4. Cavalry was served with a copy of the Complaint on April 4, 2023.

5. As is required by 28 U.S.C. § 1446(b), this Notice of Removal is filed within 30 days of receipt of the Complaint by Cavalry.

6. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served in the Complaint are attached hereto. See, *Exhibit B*.

7. Cavalry incorporates the allegations of the Complaint into its Notice of Removal as if repeated herein verbatim and relies upon the allegations of the Complaint, as well as its attached exhibits, solely for support of the propriety of the Notice of Removal.

THIS COURT HAS JURISDICTION OVER THE COMPLAINT

8. Initially, any civil action filed in a state court over which the Federal District Courts would have original jurisdiction may be removed. 28 U.S.C. § 1441(a).

9. The above-captioned case is removable because this Court has original subject matter jurisdiction on federal question grounds pursuant to 28 U.S.C. § 1331.

10. As is stated in Plaintiff’s Complaint, this case arises under federal law -- more particularly under the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 et. seq. See, Exhibit B.

11. Specifically, the Complaint alleges that Cavalry communicated with Plaintiff and that said communications violated 15 USC 1692e and 1692f. Exhibit B, generally.

12. Plaintiff alleges that he suffered actual damages as a result of Cavalry’s conduct including but not limited to “emotional and physical harm because of Defendants’ improper acts, including, but not limited to, mental strain, emotional fatigue and increased heartrate.” Exhibit B, ¶ 43.

13. Under the provisions of 28 U.S.C. § 1441(a), the United States District Court for the Southern District of New York is the federal court for the district and division embracing the place where the State Court Action is pending (i.e., Orange County, New York).

14. Cavalry has complied with all other applicable requirements of 28 U.S.C. § 1446 for removing this action, including giving written notice of the filing of this Notice of Removal to Plaintiff and filing a copy of the Notice of Removal with the clerk of the Supreme Court of the State of New York, Orange County at or about the same time as this filing.

WHEREFORE, Cavalry Portfolio Services, LLC, gives notice that this action is hereby removed from the Supreme Court of the State of New York, Orange County to the United States District Court for the Southern District of New York.

Respectfully submitted,
Maurice Wutscher, LLP
/s/ Thomas R. Dominczyk
Thomas R. Dominczyk
5 Walter E. Foran Blvd., Suite 2007
Flemington, NJ 08822
(908) 237-4550
(908) 237-4551(fax)
Attorneys for Defendant

Dated: April 21, 2023

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EF001789-2023 - Orange County Supreme Court

Short Caption: **JOEL LEVI v. CAVALRY PORTFOLIO SERVICES, LLC**
 Case Type: **Torts - Other (15 U.S.C. §1692)**
 Case Status: **Pre-RJI**
 eFiling Status: **Partial Participation Recorded**

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thru

Document Number:

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#	Document	Filed By	Status
1	SUMMONS + COMPLAINT	Yusko, R. Filed: 03/17/2023 Received: 03/17/2023	Processed Confirmation Notice
2	EXHIBIT(S) - A Copy of Collection Letter	Yusko, R. Filed: 03/17/2023 Received: 03/17/2023	Processed Confirmation Notice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----x

JOEL LEVI,

Plaintiff,

-against-

CAVALRY PORTFOLIO SERVICES, LLC,

Defendant.

-----x

To the above-named Defendant:

Index No.:

**Plaintiff designates Orange
County as the place of trial.
The basis of venue is
Plaintiff's residence.**

SUMMONS

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a Notice of Appearance on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Hackensack, New Jersey

March 17, 2023

Sincerely,

Stein Saks, PLLC
/s/ Robert T. Yusko
Robert T. Yusko, Esq.
One University Plaza, Suite 620
Hackensack, NJ 07601
P. (201) 282-6500
ryusko@steinsakslegal.com
Counsel for Plaintiff

Defendant's Address for service of process:

CAVALRY PORTFOLIO SERVICES, LLC
C/O C T CORPORATION SYSTEM
28 LIBERTY STREET
NEW YORK, NEW YORK, 10005

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----x
JOEL LEVI,

Index No.:

Plaintiff,

COMPLAINT

-against-

CAVALRY PORTFOLIO SERVICES, LLC,
Defendant.

-----x
Plaintiff Joel Levi (hereinafter, "Plaintiff") brings this Complaint by and through his attorneys, Stein Saks, PLLC, against the Defendant Cavalry Portfolio Services, LLC ("Cavalry" or "Defendant"), based upon information and belief of the Plaintiff's counsel, except for allegations specifically pertaining to the Plaintiff, which are based upon the Plaintiff's personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the Fair Debt Collection Practices Act (the "FDCPA" or "Act") in 1977 in response to the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. §1692(a). At that time, Congress was concerned that "abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." *Id.* Congress concluded that "existing laws...[we]re inadequate to protect consumers," and that "the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices." 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to "[e]nsure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate *Id.* § 1692(b), Congress

gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action as the Plaintiff was and is a resident of the County of Orange, State of New York.

4. Venue is proper in this judicial district as this is where the Plaintiff resides.

NATURE OF THE ACTION

5. Plaintiff brings this action under § 1692 et seq. of Title 15 of the United States Code, also known as the FDCPA, and

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of New York, County of Orange.

8. Defendant is a “debt collector” as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address for service of process at care of C T Corporation System, 28 Liberty Street, New York, New York 10005.

9. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

FACTUAL ALLEGATIONS

10. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs numbered above with the same force and effect as if the same were set forth at length herein.

11. Some time prior to August 23, 2022, Plaintiff allegedly incurred an obligation to non-party original creditor Citibank, N.A. (“Citi”).

12. The obligation arose out of a transaction involving a debt to Citi in which money, property, insurance or services, that are the subject of the transaction(s), were incurred primarily for personal, family, or household purposes.

13. The alleged Citi obligation is a "debt" as defined by 15 U.S.C. § 1692a (5).

14. Upon information and belief, Citi sold the debt to Cavalry SPV I, LLC ("SPV").

15. SPV is a "creditor" as defined by 15 U.S.C. § 1692a (4).

16. Upon information and belief, SPV assigned the account to Cavalry to collect the alleged debt.

17. Cavalry collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

Violations – August 23, 2022 Letter

18. On or about August 23, 2022, Defendant sent the Plaintiff a 45% discounted collection letter ("the Letter"), a copy of which is attached as Exhibit A.

19. The Letter sets forth that it "IS AN ATTEMPT TO COLLECT A DEBT."

20. The Letter contains contradictory messages concerning restarting the statute of limitations.

21. Specifically, the Letter states as follows:

1. "... if you make a payment on a debt, admit to owing a debt, or promise to pay a debt, the time period in which the debt is enforceable in court may start again;"
2. "However, your creditor or debt collector believes that restarting the time period on this debt is prohibited by law, and whether or not you

acknowledge, promise to pay, or make a payment on this debt, your creditor or debt collector will NOT sue you to collect this debt;” and

3. “If you waive the statute of limitations on a debt, the time period in which the debt is enforceable in court may start again.”

22. Moreover, in addition to being inherently contradictory, the Letter fails to explain whether the debt is subject to sale to a new creditor and/or assignment to a new debt collector that can sue if the Plaintiff acknowledges, promises to pay or makes a payment on the debt.

23. Thus, the potential to restart the statute of limitations is not adequately explained and results in at least five (5) different reasonable interpretations, at least one of which is inaccurate.

24. First, if payment, admission or promise to pay is made, the legal time period to enforce the debt in court may be restarted.

25. Second, restarting the time period to enforce the debt in court is illegal.

26. Third, even if restarting the time period to enforce the debt is legal, Defendant and SPV promise not to sue;

27. Fourth, Defendant and SPV promise not to sue, but no promises concerning resale or reassignment of the debt.

28. Fifth, if anyone other than Defendant and SPV acquire rights to the debt after waiver of the statute of limitations, the time period in which the debt is enforceable in court may start again and you may be sued.

29. By providing conflicting information concerning the potential to restart the statute of limitations, and at least five (5) possible interpretations of the information, the Letter is false, deceptive and misleading.

30. Plaintiff was misled as to whether he could be sued over the debt or not.

31. Plaintiff was unable to properly evaluate the demand for payment or how to address it.

32. Defendant misled the Plaintiff concerning whether he could be sued on the debt following payment, acknowledgment or promise to pay.

33. Defendant's actions were false, deceptive, unfair, and/or misleading.

34. Plaintiff was concerned and misled by the Letter.

35. Plaintiff was therefore unable to evaluate his options of how to handle this debt.

36. Plaintiff cannot pay the alleged debt, trusting the Defendant, when it appears that the information stated in the Defendant's Letter is incorrect.

37. Because of the Defendant's actions, the funds the Plaintiff could have used to pay all or part of the alleged debt were prioritized elsewhere.

38. Because of this, Plaintiff expended time and money in determining the proper course of action.

39. In reliance on the Letter, Plaintiff expended time and money in an effort to mitigate the risk of future financial harm in the form of dominion and control over his funds.

40. In reliance on the Letter, Plaintiff expended time and money in an effort to mitigate the risk of reputational harm in the form of negative credit/collection informational furnishment (as threatened in the Letter), and ultimate dissemination, to to third parties.

41. Plaintiff's failure to pay the debt arose from the collection Letter itself because the Plaintiff believes it was an attempt to collect an expired debt.

42. Plaintiff's reliance on the Letter, and the resulting inaction/non-payment, was detrimental to the Plaintiff because of the lost opportunity to settle the alleged debt at a discount.

43. In addition, Plaintiff suffered emotional and physical harm because of the Defendants' improper acts, including, but not limited to, mental strain, emotional fatigue and increased heartrate.

44. Plaintiff would have pursued a different course of action were it not for the Defendant's violations.

45. Congress is empowered to pass laws and is well-positioned to create laws that will better society at large.

46. As it relates to this case, Congress identified concrete and particularized harms with close common-law analogues to the traditional torts of fraud, negligent misrepresentation, negligent infliction of emotional distress, defamation and conversion.

47. For purposes of this action, only a close relationship to common-law harm is needed, not an exact duplicate.

48. Plaintiff is entitled to receive proper notice of the character, legal status and amount of the debt, as required by the FDCPA.

49. Defendant failed to effectively inform the Plaintiff of this information, and in fact, attempted to conceal it in violation of the law.

50. These violations by the Defendant were knowing, willful, negligent and/or intentional, and the Defendant did not maintain procedures reasonably adopted to avoid any such violations.

51. Defendant's collection efforts with respect to this alleged debt from the Plaintiff caused the Plaintiff to suffer concrete and particularized harm, inter alia, because the FDCPA provides the Plaintiff with the legally protected right to be not to be misled or treated unfairly with respect to any action for the collection of any consumer debt.

52. Defendant's deceptive, misleading and unfair representations with respect to its collection efforts were material misrepresentations that affected and frustrated the Plaintiff's ability to intelligently respond to the Defendant's collection efforts because the Plaintiff could not adequately respond to the Defendant's demand for payment of this debt.

53. Defendant's actions created an appreciable risk to the Plaintiff of being unable to properly respond to, or handle, Defendant's debt collection.

54. Plaintiff was confused and misled to his detriment by the statements in the Letter, and relied on the contents of the Letter to his detriment.

55. As a result of the Defendant's deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692e et seq.

56. Plaintiff repeats the above allegations as if set forth herein.

57. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

58. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

59. Defendant violated said section, inter alia, by:

- a. Falsely representing the character, amount, or legal status of the debt in violation of § 1692e (2);
- b. Using a false representation or deceptive means to collect or attempt to collect a debt in violation of § 1692e (10);

60. By reason thereof, Defendant is liable to the Plaintiff for judgment that the Defendant's conduct violated Section 1692e et seq. of the FDCPA, and that the Plaintiff is entitled to actual damages, statutory damages, costs and attorneys' fees.

COUNT II
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692f et seq.

61. Plaintiff repeats the above allegations as if set forth herein.

62. Additionally, Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

63. Pursuant to 15 U.S.C. §1692f, a debt collector may not use any unfair or unconscionable means in connection with the collection of any debt.

64. Defendant violated this section by unfairly collecting the alleged debt, as described above, in violation of § 1692f.

65. By reason thereof, Defendant is liable to the Plaintiff for judgment that the Defendant's conduct violated Section 1692f et seq. of the FDCPA, and that the Plaintiff is entitled to actual damages, statutory damages, costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

66. Pursuant to CPLR 4102(a), Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joel Levi, demands judgment from the Defendant for a sum within the jurisdictional limits of this Court and for an amount in excess of the jurisdictional limits of the

lower Courts of the State of New York with the costs and disbursements of this action and relief as follows:

1. Awarding the Plaintiff statutory damages;
2. Awarding the Plaintiff actual damages;
3. Awarding the Plaintiff costs, including reasonable attorneys' fees and expenses;
4. Awarding pre-judgment interest and post-judgment interest; and
5. Awarding such other and further relief as this Court may deem just and proper.

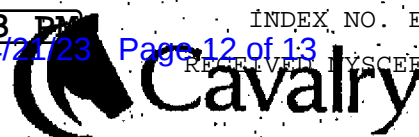
Dated: March 17, 2023

Respectfully Submitted,

Stein Saks, PLLC
/s/ Robert Yusko
Robert Yusko, Esq.
One University Plaza, Suite 620
Hackensack, NJ 07601
P. (201) 282-6500
ryusko@steinsakslegal.com
Counsel for Plaintiff

EXHIBIT A

1 American Lane, Suite 220
Greenwich, CT 06831



Phone: (866) 434-2995

www.cavps.com • cavcares@cavps.com

August 23, 2022

RE: Original Creditor: Citibank, N.A.
Original Account No.: [REDACTED]
Cavalry Account No.: [REDACTED]
Current Creditor: Cavalry SPV I, LLC.
Amount of Debt Owed: \$8612.12

Joel Levi
[REDACTED]

We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice. Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. It is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. section 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. If a creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell the court that the statute of limitations has expired.

Even if the statute of limitations has expired, you may choose to make payments on the debt. We are also required to tell you that, for certain kinds of debts, if you make a payment on a debt, admit to owing a debt, or promise to pay a debt, the time period in which the debt is enforceable in court may start again.

However, your creditor or debt collector believes that restarting the time period on this debt is prohibited by law, and whether or not you acknowledge, promise to pay, or make a payment on this debt, your creditor or debt collector will NOT sue you to collect this debt.

If you waive the statute of limitations on a debt, the time period in which the debt is enforceable in court may start again.

If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.

Cavalry is offering a 45% discount to you. That's right, you can resolve your account by simply choosing one of the following payment options listed below:

1 payment of
\$4736.67

18 monthly payments of
\$263.14

36 monthly payments of
\$131.57

This offer expires September 22, 2022.
Please note we are not obligated to renew this offer.

Please feel free to visit our website at www.cavps.com or call us at (888) 716-0010 to discuss this or other payment options available at Cavalry.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR. SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT INFORMATION CONCERNING YOUR RIGHTS.

PAYMENT COUPON

Joel Levi
[REDACTED]

Please detach and return this portion with the payment to the address below.
Make Checks and Money Orders Payable to Cavalry Portfolio Services, LLC.

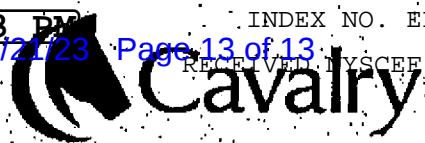
If you would like to make a payment via our secure website, please visit us at www.cavps.com

Cavalry Portfolio Services, LLC
PO Box 27288
Tempe, AZ 85285-7288

Original Creditor: Citibank, N.A.
Original Account No.: [REDACTED]
Cavalry Account No.: [REDACTED]
Amount of Debt Owed: \$8612.12

SIF LTRG
CVN w/d
335933
00000031

1 American Lane, Suite 220
Greenwich, CT 06831



Phone: (866) 434-2995

www.cavps.com • cavcares@cavps.com



August 23, 2022

RE: Original Creditor: Citibank, N.A.
Original Account No.: [Redacted]
Cavalry Account No.: [Redacted]
Current Creditor: Cavalry SPV I, LLC
Amount of Debt Owed: \$8612.12

Joel Lev
[Redacted]

Sincerely,

Kshon Camp
Cavalry Portfolio Services, LLC

We may report information about your account to credit reporting agencies.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR. SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT INFORMATION CONCERNING YOUR RIGHTS.

PAYMENT COUPON

Joel Lev
[Redacted]

Please detach and return this portion with the payment to the address below.
Make Checks and Money Orders Payable to Cavalry Portfolio Services, LLC.

If you would like to make a payment via our secure website, please visit us at www.cavps.com

Cavalry Portfolio Services, LLC
PO Box 27288
Tempe, AZ 85285-7288

Original Creditor: Citibank, N.A.
Original Account No.: [Redacted]
Cavalry Account No.: [Redacted]
Amount of Debt Owed: \$8612.12

SIF LTR3
CVI and
398838
0000031