

PHILIP D. STERN ATTORNEY AT LAW, LLC
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(973) 379-7500
Attorneys for Plaintiff, Daniel Bock, Jr.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>DANIEL BOCK, JR., Plaintiff,</p> <p>vs.</p> <p>PRESSLER AND PRESSLER, LLP, Defendant.</p>	<p>Case 2:11-cv-07593-KM-MCA</p> <p>NOTICE OF MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT’S LIABILITY</p>
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TO: Mitchell L. Williamson, Esq.
Michael J. Peters, Esq.
Pressler and Pressler, LLP, *pro se*
7 Entin Road
Parsippany, NJ 07054-9944

Please take notice that on December 2, 2013,¹ at 10:00 a.m. or at such other time as counsel may be heard, Plaintiff, through his counsel, will move for an Order to entering summary judgment as to Defendant’s liability.

In support of the Motion, Plaintiff, Daniel Bock, Jr., rely on the Declarations of Danil Bock, Jr. and Philip D. Stern, Esq., Plaintiff’s Statement of Material Fact, and Plaintiff’s Brief submitted with this Motion.

Plaintiff, Daniel Bock, Jr. requests oral argument.

Philip D. Stern Attorney at Law, LLC
Attorneys for Plaintiff, Daniel Bock, Jr.
s/Philip D. Stern

Dated: September 21, 2013

Philip D. Stern

¹ The Court’s Text Order [E.D. 31] entered on August 14, 2013 set a briefing schedule for summary judgment motions including filing reply briefs by November 15, 2013. Based on the Clerk’s published list of regular motion days, December 2, 2013 is the earliest return date for a motion in which the reply papers are filed on November 15, 2013.

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DANIEL BOCK, JR.,
Plaintiff,

vs.

PRESSLER AND PRESSLER, LLP,
Defendant.

Case 2:11-cv-07593-KM-MCA

**ORDER GRANTING
SUMMARY JUDGMENT ON
LIABILITY**

This matter having been opened to the Court on Plaintiff's and Defendant's separate motions filed pursuant to F.R.Civ.P. 56 and the Court's Text Order (ECF No. 31), and the Court having considered the papers submitted and concluded that there is no genuine dispute as to any material fact and that Plaintiff is entitled to judgment as a matter of law with respect to Defendant's liability and the Court specifically having found that [1] Defendant is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6), [2] Defendant attempted to collect a "debt" within the meaning of 15 U.S.C. § 1692a(5), [3] Plaintiff was the object of Defendant's attempts to collect that debt and, therefore, Plaintiff is a "consumer" within the meaning of 15 U.S.C. § 1692a(3), and [4] in connection with Defendant's filing of a collection complaint against Plaintiff in state court, there was insufficient attorney involvement to constitute a communication from an attorney, and Defendant, through its employee, Ralph Gulko, Esq.,

misrepresented that, at the time the collection complaint was filed, he had undertaken an inquiry reasonable under the circumstances to certify that, to the best of his knowledge, information and belief the factual allegations of the collection complaint had evidentiary support, such that Defendant violated 15 U.S.C. §§ 1692e, 1692e(3) and 1692e(10); and for the reasons set forth by the Court on the record or in its separately filed Opinion, and for good cause shown; IT IS ON THIS DAY OF , 2013; ORDERED AND ADJUDGED:

1. Plaintiff's Motion is GRANTED.
2. Defendant's Motion is DENIED.
3. Judgment be and hereby is entered in favor of Plaintiff and against Defendant as to Defendant's liability to Plaintiff based on Defendant's violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and for such amount as allowed under 15 U.S.C. § 1692k(a) to be determined in a subsequent proceeding in this action.

SO ORDERED:

PHILIP D. STERN ATTORNEY AT LAW, LLC
697 Valley Street, Suite 2d
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(973) 379-7500
Attorneys for Plaintiff, Daniel Bock, Jr.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DANIEL BOCK, JR.,
Plaintiff,

vs.

PRESSLER AND PRESSLER, LLP,
Defendant.

Case 2:11-cv-07593-KM-MCA

**PLAINTIFF'S STATEMENT OF
MATERIAL FACTS**

Pursuant to L.Civ.R. 56.1(a), Plaintiff, Daniel Bock, Jr., submits this
Statement of Material Facts in Support of his Motion for Summary Judgment:

REFERENCES TO THE MOTION RECORD

References to the docket will be by "E.D. #" and may include "ID#" when
referencing a particular page.

In support of this Motion, Plaintiff submits his Declaration ("Bock Decl.")
as well as the Declaration of his counsel ("Stern Decl."), along with the exhibits
to those declarations.

There is one exhibit attached to the Bock Decl. designated as P-1, which is
a copy of a complaint ("*Collection Complaint*") filed in a New Jersey state court.

Attached to the Stern Decl. are the following exhibits:

P-2 *Pressler Web I*. Screen shot of the home page from Defendant's website
accessed January 12, 2013.

- P-3 *Pressler Web II*. Screen shot of the home page from Defendant's website accessed September 21, 2013.
- P-4 *McCabe*. Affidavit of Steven P. McCabe, Esq. filed in this action as E.D. 29 on July 8, 2013. References are made to paragraph numbers.
- P-5 *Bills*. The first page of the Billing Statements produced by Defendant in discovery in this action.
- P-6 *Russo I*. Affidavit of Tara Russo dated May 14, 2013. References are made to paragraph numbers.
- P-7 *Russo II*. Amended Affidavit of Tara Russo dated June 28, 2013. References are made to paragraph numbers.
- P-8 *Gulko Aff*. Affidavit of Ralph X. Gulko, Esq. dated April 12, 2013. References are made to paragraph numbers.
- P-9 *Gulko Dep. (P-9)* Deposition of Ralph X. Gulko, Esq. References are made to paragraph numbers are made to page and line numbers, thus 110:12 means page 110 at line 12.
- P-10 *Freeman Complaint*. Exhibit P-10 marked at the *Gulko Dep*.
- P-11 *NJ Court Rule*. Copy of New Jersey Court Rule 1:4-8 marked as Exhibit P-16 at the *Gulko Dep*.

JURISDICTION AND VENUE

1. Defendant failed to admit subject matter jurisdiction. See E.D. 7 at ¶5.
2. The Complaint asserts a claim for violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. E.D. 1, at ¶¶39 to 45.
3. The FDCPA expressly provides for subject matter jurisdiction in a United States District Court. 15 U.S.C. § 1692k(d).
4. Subject matter jurisdiction also arises under 28 U.S.C. § 1331 because the FDCPA is a law of the United States.

5. The Court has personal jurisdiction over Defendant due to personal service of process. E.D. 3. In addition, Defendant has not alleged in its Answer [E.D. 7] nor filed any motion based on lack of personal jurisdiction and, therefore, it is waived pursuant to Fed.R.Civ.P. 12(h)(1)(B).

6. Venue in this District is proper because Defendant admits that its principal business address is located in this District and that the collection complaint on which this instant action is based was filed in New Jersey state court. See Answer [E.D. 7] to Complaint [E.D. 1] ¶¶ 4 and 32.

DEFENDANT IS A “DEBT COLLECTOR”

The Pleadings

7. Defendant would not admit that it is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6). Answer [E.D. 7] to Complaint [E.D. 1] at ¶39.

8. In response to the allegation that Defendant “is regularly engaged in the collection of debts,” Defendant responded, “Admitted that Pressler is located in the State of New Jersey and is engaged in the practice of law, which on some occasions involves collecting monies due and owing through legal process.” Answer ¶ 24 (E.D. 7 at PageID 25).

9. Defendant denied the allegation that “[t]he principal purpose of PRESSLER is the collection of debts and it uses the mails, telephone, the internet and other instruments of interstate commerce.” Answer ¶ 25 (E.D. 7 at PageID 26).

Piercing the Pleadings with the Evidential Record

10. The home page of Defendant's published website, www.pressler-pressler.com, has consistently proclaimed the firm's tagline, "Specializing in Retail Collections Since 1930." *Pressler Web I* (P-2) and *Pressler Web II* (P-3).

11. Defendant is self-described as engaging in "its highly specialized practice" in which it "represents national credit card companies throughout the States of New Jersey and New York." *Pressler Web II* (P-3).

12. Defendant "is very active in maintaining, supporting and opposing new legislation which affects the collection industry." In addition, "[w]ith over 300 employees and 19 attorneys, Pressler and Pressler, LLP provides a total retail collection environment." *Pressler Web II* (P-3).

13. Defendant's "primary practice is devoted to a retail or consumer collection practice on behalf of our clients." *McCabe* (P-4) at ¶1.

14. Defendant's "clients include, and/or have included, banking institutions, both local and national banks, credit card issuers, local merchants and professionals, such as doctors, dentists, lawyers and accountants, hospitals and other medical institutions and clients that purchase charged off defaulted accounts." *McCabe* (P-4) at ¶1.

15. Defendant was "founded in 1930, has been collecting retail debt on behalf of clients since shortly after its inception[, and] "is the largest and oldest law firm specializing in retail debt collection in New Jersey." *McCabe* (P-4) at ¶7.

16. Defendant admits to being “subject to regulation under the Fair Debt Collection Practices Act (‘FDCPA’), 15 USC § 1692 et seq. as well as all other federal and state laws governing or relating to the collection of retail debt from consumers.” *McCabe* (P-4) at ¶8.

DEFENDANT ATTEMPTED TO COLLECT A CONSUMER “DEBT”

17. Defendant would not admit that its actions concerned a “debt” within the meaning of 15 U.S.C. § 1692a(5). Answer [E.D. 7] to Complaint [E.D. 1] at ¶41.

18. Defendant attempted to collect on a Plaintiff’s HSBC Bank Nevada, N.A. Mastercard credit card account ending in 8245 (“Account”). *Collection Complaint* (P-1).

19. Defendant contended that the Account was in default and that the account was placed with Defendant after it was in default. Answer [E.D. 7] to Complaint [E.D. 1] ¶¶24 and 26.

20. Defendant neither admitted nor denied Plaintiff’s allegations that Debt arose from transactions but, in discovery responses, produced copies of 24 periodic billing statements from its collection file which reflect transactions on a credit card account. Answer [E.D. 7] to Complaint [E.D. 1] at ¶22; *Billings* (P-5).

21. Notwithstanding Defendant admitting that its “primary practice is devoted to a retail or consumer collection practice,” Defendant’s *pro se* Answer failed to admit or deny that the Debt arose primary from transactions primarily for person, family or household purposes. *McCabe* (P-4) at ¶1; Defendant’s

Answer [E.D. 7], ¶23.

22. Plaintiff did use the Account in transactions which were for personal purposes. *Bock Decl.*

PLAINTIFF IS A “CONSUMER”

23. Defendant would not admit that Plaintiff is a “consumer” within the meaning of 15 U.S.C. § 1692a(3). Answer [E.D. 7] to Complaint [E.D. 1] at ¶39.

24. Defendant admitted, however, that Plaintiff is a natural person. Answer [E.D. 7] to Complaint [E.D. 1] at ¶2.

25. Defendant also admitted that it sent the letter attached to the Complaint as Exhibit A which was addressed to Plaintiff, identified the Account, and stated that the Account “has been placed with the firm Pressler and Pressler, LLP for collection. Answer [E.D. 7] to Complaint [E.D. 1] at ¶¶29 to 31.

26. Defendant also admitted that it filed the *Collection Complaint* which sought a judgment against Plaintiff based on the allegation that he was liable to Midland Funding, LLC as the current owner of the defaulted Account. Answer [E.D. 7] to Complaint [E.D. 1] at ¶¶32 to 33.

DEFENDANT’S VIOLATIONS OF THE FDCPA

27. Defendant’s letter (Exhibit A to the Complaint) dated September 15, 2011, is on Defendant’s letterhead, is not signed by anyone, and expressly disclaimed, “At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.” Answer [E.D. 7] to Complaint [E.D.

1] at ¶¶29 to 31.

Defendant's Collection Complaint Drafting & Filing Practices.

28. Defendant's non-attorney SAC Department drafts collection complaints like the *Collection Complaint* here. *Gulko Dep.* (P-9) 29:14-23; compare the *Collection Complaint* (P-1) to the *Freeman Complaint* (P-10) discussed in *Gulko Dep.*

29. The drafting process consisted of merging electronically stored "placement information" with a template or form complaint. *Gulko Dep.* (P-9) 96:20-97:1.

30. The placement information is the information supplied by Defendant's client which is contained within Defendant's collection software. *Gulko Dep.* (P-9) 30:8-18.

31. Defendant prepares a collection complaint 35 days after sending an "Initial Notice letter" unless Defendant receives a dispute or that letter is returned undeliverable. *Gulko Aff.* (P-8), ¶¶2-3.

32. After being drafted, the SAC Department prepares a daily "feed list" of file numbers for the complaints ready for Gulko's review. *Gulko Dep.* (P-9) 85:12-17.

33. Except when he is on vacation, Gulko is the attorney employed by Defendant to review SAC Department-drafted complaints for filing in New Jersey and Pennsylvania. *Gulko Dep.* (P-9) 92:9-23.

34. Gulko's daily "feed list" averages 300-400 but there have been

occasions when it has exceed 1,000. *Gulko Dep.* (P-9) 92:24-94:5.

35. Prior to reviewing the prepared complaint, Gulko has no involvement with a claim. *Gulko Dep.* (P-9) 26:10-23.

36. Gulko generally completes his review of the entire feed list each day without him feeling “stressed or behind the eight ball.” *Gulko Dep.* (P-9) 93:19-94:5.

37. Gulko’s review process consists of typing in the file number which results in an electronic copy of the SAC Department-drafted complaint to appear on the left screen and the placement information to appear on the right screen. *Gulko Dep.* (P-9) 28:14-29:4; 31:1-7.

38. If he is satisfied that a complaint should be filed, Gulko enters “G” and “D” on his computer for “good” to signify his approval of the complaint for filing. If he does not want the complaint filed, then he enters “N” and “G” so that the complaint is “kicked back.” *Gulko Dep.* (P-9) 17:5-14.

39. The data which Gulko looks to review is the placement information which the client provided. *Gulko Dep.* (P-9) 31:8-32:6; 34:8-20; *Gulko Aff.* (P-8) ¶5.

40. Gulko seeks to determine whether the information provided by the client matches the information in the complaint. *Gulko Dep.* (P-9) 71:7-25.

41. Gulko also checks to see if any data has been changed “due to post-referral credits and/or address changes,” and that the data in Defendant’s system is current. *Gulko Aff.* (P-8) ¶¶5-6.

42. If the variable information from complaint template matches what is in the placement information, Gulko will approve the complaint for filing. *Gulko Dep.* (P-9) 97:18-101:16.

43. Gulko does not look beyond the initial right screen unless something appears “unusual or incomplete or in any way peaks [his] interest or makes [him] question what it is.” *Gulko Dep.* (P-9) 65:16-67:5.

44. The information supplied by the client is the client’s claim to own the account, the debtor’s name and address, an account number, and the amount and date of the debt. *Gulko Dep.* (P-9) 73:7-15.

45. Gulko reviews what Defendant’s client “alleges,” namely, “that is it owed money because it owns an account and it identified the account by name, it identified the accountholder, it identified the account number, it identified the amount due and, it identified the date due. That’s the allegation, that’s the information that [the] client provided [Defendant]. That’s what [Gulko] reviewed.” *Gulko Dep.* (P-9) 76:22-77:3.

46. In debt-buyer cases, Gulko knows that the client acquired information from some else but, prior to approving complaints, he does not inquire “whether there were any affidavits of custodian of records for any documents which were created at or near the time of the event of the information being recorded.” *Gulko Dep.* (P-9) 81:15-82:5.

47. In his review process of complaints asserting a claim based on a credit card account, Gulko does not review the written contractual terms

governing the credit card account on which the claim arose despite his admitting that a choice-of-law and arbitration clause would be relevant, nor does he review the periodic billing statements associated with the account. *Gulko Dep.* (P-9) 68:22-69:21; 80:6-10; 80:11-16; 85:25-86:8.

48. Gulko does not inquire as to whether the client has possession of or access to account billing statements – at least not for one of its debt-buyer clients, New Century Financial Services, Inc. *Gulko Dep.* (P-9) 82:6-11.

49. In debt-buyer cases, if the chain of assignment is in the placement information, Gulko will look at it but he does not know whether the chain of assignment information is present more often than not. *Gulko Dep.* (P-9) 67:20-68:15.

50. The chain of assignment does not include the actual assignment agreement because that document is not made available to Gulko. *Gulko Dep.* (P-9) 85:18-23.

51. Similar to ECF, New Jersey’s electronic filing procedures in Special Civil Part permits typed signatures. *Stern Decl.* at ¶18.

52. After Gulko enters “GD,” his signature is typed on the complaint to be electronically filed and is then filed. *Gulko Dep.* (P-9) 53:19-55:12.

53. After Gulko approves complaints, no one else reviews them prior to filing. *Gulko Dep.* (P-9) 46:12-22.

Gulko’s Inquiry as to Evidentiary Support for the Factual Allegations.

54. Gulko has read New Jersey Court Rule 1:4-8 and admits that it

applies to the complaints he approves for filing. *Gulko Dep.* (P-9) 50:6-10; 56:11-19; 78:22-79:8.

55. Gulko has read the part of that Rule relating to his obligation to conduct a reasonable inquiry. *Gulko Dep.* (P-9) 50:20-51:14.

56. Gulko understands that one part of that Rule deals with factual allegations that have evidentiary support and another part addresses specifically identified allegation which are likely to have evidentiary support. *Gulko Dep.* (P-9) 61:15-18; 61:19-62:6.

57. Gulko understands “evidentiary support” to mean “[t]hat a client who comes to this office with a claim for collection, that it has given us information sufficient for [Gulko] as an attorney to believe that a legal claim does exist as alleged for the filing of a lawsuit.” *Gulko Dep.* (P-9) 70:4-16.

58. Gulko’s understanding is that the information provided by the client is admissible evidence. *Gulko Dep.* (P-9) 71:7-25.

59. Where a debtor has not disputed the debt in response to Defendant’s initial collection notice, Gulko assumes, as is permitted under the Fair Debt Collection Practices Act, that the claim is valid but is unaware whether the debtor’s failure to dispute is evidential. *Gulko Dep.* (P-9) 82:15-84:14.

The Collection Complaint which Defendant Filed Against Plaintiff

60. Defendant filed the collection complaint against Plaintiff on October 21, 2011. *Collection Complaint* (P-1); *Russo II* (P-7), ¶3.

61. Gulko reviewed the collection complaint filed against Plaintiff on

October 20, 2011. *Russo II* (P-7), ¶4.

62. On October 20, 2011, Gulko reviewed 673 complaints of which he approved 663 and rejected 10. *Russo II* (P-7), ¶¶7 and 8.

63. In the case of the complaint filed against Plaintiff, Defendant's records reflect that Gulko had Plaintiff's file open for a total of *four seconds*. *Russo II* (P-7), ¶9.

64. Defendant's collection file (which it produced in discovery in this action) contains no billing statements with a balance in excess of \$7,867.47 and contains a report that "No finance charges computed since charge-off" which was on May 31, 2010. *Billings* (P-5), *Computer Report* (P-12).

[END OF PLAINTIFF'S STATEMENT OF MATERIAL FACTS]

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL BOCK, JR.,
Plaintiff,

vs.

PRESSLER AND PRESSLER, LLP,
Defendant.

Case 2:11-cv-07593-KM-MCA

**DECLARATION OF
DANIEL BOCK, JR.**

I, Daniel Bock, Jr., declare:

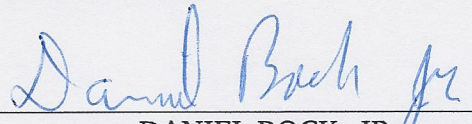
1. I am the Plaintiff in this lawsuit. I am over the age of 18 and make this Declaration based on my own personal knowledge.
2. I understand that this Declaration is being filed with the Court in support of my Motion which asks the Court to decide issues in the case without the need for a trial as to those issues. Specifically, I understand that I am making this Declaration to establish that my HSBC credit card account was used for personal or family purchases and not in connection with any business.
3. I did experience personal financial difficulties and became unable to keep current with some of my obligations including my credit card accounts.
4. I never used any of my credit cards in connection with any business or for any business transaction. Instead, my credit cards were used only to purchase goods or services for personal reasons. Any balance transfers would have been paid to other credit card accounts, and cash advances were for personal expenses.
5. In October 2011, I received papers that I was being sued by Pressler and Pressler on behalf of Midland Funding, LLC. The papers included a collection complaint, a true copy of the complaint is attached as P-1.
6. As I understood the collection complaint, Midland Funding said that it owned my

HSBC account and that I owed Midland more than eight thousand dollars.

7. At the time I received the collection complaint, the account had been closed for at least a couple of years and, as a result, I did not remember specifics about it but felt fairly certain that the balance had never exceeded eight thousand dollars. Also, I never had any dealings with Midland Funding and I did not remember receiving anything from HSBC telling me that the account had been sold to Midland Funding or to anyone else.
8. As I hadn't kept any statements from which I could confirm or dispute what was claimed in the collection complaint, I filed an answer with the court and stated that I was looking for documentation supporting the claim. I wasn't just going to pay whatever Pressler or Midland said I owed.
9. Neither Midland Funding nor Pressler and Pressler sent me any bills or other documents which showed what was due on the account.
10. In this lawsuit, I understand that Pressler and Pressler did provide my attorney with a copy of 24 monthly statements dated from May 2008 to April 2010. Confirming what I suspected back when I received the collection complaint, all of the statements showed balances under eight thousand dollars.
11. Those 24 statements only show four charges: (a) \$2,104.95 at the Borgata in Atlantic City on August 26, 2008; (b) \$93.13 at the Target in Jersey City on November 2, 2008; (c) \$700.00 at Walmart in Kearney on June 21, 2009; and (d) \$350.00 at Best Buy in Union on November 16, 2009.
12. I have shopped at the Target in Jersey City, the Walmart in Kearney, and the Best Buy on Route 22 in Union but I have no recollection as to what I purchased in connection with those three specific charges. I do, however, remember taking a trip to the Borgata late in the summer of 2008 with my girlfriend (now my fiancé). I had forgotten to bring my ATM card on that trip and made some purchases for her and me as well as taking a cash advance used during that trip.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: September 30, 2013



DANIEL BOCK, JR.

Pressler and Pressler, LLP
7 Entin Rd.
Parsippany, NJ 07054-5020
(973)753-5100
Attorney for Plaintiff
File # B228739
MIDLAND FUNDING LLC

Plaintiff

vs.

DANIEL BOCK JR

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
Law Division
HUDSON Special Civil Part
Docket # DC-022331-11

Civil Action
COMPLAINT
(Contract)

Plaintiff having a principal place of business at: 8875 AERO DRIVE SUITE 200
SAN DIEGO, CA 92123 says:

1. It is now the owner of the defendant(s) HSBC BANK NEVADA, N.A. account number 5456001561298245 which is now in default. There is due the plaintiff from the defendant(s) DANIEL BOCK JR the sum of \$8,021.57 plus interest from 05/31/2010 to 10/20/2011 in the amount of \$102.98 for a total of \$8,124.55.

WHEREFORE, plaintiff demands judgment for the sum of \$8,124.55 plus accruing interest to the date of judgment plus costs.

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff(s)
By: S/Ralph Gulko

Ralph Gulko

PHILIP D. STERN ATTORNEY AT LAW, LLC
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>DANIEL BOCK, JR., Plaintiff,</p> <p>vs.</p> <p>PRESSLER AND PRESSLER, LLP, Defendant.</p>	<p>Case 2:11-cv-07593-KM-MCA</p> <p>DECLARATION OF PHILIP D. STERN, ESQ.</p>
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I, Philip D. Stern, declare:

1. I am Plaintiff's attorney in this action. I make this Declaration for the purpose of authenticating the documents attached to this Declaration and described below. These documents are offered in support of Plaintiff's Motion for Summary Judgment.
2. Plaintiff's Motion relies on documents marked P-1 through P-12. P-1 is attached to the Plaintiff's Declaration. I attached P-2 through P-12.
3. P-2 is a true copy of a screen print I made of the home page found at the URL, www.pressler-pressler.com which I access on January 12, 2013.
4. P-3 is a true copy of a screen print I made of the home page found at the URL, www.pressler-pressler.com which I access on September 21, 2013.
5. P-4 is a copy of an affidavit already on the docket in this action as E.D. 29 but is attached for the convenience of having the evidential documents together.
6. P-5 is a copy of the first page of the 24 monthly statements produced to my office by the Defendant in response to Plaintiff's discovery requests in this action for Defendant's collection file concerning the debt referenced in the *Collection Complaint* (P-1).
7. P-6 is an Affidavit of Tara Russo dated May 14, 2013 and supplied by Defendant

to my office in connection with discovery in this action.

8. P-7 is an Amended Affidavit of Tara Russo dated June 28, 2013 and supplied by Defendant to my office in connection with discovery in this action.
9. P-8 is an Affidavit of Ralph Gulko dated April 12, 2012.
10. P-9 is a copy of the transcript from Ralph Gulko's deposition taken on October 15, 2012.
11. P-10 is a copy of one exhibit from Ralph Gulko's deposition also marked at the deposition as P-10.
12. P-11 is a copy of another exhibit from Ralph Gulko's deposition marked at the deposition as P-16. I prepared P-16 as the text of New Jersey Court Rule 1:4-8 which I obtained from the website of the New Jersey Judiciary.
13. P-9, P-10 and P-11 relate to another action pending in this District, *Williams v. Pressler and Pressler, LLP*, Case 2:11-cv-07296. The instant action was pending at the time Mr. Gulko's deposition was scheduled in the *Williams* action and Defendant (through counsel, Mitchell L. Williamson, Esq.) proposed that, as Mr. Gulko's deposition related to claims similar to those raised in this action, the deposition cover Mr. Gulko's review and approval of collection complaints in general.
14. Last, P-12 is another document produced by Defendant in this action in response to the request for its collection file.
15. Gulko's deposition discussed, in part, a form complaint, P-10, filed in the Special Civil Part of the Superior Court of New Jersey. The *Collection Complaint* (P-1) filed against Plaintiff appears to be based on the same form or template and also filed in the Special Civil Part. Therefore, I provide the following to give context to the discussion Gulko's deposition.
16. The Special Civil Part is a branch of the civil division within the Superior Court of New Jersey. The Special Civil Part is within the Law Division of the Superior Court. The Law Division has a civil part and a criminal part and is the court of general jurisdiction. The Special Civil Part has limited jurisdiction to cases involving monetary claims up to \$15,000 exclusive of costs.
17. Unlike the rest of the Law Division, the Special Civil Part is set up for electronic filing. If a law firm's annual volume of cases exceeds a threshold set by the court,

it must use electronic filing. As for all others, electronic filing is optional.

18. Like the ECF system, an electronic filer may submit documents with a typed signature which has the same effect as if manually signed.
19. Although the dispute here concerns Defendant's conduct concerning its filing of the *Collection Complaint*, the exhibits reflect that Defendant files hundreds of collections complaints each day with Mr. Gulko reviewing all the complaints being filed in New Jersey and Pennsylvania except when he is on vacation. Therefore,

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: October 1, 2013

s/Philip D. Stern

PHILIP D. STERN

Pressler and Pressler, LLP

Counsellors at Law



7 Entin Rd, Parsippany, New Jersey 07054-5020

Specializing in Retail Collections Since 1930

Founded in 1930, Pressler and Pressler, LLP is managed by Sheldon H. Pressler who was admitted to the Bar in 1955. He was appointed by the Supreme Court to the Rules Committee for the Special Civil Part and served over 25 years. The Special Civil Part has jurisdiction up to \$15,000.00 where most retail collection matters are filed. He was also a member of the New Jersey State Bar Committee for the Special Civil Part. He has lectured for the New Jersey Institute for Continuing Legal Education (ICLE) on “How to Collect a Judgment”, “Collection Practice”, and “The FDCPA”. He is counsel for the New Jersey unit of the American Collection Association (ACA) and is President of the “New Jersey Creditors Bar Association” of the State of New Jersey

To serve its highly specialized practice, Pressler and Pressler, LLP is online with three (3) major credit bureaus. All real estate, lots, blocks, addresses, and assessments are online and computer checked with new claims. We have a full-time programming and networking staff to assist our various clients who are computer linked to allow immediate transfer of new claims, constant online availability of claim status, payments, etc.

Pressler and Pressler, LLP represents national credit card companies throughout the States of New Jersey and New York.



Our office was chosen as the beta site by the New Jersey Supreme Court to test and implement programs to computerize the communications and filings between litigants and the Courts. As a result, we now transmit all Complaints, Motions, and Executions electronically to the Court's computers. This has improved the response time in obtaining docket numbers, service dates, and other information from the Court.

Pressler and Pressler, LLP is very active in maintaining, supporting and opposing new legislation which affects the collection industry. We were responsible for rolling back the costs for docketing New Jersey judgments from a fee of \$25.00 to a more reasonable fee of \$5.00 [now \$10.00].

With over 300 employees and 19 attorneys, Pressler and Pressler, LLP provides a total retail collection environment including skip-tracing and asset location.

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Our Location: 7 Entin Rd, Parsippany, New Jersey 07054-5020

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information regarding Pressler's proprietary computer software system. For the reasons cited herein, Pressler seeks to seal these materials.

II. PRESSLER'S COMPUTER SYSTEM & METHODOLOGY IS ITS BUSINESS

5. Pressler is a law firm governed by the Rules Governing the Courts of the State of New Jersey ("NJ Ct Rules") and the Rules governing Professional Conduct (the "R.P.C.") promulgated by the New Jersey Supreme Court pursuant to the New Jersey Constitution, Article VI, section 2, paragraph 3 which confers upon the Court the exclusive rule making authority with respect to practice and procedure. See Winberry v Salisbury, 5 N.J. 240, 255 (1950) cert denied 340 U.S. 877 (1950)

6. Pressler is also subject to regulation under the Fair Debt Collection Practices Act ("FDCPA"), 15 USC § 1692 et seq. as well as all other federal and state laws governing or relating to the collection of retail debt from consumers. As an example, 15 USC §§ 1692b and 1692c(b) of the FDCPA restricts contacts with third parties and disclosure of information about debtors.

7. Pressler founded in 1930, has been collecting retail debt on behalf of clients since shortly after its inception. Pressler is the largest and oldest law firm specializing in retail debt collection in New Jersey.

8. Debt collection is a competitive business and as in most other businesses a computer system is a valuable tool developed by the law firm to aid in the collection of claims forwarded by its clients. Pressler was among the first firms in New Jersey to completely computerize its system and develop a unique in-house the proprietary collection software. Our system has been developed in-house over decades and our Information Technology Department consists of both software (programing) and hardware (maintenance of equipment) divisions. Pressler believes that its system gives it a competitive advantage over that of its competitors and for that reason seeks to protect its "inner workings" from publication of any sort. I am aware that at least one major corporation sought to purchase or license our collection software or otherwise partner with us, but that overture was rejected as Pressler wanted to keep its processes secret.

9. In addition to its computerized processes, Pressler has also developed over time a methodology as to its collection activities, the "secret sauce" as it were. Activities such as making phone calls and sending letters are subject to customization (when they are made, their frequency and the language used) depending on internal and external factors.

10. There are also litigation strategies utilized, normally protected by the attorney work product doctrine, but subject to discovery demands in the instant matter nonetheless which if produced need protection.

11. There are also communications normally protected by the attorney-client privilege which may be subject to discovery demands nonetheless which if produced need protection.

12. If as a result of the instant litigation, information as to the design, structure and inner workings of Pressler's computer system and/or its litigation strategies were to be disclosed to third parties there would be a great risk of serious injury to Pressler's business. Pressler's ability to compete with other law firms in the same space would be substantially compromised. Thus, Pressler's "trade secrets" would be lost if our competitors were able to gain access to this information.

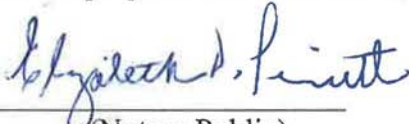
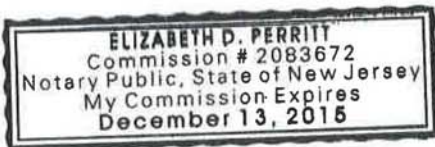
13. In addition Pressler has an obligation to protect the identities and privacy of debtors from whom we collect debts and judgments, including their addresses, social security numbers, account numbers and other protected data. If this information wasn't subject to being sealed, these debtors could be subject to identity theft due to the nature of the information sought and the public availability to it.

14. For the reasons cited herein, Pressler seeks judicial approval to keep the discovery materials discussed herein confidential.



Steven P. McCabe

Sworn to and subscribed before me
this 8th day of July, 2013
as his free and voluntary act and deed
for the purposes set forth above.


(Notary Public)

Account Number	New Balance	Minimum Payment Due	Payment Due Date	Estimated Finance Charge
5458 0015 6129 8245	\$4,530.99	\$91.00	07/15/2008	\$

Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR 914
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21287-1313

545800156129824500009100004530990

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Share your card benefits with your family! There are a lot of good reasons to give your whole family the convenience of additional credit cards. And here's another - you can get more cards for your account at no extra cost. To order additional cards call 1-800-379-7999 or log on to **ACCOUNTCENTRALONLINE.COM**

YOUR HSBC ACCOUNT SUMMARY

Statement Date	June 20, 2008
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$3,469.00
Cash Advance Credit Limit	\$4,000.00
Cash Advance Available Credit	\$3,469.00
Minimum Payment Due	\$91.00
Payment Due Date	July 15, 2008
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$4,586.02
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$100.00
Fees/Other	+\$0.00
Finance Charges	+\$44.97
New Balance	\$4,530.99

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
06/08	06/08	85458001-G012T0S8V	PAYMENT- THANK YOU TULSA OK	\$100.00		
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
06/20	06/20	-FINANCE CHARGE-	PURCHASES \$44.97 CASH ADVANCE \$0.00		\$44.97	

Personal Account Protection™

Personal Account Protection protects your Credit card account if you're unable to pay because of the following:

- You involuntarily lose your job
- You are a victim of Identity Theft
- You are unable to work due to a disability
- You get married, have a baby, get a new job, retire, get accepted to and enter a college program, move to or purchase a new home, celebrate a milestone birthday (20, 30, 40, etc.)
- You are displaced from your home
- An immediate family member is disabled or hospitalized
- You are called to Military Reserve/National Guard Duty
- You enter a skilled nursing facility
- You are unable to work due to an approved unpaid leave of absence
- You pass away and more...

Personal Account Protection provides you protection when you need it most.

Here's how it works:

For events such as disability, involuntary unemployment and hospitalization,

- No monthly credit card payments are due
- No periodic finance charges or interest due
- No late fees or overlimit fees are charged

Or, one minimum payment is cancelled for certain qualifying events, such as:

- Birth of a Child
- Marriage
- Major Birthday (20, 30, 40, etc.)
- Relocation
- And others, see disclosure for details

Lastly, your entire balance can be cancelled in the event of your death or prolonged disability/involuntary unemployment.

Protect your account today! Call **1-877-703-0918** or Visit www.personalaccountprotection.com today!

Your purchase of Personal Account Protection (PAP) is optional. Whether or not you purchase PAP will not affect your application for credit or the terms of any credit agreement you have with the bank. We will give you additional information before you are required to pay for PAP. There are eligibility requirements, conditions and exclusions that could prevent you from receiving benefits under PAP. You should read the terms and conditions for a full explanation of PAP.

Account #	New Balance	Minimum Payment Due	Payment Due Date	Account Class
5458 0015 6129 8245	\$4,479.89	\$94.00	08/17/2008	\$

Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR 914
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

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PO BOX 17313
BALTIMORE MD 21287-1313

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ACCOUNTCENTRALONLINE.COM

YOUR HSBC ACCOUNT SUMMARY

Statement Date	July 23, 2008
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$3,520.00
Cash Advance Credit Limit	\$4,000.00
Cash Advance Available Credit	\$3,520.00
Minimum Payment Due	\$94.00
Payment Due Date	August 17, 2008
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$4,530.99
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$100.00
Fees/Other	+\$0.00
Finance Charges	+\$48.90
New Balance	\$4,479.89

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
07/10	07/10	8545800JG014TFTT6	PAYMENT- THANK YOU TULSA OK		\$100.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
07/23	07/23	-FINANCE CHARGE-	PURCHASES \$48.90 CASH ADVANCE \$0.00			\$48.90

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Account Number	New Balance	Minimum Payment Due	Payment Due Date	Amount Due
5458 0015 6129 8245	\$6,591.45	\$146.00	10/17/2008	\$

Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

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15 NORTH ST APT 2
BAYONNE NJ 07002-1218

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YOUR HSBC ACCOUNT SUMMARY

Statement Date	September 22, 2008
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$1,408.00
Cash Advance Credit Limit	\$4,000.00
Cash Advance Available Credit	\$1,408.00
Minimum Payment Due	\$146.00
Payment Due Date	October 17, 2008
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$4,422.22
Purchases	+\$0.00
Cash Advances	+\$2,104.95
Payments & Other Credits	-\$100.00
Fees/Other	+\$0.00
Finance Charges	+\$164.28
New Balance	\$6,591.45

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
09/10	09/10	8545800LE01FT0H6E	PAYMENT- THANK YOU TULSA OK		\$100.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
08/26	08/26	0542562KZ00002XZW	GCA BORGATA HOTEL CAS ATLANTIC CITY NJ			\$2,104.95
08/26	08/26		CASH ADVANCE FEE			\$84.19
09/22	09/22		FINANCE CHARGE			\$60.09

5458 0015 6129 8245 DANIEL P BOCK JR 1 7 15 080922 0 PAGE 1 of 3 10 8800 1500 B479 01BN5994

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- Relocation
- And others, see disclosure for details

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Account #	New Balance	Minimum Payment Due	Payment Due Date	Due to Cardholder
5458 0015 6129 8245	\$6,523.25	\$148.00	11/17/2008	\$

Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR 914
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21287-1313

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Statement Date	October 23, 2008
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$1,476.00
Cash Advance Credit Limit	\$4,000.00
Cash Advance Available Credit	\$1,476.00
Minimum Payment Due	\$148.00
Payment Due Date	November 17, 2008
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,591.45
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$150.00
Fees/Other	+\$0.00
Finance Charges	+\$81.80
New Balance	\$6,523.25

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
10/11	10/11	8545800ME0108X9D0	PAYMENT- THANK YOU TULSA OK		\$150.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
10/23	10/23		FINANCE CHARGE PURCHASES \$44.49 CASH ADVANCE \$37.31			\$81.80

5458 0015 6129 8245 DANIEL P BOCK JR PAGE 1 of 3 10 8800 1500 B479 01BN5994
5994 T7G 1 7 15 081023 0

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- Relocation
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Account #	New Balance	Minimum Payment Due	Payment Due Date	Account Expires
5458 0015 6129 8245	\$6,542.43	\$142.00	12/16/2008	\$

Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

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15 NORTH ST APT 2
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Statement Date	November 21, 2008
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$1,457.00
Cash Advance Credit Limit	\$4,000.00
Cash Advance Available Credit	\$1,457.00
Minimum Payment Due	\$142.00
Payment Due Date	December 16, 2008
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,523.25
Purchases	+\$93.13
Cash Advances	+\$0.00
Payments & Other Credits	-\$150.00
Fees/Other	+\$0.00
Finance Charges	+\$76.05
New Balance	\$6,542.43

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
11/08	11/08	8545800NA0168ZJEZ	PAYMENT- THANK YOU TULSA OK		\$150.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
11/02	11/02	0541019N32LRE7MSZ	TARGET 00018861 JERSEY CITY NJ			\$93.13
11/21	11/21		FINANCE CHARGE PURCHASES \$41.94 CASH ADVANCE \$34.11			\$76.05

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Lastly, your entire balance can be cancelled in the event of your death or prolonged disability/involuntary unemployment.

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Your purchase of Personal Account Protection (PAP) is optional. Whether or not you purchase PAP will not affect your application for credit or the terms of any credit agreement you have with the bank. We will give you additional information before you are required to pay for PAP. There are eligibility requirements, conditions and exclusions that could prevent you from receiving benefits under PAP. You should read the terms and conditions for a full explanation of PAP.

Account Number	New Balance	Minimum Payment	Payment Due Date	Payment Due
5458 0015 6129 8245	\$6,473.58	\$146.00	01/16/2009	\$

Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR 914
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

PAYMENT CENTER
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BALTIMORE MD 21287-1313

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YOUR HSBC ACCOUNT SUMMARY

Statement Date	December 22, 2008
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$1,526.00
Cash Advance Credit Limit	\$4,000.00
Cash Advance Available Credit	\$1,526.00
Minimum Payment Due	\$146.00
Payment Due Date	January 16, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,542.43
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$150.00
Fees/Other	+\$0.00
Finance Charges	+\$81.15
New Balance	\$6,473.58

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
12/14	12/14	8545800PD013861AY	PAYMENT- THANK YOU TULSA OK		\$150.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
12/22	12/22	-FINANCE CHARGE-	PURCHASES \$44.71 CASH ADVANCE \$36.44			\$81.15

5458 0015 6129 8245 DANIEL P BOCK JR PAGE 1 of 3 10 8800 1500 B479 01BN5994
5994 T7G 1 7 15 081222 0

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- You involuntarily lose your job
- You are a victim of Identity Theft
- You are unable to work due to a disability
- You get married, have a baby, get a new job, retire, get accepted to and enter a college program, move to or purchase a new home, celebrate a milestone birthday (20, 30, 40, etc.)
- You are displaced from your home
- An immediate family member is disabled or hospitalized
- You are called to Military Reserve/National Guard Duty
- You enter a skilled nursing facility
- You are unable to work due to an approved unpaid leave of absence
- You pass away and more...

Personal Account Protection provides you protection when you need it most.

Here's how it works:

For events such as disability, involuntary unemployment and hospitalization,

- No monthly credit card payments are due
- No periodic finance charges or interest due
- No late fees or overlimit fees are charged

Or, one minimum payment is cancelled for certain qualifying events, such as:

- Birth of a Child
- Marriage
- Major Birthday (20, 30, 40, etc.)
- Relocation
- And others, see disclosure for details

Lastly, your entire balance can be cancelled in the event of your death or prolonged disability/involuntary unemployment.

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Account Number	New Balance	Minimum Payment	Payment Due Date	Payment Due
5458 0015 6129 8245	\$6,431.58	\$173.00	02/16/2009	\$

Do we have your current mailing and email address?
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Make check payable to: **HSBC Card Services**

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YOUR HSBC ACCOUNT SUMMARY

Statement Date	January 22, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$8,000.00
Total Available Credit	\$1,568.00
Cash Advance Credit Limit	\$2,000.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$173.00
Payment Due Date	February 16, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,473.58
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$150.00
Fees/Other	+\$0.00
Finance Charges	+\$108.00
New Balance	\$6,431.58

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
01/12	01/12	85458000Q00ZQZ6GV	PAYMENT- THANK YOU TULSA OK		\$150.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
01/22	01/22	-FINANCE CHARGE-	PURCHASES \$54.97 CASH ADVANCE \$53.03			\$108.00

5458 0015 6129 8245 DANIEL P BOCK JR 1 7 15 090122 0 PAGE 1 of 3 1 0 8800 1500 C095 01BN5994 5994 T7G

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- You are a victim of Identity Theft
- You are unable to work due to a disability
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- You are displaced from your home
- An immediate family member is disabled or hospitalized
- You are called to Military Reserve/National Guard Duty
- You enter a skilled nursing facility
- You are unable to work due to an approved unpaid leave of absence
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- Marriage
- Major Birthday (20, 30, 40, etc.)
- Relocation
- And others, see disclosure for details

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5458 0015 6129 8245	\$6,272.26	\$169.00	04/17/2009	\$
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Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

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15 NORTH ST APT 2
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ACCOUNTCENTRALONLINE.COM

YOUR HSBC ACCOUNT SUMMARY

Statement Date	March 23, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$577.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$169.00
Payment Due Date	April 17, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,331.57
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$165.00
Fees/Other	+\$0.00
Finance Charges	+\$105.69
New Balance	\$6,272.26

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
03/07	03/07	8545800230122ZSWE	PAYMENT- THANK YOU TULSA OK		\$165.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
03/23	03/23	-FINANCE CHARGE-	PURCHASES \$52.69 CASH ADVANCE \$53.00			\$105.69

5458 0015 6129 8245 DANIEL P BOCK JR 1 7 15 090323 0 PAGE 1 of 3 10 8800 1500 C095 01BN5994

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- You involuntarily lose your job
- You are a victim of Identity Theft
- You are unable to work due to a disability
- You get married, have a baby, get a new job, retire, get accepted to and enter a college program, move to or purchase a new home, celebrate a milestone birthday (20, 30, 40, etc.)
- You are displaced from your home
- An immediate family member is disabled or hospitalized
- You are called to Military Reserve/National Guard Duty
- You enter a skilled nursing facility
- You are unable to work due to an approved unpaid leave of absence
- You pass away and more...

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- No periodic finance charges or interest due
- No late fees or overlimit fees are charged

Or, one minimum payment is cancelled for certain qualifying events, such as:

- Birth of a Child
- Marriage
- Major Birthday (20, 30, 40, etc.)
- Relocation
- And others, see disclosure for details

Lastly, your entire balance can be cancelled in the event of your death or prolonged disability/involuntary unemployment.

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Account Number	New Balance	Minimum Payment Due	Payment Due Date	Payment Due
5458 0015 6129 8245	\$6,204.53	\$165.00	05/17/2009	\$

Do we have your current mailing and email address?
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BAYONNE NJ 07002-1218

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YOUR HSBC ACCOUNT SUMMARY

Statement Date	April 22, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$645.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$165.00
Payment Due Date	May 17, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,272.26
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$170.00
Fees/Other	+\$0.00
Finance Charges	+\$102.27
New Balance	\$6,204.53

Notice: See reverse side for important information.

YOUR TRANSACTIONS

PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
04/15	04/15	854580039011EJRLY	PAYMENT- THANK YOU TULSA OK		\$170.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
04/22	04/22	-FINANCE CHARGE-	PURCHASES \$50.60 CASH ADVANCE \$51.67			\$102.27

5458 0015 6129 8245 DANIEL P BOCK JR 1 7 15 090422 0 PAGE 1 of 3 1 0 8800 1500 C095 01BN5994 5994 T7G

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and
Secure

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5458 0015 6129 8245	\$6,048.59	\$168.00	07/17/2009	\$
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Do we have your current mailing and email address?
Please check and provide on the reverse side

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR
15 NORTH ST APT 2
BAYCREE NJ 07002-1218

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21287-1313

|||||00156129824500016800006048591

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ao.accountcentralonline.com

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YOUR HSBC ACCOUNT SUMMARY

Statement Date	June 22, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$101.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$168.00
Payment Due Date	July 17, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,101.99
Purchases	+\$0.00
Cash Advances	+\$0.00
Payments & Other Credits	-\$160.00
Fees/Other	+\$0.00
Finance Charges	+\$106.60
New Balance	\$6,048.59

Notice: See reverse side for important information.

YOUR TRANSACTIONS						
PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
06/11	06/11	8545800520115X1AR	PAYMENT- THANK YOU TULSA OK		\$160.00	
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description		(-) Credits	(+) Charges
06/22	06/22	-FINANCE CHARGE-	PURCHASES \$51.65 CASH ADVANCE \$54.95			\$106.60

5458 0015 6129 8245 DANIEL P BOCK JR 1 7 15 090622 0 PAGE 1 of 3 10 8800 1500 C095 01BN5994 5994 T7G

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Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$6,690.07	\$179.00	08/17/2009	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Do we have your current mailing and email address?
Please check and provide on the reverse side.

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

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PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21297-1313



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YOUR HSBC ACCOUNT SUMMARY	
Statement Date	July 23, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$159.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$179.00
Payment Due Date	August 17, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS	
Previous Balance	\$6,048.59
Purchases	+ \$700.00
Cash Advances	+ \$0.00
Payments & Other Credits	- \$170.00
Fees/Other	+ \$0.00
Finance Charges	+ \$111.48
New Balance	\$6,690.07

Notice: See reverse side for important information.

YOUR TRANSACTIONS						
PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
07/12	07/12	8545800610147J2VG	PAYMENT- THANK YOU TULSA OK	\$170.00		
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
06/21	06/23	05416015D43AW26VH	WAL-MART #5447 KEARNY NJ		\$700.00	
07/23	07/23	*FINANCE CHARGE*	PURCHASES \$58.20 CASH ADVANCE \$53.28		\$111.48	

Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$6,613.74	\$170.00	09/15/2009	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Do we have your current mailing and email address?
Please check and provide on the reverse side.

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Send Payment To:

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YOUR HSBC ACCOUNT SUMMARY	
Statement Date	August 21, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$236.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$170.00
Payment Due Date	September 15, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,690.07
Purchases	+ \$0.00
Cash Advances	+ \$0.00
Payments & Other Credits	- \$180.00
Fees/Other	+ \$0.00
Finance Charges	+ \$103.67
New Balance	\$6,613.74

Notice: See reverse side for important information.

YOUR TRANSACTIONS						
PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
08/13	08/13	854580071016Q7BG9	PAYMENT- THANK YOU TULSA OK	\$180.00		
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
08/21	08/21	*FINANCE CHARGE*	PURCHASES \$53.80 CASH ADVANCE \$49.87		\$103.67	

Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$6,557.34	\$180.00	10/17/2009	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

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YOUR HSBC ACCOUNT SUMMARY	
Statement Date	September 22, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$292.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$180.00
Payment Due Date	October 17, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,613.74
Purchases	+ \$0.00
Cash Advances	+ \$0.00
Payments & Other Credits	- \$170.00
Fees/Other	+ \$0.00
Finance Charges	+ \$113.60
New Balance	\$6,557.34

Notice: See reverse side for important information.

YOUR TRANSACTIONS						
PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
09/14	09/14	854580081012TQZB5	PAYMENT- THANK YOU TULSA OK	\$170.00		
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
09/22	09/22	*FINANCE CHARGE*	PURCHASES \$58.52 CASH ADVANCE \$55.08		\$113.60	

Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$6,483.12	\$171.00	11/16/2009	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Do we have your current mailing and email address?
Please check and provide on the reverse side.

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

914

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21297-1313



545800156129824500017100006483123

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ACCOUNTCENTRALONLINE.COM

YOUR HSBC ACCOUNT SUMMARY	
Statement Date	October 22, 2009
Account Number	5458 0015 6129 8245
Total Credit Limit	\$6,850.00
Total Available Credit	\$366.00
Cash Advance Credit Limit	\$1,713.00
Cash Advance Available Credit	\$0.00
Minimum Payment Due	\$171.00
Payment Due Date	November 16, 2009
Past Due Amount	\$0.00
Overlimit Amount	\$0.00

YOUR BALANCE DETAILS

Previous Balance	\$6,557.34
Purchases	+ \$0.00
Cash Advances	+ \$0.00
Payments & Other Credits	- \$180.00
Fees/Other	+ \$0.00
Finance Charges	+ \$105.78
New Balance	\$6,483.12

Notice: See reverse side for important information.

YOUR TRANSACTIONS						
PAYMENTS & CREDITS						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
10/15	10/15	8545800900127MBJQ	PAYMENT- THANK YOU TULSA OK	\$180.00		
PURCHASES, CASH ADVANCES, & FEES						
Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges	
10/22	10/22	*FINANCE CHARGE*	PURCHASES \$54.08 CASH ADVANCE \$51.70		\$105.78	

Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$6,974.95	\$344.00*	12/15/2009	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

*To avoid additional late and/or overlimit fees, you must pay \$344.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

Do we have your current mailing and email address?
Please check and provide on the reverse side.

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

914

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21297-1313



545800156129824500034400006974959

Detach and insert this top portion in the enclosed envelope. Be sure the Payment Center address shows in the envelope window.

5994 T7G 1 7 15 091120 0 X PAGE 1 of 3 1 0 8800 1500 C095 01BN5994



Pay your bill anytime at AccountCentralOnline.com

Online Account Access lets you take control of your Account anytime, anywhere. Registration is easy, secure and waiting for you at accountcentralonline.com

Share your card benefits with your family! There are a lot of good reasons to give your whole family the convenience of additional credit cards. And here's another - you can get more cards for your account at no extra cost. To order additional cards call 1-800-379-7999 or log on to

ACCOUNTCENTRALONLINE.COM

YOUR HSBC ACCOUNT SUMMARY

Statement DateNovember 20, 2009
 Account Number5458 0015 6129 8245
 Total Credit Limit\$6,850.00
 Total Available Credit-\$124.00
 Cash Advance Credit Limit\$1,713.00
 Cash Advance Available Credit\$0.00
 Minimum Payment Due\$344.00 *
 Payment Due DateDecember 15, 2009
 Past Due Amount\$171.00
 Overlimit Amount\$124.95

*To avoid additional late and/or overlimit fees, you must pay \$344.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

YOUR BALANCE DETAILS

Previous Balance \$6,483.12
 Purchases+ \$350.00
 Cash Advances+ \$0.00
 Payments & Other Credits - \$0.00
 Fees/Other+ \$39.00
 Finance Charges+ \$102.83
 New Balance \$6,974.95

Notice: See reverse side for important information.

IMPORTANT ACCOUNT INFORMATION

YOUR ACCOUNT IS PAST DUE. IF YOU HAVE ALREADY MAILED YOUR PAYMENT, THANK YOU. IF YOU HAVEN'T SENT YOUR PAYMENT, PLEASE PAY THE AMOUNT DUE TO AVOID POTENTIAL DAMAGE TO YOUR CREDIT.

YOUR TRANSACTIONS

PURCHASES, CASH ADVANCES, & FEES

Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges
11/16	11/16	0541019A08JS37K8K	BEST BUY MHT 00004721 UNION NJ		\$350.00
11/16	11/16		LATE FEE		\$39.00
11/20	11/20	*FINANCE CHARGE*	PURCHASES \$52.61 CASH ADVANCE \$50.22		\$102.83

Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$7,173.01	\$536.00*	01/16/2010	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

*To avoid additional late and/or overlimit fees, you must pay \$536.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

Do we have your current mailing and email address?
Please check and provide on the reverse side.

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

914

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21297-1313



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Detach and insert this top portion in the enclosed envelope. Be sure the Payment Center address shows in the envelope window.

5994 T7G 1 7 15 091222 0 X PAGE 1 of 3 1 0 8800 1500 T095 01BN5994



Pay your bill anytime at AccountCentralOnline.com

Online Account Access lets you take control of your Account anytime, anywhere. Registration is easy, secure and waiting for you at accountcentralonline.com

Share your card benefits with your family! There are a lot of good reasons to give your whole family the convenience of additional credit cards. And here's another - you can get more cards for your account at no extra cost. To order additional cards call 1-800-379-7999 or log on to

ACCOUNTCENTRALONLINE.COM

YOUR HSBC ACCOUNT SUMMARY

Statement DateDecember 22, 2009
 Account Number5458 0015 6129 8245
 Total Credit Limit\$6,850.00
 Total Available Credit-\$323.00
 Cash Advance Credit Limit\$1,713.00
 Cash Advance Available Credit\$0.00
 Minimum Payment Due\$536.00 *
 Payment Due DateJanuary 16, 2010
 Past Due Amount\$344.00
 Overlimit Amount\$323.01

*To avoid additional late and/or overlimit fees, you must pay \$536.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

YOUR BALANCE DETAILS

Previous Balance \$6,974.95
 Purchases + \$0.00
 Cash Advances + \$0.00
 Payments & Other Credits - \$0.00
 Fees/Other + \$78.00
 Finance Charges + \$120.06
 New Balance \$7,173.01

Notice: See reverse side for important information.

IMPORTANT ACCOUNT INFORMATION

Notice of Changes to Your Interest Rate

You have triggered the Default APR of 29.99%. This APR will vary with the market based on the Prime Rate. This change will impact your account as follows:

All existing and future transactions: As of 02/20/2010, the Default APR will apply to these transactions. Any existing promotional rates or plans will be cancelled and the Default APR will apply to these transactions as well. The Default Rate will continue to apply until you make six consecutive on-time minimum monthly payments.

YOUR ACCOUNT IS PAST DUE. IF YOU HAVE ALREADY MAILED YOUR PAYMENT, THANK YOU. IF YOU HAVEN'T SENT YOUR PAYMENT, PLEASE PAY THE AMOUNT DUE TO AVOID POTENTIAL DAMAGE TO YOUR CREDIT.

YOUR TRANSACTIONS

Account Number	Current Balance	Minimum Payment Due	Payment Due Date	Amount Enclosed
5458 0015 6129 8245	\$7,437.18	\$797.00*	02/16/2010	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

*To avoid additional late and/or overlimit fees, you must pay \$848.18 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

Do we have your current mailing and email address?
Please check and provide on the reverse side.

Make check payable to: **HSBC Card Services**

Send Payment To:

DANIEL P BOCK JR
15 NORTH ST APT 2
BAYONNE NJ 07002-1218

914

PAYMENT CENTER
PO BOX 17313
BALTIMORE MD 21297-1313



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Detach and insert this top portion in the enclosed envelope. Be sure the Payment Center address shows in the envelope window.

5994 T7G 1 7 15 100122 0 EX PAGE 1 of 3 1 0 8800 1500 T283 01BN5994



Pay your bill anytime at AccountCentralOnline.com

Due to the delinquent status of your account, your charging privileges have been revoked. Please destroy your card(s). Contact us toll free at 800-435-1415 to discuss your account.

YOUR HSBC ACCOUNT SUMMARY

Statement DateJanuary 22, 2010
 Account Number5458 0015 6129 8245
 Total Credit Limit\$6,850.00
 Total Available Credit\$0.00
 Cash Advance Credit Limit\$1,713.00
 Cash Advance Available Credit\$0.00
 Minimum Payment Due\$797.00 *
 Payment Due DateFebruary 16, 2010
 Past Due Amount\$536.00
 Overlimit Amount\$587.18

*To avoid additional late and/or overlimit fees, you must pay \$848.18 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

YOUR BALANCE DETAILS

Previous Balance \$7,173.01
 Purchases + \$0.00
 Cash Advances + \$0.00
 Payments & Other Credits - \$0.00
 Fees/Other + \$78.00
 Finance Charges + \$186.17
 New Balance \$7,437.18

Notice: See reverse side for important information.

IMPORTANT ACCOUNT INFORMATION

YOUR ACCOUNT IS SERIOUSLY PAST DUE. PLEASE PAY THE AMOUNT DUE IMMEDIATELY TO AVOID ADDITIONAL DAMAGE TO YOUR CREDIT. YOU MAY CONTACT AN ACCOUNT SPECIALIST AT 1-800-435-1415 TO CUSTOMIZE A REPAYMENT PLAN.

YOUR ACCOUNT IS CURRENTLY CLOSED.

YOUR TRANSACTIONS

PURCHASES, CASH ADVANCES, & FEES

Trans. Date	Post Date	Reference #	Description	(-) Credits	(+) Charges
12/23	12/23		OVERLIMIT FEE		\$39.00



SUMMARY OF ACCOUNT ACTIVITY				PAYMENT INFORMATION	
Previous Balance	\$7,437.18	Credit Limit	\$6,850.00	New Balance	\$7,568.38
Payments	- \$0.00	Credit Available	\$0.00	Minimum Payment Due	\$1,004.00
Other Credits	- \$0.00	Cash Limit V	\$1,713.00	Payment Due Date	03/17/2010
Purchases/Debits	+ \$0.00	Cash Available	\$0.00	Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a \$39 late fee and your APRs may be increased up to the Penalty APR of 29.99%.	
Cash Advances	+ \$0.00	Statement Closing Date	02/19/2010	Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:	
Past Due Amount	\$797.00	Days in Billing Cycle	28	If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...
Fees Charged	+ \$0.00			Only the minimum payment	26 Years
Interest Charged	+ \$131.20			\$293.00	3 Years
New Balance	\$7,568.38				\$10530.00 (Savings=\$10697.00)
Cash Limit is a portion of Total Credit Limit				If you would like information about credit counseling services, call 1-866-569-2227.	

Questions?
 Customer Service: 800-379-7999
 Lost/Stolen Card: 800-379-7999
 Outside USA Collect: 904-997-4997
 TDD/Hearing Impaired: 877-902-0967

Payment Address: Payment Center, PO Box 17313, Baltimore, MD 21297-1313
Billing Inquiries: Cardmember Services, PO Box 5250, Carol Stream, IL 60197-5250
Manage Your account online at www.AccountCentralOnline.com

IMPORTANT INFORMATION

YOUR ACCOUNT IS SERIOUSLY PAST DUE. PLEASE PAY THE AMOUNT DUE IMMEDIATELY TO AVOID ADDITIONAL DAMAGE TO YOUR CREDIT. YOU MAY CONTACT AN ACCOUNT SPECIALIST AT 1-800-435-1415 TO CUSTOMIZE A REPAYMENT PLAN.

YOUR ACCOUNT IS CURRENTLY CLOSED.

As a reminder, you may pay your credit card bill online or through our automated phone system for no fee.

Due to the delinquent status of your account, your charging privileges have been revoked. Please destroy your card(s). Contact us toll-free at 800-435-1415 to discuss your account.

TRANSACTIONS

Trans Date	Post Date	Description of Transaction or Credit	Reference Number	Amount
Fees				
TOTAL FEES FOR THIS PERIOD				\$0.00
Interest Charged				
02/19	02/19	Interest Charge on Purchases		\$79.01
02/19	02/19	Interest Charge on Cash Advances		\$52.19
TOTAL INTEREST FOR THIS PERIOD				\$131.20

2010 Totals Year to Date	
Total Fees charged in 2010	\$78.00
Total Interest charged in 2010	\$317.37

INTEREST CHARGE CALCULATION

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchase	19.99% (v)	\$5,153.17	\$79.01
Cash Advances	28.99% (v)	\$2,347.06	\$52.19
BALANCE TRANSFER	19.99% (v)	\$0.00	\$0.00

(v) = Variable

5994 DOH 1 7 15 100219 0 E X PAGE 1 of 1 1 0 8800 1500 C283 O1CR5994

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT.

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



*To avoid additional late and/or overlimit fees, you must pay \$1,004.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

Account Number: 5458 0015 6129 8245
New Balance \$7,568.38
Minimum Payment Due \$1,004.00 *
Payment Due Date 03/17/2010

Include account number on check to HSBC Card Services. Do not send cash. Please send your payment 7 to 10 days prior to the payment due date to ensure timely delivery.

AMOUNT ENCLOSED \$

DANIEL P BOCK JR
 15 NORTH ST APT 2
 BAYONNE NJ 07002-1218

914



PAYMENT CENTER
 PO BOX 17313
 BALTIMORE MD 21297-1313



New Address or Phone Number? Please check the box and enter your new information on reverse side



SUMMARY OF ACCOUNT ACTIVITY		PAYMENT INFORMATION	
Previous Balance	\$7,568.38	Credit Limit	\$6,850.00
Payments	- \$0.00	Credit Available	\$0.00
Other Credits	- \$0.00	Cash Limit V	\$1,713.00
Purchases/Debits	+ \$0.00	Cash Available	\$0.00
Cash Advances	+ \$0.00	Statement Closing Date	03/23/2010
Past Due Amount	\$1,004.00	Days in Billing Cycle	32
Fees Charged	+ \$0.00		
Interest Charged	+ \$152.88		
New Balance	\$7,721.26		

PAYMENT INFORMATION		
New Balance	\$7,721.26	
Minimum Payment Due	\$1,235.00	
Payment Due Date	04/17/2010	

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a \$39.00 late fee and your APRs may be increased up to the Penalty APR of 29.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	26 Years	\$21242.00
\$298.00	3 Years	\$10745.00 (Savings=\$10497.00)

If you would like information about credit counseling services, call 1-866-569-2227.

VCash Limit is a portion of Total Credit Limit

Questions?

Customer Service: 800-379-7999
 Lost/Stolen Card: 800-379-7999
 Outside USA Collect: 904-997-4997
 TDD/Hearing Impaired: 877-902-0967

Payment Address: Payment Center, PO Box 17313, Baltimore, MD 21297-1313
 Billing Inquiries: Cardmember Services, PO Box 5250, Carol Stream, IL 60197-5250
 Manage Your account online at www.AccountCentralOnline.com

Notice of Changes to Your Interest Rates

YOU HAVE TRIGGER THE PENALTY APR'S OF 29.990% % FOR PURCHASES AND 29.990% % FOR CASH. THIS APR WILL VARY WITH THE MARKET BASE ON THE PRIMERATE. THIS CHANGE WILL IMPACT YOUR ACCOUNT AS FOLLOWS: TRANSACTIONS MADE ON OR AFTER 04/06/10 : AS OF 05/24/10 , THE PENALTY APR WILL APPLY TO THESE TRANSACTIONS. WE MAY KEEP THE APR AT THIS LEVEL INDEFINITELY. TRANSACTION MADE BEFORE 04/06/10 : CURRENT RATES WILL CONTINUE TO APPLY TO THESE TRANSACTIONS. HOWEVER, IF YOU BECOME MORE THAN 60 DAYS LATE ON YOUR ACCOUNT, THE PENALTY APR WILL APPLY TO THOSE TRANSACTIONS AS WELL. REVISED TERMS AS OF 05/24/10

IMPORTANT INFORMATION

YOUR ACCOUNT IS SERIOUSLY PAST DUE. IT IS IMPERATIVE THAT YOU PAY THE AMOUNT DUE TO AVOID FURTHER DAMAGE TO YOUR CREDIT. YOU MAY CONTACT AN ACCOUNT SPECIALIST AT 1-800-435-1415 TO CUSTOMIZE A REPAYMENT PLAN.

YOUR ACCOUNT IS CURRENTLY CLOSED.
 As a reminder, you may pay your credit card bill online or through our automated phone system for no fee.

TRANSACTIONS				
Trans Date	Post Date	Description of Transaction or Credit	Reference Number	Amount
Fees				
TOTAL FEES FOR THIS PERIOD				\$0.00
Interest Charged				
03/23	03/23	Interest Charge on Purchases		\$91.80
03/23	03/23	Interest Charge on Cash Advances		\$61.08
TOTAL INTEREST FOR THIS PERIOD				\$152.88

2010 Totals Year to Date	
Total Fees charged in 2010	\$78.00
Total Interest charged in 2010	\$470.25

5994 DOH 1 7 15 100323 0 E X PAGE 1 of 3 1 0 8800 1500 C283 O1CR5994

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



*To avoid additional late and/or overlimit fees, you must pay \$1,235.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

Account Number: 5458 0015 6129 8245
 New Balance \$7,721.26
 Minimum Payment Due \$1,235.00 *
 Payment Due Date 04/17/2010

Include account number on check to HSBC Card Services. Do not send cash. Please send your payment 7 to 10 days prior to the payment due date to ensure timely delivery.

AMOUNT ENCLOSED \$

DANIEL P BOCK JR
 15 NORTH ST APT 2
 BAYONNE NJ 07002-1218

914



PAYMENT CENTER
 PO BOX 17313
 BALTIMORE MD 21297-1313



New Address or Phone Number? Please check the box and enter your new information on reverse side

545800156129824500123500007721267



DIRECT MERCHANTS BANK Account Statement
 Account Number 5458 0015 6129 8245
 March 23, 2010 to April 22, 2010

SUMMARY OF ACCOUNT ACTIVITY	
Previous Balance	\$7,721.26
Payments	- \$0.00
Other Credits	- \$0.00
Purchases/Debits	+ \$0.00
Cash Advances	+ \$0.00
Past Due Amount	\$1,235.00
Fees Charged	+ \$0.00
Interest Charged	+ \$146.21
New Balance	\$7,867.47

Cash Limit is a portion of Total Credit Limit

PAYMENT INFORMATION	
New Balance	\$7,867.47
Minimum Payment Due	\$1,460.00
Payment Due Date	05/17/2010

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a \$39.00 late fee and your APRs may be increased up to the Penalty APR of 29.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	25 Years	\$20055.00
\$304.00	3 Years	\$10950.00 (Savings=\$9105.00)

If you would like information about credit counseling services, call 1-866-569-2227.

Questions?
 Customer Service: 800-379-7999
 Lost/Stolen Card: 800-379-7999
 Outside USA Collect: 904-997-4997
 TDD/Hearing Impaired: 877-902-0967

Payment Address: Payment Center, PO Box 17313, Baltimore, MD 21297-1313
Billing Inquiries: Cardmember Services, PO Box 5250, Carol Stream, IL 60197-5250
Manage Your account online at www.AccountCentralOnline.com

IMPORTANT INFORMATION

YOUR ACCOUNT IS SERIOUSLY PAST DUE. IT IS IMPERATIVE THAT YOU PAY THE AMOUNT DUE TO AVOID FURTHER DAMAGE TO YOUR CREDIT. YOU MAY CONTACT AN ACCOUNT SPECIALIST AT 1-800-435-1415 TO CUSTOMIZE A REPAYMENT PLAN.

YOUR ACCOUNT IS CURRENTLY CLOSED.

As a reminder, you may pay your credit card bill online or through our automated phone system for no fee.

TRANSACTIONS				
Trans Date	Post Date	Description of Transaction or Credit	Reference Number	Amount
Fees				
TOTAL FEES FOR THIS PERIOD				\$0.00
Interest Charged				
04/22	04/22	PROTECTEDBALANCE CASH		\$58.68
04/22	04/22	PROTECTEDBALANCE PURCHASES		\$87.53
04/22	04/22	Interest Charge on Purchases		\$0.00
04/22	04/22	Interest Charge on Cash Advances		\$0.00
TOTAL INTEREST FOR THIS PERIOD				\$146.21

2010 Totals Year to Date	
Total Fees charged in 2010	\$78.00
Total Interest charged in 2010	\$616.46

INTEREST CHARGE CALCULATIONS			
Your Annual Percentage Rate (APR) is the annual interest rate on your account			
Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchase	19.99% (v)	\$0.00	\$87.53
Cash Advances	28.99% (v)	\$0.00	\$58.68
PROTECTEDBALANCE FOR CASH	28.99 (v)	\$2,463.51	\$58.68
PROTECTEDBALANCE FOR PURCHASE	19.99 (v)	\$5,328.17	\$87.53
PRTCTEDBAL FOR NO INTRST BAL	19.99 (v)	\$0.00	\$0.00

(v) = Variable

5994 DOH 1 7 15 100422 0 E X PAGE 1 of 1 1 0 8800 1500 C283 O1CR5994

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



*To avoid additional late and/or overlimit fees, you must pay \$1,460.00 (which includes the Minimum Payment Due and any Past Due and/or Overlimit Amounts).

Account Number: 5458 0015 6129 8245
New Balance \$7,867.47
Minimum Payment Due \$1,460.00 *
Payment Due Date 05/17/2010

Include account number on check to HSBC Card Services. Do not send cash. Please send your payment 7 to 10 days prior to the payment due date to ensure timely delivery.

AMOUNT ENCLOSED \$

DANIEL P BOCK JR
 15 NORTH ST APT 2
 BAYONNE NJ 07002-1218

914



PAYMENT CENTER
 PO BOX 17313
 BALTIMORE MD 21297-1313



New Address or Phone Number? Please check the box and enter your new information on reverse side

545800156129824500146000007867478

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

EXHIBIT P-6

===== :
:
NATALIE A. WILLIAMS and ALAN J., :
SETNESKA, individually and on behalf :
of all others similarly situated, :

:
Plaintiffs :

:
vs. :

:
PRESSLER & PRESSLER, LLP, :

:
Defendant :

===== :

2:11-cv-07296 (KM)(MCA)

**AFFIDAVIT OF
TARA RUSSO**

State of New Jersey:

: SS

County of Morris :

I, Tara Russo, of full age and under oath do state:

1. I am the Compliance Department Manager for Pressler & Pressler, LLP (“Pressler”) and am familiar with its books, records and recordkeeping procedures. I have been employed by Pressler since January 14, 2003 and have held my current position since approximately April 2007. I make this affidavit based on my personal knowledge and on a review of Pressler’s books and records. I am authorized to offer this Affidavit.

2. I was requested to ascertain the number of Summons and Complaints (“SACs”) Attorney Ralph X. Gulko, Esq. (“Gulko”) reviewed on October 21, 2011 and report how many were approved and how many were not approved on that date.

3. In order to make my review I caused Pressler’s IT department to retrieve the archived disks and create a list of all claims Gulko accessed on October 21, 2011.

4. Upon receipt of that computer list I was able to run the list and review all the files accessed by Gulko in the order they were accessed. My review of the individual files allowed me to see those where a SAC was reviewed and either approved or disapproved for filing with the Court.


5. Where the SAC were approved there was a notation in the file that it was electronically sent to the Court under Gulko's digital signature. There were 181 SAC's approved on October 21, 2011 by Gulko.

6. Where the SAC was not approved, the file bore a notation that it was rejected and not sent to the court. On October 21, 2011, 13 potential SACs were rejected.



Tara Russo

Sworn to and subscribed before me
this 14th day of May, 2013
as her free and voluntary act and deed
for the purposes set forth above.



(Notary Public)

STEVEN PUCCONE
ATTORNEY AT LAW
STATE OF NEW JERSEY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

EXHIBIT P-7

===== :
 DANIEL BOCK, Jr., :
 Plaintiff :
 vs. :
 PRESSLER & PRESSLER, LLP, :
 Defendant :
 ===== :

2:11-cv-07593 (KM)(MCA)
 AMENDED AFFIDAVIT OF
 TARA RUSSO

State of New Jersey: :
 : SS
 County of Morris :

I, Tara Russo, of full age and under oath do state:

1. I am the Compliance Department Manager for Pressler & Pressler, LLP (“Pressler”) and am familiar with its books, records and recordkeeping procedures. I have been employed by Pressler since January 14, 2003 and have held my current position since approximately April 2007. I make this affidavit based on my personal knowledge and on a review of Pressler’s books and records. I am authorized to offer this Affidavit.
2. Pursuant to a Superceding Order dated June 12, 2013 I was also asked to ascertain the amount of time Attorney Ralph X. Gulko, Esq. (“Gulko”) reviewed the complaint in the matter entitled Midland Funding LLC v. Daniel Bock, Jr., Docket no. DC-022331-11, filed on October 21, 2011.
3. While performing that search I noticed that while the complaint was filed with the court on October 21, 2011, Gulko actually reviewed it the prior day. (Depending on the time of day, a complaint may be electronically sent to court on the same day it is reviewed or the following morning.)
4. Previously I was requested to ascertain the number of Summons and Complaints (“SACs”) Attorney Ralph X. Gulko, Esq. (“Gulko”) reviewed on October 21, 2011 and report how many were approved and how many were not approved on that date. I therefore now amend my prior Affidavit (dated May 14, 2013) to provide the details for October 20, 2011.

5. In order to make my review I caused Pressler's IT department to retrieve the archived disks and create a list of all claims Gulko accessed on that date.

6. Upon receipt of that computer list I was able to run the list and review all the files accessed by Gulko in the order they were accessed. My review of the individual files allowed me to see those where a SAC was reviewed and either approved or disapproved for filing with the Court.

7. Where the SAC were approved there was a notation in the file that it was electronically sent to the Court under Gulko's digital signature. There were 663 SAC's approved on October 20, 2011 by Gulko.



8. Where the SAC was not approved, the file bore a notation that it was rejected and not sent to the court. On October 20, 2011, Gulko rejected 10 potential SACs.

9. Pursuant to my review of the records Gulko accessed the plaintiff's aforementioned electronic file for 4 seconds.



Tara Russo

Sworn to and subscribed before me
this 28th day of June, 2013
as his free and voluntary act and deed
for the purposes set forth above.



MARY LOU REGIT
Commission # 2314094
Notary Public, State of New Jersey
My Commission Expires
April 26, 2014

5. I review each proposed complaint in its entirety. I make sure all information contained in the Summons and Complaint ("SAC") is the same information that was received by the client. I also review the file notes on the account to ascertain whether there have been any changes in that information due to post-referral credits and/or address changes.

6. I further review the account to confirm all changes are current. If there are other accounts for the debtor I will check those claims and look at any documents related to that claim. I further check for any credit reports that have been obtained to confirm correct and updated information.

7. If documents are to be attached to the SAC, such as a medical bill, I review those to be sure the document(s) is(are) the correct one to use, and that all private information has been redacted.

8. Generally, the SAC must be correct in all respects in order to be approved. This includes name, address, county of venue, amount, the cause of action alleged in the body of the complaint, the statute of limitations, and anything else that would give me any cause or reason to reject the SAC.

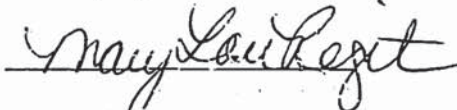
9. I look to see if there is any reason to reject it, such as an intervening bankruptcy filing. Even a late payment will cause me to reject it for purposes of redoing the SAC to reflect the new and now lower balance.

10. Finally if the SAC is "good" I approve it for filing. If I find what I perceive to be a "problem" I return it to the originating department for review with my reasons for rejection.



Ralph Gulko, Esq.

Sworn to and subscribed before me
this 2nd day of April, 2012
as his free and voluntary act and deed
for the purposes set forth above.



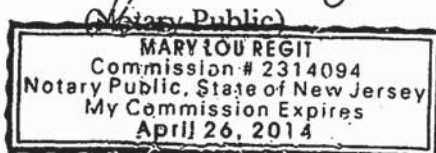


EXHIBIT P-9

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Action No. 2:11-cv-07296 (KSH) (PS)

NATALIE A. WILLIAMS and	:	
ALAN J. SETNESKA,	:	
individually and on	:	
behalf of all others	:	DEPOSITION OF:
similarly situated,	:	
	:	RALPH GULKO
Plaintiffs,	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLC,	:	
	:	
Defendant.	:	

T R A N S C R I P T of the
proceedings as taken stenographically by and before
ANN P. CONLON, a Notary Public and Certified Court
Reporter of the State of New Jersey, at the offices
of Pressler & Pressler, 7 Entin Road, Parsippany, New
Jersey, on Monday, October 15, 2012, commencing at
11:34 a.m.

ANN P. CONLON
Certified Court Reporter
12 Sneider Road
Warren, New Jersey 07059
(732) 748-8998
nancita@juno.com

1 A P P E A R A N C E S :

2

3

4 PHILIP D. STERN, ESQ.

5 697 Valley Street #2D

6 Maplewood, NJ 07040

7 908.379.7500

8 ATTORNEY FOR PLAINTIFFS

9

10

11 PRESSLER & PRESSLER

12 7 Entin Road

13 Parsippany, NJ 07054

14 973.753.5100

15 BY: MITCHELL L. WILLIAMSON, ESQ.

16 MICHAEL J. PETERS, ESQ.

17 ATTORNEYS FOR DEFENDANT

18

19

20

21 * * * * *

22

23

24

25

1 I N D E X

2

3 WITNESS: RALPH GULKO

4 EXAMINATION BY: PAGE

5 Mr. Stern 4

6

7

8 E X H I B I T S

9 (Exhibits P-9 through P-14 were marked
10 prior to the start of the deposition.)

11	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
12	P-9	Affidavit of Ralph Gulko	
13	P-10	Freeman Complaint	
14	P-11	unsigned Complaint	
15	P-12	Stipulation of Dismissal	
16	P-13	Stipulation of Dismissal	
17	P-14	Civil Action Complaint	
18	P-15	Court Rule 1:4-5	43
19	P-16	Court Rule 1:4-8	43

20

21

22

23 REQUESTS FOR DOCUMENTS/INFORMATION

24 PAGE - LINE

25 none

4

1 RALPH GULKO,
 2 having been duly sworn according
 3 to law, testified as follows:
 4
 5 EXAMINATION BY MR. STERN:
 6 Q. Good morning, Mr. Gulko. My name is
 7 Philip Stern and I'm representing Natalie Williams,
 8 formerly known as Natalie Freeman, and Alan Setneska
 9 with respect to a complaint that's been filed against
 10 Pressler & Pressler. Have you read the complaint or
 11 the amended complaint?
 12 A. No.
 13 Q. Do you have any understanding as to
 14 what the nature of the lawsuit is about?
 15 A. No.
 16 Q. What's your understanding of the
 17 reason why you're appearing this morning?
 18 A. **I don't know. You haven't asked me**
 19 **any questions yet.**
 20 Q. You have no idea what this is about?
 21 Is that what you're saying?
 22 A. **I've never reviewed the file, no.**
 23 Q. Do you have any understanding about
 24 what this proceeding is about?
 25 A. No.

5

1 Q. How did you find out that you would
 2 need to be here today?
 3 A. **Mr. Williamson notified me.**
 4 Q. And without telling me the substance
 5 of it, did you discuss with Mr. Williamson what the
 6 reason for your appearing here today would be?
 7 MR. WILLIAMSON: I'm going to let him
 8 answer, but you're real close to attorney-client
 9 privilege. I'll let him give a yes or no answer.
 10 A. **I'm sorry, I don't understand the**
 11 **question.**
 12 MR. STERN: Can you repeat the
 13 question, please?
 14 (The question is read by the reporter.)
 15 A. **I don't understand your question.**
 16 MR. WILLIAMSON: Object to form as
 17 well.
 18 Q. Did Mr. Williamson explain to you any
 19 reason why you would be appearing today?
 20 MR. WILLIAMSON: Objection. Answer it
 21 to the best of your ability.
 22 A. **I don't understand what you mean by**
 23 **"reason." I mean, I'm guessing at what you're asking**
 24 **me and I don't want to guess.**
 25 Q. Do you have any understanding about

6

1 why you're here today?
 2 A. **I'm being deposed.**
 3 Q. Do you have any idea as to what the
 4 subject matter of the deposition is intended to be?
 5 A. **It's my understanding that you are**
 6 **deposing me as a fact witness as to the work I do on**
 7 **behalf of this law firm.**
 8 Q. Are you admitted to practice law?
 9 A. **Yes.**
 10 Q. In what jurisdictions?
 11 A. **New Jersey, New York, and**
 12 **Pennsylvania.**
 13 Q. Where did you graduate law school?
 14 A. **Rutgers in Camden.**
 15 Q. Do you remember the year?
 16 A. **1978.**
 17 Q. Since that time, has your full-time
 18 employment been engaged in the private practice of
 19 law?
 20 A. **Yes.**
 21 Q. Can you run through chronologically
 22 where you've worked since you graduated law school?
 23 A. **I served a one-year clerkship for the**
 24 **Honorable Amos Saunders in Paterson, Superior Court**
 25 **of New Jersey. After the clerkship, I worked for the**

7

1 **law firm of Celentano & Stadtmauer in Clifton. Then**
 2 **I worked for the law firm of Eichenbaum, Cantowitz**
 3 **and Leff beginning in May of 1980. The firm became**
 4 **Eichenbaum, Kantrowitz, Leff & Gulko in 1986, and**
 5 **then seven years ago I withdrew from that law firm**
 6 **and associated myself with this law firm.**
 7 Q. Just so I'm clear, 2005 is when you
 8 started working with Pressler & Pressler?
 9 A. **Yes, August, 2005.**
 10 Q. Other than your license to practice
 11 law in the three states you mentioned, do you hold
 12 any vocational or professional licenses?
 13 A. **Other than the practice of law?**
 14 Q. Right, for those three states.
 15 A. **Well, there are federal court licenses**
 16 **in those states, but other than that, no.**
 17 Q. From the time you began working at
 18 Celentano & Stadtmauer, has your practice been
 19 primarily related to the collection of defaulted
 20 debts?
 21 A. **Yes.**
 22 Q. Has that been limited or focussed with
 23 respect to consumer debts or both consumer and
 24 commercial debts?
 25 A. **Both, but primarily consumers.**

8

1 **Q.** What was the position for which you
 2 were hired when you first came to Pressler &
 3 Pressler?
 4 **MR. WILLIAMSON:** Objection to form.
 5 You can answer.
 6 **A. I was hired as an associate attorney**
 7 **for the firm.**
 8 **Q.** Has your position changed since you
 9 began working at Pressler & Pressler?
 10 **A. No.**
 11 **Q.** Do you report to any other attorney in
 12 the office?
 13 **A. I am subject to the partners.**
 14 **Q.** Is there any particular individual who
 15 is your immediate supervisor?
 16 **A. I don't understand your question as to**
 17 **"immediate supervisor."**
 18 **Q.** Is there any one individual who has
 19 primary responsibility for overseeing your work?
 20 **A. I don't know about responsibility. I**
 21 **have at times spoken with all the partners. If**
 22 **there's one partner who you ask over the years do I**
 23 **speak with more about my work than other partners,**
 24 **that would be Mr. Felt, Gerald Felt.**
 25 **Q.** Who are the other partners?

9

1 **A. Mr. McCabe, Mr. McDermott and there's**
 2 **Mr. Pressler.**
 3 **Q.** Please describe the work that you
 4 perform currently for Pressler & Pressler.
 5 **A. Currently, my work consists of**
 6 **pleading and document review and approval.**
 7 **Q.** So would it be fair to say that your
 8 work is limited to cases that have been pending in
 9 court?
 10 **MR. WILLIAMSON:** Objection, form.
 11 **MR. STERN:** I'll withdraw the
 12 question.
 13 **Q.** Would it be fair to say that your work
 14 focuses on matters that are either being filed in
 15 court or have already been filed in court matters?
 16 **A. My work consists of whatever work is**
 17 **given to me by the firm to review.**
 18 **Q.** You said pleading and document review
 19 and approval. Do you recall that testimony?
 20 **A. Yes.**
 21 **Q.** Pleading and review obviously, by
 22 definition, pleading is referring to matters that are
 23 pending in court, correct?
 24 **A. Or about to be.**
 25 **Q.** Okay. And would document review

10

1 relate to matters that have not been or are not about
 2 to be filed in court?
 3 **A. About to be.**
 4 **Q.** Okay. So document review would
 5 include matters that are about to be filed?
 6 **A. Yes.**
 7 **Q.** With respect to the courts in which
 8 the matter is filed or about to be filed, are those
 9 courts courts of the state of New Jersey?
 10 **A. Yes, and Pennsylvania.**
 11 **Q.** And what about New York?
 12 **A. I do not presently do New York review.**
 13 **Q.** Can you estimate how much of your time
 14 is spent doing your work with respect to matters
 15 filed or about to be filed in New Jersey as opposed
 16 to matters that are filed or about to be filed in
 17 Pennsylvania?
 18 **A. The majority of my time is spent on**
 19 **New Jersey.**
 20 **Q.** Mr. Gulko, I'm showing you what's been
 21 marked as P-10. Do you know what P-10 is?
 22 **A. It appears to be a complaint that was**
 23 **filed by this office through JEFIS with the Hudson**
 24 **County Special Civil Part.**
 25 **Q.** Mr. Gulko, I'm showing you what's been

11

1 marked as P-11 and I'll represent to you that Mr.
 2 Williamson provided my office with P-11. Do you
 3 agree that P-10 and P-11 are substantially the same
 4 document?
 5 **A. It would appear so.**
 6 **Q.** If you want to, take a moment and
 7 review it, because I want to ask you about this. It
 8 appears the only difference that I've been able to
 9 see between the two is that there's a typed signature
 10 on P-10 and not on P-11. So I want to ask you about
 11 that in a moment, but I want to give you an
 12 opportunity to review it to see if there's any other
 13 differences.
 14 **A. Well, there are differences to the**
 15 **extent that this would appear -- this appears to me**
 16 **to be our -- P-11 appears to be our file copy and**
 17 **P-10 appears to be a copy of what was filed with the**
 18 **court. Because of the information received on the**
 19 **top and the file date as well as the docket number**
 20 **itself, this document appears to have come from the**
 21 **court and this is the document before it was sent to**
 22 **the court.**
 23 **Q.** And just for purposes of the record,
 24 the document that you said appears to have been
 25 recorded is P-10?

12

1 **A. P-10.**

2 **Q.** And the document you said is from your

3 files as your file copy is P-11?

4 **A. Yes.**

5 **Q.** Is P-11 a version of P-10 which

6 existed prior to P-10? I'll withdraw that.

7 Did P-11 come earlier than P-10 in

8 time?

9 **A. It would appear so, yes.**

10 **Q.** And is the reason why it appears so is

11 because P-10 has a signature on it, a typed

12 signature?

13 **A. No, that's not what makes me say that.**

14 **What makes me say that P-10 comes after P-11 is P-11**

15 **looks like what is created in our office, and P-10**

16 **looks like what is generated by the court after it's**

17 **filed and the docket number is assigned.**

18 **Q.** Okay. Is there a point in time after

19 P-11 was created when your typed signature was added

20 to the document?

21 **A. Documents such as P-10 are what we**

22 **call a Special Civil Part complaint. All Special**

23 **Civil Part complaints by court rule are**

24 **electronically filed through the JEFIS system.**

25 **Therefore, none of the complaints filed in the court**

13

1 **contain an ink signature. They are processed as an**

2 **"S/type name" because it is an electronic download to**

3 **the court pursuant to court regulations. That is why**

4 **it appears this way from the court.**

5 **Q.** Do you know who added the typed

6 signature to P-10?

7 MR. WILLIAMSON: Objection to form.

8 **A. I'm presuming our office did during,**

9 **you know, when it's sent to JEFIS.**

10 **Q.** I appreciate your explaining it

11 through the JEFIS system that the signatures are

12 typed. To your knowledge, is there a difference in

13 effect between a typed signature and a handwritten

14 signature with respect to the complaints that are

15 filed through JEFIS?

16 MR. WILLIAMSON: Objection, form. I

17 don't understand it, but if you understand it,

18 answer. Read it back, please.

19 (The question is read by the reporter.)

20 **A. I've already testified to you that all**

21 **complaints filed through JEFIS are electronic.**

22 **Therefore, there are no ink-signed signatures on a**

23 **JEFIS-filed complaint. Where I would sign in ink a**

24 **complaint would be in a Law Division complaint for**

25 **matters over 15,000. JEFIS is not used to file a**

14

1 **complaint.**

2 **Q.** Based upon the volume of cases that

3 your firm brings, Pressler & Pressler is obligated to

4 file Special Civil Part matters through the JEFIS

5 system, correct?

6 **A. Yes.**

7 **Q.** To your knowledge, does the Special

8 Civil Part accept complaints for filing that are not

9 filed through the JEFIS system?

10 **A. I wouldn't know what the court does.**

11 **Q.** Is there a difference in effect

12 between your handwritten signature on a Law Division

13 complaint and your typed signature on a JEFIS-filed

14 complaint?

15 **A. I don't understand what you mean by**

16 **"difference."**

17 **Q.** The typewritten signature, is the S/

18 signature on P-10 your signature?

19 **A. I don't understand your question.**

20 **Q.** Does the S/ typed signature on P-10

21 constitute your signature on that complaint?

22 **A. It is my understanding that the format**

23 **of the P-10 document is indicative upon the filing**

24 **through JEFIS of a signed complaint.**

25 MR. WILLIAMSON: Could we go off the

15

1 record for a second?

2 MR. STERN: Are you going to talk

3 about this?

4 MR. WILLIAMSON: Yes.

5 MR. STERN: Just have him step

6 outside.

7 (The witness leaves the room.)

8 MR. WILLIAMSON: It would appear to me

9 that this is like you and I, we have the right to

10 file electronically with the District Court. So I

11 think we're spending a lot of time --

12 MR. STERN: He's fighting with me --

13 MR. WILLIAMSON: Well, I don't --

14 MR. STERN: But I'm pretty sure he

15 admitted in the answer that the complaint was signed.

16 MR. WILLIAMSON: Right, in the same

17 sense that you and I --

18 MR. STERN: It doesn't bother me to

19 forecast this a little bit. What I want to get to is

20 the process, how it goes from P-11 to P-10.

21 MR. WILLIAMSON: That's fine.

22 MR. STERN: We'll get to that, but

23 first I need him to acknowledge that yes, he signed

24 the document.

25 MR. WILLIAMSON: Well, no, you keep

16

1 asking about signature. I think we're going to be
 2 here for another half hour. You need to sign up so
 3 that your typewritten -- your S/ constitutes --
 4 MR. STERN: Right, is your signature.
 5 MR. WILLIAMSON: Well, as a JEFIS
 6 filer, your S/ constitutes --
 7 MR. STERN: Okay.
 8 MR. WILLIAMSON: Just to cut to the
 9 chase.
 10 MR. STERN: Right, I don't want to
 11 belabor the point.
 12 (The witness re-enters the room.)
 13 **Q.** Mr. Gulko, are you a JEFIS filer?
 14 **A.** **The law firm is a JEFIS filer.**
 15 **Q.** So are you saying you are not a JEFIS
 16 filer?
 17 **A.** **I don't understand your question.**
 18 **Q.** All right. Do you have authority to
 19 file complaints through the JEFIS system?
 20 **A.** **I have authority to approve or**
 21 **disapprove complaints that are presented to me,**
 22 **which, if approved, are JEFISed, yes.**
 23 **Q.** Do you have an understanding as to
 24 what effect the typewritten S/ has on the complaint?
 25 **A.** **I don't understand your question.**

17

1 **Q.** Do complaints which you file require
 2 you to sign it?
 3 **A.** **In the computer, yes.**
 4 **Q.** What do you mean by in the computer?
 5 **A.** **I either approve it or don't approve**
 6 **it upon my review of the proposed complaint that's**
 7 **presented to me in my work. After I have reviewed it**
 8 **and if I am satisfied that the complaint should be**
 9 **filed in the manner that it's presented to me, I**
 10 **imprint GD for good in the computer and hit enter.**
 11 **If for any reason I don't want the**
 12 **complaint filed, I enter NG in the computer and hit**
 13 **enter and then the complaint is kicked back to**
 14 **wherever I want it to go for further action.**
 15 **Q.** Do complaints filed with the courts of
 16 the state of New Jersey require a signature of the
 17 attorney filing the complaint?
 18 **A.** **Could you repeat that question?**
 19 **Q.** Yes. Do complaints filed with the
 20 courts of the state of New Jersey require a signature
 21 of the attorney filing the complaint?
 22 **A.** **What do you mean by "signature"? I've**
 23 **already testified that in Law Division matters I sign**
 24 **the complaint in ink and that in Special Civil Part**
 25 **matters I approve the complaints which are**

18

1 **transmitted electronically through the JEFIS system,**
 2 **and that is why it appears as it does.**
 3 **Q.** Is your approval of a complaint
 4 different from your signing the complaint?
 5 **A.** **On the JEFIS matters? Is that your**
 6 **question?**
 7 **Q.** Yes, I'm asking with respect to the
 8 JEFIS matters.
 9 **A.** **When I approve a matter for Special**
 10 **Civil Part, once it is approved by me in the**
 11 **computer, it is JEFISed to whichever court I want it**
 12 **to be filed.**
 13 **Q.** I'm showing you what's been marked as
 14 P-14. Do you recognize P-14?
 15 **A.** **I see it.**
 16 **Q.** Do you recognize it?
 17 **A.** **It looks like a Law Division complaint**
 18 **prepared by this office.**
 19 **Q.** And does your signature appear on that
 20 complaint?
 21 **A.** **As an S slash.**
 22 **Q.** And to your knowledge, was that
 23 complaint filed in that form with the Superior Court
 24 of New Jersey?
 25 **A.** **Law Division complaints are filed in**

19

1 **multiple. There is what I would call the original**
 2 **complaint, which has my signature in ink, and then**
 3 **there's at least one copy filed with it which has the**
 4 **S/F to allow the court upon receipt of the complaint**
 5 **and the filing fee to stamp the court receipt date**
 6 **and the docket number. And then the S/ copy is**
 7 **returned to us and we use that copy to issue out a**
 8 **summons to the sheriff for service.**
 9 **Q.** Based upon the explanations you just
 10 gave about your practice, are you able to say with
 11 respect to P-14 that P-14 is the copy that you
 12 received back from the Superior Court?
 13 **A.** **Oh, I don't know that, because there's**
 14 **no court received date or docket number. If you're**
 15 **asking me what I think this is looking at the four**
 16 **corners of P-14, I would say much as I said in P-11,**
 17 **that this is our file copy of the complaint as it was**
 18 **prepared. Looking at P-14, I couldn't testify**
 19 **whether this document has been or ever was filed,**
 20 **because there's no file stamp and no docket number.**
 21 **Q.** Was there an original of the complaint
 22 represented by P-14 which contained your wet ink
 23 signature?
 24 **A.** **I've already testified to that, sir.**
 25 **Would you like me to repeat my testimony to you?**

20

1 **Q.** I don't mean to challenge you, but I
 2 believe you testified, what I thought you were
 3 talking about was your general practice with respect
 4 to Law Division complaints and explaining how there's
 5 one copy that's original with your signature and one
 6 copy that goes with a typed signature. Was that what
 7 you were saying was your prior answer to the
 8 question?

9 **A. Now I'm not following you.**

10 **Q.** Okay.

11 **A. Why don't you re-ask your question**
 12 **again. Maybe I'll understand you a second time**
 13 **around.**

14 **Q.** Do you know whether there is a
 15 complaint that is substantially identical to P-14 but
 16 which contains your handwritten signature?

17 **A. Looking at this, I can't say, because**
 18 **I would have to look at the file to see if I had**
 19 **approved this document and whether it was sent to the**
 20 **court and whether it was filed and whether a docket**
 21 **number was assigned to it. If all that were to be**
 22 **reflected in the file, then I would say that my prior**
 23 **answer was that P-14 would represent a file copy of**
 24 **an original that was filed with the court, which**
 25 **would have had my signature. But like I said,**

21

1 **looking at P-14 here now, I don't know.**

2 **Q.** Okay. So you said you would have to
 3 look at your file.

4 **A. Yes.**

5 **Q.** Is your file a physical file or is it
 6 an electronic file?

7 **A. Electronic.**

8 **Q.** Is that electronic file accessible to
 9 you from your office?

10 **A. Yes.**

11 **Q.** Is it accessible from other computers
 12 in the law firm?

13 **A. I assume so, yes. My understanding is**
 14 **yes.**

15 **Q.** Is there a file number, a Pressler &
 16 Pressler file number associated with P-14?

17 **A. Yes.**

18 **Q.** Is there a Pressler & Pressler file
 19 number associated with either P-10 or P-11?

20 **A. Yes.**

21 **Q.** Did you review either the file
 22 reflected in P-14 or the file reflected in P-11 in
 23 preparation for your deposition?

24 **A. No.**

25 MR. STERN: I have some questions, but

22

1 I think when we take a break for lunch I'm going to
 2 request that he review the files. He's here to
 3 testify about his knowledge about what he did in
 4 preparation of these complaints and it appears that
 5 he needs to review his files in order to be able to
 6 answer questions regarding that.

7 MR. WILLIAMSON: Well, I'm not so sure
 8 about that. I think if you're asking him about --
 9 it's my understanding you wanted to ask him what he
 10 generally does. If you're now limiting it to those
 11 specific two complaints only, what he's specifically
 12 done with regard to these two complaints in
 13 isolation, that's a different issue. So is that what
 14 you want?

15 MR. STERN: Well, your position with
 16 respect to this, I thought with respect to these
 17 issues generally is it doesn't matter what he does
 18 generally, what matters is what he did here. I think
 19 both issues are relevant. I don't think that we
 20 limited the scope of his -- certainly he was
 21 identified as a fact witness. I made a request for
 22 his deposition.

23 MR. WILLIAMSON: No, you requested his
 24 deposition. You didn't give details of what you
 25 wanted to ask him and I had to assume, based on other

23

1 arguments, that the idea was what is it he does
 2 before he files --

3 MR. STERN: I have no problem going
 4 into those areas. Those are areas that I'll need to
 5 go into, but if I'm going to ask him questions and
 6 he's going to say I don't know because I haven't
 7 looked at my file, and then we go to trial and he
 8 says now I've looked at the file and have all these
 9 other answers, I think that puts us at a
 10 disadvantage.

11 MR. WILLIAMSON: I think that if he
 12 recalls -- if he doesn't recall -- all right, I'll
 13 take it under advisement.

14 MR. STERN: I can certainly sit here
 15 and we can print out the case files that you provided
 16 to me and I can go through and have him do all of
 17 that. I think it's going to take many hours to do
 18 that unnecessarily rather than just have him review
 19 his files since we're here and he has access to them.

20 MR. WILLIAMSON: You want him to be
 21 able to testify what he did prior to approving --

22 MR. STERN: I'm not going to limit
 23 what I'm going to ask him about --

24 MR. WILLIAMSON: I'm going to tell you
 25 right now I'm going to have him review the files. As

24

1 a compromise, I'm going to have him review the files
 2 to the point that the complaint was filed, no
 3 further. That's it, he's not going to look at
 4 anything else and he's not going to testify about
 5 anything else.
 6 MR. STERN: But the fact that he's not
 7 able to testify as to whether the Setneska complaint,
 8 for example, was filed --
 9 MR. WILLIAMSON: Fair enough. I'll
 10 have him review the notes, the files, to the extent
 11 to the time when these two were filed.
 12 MR. STERN: Okay.
 13 MR. WILLIAMSON: And not beyond.
 14 MR. STERN: Okay. I assume we'll take
 15 a break at some point.
 16 (A discussion is held off the record.)
 17 BY MR. STERN:
 18 Q. Mr. Gulko, referring back again to
 19 P-14, is the inclusion of the typed signature with
 20 the S/ intended to represent that you had signed the
 21 complaint.
 22 A. **It is intended or was intended by me**
 23 **to be an additional copy to the original complaint**
 24 **that was signed by me. That would have been**
 25 **submitted to the court for filing and the assignment**

25

1 **of a docket number.**
 2 Q. Mr. Gulko, I'm showing you what's been
 3 marked as P-9. Do you recognize P-9?
 4 A. **It says it's an affidavit of Ralph**
 5 **Gulko, and on the second page it bears a signature**
 6 **that I recognize to be mine.**
 7 Q. Would you take a moment and read to
 8 yourself the affidavit? Let me know when you're
 9 done?
 10 Do you see on the second page there is
 11 a jurat?
 12 A. **Yes.**
 13 Q. That indicates that it was signed on
 14 the 2nd day of April, 2012?
 15 A. **Yes.**
 16 Q. Do you recall signing this affidavit
 17 on or about April 2nd, 2012?
 18 A. **I have no present recollection.**
 19 Q. Is there anything stated in the
 20 affidavit which you believe to be inaccurate?
 21 A. **No.**
 22 Q. Is there anything stated in the
 23 affidavit which you believe to be untrue?
 24 A. **No.**
 25 Q. Is there anything stated in the

26

1 affidavit which you would like to change today?
 2 A. **No.**
 3 Q. Refer, if you will, please, to
 4 paragraph number two in P-9.
 5 A. **Yes.**
 6 Q. Do you see that that refers to
 7 describing a first step with respect to new retail
 8 consumer collection claims?
 9 A. **Yes.**
 10 Q. Can you describe from the point in
 11 time that the initial notice letter goes out until
 12 the time that you would approve a complaint for
 13 filing, what happens with respect to the claim?
 14 A. **I don't see the file until the**
 15 **complaint is presented to me for approval or**
 16 **disapproval as stated in paragraph three, that step.**
 17 **The presentation of the proposed complaint is not**
 18 **presented to me until at least 35 days after the**
 19 **mailing of the initial notice letter.**
 20 Q. So you have no involvement with
 21 respect to the claim until a complaint is presented
 22 to you for approval?
 23 A. **That's correct.**
 24 Q. When a complaint is presented to you,
 25 it's already been prepared? Someone has drafted the

27

1 complaint, correct?
 2 A. **It's been prepared for my review, yes.**
 3 Q. Do you know who prepares the
 4 complaint?
 5 A. **Not personally, no.**
 6 Q. Are there individuals with designated
 7 job titles or job functions who have responsibility
 8 for preparing the complaints that are presented to
 9 you?
 10 A. **I don't know who the individuals are.**
 11 **There are departments that prepare this pursuant to**
 12 **forms that are within our computer system.**
 13 Q. Do you know if the complaints are
 14 prepared by an attorney at Pressler & Pressler?
 15 MR. WILLIAMSON: Objection, form.
 16 A. **I don't understand your question.**
 17 Q. How do you find out that a complaint
 18 has been prepared for your approval?
 19 MR. WILLIAMSON: Objection to form.
 20 You keep using the word "prepared." I'm not clear
 21 what that word means. I think that's the problem.
 22 Q. A complaint is presented to you for
 23 approval.
 24 A. **For review.**
 25 Q. For review. And either approval or

1 disapproval, correct?
 2 **A. Correct.**
 3 **Q.** How is the complaint created?
 4 MR. WILLIAMSON: Objection to form. I
 5 want to cut to the chase. Are you asking him how it
 6 gets drafted?
 7 MR. STERN: Drafted, prepared,
 8 created, whatever. How does it get to him in that
 9 form? He's presented with something he calls a
 10 complaint.
 11 MR. WILLIAMSON: I don't mean to speak
 12 for him, but I think he testified he's presented with
 13 a draft complaint.
 14 **Q.** Mr. Gulko, are you presented with a
 15 draft complaint?
 16 **A. Here is how my work is presented to**
 17 **me. Complaints are either Special Civil Part for**
 18 **purposes of being JEFISed upon approval or they're**
 19 **Law Division complaints for purposes of being signed**
 20 **and filed with the court manually.**
 21 **The Special Civil Part complaint, the**
 22 **daily work for my review comes in a computer printout**
 23 **of file number and case name. When I work it on my**
 24 **computer, the file is brought up on a double-screen**
 25 **computer. On the right side of the screen is the**

1 **collection program that contains all the information**
 2 **on the case that is pertinent for me to review, and**
 3 **on the left side of the screen is the actual document**
 4 **itself.**
 5 **For instance, P-11 is what I would**
 6 **actually see on the left side of my screen.**
 7 **Likewise, P-14 is what I would -- well, P-14 comes**
 8 **up, but since it's physically presented to me for**
 9 **signing, my eyes are on the paper document, but it**
 10 **does also come up because the computer pulls it up.**
 11 **Q.** Okay. So the left side is the
 12 document that you're reviewing.
 13 **A. Yes.**
 14 **Q.** The complaint. Do you know how that
 15 document is created?
 16 **A. At a point in time, a department**
 17 **responsible for creating that work creates it. The**
 18 **computer pulls the information, the variable**
 19 **information in what is, for the lack of a better**
 20 **form, a template computer complaint document. It**
 21 **merges it. The work then comes to me on a daily**
 22 **basis and I review it as to all aspects for approval**
 23 **or disapproval.**
 24 **Q.** In the course of what you do, you
 25 approve complaints that are prepared on behalf of New

1 Century Financial Services?
 2 **A. New Century Financial Services is a**
 3 **client that I recognize to be a client of this**
 4 **firm's, yes.**
 5 **Q.** On the right screen, you said there is
 6 information about the file?
 7 **A. Yes.**
 8 **Q.** Do you know how that information is
 9 entered into your system?
 10 **A. It is my understanding that we receive**
 11 **files both electronically and manually depending on**
 12 **the client. For New Century it would be electronic.**
 13 **The information is received electronically by the**
 14 **computer. It's set up. If it's a manual client, as**
 15 **would be typical in our medical and veterinary**
 16 **claims, we have a setup department where they take**
 17 **the information and they input it into the collection**
 18 **program that we use.**
 19 **Q.** We can limit ourselves to what happens
 20 with respect to New Century.
 21 **A. Mm-hmm.**
 22 **Q.** Okay?
 23 **A. Mm-hmm.**
 24 **Q.** I need a verbal response.
 25 **A. Yes.**

1 **Q.** Please correct me if I'm wrong. I
 2 believe you testified that you look at the document
 3 on the left screen and you look at pertinent
 4 information or relevant information for purposes of
 5 the complaint on the right screen. Is that a fair
 6 statement as to what you do?
 7 **A. Yes.**
 8 **Q.** When you're reviewing a complaint
 9 that's prepared for New Century, what information on
 10 that right screen are you looking for?
 11 **A. The initial screen, which is the**
 12 **computer program that I'm looking at, has the**
 13 **Pressler file number, the claim name of both the**
 14 **debtor and the plaintiff, the debtor's address, the**
 15 **debtor's Social Security number, the debtor's date of**
 16 **birth, the account number, the date of referral, the**
 17 **referral balance, the amount referred.**
 18 **There will be on the lower half of the**
 19 **screen what's called the note set, which will have**
 20 **information and a default pops up to the most recent.**
 21 **So therefore the note set information can vary as to**
 22 **what was last done on the case, last communications,**
 23 **whatever.**
 24 **The screen has the date of the initial**
 25 **demand letter. It will also have any payments that**

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1 **had come in after referral. That will show on the**
 2 **screen. It will flash if there was any bankruptcy**
 3 **filed or any claim of death. I mean, there's a lot**
 4 **of information and it's all on the screen in**
 5 **designated areas, the same information in the same**
 6 **place on the screen.**
 7 **Q.** You referred -- I want to make sure I
 8 say it right. Was it the collection software, is
 9 that what you said or the firm's software? How did
 10 you describe what system you're using that's on the
 11 right-hand side?
 12 **A. It's the firm's computer. I'm an**
 13 **attorney, I'm not an IT wonk, so I don't know what**
 14 **anybody else would call it. I call it our collection**
 15 **software, whatever it is that we use to receive**
 16 **claims and process them.**
 17 **Q.** Okay. Do you know if that collection
 18 software is something that's proprietary to the firm
 19 or is it something that's provided by some vendor?
 20 **A. I'm not really sure.**
 21 **Q.** Do you know how information regarding
 22 -- again, limiting ourselves to New Century
 23 matters -- do you know how the information that's
 24 populated into the collection software gets into the
 25 software?

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1 **A. Through electronic download transfer.**
 2 **Q.** From New Century to Pressler &
 3 Pressler?
 4 **MR. WILLIAMSON:** I'm going to object
 5 because he already testified he's not a computer guy.
 6 So now you're asking him how the computer works. I
 7 think it's inappropriate.
 8 **MR. STERN:** I asked him if he knows.
 9 I asked him if he knows how it gets there and he said
 10 from a download.
 11 **MR. WILLIAMSON:** Well, part of the
 12 problem, he's not a computer expert. So he can say
 13 anything and I don't want that to become -- based on
 14 the fact that he doesn't really know what he's
 15 talking about.
 16 **MR. STERN:** You can handle that on
 17 cross or if it's not the firm's policy, there's ways
 18 to correct that, but I can ask him what his
 19 understanding is. That's his understanding. That
 20 may or may not be binding on the firm.
 21 **MR. WILLIAMSON:** Well, it certainly
 22 isn't binding on the firm. He's here as an
 23 individual, not as a representative of the firm.
 24 **Q.** Do you know the term "placement
 25 information"?

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1 **A. In what regard?**
 2 **Q.** In regard to the collection of
 3 consumer debts.
 4 **A. Generally or in regard to New Century?**
 5 **Q.** Well, let's talk about New Century.
 6 **A. I'm not understanding your question.**
 7 **What do you want me to --**
 8 **Q.** I want to know if you understand the
 9 term. Do you know what's meant by "placement
 10 information"?
 11 **A. My understanding of the term**
 12 **"placement information" is the information that the**
 13 **client provides the law firm.**
 14 **Q.** When you review a complaint for New
 15 Century and you look at the information that's
 16 populated into the collection software, is that
 17 either all or part of the placement information from
 18 New Century?
 19 **A. It's my understanding that's where**
 20 **that information comes from, yes.**
 21 **Q.** Do you have an understanding as to how
 22 New Century obtained that information?
 23 **A. No, I do not know. I mean, they're a**
 24 **client. I'm not an employee of New Century, so I**
 25 **don't know.**

35

1 **Q.** With respect to medical claims, you
 2 talked about that there's a department that takes the
 3 information obtained from the clients and enters that
 4 into your computers, correct?
 5 **A. Sent, by way of example, in manual**
 6 **submissions.**
 7 **Q.** You say manual submissions. You mean
 8 submissions on paper?
 9 **A. Yes.**
 10 **Q.** Does New Century submit anything
 11 manually to Pressler & Pressler for collection?
 12 **A. I'm not aware one way or the other.**
 13 **I'm not involved in the receipt aspect of New Century**
 14 **claims.**
 15 **Q.** So then you don't know with respect to
 16 the information that you see on your screen whether
 17 the information comes either electronically or
 18 manually from New Century?
 19 **A. I don't know. It was my understanding**
 20 **it was electronic.**
 21 **Q.** What's the basis of your understanding
 22 that it comes in electronically?
 23 **A. From general knowledge and practice**
 24 **within the firm over the seven years. Also, a lot of**
 25 **manual files, that paper is scanned into a separate**

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1 **screen, so you can determine if a file is manual or**
 2 **electronic depending on the existence of scanned**
 3 **documents.**
 4 **Q.** Do you recall any instance where you
 5 reviewed a New Century complaint where there were
 6 scanned documents?
 7 **A. Some are, some aren't.**
 8 **Q.** With respect to New Century, when
 9 there are scanned documents, do you recall what those
 10 documents were? Either categorically or
 11 specifically?
 12 **A. It depends. It depends on the**
 13 **particular file that we get. Sometimes we get what's**
 14 **called the chain of ownership, because New Century is**
 15 **a debt buyer. So the documents that link back to the**
 16 **original creditor on the claim that we are now**
 17 **collecting on behalf of New Century, again, depending**
 18 **on the claim, there may be a monthly statement, there**
 19 **may be an application. After the initial demand**
 20 **letter there may be a letter response from the**
 21 **debtor, correspondence. It depends on the file.**
 22 **Q.** After you review a complaint and
 23 approve it, is there anything else that you do with
 24 respect to that claim?
 25 MR. WILLIAMSON: Objection.

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1 MR. STERN: I'll withdraw the
 2 question.
 3 **Q.** Do you do anything with respect to a
 4 claim after you have approved the complaint?
 5 MR. WILLIAMSON: Objection. Do you
 6 want me to expand?
 7 MR. STERN: Go ahead.
 8 MR. WILLIAMSON: I think Mr. Gulko
 9 reviews multiple complaints on any given day. So
 10 what he might do, I mean, it's pretty broad. Some
 11 accounts he may look at at a later date, some he may
 12 not. So you're asking --
 13 MR. STERN: Well, you're testifying
 14 for him.
 15 MR. WILLIAMSON: Well, I'm just
 16 pointing out that this is kind of like where are we
 17 going?
 18 MR. STERN: I just want to find out
 19 what his functions are beyond approving the
 20 complaint.
 21 MR. WILLIAMSON: If you ask him
 22 generally, I'm not going to object. If you're asking
 23 on a complaint, if you ask him in general.
 24 MR. STERN: In general what?
 25 MR. WILLIAMSON: Does he come to see

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1 accounts after he approves an account --
 2 MR. STERN: What is the difference if
 3 you do anything after you've approved the complaint?
 4 He's testified --
 5 MR. WILLIAMSON: Any complaint, not a
 6 complaint.
 7 MR. STERN: As a general matter, yes.
 8 **A. It depends on the history of the file.**
 9 **Some cases I see again, some I don't.**
 10 **Q.** What would be the basis why you would
 11 see a complaint in a case again versus not seeing it
 12 again?
 13 **A. I approve a complaint, such as P-10.**
 14 **Q.** Okay.
 15 **A. I approve a compliant for filing. The**
 16 **court serves it upon the debtor. The debtor goes to**
 17 **a licensed attorney such as yourself and says defend**
 18 **me. You'll pick up the phone, because my name is on**
 19 **the complaint, you'll phone me, you'll introduce**
 20 **yourself, you'll tell me what you want to do with the**
 21 **file, whether you had a meritorious defense, the**
 22 **defendant is in a financial problem, whether you want**
 23 **to do a settlement, whether you want to do a consent**
 24 **order, whatever, that's me seeing the case a second**
 25 **time because you were obtained by the debtor to call**

39

1 **me.**
 2 **Q.** For you to perform the functions that
 3 you've described, is it important that you have an
 4 understanding of the Fair Debt Collection Practices
 5 Act?
 6 **A. Yes.**
 7 **Q.** And is it important that you stay
 8 current with respect to any changes in that act or
 9 any court decisions concerning that act?
 10 **A. Yes.**
 11 **Q.** What do you do to stay current with
 12 respect to the Fair Debt Collection Practices Act?
 13 **A. This firm has regular attorney**
 14 **meetings at which changes are discussed and appellate**
 15 **Supreme Court cases are distributed and discussed.**
 16 **Q.** Anything else that you do with respect
 17 to staying current with the Fair Debt Collection
 18 Practices Act?
 19 **A. Well, if it should be one of the cases**
 20 **or one of the courses that I take, although by no**
 21 **means required, my professional continuing legal**
 22 **education can be satisfied through a course on that**
 23 **topic.**
 24 **Q.** Do you review periodicals with respect
 25 to the Fair Debt Collection Practices Act? On a

40

1 regular basis.

2 **A. I don't know what you mean by**

3 **periodicals.**

4 **Q.** Magazines, newspapers, newsletters.

5 **A. If I see them or if they're**

6 **distributed within the office.**

7 **Q.** So it's fair to say that your

8 information is going to come from either taking

9 continuing education or from information that gets

10 circulated in the office?

11 **A. Yes, which is done on a regular basis.**

12 **Q.** Okay. Do you feel for your job it's

13 important that you have an understanding of the New

14 Jersey court rules?

15 **A. Yes.**

16 **Q.** And it's important that you stay

17 current with respect to any changes with respect to

18 the New Jersey court rules?

19 **A. Yes.**

20 **Q.** And also with respect to the court

21 rules in Pennsylvania?

22 **A. Yes.**

23 **Q.** What do you do to stay current with

24 respect to the court rules in those states?

25 **A. Every year I receive a copy -- and**

41

1 **it's in my office as we speak -- of the current New**

2 **Jersey court rules and the current Pennsylvania court**

3 **rules.**

4 **Q.** And you review them after they come

5 in?

6 **A. As I need them.**

7 **Q.** And to do your job properly it's

8 important that you have an understanding of the rules

9 of evidence?

10 **A. Yes.**

11 **Q.** And is it important that you stay

12 current with respect to any changes or

13 interpretations with respect to New Jersey Rules of

14 Evidence?

15 MR. WILLIAMSON: Objection, form,

16 relevance.

17 MR. STERN: We'll get there. I think

18 it's clearly relevant or likely to lead. Are you

19 instructing him not to answer?

20 MR. WILLIAMSON: Whether he needs to

21 know the rules of evidence relating to the review of

22 the complaint?

23 MR. STERN: No, that's not what I

24 asked him, I asked him for him to do his job properly

25 here, which could include whatever that is. He

42

1 talked about a lot of things.

2 MR. WILLIAMSON: Well, if his job was

3 to take a case to trial, I would agree with you.

4 However, this case is not about whether he takes a

5 case to trial. This case is limited to what he does

6 in reviewing complaints. It's not about what he does

7 otherwise. It's not about when he does discovery

8 issues, if he does that. It's not about whether he

9 does any other types of things subsequent on any

10 other accounts. That's not what it's about. We're

11 going overboard.

12 MR. STERN: I don't think it's

13 overboard. I think it's clearly within the scope of

14 it and I think I can ask him whether he feels that he

15 needs to know the rules of evidence.

16 MR. WILLIAMSON: He answered that.

17 MR. STERN: I don't know, I think you

18 objected before he answered. You're not letting him

19 answer that question?

20 MR. WILLIAMSON: I think it's

21 irrelevant.

22 You know what? For the sake of moving

23 on, if you want to tell him what you think briefly,

24 tell him.

25 Please reread just that question.

43

1 (The question is read by the reporter.)

2 **A. Yes.**

3 **Q.** And can you describe what you do to

4 stay current?

5 MR. WILLIAMSON: Now I'm going to

6 object and direct him not to answer because I think

7 we're going -- it's just ridiculous.

8 MR. STERN: Okay.

9 MR. WILLIAMSON: Is this a good time

10 to take a break?

11 MR. STERN: Yes.

12

13 (A one-hour recess is taken at 12:42 p.m.)

14

15 (Exhibit P-15, Rule 1:4-5, is marked

16 for identification by the reporter.)

17 (Exhibit P-16, Rule 1:4-8, is marked

18 for identification by the reporter.)

19

20 BY MR. STERN:

21 **Q.** Mr. Gulko, during the break did you

22 get an opportunity to look at your firm's files with

23 respect to the two complaints that we looked at

24 earlier?

25 **A. Yes.**

44

1 **Q.** Is your recollection refreshed with
 2 respect to P-14 as to whether there was an original
 3 of that complaint that was filed with your original
 4 signature?
 5 **A. I wouldn't use the phrase**
 6 **"recollection refreshed." When I looked at the file**
 7 **during the break, I saw in what we call the V screen,**
 8 **which are scanned documents, I saw that this**
 9 **document, P-14, was scanned in with a court filed**
 10 **stamp and a docket number. That one also had the**
 11 **S/Ralph Gulko, which would comport with my earlier**
 12 **testimony that when a Law Division matter complaint**
 13 **is filed by this office, since it is a manual filing,**
 14 **I sign the first copy, the original copy and we send**
 15 **at least one more copy in for filing carrying the S/**
 16 **Ralph Gulko, so that the court will return to us a**
 17 **filed copy. The court always keeps the original**
 18 **signature copy of the complaint, and if you want to**
 19 **obtain a copy of that, I suggest you contact the**
 20 **clerk of the court.**
 21 **Q.** Okay. P-14 refers to a particular
 22 case, correct?
 23 **A. Claim I would call it, a particular**
 24 **claim.**
 25 **Q.** All right. And your review of the

45

1 file reflects that a civil action was commenced with
 2 respect to that claim, correct?
 3 **A. I reviewed the file up until the point**
 4 **of my involvement in it, and then I did another**
 5 **review to see if I had ever viewed this file or done**
 6 **anything on it after my involvement, which was**
 7 **approval of suit, and I did not have any involvement**
 8 **after the filing of the complaint.**
 9 **Q.** Okay. Are you okay if we refer to
 10 that matter as the Setneska matter? Is that a term
 11 you're okay with?
 12 **A. Yes. You can refer to it however you**
 13 **want.**
 14 **Q.** I want to make sure we're using the
 15 same terms. So I want to be clear. You approved the
 16 complaint in the Setneska matter?
 17 **A. For filing, yes, I did.**
 18 **Q.** And the other matter, we'll refer to
 19 that as the Freeman matter.
 20 **A. If you wish.**
 21 **Q.** You approved the complaint for filing
 22 in the Freeman matter?
 23 **A. Yes, I did.**
 24 **Q.** Was it the responsibility of any other
 25 attorney to approve the complaint for filing in

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1 either the Setneska matter or the Freeman matter?
 2 **A. I already testified that I did it.**
 3 **Q.** To your knowledge, no one else also
 4 approved it. Is that correct?
 5 **A. For the complaint?**
 6 **Q.** For the complaint.
 7 **A. No.**
 8 **Q.** Is it common practice that complaints
 9 that you approve for filing are not approved by
 10 anyone else?
 11 **A. I don't understand that question.**
 12 **Q.** Does someone else approve the same
 13 complaints that you approve?
 14 **A. Twice you mean?**
 15 **Q.** Yes.
 16 **A. No.**
 17 **Q.** So once you approve them, then the
 18 standard practice is that they're sent in for filing?
 19 **A. Yes.**
 20 **Q.** Either through the JEFIS or in a
 21 manual form if it's a Law Division matter?
 22 **A. Yes.**
 23 **Q.** I'm showing you what I've marked as
 24 P-15, and I'll represent to you that P-15 is a copy
 25 of one court rule which I obtained from West's, but

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1 take a moment and tell me if you're familiar with
 2 that rule.
 3 **A. It appears to be a copy of New Jersey**
 4 **Court Rule 1:4-5.**
 5 **Q.** Referring your attention to the last
 6 sentence, do you see there it says, "Every paper to
 7 be filed should bear the date on which it was
 8 signed"?
 9 **A. Yes.**
 10 **Q.** Are you aware as to whether the filed
 11 complaint in either the Setneska matter or the
 12 Freeman matter bears a date on which it was signed?
 13 **A. A view of P-14 and P-11 does not**
 14 **indicate a date.**
 15 **Q.** To your knowledge, is it your practice
 16 with respect to complaints that you approve that they
 17 bear a date on which they're signed?
 18 **A. I don't understand your question.**
 19 **Q.** It appears that these complaints do
 20 not bear a date on which it was signed. What I'm
 21 trying to find out is, is that common practice with
 22 respect to complaints filed or is this perhaps an
 23 aberration?
 24 **A. I would have no recollection.**
 25 **Q.** I have in my possession -- and I can

1 mark them -- a bunch of complaints, I don't know how
2 many exactly, that appear to have your signature.
3 And I represent to you that none of them are dated,
4 and I can go through showing them to you --

5 MR. WILLIAMSON: Phil, is there any
6 point to that?

7 MR. STERN: Yes.

8 MR. WILLIAMSON: What's the point,
9 that you're going to allege that there was a
10 violation of the court rule that it was signed, that
11 there's no date on it?

12 MR. STERN: Is there an allegation?
13 No, I'm just trying to find out --

14 MR. WILLIAMSON: No, when you say
15 you're just trying to find out, I think you're just
16 going to waste time. If you have documents that you
17 want to know if -- and as to their authenticity, the
18 document is the document. If there's a date on it,
19 there's a date on it. If there's not, there's not.

20 Q. Mr. Gulko, do you know what date you
21 approved the Freeman complaint?

22 A. **I could if I went into the computer
23 screen, yes.**

24 Q. Do you know the date on which you
25 signed the Setneska complaint?

1 A. **If I were to go into the computer
2 screen, yes.**

3 Q. When you sign complaints, handwritten
4 signatures for Law Division matters, is it your
5 practice to include the date on which you signed it
6 on the complaint?

7 A. **I don't prepare the complaint. I
8 review the complaint.**

9 Q. In Law Division cases?

10 A. **In all cases.**

11 Q. But you personally sign your name to
12 Law Division complaints.

13 A. **That are approved, yes.**

14 Q. That you approve?

15 A. **Yes, that I approve.**

16 Q. In those situations where it's a Law
17 Division complaint that you approve that you are
18 signing, is it your practice to include the date on
19 which you signed the complaint and include that date
20 on the complaint?

21 A. **It's not something I would have
22 recalled.**

23 Q. And do you recall when you review
24 complaints to be filed with JEFIS that they include
25 the date on which you either approve or that your

1 typed signature is added to the complaint?

2 A. **It's not something that I would recall
3 having looked for.**

4 Q. I'm showing you what's been marked as
5 P-16. Do you know what P-16 is?

6 A. **It purports to be New Jersey Court
7 Rule 1:4-8.**

8 Q. Do you recall ever reviewing rule
9 1:4-8 prior to today?

10 A. **I've read it in my lifetime, yes.**

11 Q. Referring to paragraph A and the first
12 sentence, it says, "The signature of an attorney or
13 pro se party constitutes a certificate that the
14 signatory has read the pleading, written motion or
15 other paper."

16 Is it your understanding that by
17 signing a complaint that you have certified that you
18 read the complaint?

19 A. **Yes, and I have.**

20 Q. Going to the next sentence, which we
21 can go through but I'd have to break it down because
22 it's a rather lengthy sentence, it says, "By signing,
23 filing or advocating a pleading, written motion or
24 other paper, an attorney or pro se party certifies to
25 the best of his or her knowledge information and

1 belief formed after an inquiry reasonable under the
2 circumstances," and then there are four numbered
3 items and I'd like you to focus on number three.

4 "The factual allegations have
5 evidentiary support or as to specifically identify
6 the allegations, they're either likely to have
7 evidentiary support or they will be withdrawn or
8 corrected if reasonable opportunity for further
9 investigation or discovery indicates insufficient
10 evidentiary support."

11 Have you read the provisions that I
12 just read out loud prior to today?

13 A. **Yes, I previously testified that I
14 have read this rule before.**

15 Q. Okay. Is it your understanding that
16 -- let's go back. I want to get this very clear for
17 the record.

18 MR. WILLIAMSON: I'm also going to get
19 clear that this is what it's been alleged that you
20 haven't done in the filing of this complaint, because
21 you're now sitting here trying to find out if there
22 is any evidentiary support. You filed the complaint
23 without any evidentiary support other than your own
24 personal supposition.

25 MR. STERN: Is there an objection?

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1 MR. WILLIAMSON: Yes, I'm going to
 2 object depending where we go with this. He's
 3 admitted that he's read it. The rule is the rule.
 4 MR. STERN: You are free to make any
 5 application for sanctions against --
 6 MR. WILLIAMSON: You're badgering him.
 7 MR. STERN: I'm not badgering him.
 8 There's no objection being stated. There's actually
 9 no question pending for you to object to and there
 10 shouldn't be speaking objections.
 11 Q. With respect to complaints filed
 12 through JEFIS which bears the typewritten signature
 13 of S/Ralph Gulko, does the typewritten signature get
 14 included before or after you have approved the
 15 complaint?
 16 MR. WILLIAMSON: Objection, asked and
 17 answered. You can answer.
 18 A. **It's my understanding that after I**
 19 **approve a complaint and the document is JEFISed, the**
 20 **document is JEFISed in the form that is reflected in**
 21 **P-10, which has the S/Ralph Gulko.**
 22 Q. Do you personally type in the S/Ralph
 23 Gulko on those approved complaints?
 24 A. **No.**
 25 Q. Do you know whether a typist does it

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1 or whether the system automatically includes it?
 2 A. **I have no personal knowledge. I can**
 3 **hazard a guess.**
 4 MR. WILLIAMSON: You're not here to
 5 guess.
 6 Q. Is it your intent that when you
 7 approve a complaint for filing via JEFIS that the
 8 typed signature be added to the complaint?
 9 MR. WILLIAMSON: Could you read that
 10 back, please?
 11 (The question is read by the reporter.)
 12 A. **I don't understand your question.**
 13 Q. Does your approval of the complaint
 14 include your authorization that your typed signature
 15 be added to the complaint?
 16 A. **I'm unclear what you mean by the use**
 17 **of the word "authorization."**
 18 Q. Permission.
 19 A. **I don't even know what you mean by**
 20 **that. I've previously testified this morning that**
 21 **when a complaint is presented to me for approval,**
 22 **since it is a computer-generated document to be**
 23 **electronically transferred to the court by JEFIS,**
 24 **that if I approve it, I enter GD for good and hit**
 25 **enter, and then the JEFIS department JEFISes the**

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1 **document in the manner that it does.**
 2 **I don't know what you want me to say,**
 3 **what my entry of GD enter button, what that**
 4 **represents to you beyond approving of the complaint**
 5 **for filing with the court.**
 6 Q. You know that once you approve the
 7 complaint for filing that the typed signature will be
 8 added to the complaint, correct?
 9 A. **I have an awareness of that, yes.**
 10 Q. Do you have an objection to Pressler &
 11 Pressler typing your name as the signature after you
 12 have approved a complaint for filing via JEFIS?
 13 A. **I have no objection.**
 14 Q. Does Pressler & Pressler have your
 15 permission to type that signature on the complaint?
 16 A. **I don't know what you mean by**
 17 **permission.**
 18 Q. Is it okay with you that Pressler &
 19 Pressler adds your typed signature to the complaints
 20 you have approved for JEFIS filing?
 21 A. **If I have approved the complaint**
 22 **within the computer by the entry of the characters GD**
 23 **and the enter button, then I have done so with the**
 24 **intent and purpose that the complaint be filed, and**
 25 **if it's in Special Civil Part that it be JEFISed.**

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1 **Since, in my prior testimony, an**
 2 **electronic transfer of a complaint by JEFIS does not**
 3 **have an inked signature, it is my understanding that**
 4 **as in P-14, that the S/Ralph Gulko is tantamount to**
 5 **signing the complaint at the time of filing with the**
 6 **court.**
 7 Q. Okay.
 8 A. **I don't know what else you're trying**
 9 **to ask me.**
 10 Q. So the typed signature is tantamount
 11 to your having signed the complaint, correct?
 12 A. **After I have approved it, yes.**
 13 Q. Understood, it's after you have
 14 approved it.
 15 So would you agree that your
 16 understanding of Court Rule 1:4-8 applies to the
 17 complaints that you have approved for filing via
 18 JEFIS?
 19 MR. WILLIAMSON: Objection, asked and
 20 answered I think three times now.
 21 A. **I don't understand your question.**
 22 Q. Do you understand that Rule 1:4-8A
 23 applies to complaints signed by attorneys and filed
 24 with the court?
 25 A. **That is my understanding.**

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1 **Q.** Therefore, is it your understanding
 2 that Rule 1:4-8A applies to the complaints which you
 3 have approved for filing?
 4 **A.** **If there were an independent factual**
 5 **basis to support the application of 1:4-8, then yes.**
 6 **Q.** What factual basis would apply to
 7 1:4-8?
 8 **A.** **As to whether any of the items of the**
 9 **court rule have been violated.**
 10 **Q.** I'm not asking whether it's been
 11 violated. My question is, is it your understanding
 12 that the rule applies to the filing of the complaint
 13 that you have approved and that contains either your
 14 handwritten signature or the typewritten signature
 15 which you said is tantamount to your signature?
 16 **A.** **The entire rules of court apply to the**
 17 **documents that are filed with the court.**
 18 **Q.** Okay.
 19 **A.** **Rule 1:4-8 is just one.**
 20 **Q.** When you approved the complaint in the
 21 Freeman matter, did you have an understanding as to
 22 whether the factual allegations in the complaint had
 23 evidentiary support?
 24 MR. WILLIAMSON: Objection. You've
 25 got to read the whole rule. I don't see how reading

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1 half the rule or a word at a time is relevant.
 2 MR. STERN: I'm not reading from the
 3 rule. I asked him a question. I didn't ask him a
 4 question about the rule.
 5 Can you read the question back,
 6 please?
 7 (The question is read by the reporter.)
 8 MR. WILLIAMSON: Objection. What
 9 time? If you're going to parse the rule, you're
 10 asking him specifically one aspect of that rule, of
 11 that paragraph.
 12 MR. STERN: You said when?
 13 MR. WILLIAMSON: You're asking him as
 14 to one aspect of that paragraph.
 15 MR. STERN: I didn't ask him anything
 16 about the rule.
 17 MR. WILLIAMSON: You did. It says
 18 here, "Factual allegations have evidentiary support."
 19 You asked him if the factual allegations had
 20 evidentiary support. You didn't ask him the rest as
 21 it goes on "or they're likely to have evidentiary
 22 support."
 23 MR. STERN: Okay.
 24 MR. WILLIAMSON: The rule is much more
 25 broad than what you're making it out to be.

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1 MR. STERN: Fine.
 2 **Q.** Mr. Gulko, do you understand what your
 3 counsel is arguing?
 4 **A.** **Yes.**
 5 **Q.** In other words, that paragraph A-3 has
 6 a disjunctive?
 7 **A.** **I've read the rule.**
 8 **Q.** Okay. Well, your point, the point
 9 from counsel is that it has a disjunctive, it's the
 10 factual allegation or, and then it goes on.
 11 MR. WILLIAMSON: Ask him if what he
 12 did complies with the rule as it's written.
 13 MR. STERN: No.
 14 MR. WILLIAMSON: You want to ask him
 15 something totally different.
 16 MR. STERN: No. I'm asking you, I
 17 think your point is that Rule A-3 has two different
 18 components written in the disjunctive.
 19 MR. WILLIAMSON: Two different
 20 components and it also allows for subsequent action,
 21 as I understand it, subsequent to the filing.
 22 MR. STERN: A-3?
 23 MR. WILLIAMSON: Yes, A-3.
 24 MR. STERN: As to the disjunctive,
 25 there's two parts.

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1 MR. WILLIAMSON: Correct.
 2 MR. STERN: Fine, I'm asking him is
 3 that his understanding that it has two parts.
 4 **Q.** Mr. Gulko, do you agree with your
 5 counsel's description of paragraph A-3 in Rule 1:4-8
 6 that it has two parts in the disjunctive?
 7 **A.** **Yes.**
 8 **Q.** Can we agree that one part says the
 9 factual allegations have evidentiary support?
 10 Correct?
 11 **A.** **The rule is what the rule says.**
 12 **You're reading it. You don't need me to say that's**
 13 **what it says.**
 14 **Q.** I'm trying to find out what your
 15 understanding is.
 16 MR. WILLIAMSON: He's not here to give
 17 a legal conclusion.
 18 MR. STERN: I'm not asking for a legal
 19 conclusion, I'm asking for his understanding.
 20 MR. WILLIAMSON: His understanding as
 21 to what? As a layman, as a lawyer, as what? If
 22 you're asking for his understanding as a lawyer, then
 23 he is giving you -- you're asking him for a legal
 24 interpretation.
 25 MR. STERN: No, I'm not asking for a

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1 legal interpretation, I'm asking for his
 2 understanding. He may have an understanding based on
 3 the fact that he's a lawyer, but he's here to testify
 4 about what he does. He's already testified that
 5 certain information he takes into account when he
 6 performs his duties.
 7 MR. WILLIAMSON: Right, that's
 8 factual.
 9 MR. STERN: So I'm asking him about --
 10 MR. WILLIAMSON: And he's testified
 11 that he's read the rule, he understands the rule and
 12 he complies with the rule.
 13 MR. STERN: Fine. Now I want to ask
 14 him specifics about that.
 15 MR. WILLIAMSON: Now we're into
 16 argument. What he understands the rule to mean.
 17 MR. STERN: I can say, for example,
 18 that, you know what, that I'm a really ey man as an
 19 example, all right? But that doesn't bar you, if the
 20 issue is am I a wealthy man into going into specifics
 21 as to what assets I have and what they're worth, all
 22 right? So the same thing applies here. Him saying a
 23 flat statement of "I comply with the rules" does not
 24 bar me -- excuse me I'm not done -- does not bar me
 25 from asking specifics to inquire as to his general

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1 statement.
 2 MR. WILLIAMSON: Yes, and he's
 3 testified what he does. If you want to argue at a
 4 later date that what he does does not comply with the
 5 rule --
 6 MR. STERN: I don't know that I've
 7 covered everything so I --
 8 MR. WILLIAMSON: Knock yourself out,
 9 that's fine. I'm saying that's the factual. If
 10 you're asking --
 11 MR. STERN: I want to end the argument
 12 because I want to ask the question. Read the last
 13 question back.
 14 (The question is read by the reporter.)
 15 Q. Is your understanding different than
 16 that one part of A-3 deals with factual allegations
 17 that have evidentiary support?
 18 A. **It's what the rule says.**
 19 Q. Okay. And the other part of the rule
 20 says as to specifically identified allegations and
 21 then it has requirements as to those specifically
 22 identified allegations.
 23 A. **It says likely to have evidentiary**
 24 **support.**
 25 Q. As to specifically identified

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1 allegations, correct?
 2 A. **Yes.**
 3 Q. So it requires that there be
 4 specifically identified allegations which will likely
 5 have evidentiary support, correct?
 6 A. **Yes.**
 7 Q. So if you would, turn to any version
 8 of the complaint that you may have, whether it's here
 9 or whether you need to get it from your file, of the
 10 Freeman complaint.
 11 A. **I have P-10 in front of me.**
 12 Q. Can you tell me where in P-10 there
 13 are any specifically identified allegations where you
 14 asserted that they were likely to have evidentiary
 15 support?
 16 A. **Paragraph one.**
 17 Q. What does it say?
 18 A. **It says that "The Plaintiff is the**
 19 **owner of Defendant's GE Capital Regular Walmart**
 20 **Account number C77W0342324478, which is now in**
 21 **default. There is due the plaintiff from the**
 22 **Defendant Natalie Freeman the sum of \$720.11 plus**
 23 **interest from October 27, 2010 to December 15, 2010**
 24 **in the amount of \$1.45 for a total of \$721.56."**
 25 Q. Are you testifying that that is a

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1 specifically identified --
 2 MR. WILLIAMSON: No, no, stop.
 3 Because what you're reading of the rule is totally
 4 incorrect. If you're asking him if he specifically
 5 identified allegations, if he parsed them back and
 6 forth, whether they might? Or whether you -- are you
 7 now pointing to a specific allegation?
 8 You're trying to imply -- you're
 9 trying to revamp this rule in your interpretation of
 10 it and I don't think that's appropriate in a
 11 deposition. Ask him a factual question. Ask him a
 12 simple factual question, but don't ask him to try to
 13 interpret based on your interpretation, which is what
 14 you're doing. You're asking him to interpret an
 15 interpretation, which I think is incorrect.
 16 MR. STERN: You may be right, you may
 17 be wrong as to the interpretation issue, but it
 18 doesn't matter. That's what a judge will decide,
 19 whose interpretation is right or wrong. Let me
 20 finish. It's not an argument. I can ask him facts
 21 based upon my interpretation of the rule, whether
 22 it's wrong or right, and as to facts.
 23 MR. WILLIAMSON: Well, ask him facts.
 24 MR. STERN: If you want to argue that
 25 it doesn't matter --

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1 MR. WILLIAMSON: If you ask facts, I'm
 2 quiet.
 3 MR. STERN: It is a fact. I'm asking
 4 him as to where in the complaint it specifically
 5 identifies an allegation that it's either likely to
 6 have evidentiary support or will be withdrawn or
 7 corrected if reasonable opportunity for further
 8 investigation or discovery indicates insufficient
 9 evidentiary support.
 10 MR. WILLIAMSON: I'm going to direct
 11 him not to answer, because I don't see anywhere in
 12 the rule where each individual line needs to be under
 13 that rubric.
 14 Q. Is there anywhere that there is any
 15 allegation that is specifically identified?
 16 MR. WILLIAMSON: I'm going to direct
 17 him not to answer because that makes no sense. By
 18 who?
 19 Q. Mr. Gulko, we've just identified in
 20 paragraph A-3 that there are two parts, correct?
 21 MR. WILLIAMSON: If you want to
 22 specifically identify an allegation --
 23 MR. STERN: Excuse me, I asked him a
 24 question.
 25 MR. WILLIAMSON: He's not going to

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1 explain the rule to you.
 2 MR. STERN: I'm not asking him to
 3 explain the rule. I'm asking his understanding of
 4 the rule. The rule has two parts.
 5 MR. WILLIAMSON: The rule is a whole
 6 and he's already testified to it.
 7 MR. STERN: I'm not going to argue.
 8 You want to interpret it your way, but I'm going to
 9 ask my questions. Let's get the judge on the phone.
 10 MR. WILLIAMSON: Okay.
 11 (A brief recess is taken.)
 12 BY MR. STERN:
 13 Q. Mr. Gulko, did you conduct any inquiry
 14 about anything prior to approving the Freeman
 15 complaint?
 16 A. I reviewed the file in its entirety.
 17 Q. That's the items that you described as
 18 being on the right screen previously?
 19 A. Yes.
 20 Q. Anything else beyond what was on the
 21 right screen?
 22 A. If anything on the right screen
 23 appears unusual or incomplete or in any way peaks my
 24 interest or makes me question what it is, there are
 25 other things I can look to to further my

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1 **determination as to whether I am to approve or**
 2 **disapprove the complaint.**
 3 Q. I think I asked you with respect to
 4 the Freeman complaint. Is there anything that you
 5 looked at beyond what was on the right screen with
 6 respect to approving the Freeman complaint?
 7 A. No.
 8 Q. Is there anything you looked at beyond
 9 the right screen in approving the Setneska complaint?
 10 A. No.
 11 Q. Is there anything that you ask to see
 12 in the process of approving a complaint?
 13 MR. WILLIAMSON: Objection, form.
 14 You've already asked that, come on.
 15 A. I don't understand your question.
 16 Q. You only look at what's on the right
 17 screen or the V screen I think you talked about,
 18 correct?
 19 MR. WILLIAMSON: Objection. You
 20 mischaracterized his prior testimony.
 21 MR. STERN: I asked him if it was
 22 correct, I'm not mischaracterizing. He can either
 23 say it is correct or it's not correct.
 24 A. I said the right screen contained the
 25 computer collection software program that we use. I

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1 **look at that. There is an initial screen. There are**
 2 **things on it that may cause me to bounce to**
 3 **additional screens within the collection program, so**
 4 **that by the time I'm done, I have looked at more than**
 5 **one screen in the collection program.**
 6 Q. With respect to New Century Financial,
 7 you stated that they are a debt buyer, correct?
 8 A. Yes.
 9 Q. So that every claim that you have with
 10 respect to them is a claim that was purchased from
 11 someone else who held the account.
 12 A. Yes.
 13 Q. And that could either be the issuer of
 14 the account, correct, or someone who has purchased
 15 from the issuer, correct?
 16 A. Yes.
 17 MR. WILLIAMSON: Objection. I don't
 18 know whether he's competent to testify to that, but
 19 keep going.
 20 Q. Do you review the chain of assignment
 21 in every New Century complaint?
 22 A. I don't know what you mean by review.
 23 I mean, it's there in the placement information.
 24 It's either there to be seen or it isn't.
 25 Q. The placement information is the data

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1 or the copies of the documents?

2 MR. WILLIAMSON: Could you read back

3 his question? Because your second question was

4 totally different. I don't know if he responded to

5 your question. You're asking one thing and he's

6 answering another.

7 (The record is read by the reporter.)

8 **A. I view what's there.**

9 **Q.** And sometimes it includes copies of

10 the chain of assignment documents?

11 **A. Sometimes it will.**

12 **Q.** And sometimes it does not?

13 **A. That's correct.**

14 **Q.** What happens more often?

15 **A. It's hard to say.**

16 **Q.** Can you tell me with respect to the

17 Freeman complaint whether you reviewed the credit

18 card agreement as part of your process of approving

19 the complaint?

20 **A. What do you mean by the credit card**

21 **agreement review?**

22 **Q.** Is it your understanding that with

23 respect to bank-issued credit cards that there is a

24 document which contains the written terms of the

25 agreement between the account issuer and the account

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1 debtor?

2 **A. In my capacity as a lawyer, it's my**

3 **understanding that original bank creditors do provide**

4 **that upon the issuance of the plastic credit card,**

5 **yes.**

6 **Q.** Is that document something that you

7 review with respect to reviewing and approving the

8 complaint in the Freeman matter?

9 **A. No.**

10 **Q.** Is that something that you looked at

11 in connection with your review of the file and your

12 approval of the Setneska complaint?

13 **A. No.**

14 **Q.** Did you review any copies of any

15 billing statements in connection with your review and

16 approval of the Freeman complaint?

17 **A. No.**

18 **Q.** Did you review any copies of any

19 billing statements with respect to your review and

20 approval of the Setneska complaint?

21 **A. No.**

22 **Q.** In connection with your approval of

23 either the Setneska complaint or the Freeman

24 complaint, did you draw a conclusion as to whether

25 the factual allegations had evidentiary support?

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1 **A. I don't know what you mean by draw**

2 **conclusions. I don't know what you mean in this**

3 **regard as evidentiary support.**

4 **Q.** Do you see in P-16, which is a copy of

5 Rule 1:4-8, do you see paragraph A-3? It uses the

6 term "evidentiary support."

7 **A. Yes.**

8 **Q.** Do you have an understanding as to

9 what that means?

10 **A. Yes.**

11 **Q.** What's your understanding?

12 **A. That a client who comes to this office**

13 **with a claim for collection, that it has given us**

14 **information sufficient for me as an attorney to**

15 **believe that a legal claim does exist as alleged for**

16 **the filing of a lawsuit.**

17 **Q.** With respect to the information that

18 the client brings, do you engage in any evaluation as

19 to the admissibility of that information in court for

20 purposes of proving the claim?

21 **A. Since I would not know what defenses**

22 **might be interposed for which there might be an**

23 **argument over admissibility, I'm not sure what you're**

24 **talking about.**

25 **Q.** Do you evaluate the information

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1 provided by the client to determine whether it's

2 admissible under the rules of evidence?

3 MR. WILLIAMSON: Objection, form.

4 **A. I don't know which rule of evidence**

5 **you're referring to.**

6 **Q.** I'm referring to any rule of evidence

7 as to admissibility. The question is, do you make an

8 evaluation in the course of approving a complaint as

9 to the admissibility under any rule of evidence with

10 respect to the information that client has supplied

11 regarding the client?

12 **A. I make an analysis on the review of**

13 **the complaint whether the information provided, the**

14 **placement information, is sufficient to support the**

15 **allegation that is contained in the complaint to be**

16 **filed. That's what I do.**

17 **Q.** That's not the question I asked. The

18 question I asked is whether you evaluate it for

19 purposes of whether it's admissible under any rule of

20 evidence.

21 **A. It is my understanding that it would**

22 **be.**

23 **Q.** That it would be admissible into

24 evidence?

25 **A. Yes.**

1 Q. What information did you look at with
2 respect to the Freeman complaint that you evaluated
3 would be admissible into evidence?

4 A. My client has provided us information
5 that it is the owner of a GE Capital Regular Walmart
6 account, and it gave an account number and that it
7 belonged to the Defendant Natalie Freeman. And it
8 provided us information that the account is in
9 default and it provided us information as to the
10 amount that was in default and gave us the date from
11 which we then calculated accruing interest to arrive
12 at a total demand in the complaint.

13 Q. And your evaluation was that that
14 information that was supplied to you by your client
15 was admissible in evidence?

16 A. That it would be, yes.

17 Q. Where did your client obtain that
18 information?

19 MR. WILLIAMSON: What information?

20 MR. STERN: The information that he's
21 identified as the client supplied information on
22 which he relied in terms of approving the complaint.

23 MR. WILLIAMSON: You're talking about
24 the Freeman complaint?

25 MR. STERN: We're talking about the

1 Freeman complaint. He's identified the information.

2 A. That's the business records.

3 Q. Whose business records?

4 A. My client's business records.

5 Q. Could we go back to the question? If
6 I understand, because there was some interruption
7 between the question and the answer, are you saying
8 that your client obtained the information from its
9 own business records?

10 A. No. My client's business records is
11 this account. It claims it is the owner of it. It
12 provided me the name of the debtor. It provided us
13 the address, it provided us the account number, the
14 amount of the debt, the date of the debt. It
15 provides us all this information.

16 Q. Okay. And I'm asking you, you
17 concluded that that information was admissible
18 evidence, correct?

19 MR. WILLIAMSON: You're now getting to
20 a point where you're just arguing with him over what
21 is or is not admissible.

22 MR. STERN: No, I asked him what he
23 concluded. That's all I asked him was what he
24 concluded.

25 A. I don't conclude anything. My client

1 provided us with this information. If you're asking
2 me in my review as an attorney did I consider this
3 information sufficient to form the basis of a lawsuit
4 for filing, yes.

5 If you're asking me would I consider
6 this information sufficient in the event of no answer
7 to the complaint and the submission of a
8 certification of proof and nonmilitary service for
9 filing with the court to obtain a money judgement,
10 the answer to that is yes.

11 Q. Are there any of the factual
12 allegations in the Freeman complaint which you
13 concluded to have evidentiary support at the time you
14 approved the complaint?

15 MR. WILLIAMSON: Objection, form.
16 You're asking him for a legal conclusion. When you
17 say evidentiary support, that's a legal
18 determination.

19 MR. STERN: Can you read back the
20 question.

21 (The question is read by the reporter.)

22 MR. WILLIAMSON: And the question is
23 what's the difference whether he does or he doesn't?
24 What he concludes?

25 MR. STERN: It's not an objection,

1 it's not a speaking objection --

2 MR. WILLIAMSON: But we're going on
3 and on and on about it, that's why I'm asking the
4 question. What is the point? Is there any point to
5 what he concludes?

6 MR. STERN: I asked him the question.
7 I'd like an answer to the question. It's a factual
8 question.

9 Q. Answer the question.

10 MR. WILLIAMSON: We're going to spend
11 an hour on what he thinks is evidential and what he
12 doesn't think is evidential? Again, what is the
13 point? If there's a point to it, I wouldn't argue, I
14 wouldn't complain. Is there a point?

15 MR. STERN: Mr. Williamson, I don't
16 have to --

17 MR. WILLIAMSON: You do have to have a
18 point.

19 MR. STERN: Excuse me. I don't have
20 to explain where I'm going with every question that
21 I'm asking so that you understand where I'm going.

22 MR. WILLIAMSON: I'm not asking you
23 to, but it's not open-ended. Let's talk about
24 anything. It's not open-ended.

25 MR. STERN: This is not an open-ended

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1 question. Can we read back the question, please?
 2 (The question is read by the reporter.)
 3 **A. Yes, the placement information that my**
 4 **client provided me.**
 5 **Q.** I don't think your answer was
 6 responsive and I'll explain why. The question I
 7 asked you was about allegations, not about what was
 8 provided to you. So if we can read back the question
 9 and you can answer.
 10 (The question is read by the reporter.)
 11 **Q.** The question was, are there
 12 allegations?
 13 MR. WILLIAMSON: And he's testified to
 14 what that placement information was.
 15 MR. STERN: I didn't ask him about
 16 placement information. I asked him about
 17 allegations. I didn't ask him about placement
 18 information.
 19 **Q.** Mr. Gulko, I asked you whether there
 20 were any allegations --
 21 **A. I don't understand your question,**
 22 **counselor. My client alleges that it is owed money**
 23 **because it owns an account and it identified the**
 24 **account by name, it identified the account holder, it**
 25 **identified the account number, it identified the**

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1 **amount due, it identified the date due. That's the**
 2 **allegation, that's the information that my client**
 3 **provided me. That's what I reviewed. Anything else,**
 4 **I'm just not following you.**
 5 **Q.** Okay. Mr. Gulko, I know from our
 6 initial discussion this morning that you knew very
 7 little about this case, so I'll give you a little bit
 8 of background and hopefully that will assist in your
 9 ability to answer questions.
 10 **A. Excuse me, counselor. What I had said**
 11 **was I hadn't reviewed the file before. Okay? You're**
 12 **now saying that I never knew anything about this**
 13 **case.**
 14 **Q.** I apologize if I mischaracterized what
 15 you had said.
 16 MR. WILLIAMSON: This is three years
 17 ago or two years ago.
 18 **Q.** Mr. Gulko, you indicated that you had
 19 some familiarity and that it was important for you to
 20 have familiarity with the Fair Debt Collection
 21 Practices Act. Do you recall that?
 22 **A. Yes.**
 23 **Q.** Have you ever heard of the term in
 24 connection with the Fair Debt Collection Practices
 25 Act of meaningful attorney involvement?

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1 **A. Yes.**
 2 **Q.** Do you have an understanding as to
 3 what that means?
 4 **A. Yes.**
 5 **Q.** What is your understanding?
 6 **A. It means that the attorney is involved**
 7 **in a review of the information provided by the client**
 8 **to make a determination whether there is a good faith**
 9 **belief that what is alleged by the client is**
 10 **supportable.**
 11 **Q.** And do you understand also that there
 12 is a provision of the Fair Debt Collection Practices
 13 Act that deals with debt collectors not stating false
 14 information?
 15 **A. I'm aware that there is some provision**
 16 **to that effect.**
 17 **Q.** Do you understand that in connection
 18 with your work in connection with the collection of
 19 consumer debts that the Fair Debt Collection
 20 Practices Act applies to you?
 21 **A. Yes.**
 22 **Q.** Are you aware that by virtue of either
 23 signing a complaint or approving a complaint so that
 24 your typewritten signature is placed upon it, that
 25 there is a certain certification that you have made

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1 as set forth in Court Rule 1:4-8?
 2 MR. WILLIAMSON: Objection, he's
 3 already answered this repeatedly. And it does become
 4 badgering when you ask the same question over and
 5 over and over again. Answer it one more time,
 6 please.
 7 (The question is read by the reporter.)
 8 **A. Yes.**
 9 **Q.** And do you understand that that
 10 certification includes making a statement with regard
 11 to the factual allegations contained in the
 12 complaint?
 13 **A. Yes.**
 14 **Q.** And you approved factual allegations
 15 in the Setneska and the Freeman complaints, which
 16 asserted factual allegations, correct?
 17 **A. Yes.**
 18 **Q.** That was a circular question. And
 19 you're aware that you certified that to the best of
 20 your knowledge, information, and belief, which was
 21 formed after a reasonable inquiry under the
 22 circumstances, you made, among other things,
 23 certification as to those factual allegations?
 24 **A. Yes.**
 25 **Q.** And you've also testified that as part

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1 of your evaluation process in approving the complaint
 2 that you looked at the placement information that was
 3 provided to you in your firm's collection software,
 4 correct?
 5 **A. Yes.**
 6 **Q.** And your review of information did not
 7 include reviewing the credit card agreement that
 8 would have applied to either the Freeman matter or
 9 the Setneska matter, correct?
 10 **A. Correct.**
 11 **Q.** And in connection with your approval
 12 of those complaints, your inquiry did not include
 13 reviewing a billing statement with respect to either
 14 account referred to in either the Freeman complaint
 15 or the Setneska complaint, correct?
 16 **A. Correct.**
 17 **Q.** Is it your understanding with respect
 18 to the allegations in the Freeman complaint that you
 19 certified by approving and your typed signature being
 20 on there, that the factual allegations were likely to
 21 have evidentiary support?
 22 **A. Yes.**
 23 **Q.** Was it your understanding with respect
 24 to the factual allegations in the Freeman complaint
 25 that they did in fact have evidentiary support at the

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1 time you approved the complaint?
 2 MR. WILLIAMSON: Could you read that
 3 back, please?
 4 (The question is read by the reporter.)
 5 MR. WILLIAMSON: Object. You can
 6 answer.
 7 **A. It was my opinion that it did have**
 8 **evidentiary support to the extent that electronic**
 9 **records are admissible under the New Jersey Rules of**
 10 **Evidence and the client, through the placement**
 11 **information which is electronically transferred, gave**
 12 **me specific and concrete information that would**
 13 **support the allegations that are contained in the**
 14 **complaint.**
 15 **Q.** And you knew that your client obtained
 16 that information from somebody else, correct? In
 17 connection with New Century Financial complaints.
 18 **A. That is my understanding, yes.**
 19 **Q.** Did you ever inquire with respect to
 20 either the Freeman or the Setneska complaint as to
 21 whether there were any affidavits of custodian of
 22 records for any documents which were created at or
 23 near the time of the event of the information being
 24 recorded?
 25 **A. Not prior to the complaint, no.**

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1 **Q.** Do you do that as a regular course?
 2 When I say that, do you make that inquiry as to
 3 whether there are affidavits as a regular course --
 4 **A. Not I. Not I, not for purposes of**
 5 **complaint review.**
 6 **Q.** Do you inquire for purposes of
 7 complaint review whether New Century has possession
 8 or access to billing statements with regard to the
 9 accounts?
 10 **A. Not at the time that I review the**
 11 **complaint.**
 12 **Q.** All right. Did I cut you off? I
 13 heard your answer. I wasn't sure if I caught you at
 14 a pause or whether you were done.
 15 **A. Well, some claims have documents at**
 16 **the time of placement, okay, and some don't. So**
 17 **since under the New Jersey Rules of Evidence**
 18 **electronic records are admissible and constitute**
 19 **provable evidence, the fact that I would be reviewing**
 20 **for approval a complaint in which I don't have any**
 21 **paper documents, which you really seem to be**
 22 **referring to, is not something that would cause me**
 23 **pause if the electronic information provided by the**
 24 **client is otherwise complete and on its face**
 25 **reasonable.**

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1 **Remember also that these claims are**
 2 **not prepared for filing until 35 days after an**
 3 **initial demand letter is sent to the defendant. And**
 4 **if a defendant does not exercise his or her federal**
 5 **rights and notifies our office of a request for debt**
 6 **verification or a defense, we will assume, as allowed**
 7 **by the Fair Debt, that the information provided is**
 8 **accurate in all respects.**
 9 **Q.** The understanding that you just
 10 referred to by the failure of a consumer to dispute
 11 the debt within 30 days --
 12 **A. To ask for debt verification, yes.**
 13 **Q.** Is it your understanding that the
 14 consumer has to ask for debt verification?
 15 **A. It says if the debtor does not request**
 16 **debt verification within 30 days, then the debt**
 17 **collector has the right to assume that the**
 18 **allegations contained in the demand letter are**
 19 **accurate.**
 20 **Q.** Are you familiar with whether that
 21 assumption can be used for evidential purposes?
 22 MR. WILLIAMSON: I'm going to let him
 23 answer, but I mean, really, you're now giving him a
 24 test on the FDCPA rules in evidence which has nothing
 25 to do with the complaint.

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1 MR. STERN: There's no speaking
 2 objections.
 3 MR. WILLIAMSON: Come on. We're just
 4 wasting time.
 5 MR. STERN: I'm not wasting time.
 6 MR. WILLIAMSON: Yeah, you are,
 7 because you're going in an area that has nothing to
 8 do with the allegations in the complaint.
 9 Answer the question, please.
 10 (The question is read by the reporter.)
 11 **A. No.**
 12 **Q.** The answer is no, you were not aware
 13 of that?
 14 **A. No.**
 15 **Q.** Mr. Gulko, are you able to state the
 16 amount of time you spend reviewing a complaint on
 17 behalf of New Century?
 18 **A. It depends on the particular account.**
 19 **Q.** Can you give an approximation of sort
 20 of the least amount of time and the most amount of
 21 time you generally spend?
 22 **A. The least amount of time would be less**
 23 **than a minute. The most amount of time could be two,**
 24 **three, four, five minutes.**
 25 **Q.** You testified earlier that when you

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1 start your day you're provided a computer printout,
 2 which is a list of the files in which you need to
 3 review the complaints?
 4 **A. Yes.**
 5 **Q.** With respect to when you're reviewing
 6 New Century accounts, generally your list only
 7 includes New Century?
 8 **A. No.**
 9 **Q.** So your list will be mixed in terms of
 10 who the clients are?
 11 **A. Yes.**
 12 **Q.** Do you know who generates that list?
 13 **A. The department in the firm that is**
 14 **responsible for generating the complaint list.**
 15 **Q.** Is there a name for that department?
 16 **A. We call it the SAC department for**
 17 **summons and complaint.**
 18 **Q.** In connection with your reviewing and
 19 approving complaints for New Century, do you review
 20 the agreement between New Century and the entity from
 21 whom it acquired the accounts?
 22 **A. No, especially since I may not have**
 23 **that. There may not be anything to review as to that**
 24 **particular question.**
 25 **Q.** Would it be relevant in your review of

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1 complaints on behalf of New Century as to whether
 2 there was a choice of law provision in the credit
 3 card agreement?
 4 **A. That could be relevant.**
 5 **Q.** Would it be relevant as to whether or
 6 not there was an arbitration agreement in the credit
 7 card agreement?
 8 **A. That could be relevant also.**
 9 **Q.** In connection with your review and
 10 approval of complaints on behalf of New Century, do
 11 you make a determination as to whether a default has
 12 occurred?
 13 MR. WILLIAMSON: Excuse me. Could you
 14 read that again?
 15 (The question is read by the reporter.)
 16 **A. Well, part of the placement**
 17 **information is that the client is alleging that**
 18 **there's a default. I can determine from the**
 19 **placement information when the last payment was. So**
 20 **merely by the passage of time, it can confirm to me**
 21 **the client's position, the client's allegation that**
 22 **there is a default.**
 23 **Q.** I understand that you're relying upon
 24 the information that the client is giving you. I'm
 25 asking you whether you make any independent

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1 evaluation as to whether the account is in default.
 2 MR. WILLIAMSON: I'm going to object
 3 to the word "evaluation." Do you mean investigation?
 4 That makes sense, the other way doesn't. Because
 5 he's answered that already.
 6 MR. STERN: I'll withdraw the
 7 question.
 8 **Q.** Do you make an inquiry into any
 9 information beyond what the client has given you as
 10 to whether a default has occurred?
 11 **A. I'm unclear about your question. Let**
 12 **me repeat my prior answer. The client places a claim**
 13 **with us because of claims that the account is in**
 14 **default. It gives me a date of last payment. So I'm**
 15 **able to -- if they were to send me a claim today and**
 16 **it said that a hundred dollars was last paid**
 17 **yesterday, I'm going to kick that back saying what's**
 18 **going on here. But if they send me a claim and they**
 19 **claim it's in default and in the placement**
 20 **information it says that a hundred dollars was last**
 21 **paid June 20th, 2010, then there's nothing in there**
 22 **for me to disbelieve that this account is not in**
 23 **default as my client advises me.**
 24 **Q.** So you rely upon your client advising
 25 you that the claim is in default?

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1 **A. And my viewing the information that**
 2 **the client provides me.**
 3 **Q.** And the connection with New Century,
 4 that's information that New Century obtains from
 5 other parties, correct?
 6 **A. In part or in whole. And if you want**
 7 **to know what that means, when New Century buys a**
 8 **claim, they own it. They can work it. It could be,**
 9 **for all I know, that the last payment was a payment**
 10 **that was made to New Century at a time that it**
 11 **already owned it. So the information that it**
 12 **provides me could be a combination of its own**
 13 **information and the information as it bought the**
 14 **account.**
 15 **Q.** Okay, I understand. The information
 16 you would have that comes from New Century is
 17 information they would have of any activity once New
 18 Century owned the account?
 19 **A. Yes. And the information --**
 20 **Q.** And the information that they obtained
 21 from whoever they purchased from.
 22 **A. Yes.**
 23 **Q.** With respect to the Freeman complaint,
 24 were you able to determine the date default occurred?
 25 **A. I don't recall. It did have -- yes,**

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1 **it did have a date. Without being able to pull up**
 2 **the computer, I couldn't give it to you.**
 3 **Q.** And the same answer applies with
 4 respect to the Setneska matter?
 5 **A. Sure.**
 6 **Q.** In connection with your review and
 7 approval of claims on behalf of New Century, do you
 8 review a credit report of the defendant?
 9 **A. Yes, I can. I often do. In the case**
 10 **of the Freeman file, before a complaint could be**
 11 **prepared for review, the claim came in without a**
 12 **Social Security number. It's required that we not**
 13 **file consumer claims without a Social Security**
 14 **number. A review of the file prior to suit indicated**
 15 **that an accurate credit report was obtained for the**
 16 **purposes of determining the Social Security number**
 17 **and that's how the Social Security number was**
 18 **obtained.**
 19 **In the Setneska file, the Social**
 20 **Security number was provided at the time of**
 21 **placement.**
 22 **Q.** Was the --
 23 **A. That I remember from just lunchtime**
 24 **when I was asked to review the file.**
 25 **Q.** So is that a situation where,

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1 referring to the Freeman matter, you had reviewed it,
 2 there was no Social Security number and you rejected
 3 it, and that came back --
 4 **A. No.**
 5 **Q.** Or that was already taken care of
 6 before it came to you?
 7 **A. That's correct. I reviewed to see**
 8 **that there was a social, and by looking at the**
 9 **collections software screen, I was able to pick up**
 10 **how it was obtained.**
 11 **Q.** Got it. Are you involved in the
 12 creation of the template that was used for creating
 13 the complaints?
 14 **A. No.**
 15 **Q.** Are you aware that the template that
 16 your office is using has recently changed?
 17 **MR. WILLIAMSON:** Objection,
 18 foundation.
 19 **Q.** Are you aware that the court rules
 20 changed effective September 1st of 2012 --
 21 **A. Yes.**
 22 **Q.** -- and that those rules required a
 23 change in the template with respect to the
 24 complaints?
 25 **A. Yes.**

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1 **Q.** Were you involved in drafting any part
 2 of the change in the template?
 3 **A. My only involvement, not directly, my**
 4 **only involvement was there was a Law Division**
 5 **complaint that was presented to me for approval, and**
 6 **while the body of the complaint complied with the new**
 7 **rule, for whatever reason on that one case the**
 8 **plaintiff's name did not include the prior original**
 9 **creditor's name. I killed that complaint and**
 10 **notified I believe it was Mr. Felt. And a change to**
 11 **the template was put in and it was fixed on that case**
 12 **and it was fixed thereafter. I've never killed a**
 13 **complaint since for that reason.**
 14 **Q.** So is it fair to say you found a
 15 glitch and it was corrected?
 16 **A. Exactly, and that was the Law Division**
 17 **only. The template for the Special Civil Part was**
 18 **fully compliant.**
 19 **Q.** Did the scope of your review of
 20 complaints change as a result of the recent change in
 21 the court rules?
 22 **A. Only to the extent, as I just**
 23 **testified, that I began to look to make sure that the**
 24 **form of the complaint was compliant under the**
 25 **requirements of the new rule. Once all the glitches**

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1 were worked out, then it's fairly easy to give it a
 2 quick look and know that you're okay in regard to
 3 those changes.
 4 Q. Okay.
 5 A. Looking at new matters, I am reviewing
 6 in totality, as I do on every case, as I did on every
 7 case. I'm looking for all the information for, as
 8 you said earlier, meaningful attorney review.
 9 Q. Is there anyone else at Pressler &
 10 Pressler who performs the same function as you do
 11 with respect to reviewing and approving complaints?
 12 A. For New York, yes. Mitchell Zipkin
 13 approves New York complaints.
 14 Q. So it would be fair to say that all or
 15 virtually all of the complaints filed in New Jersey
 16 or Pennsylvania are reviewed and approved by you?
 17 A. Yes, while I'm here. When I am on
 18 vacation, Mr. Felt switches the work, because you
 19 can't let it sit a week or more. He switches the
 20 work over to another attorney who is also trained to
 21 do complaint review, and those complaints go out
 22 under that attorney's name. Then when I come back,
 23 it's switched over again.
 24 Q. To your knowledge, are there records
 25 contained of the number of complaints that you review

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1 on a daily basis?
 2 A. Well, I'm given the feed list and I go
 3 through it in a day, so of course I know how many I
 4 go through in a day.
 5 Q. Are the feed lists generally the same
 6 length in terms of number of complaints?
 7 A. No, they vary from day to day.
 8 Q. What do they vary from?
 9 A. Well, the variance can go from as
 10 little as a hundred or less to as much as hundreds a
 11 day. If you're asking what my average is, how much
 12 do I see mostly? I would say between three and four
 13 hundred a day.
 14 Q. Does it ever get as high as a thousand
 15 in a day?
 16 A. Yes.
 17 Q. Two thousand?
 18 A. I don't recall that high, no.
 19 Q. And you generally get through your
 20 list every day? If you're working the full day,
 21 you're getting through your list?
 22 A. Yes. The new list is given to me in
 23 the afternoon. So I'll work a little in the
 24 afternoon and I finish it up the next day. So if the
 25 list is given to me first thing in the morning, then

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1 I can get it all done in a day. So I don't want to
 2 mislead you. Sometimes on a clock, I'm doing it into
 3 the next day, but that's not a problem for me. I
 4 don't in any way feel stressed or behind the eight
 5 ball by that.
 6 Q. I understand. Talking only about
 7 JEFIS-filed complaints, do you know how much time
 8 expires after you approve a complaint until when it
 9 gets filed?
 10 A. No, but it's easy enough to find out.
 11 If I know the date that I approve a complaint, then I
 12 can go to another screen called the BDF screen and it
 13 gives me the date that it was JEFISed. So even
 14 though I don't have personal knowledge as we speak,
 15 it's not something that's hidden from me. I can find
 16 that out.
 17 Q. And to your knowledge, once you
 18 approve it there's a department that handles then the
 19 JEFIS filing?
 20 A. Yes.
 21 Q. Do you have any reason to believe that
 22 it's more than several days from the time that you
 23 approve it until the time that it's filed?
 24 A. No, they're pretty quick about it.
 25 (A brief recess is taken.)

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1 Q. Mr. Gulko, I apologize, I know there
 2 have been comments about me going over stuff that's
 3 been gone over, but I want to wrap up on a couple of
 4 things.
 5 If systems are working correctly, the
 6 information contained in the complaint should be
 7 identical to the information that's in your placement
 8 information.
 9 A. Unless it's been reviewed and vetted
 10 for corrections and also for changes, additional
 11 information that has come in after the date of
 12 placement to the date of presentation to me for
 13 approval.
 14 Q. I understand your answer, and I may
 15 not have been clear with my question.
 16 A. Okay.
 17 Q. What I'm talking about is, the
 18 complaint gets prepared and it contains information
 19 about the defendant and about the claim.
 20 A. Yes.
 21 Q. That information about the debtor and
 22 about the claim should be identical to the
 23 information that you have as the placement
 24 information.
 25 A. If we have not determined it to be

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1 **erroneous otherwise, yes.**

2 **Q.** You may have other information in I

3 think it was the right side of your screen, your

4 computer software?

5 **A. Yes.**

6 **Q.** That may cause you to question whether

7 the complaint should be filed.

8 **A. Yes.**

9 **Q.** But if the systems are working

10 correctly, the complaint should have the information

11 that matches the information that you have in the

12 placement information.

13 **MR. WILLIAMSON:** Objection.

14 **Q.** I guess what I'm asking -- let me

15 withdraw it, because looking at your face, I see that

16 you're not quite comfortable with the question I had

17 asked.

18 **A. I don't want to go into a big long**

19 **narrative.**

20 **Q.** We described earlier that you use a

21 template and there's a merge of information. To your

22 understanding, does the information that gets merged

23 into the complaint have its source as the placement

24 information that you have on the right side of the

25 screen?

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1 **A. Yes.**

2 **Q.** So that if the right side of the

3 screen is different from left side of the screen, it

4 means something went wrong.

5 **A. Yes.**

6 **Q.** And I gather from your answer a few

7 minutes ago is probably something happened, some

8 event happened between when the complaint was

9 prepared and when you're reviewing it.

10 **A. That could be one of multiple reasons.**

11 **Q.** Okay. But if you're going to approve

12 it, the information is going to match up and there's

13 going to be nothing in the placement information

14 that's going to cause you to question whether the

15 complaint should be filed.

16 **A. I'm sorry. You're losing me on that,**

17 **you are really are.**

18 **Q.** What I'm asking you about is, and I

19 realize that there's more information that's required

20 in your complaints now that the rules have recently

21 changed, but if we go back to P-10, because that's

22 the complaint that was filed with JEFIS, it

23 identifies your file number. I assume on all your

24 complaints, the initial information about the name of

25 the firm and its address and phone number is going to

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1 be the same.

2 **A. Sure.**

3 **Q.** That should not be something where

4 there's a mistake.

5 **A. Right.**

6 **Q.** It's going to have the file number,

7 the plaintiff's name, your client, correct?

8 **A. As of this date.**

9 **Q.** Right, I understand.

10 **A. Since September it now appears**

11 **different.**

12 **Q.** I understand.

13 **A. Prior to the rule, it did not**

14 **constitute a mistake.**

15 **Q.** I'm not suggesting that.

16 **A. Okay.**

17 **MR. WILLIAMSON:** Just focus on that

18 complaint.

19 **Q.** Let's assume the rule didn't change in

20 September or that we're back to before the rule

21 changed. So it contains the plaintiff information,

22 the defendant information in the caption.

23 **A. Yes.**

24 **Q.** The venue?

25 **A. Yes.**

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1 **Q.** And it's in Special Civil Part.

2 **A. Yes.**

3 **Q.** P-10 obviously has the docket number

4 but that's because it's after it was filed and when

5 you approve it, it does not have a docket number.

6 **A. Yes.**

7 **Q.** And then in the introductory sentence

8 it's got to have the address of the plaintiff?

9 **A. Yes.**

10 **Q.** And then in the paragraph one there's

11 two sentences and it's going to include the name of

12 the original creditor?

13 **A. Yes.**

14 **Q.** The account number that the original

15 creditor signed?

16 **A. Yes.**

17 **Q.** And just for purposes of the record,

18 I'm running through sequentially what's in the

19 complaint. It will have the defendant's name?

20 **A. Yes. But before then it includes the**

21 **allegation that the account is in default.**

22 **Q.** Correct, but that would be the same in

23 all of the complaints. The complaints would all be

24 the same.

25 **A. Yes.**

1 Q. That would be template information as
 2 opposed to variable information.
 3 A. **Very well, go ahead.**
 4 Q. It includes, at least for purposes of
 5 P-10, it includes a start date and end date for an
 6 allegation for interest.
 7 A. **Yes.**
 8 Q. And then a total amount including the
 9 principal amount of the claim plus the interest.
 10 A. **It also includes the placement amount.**
 11 Q. Right, what you're calling the
 12 placement amount.
 13 A. **Yes.**
 14 Q. And then there's the wherefore clause?
 15 A. **Right.**
 16 Q. Which includes the total amount of the
 17 claim and then some language that's required by the
 18 rules about certifying information, and then a
 19 signature block at the end.
 20 A. **Yes.**
 21 Q. If nothing has caused you to question
 22 the information and you would approve the complaint,
 23 all the information that we talked about, the various
 24 variable information would appear as fields in your
 25 placement information side that would be identical to

1 the information that's in the complaint.
 2 A. **Yes.**
 3 Q. Okay. And it's your understanding
 4 that the reason why that should occur is because the
 5 complaint is being generated from the same data that
 6 is populating the right side of your screen?
 7 A. **Yes.**
 8 Q. And what you also then do is look to
 9 see if the information on the right side of your
 10 screen gives you cause to question whether there is
 11 some reason not to file a complaint.
 12 A. **Yes.**
 13 Q. And that essentially is the scope of
 14 your review of the matter in terms of deciding
 15 whether or not to approve the complaint.
 16 A. **You simplify it, but yes.**
 17 MR. STERN: I don't have any further
 18 questions.
 19 MR. WILLIAMSON: We're done.
 20
 21 (The deposition is concluded at 3:16 p.m.)
 22
 23 * * * * *
 24
 25

1 CERTIFICATE OF OFFICER
 2
 3 I, ANN P. CONLON, a Notary Public and
 4 Certified Court Reporter of the State of New Jersey,
 5 do hereby certify that prior to the commencement of
 6 the examination, the witness was duly sworn by me.
 7
 8 I DO FURTHER CERTIFY that the
 9 foregoing is a true and accurate transcript of the
 10 testimony as taken stenographically by and before me
 11 at the time, place, and on the date hereinbefore set
 12 forth.
 13 I DO FURTHER CERTIFY that I am neither
 14 a relative nor employee, nor attorney or counsel to
 15 any of the parties involved, that I am neither
 16 related to nor employed by such attorney or counsel,
 17 and that I am not financially interested in the
 18 outcome of the action.
 19
 20
 21
 22 _____
 23 NOTARY PUBLIC OF THE STATE OF NEW JERSEY
 24 My Commission Expires: 2/3/16
 25 License No. 30XI000999

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V	<p>Walmart [2] - 62:19, 72:5 Warren [1] - 1:23 waste [1] - 48:16 wasting [2] - 84:4, 84:5 ways [1] - 33:17 wealthy [1] - 60:20 week [1] - 92:19 West's [1] - 46:25 wet [1] - 19:22 wherefore [1] - 100:14 whichever [1] - 18:11 whole [3] - 56:25, 65:5, 88:6 WILLIAMS [1] - 1:4 Williams [1] - 4:7 Williamson [5] - 5:3, 5:5, 5:18, 11:2, 75:15 WILLIAMSON</p>	<p>year [3] - 6:15, 6:23, 40:25 years [5] - 7:5, 8:22, 35:24, 77:16, 77:17 yesterday [1] - 87:17</p>	

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FILED Dec 17, 2010

EXHIBIT P-10

Pressler and Pressler, LLP
7 Entin Rd.
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File # F96305

NEW CENTURY FINANCIAL SERVICES, INC.

SUPERIOR COURT OF NEW JERSEY
Law Division

Plaintiff

vs.

HUDSON Special Civil Part

NATALIE FREEMAN

Defendant(s)

Docket # DC-031425-10

Civil Action
COMPLAINT
(Contract)

Plaintiff having a principal place of business at: 110 SOUTH JEFFERSON ROAD SUITE 104 WHIPPANY, NJ 07981 says:

1. It is now the owner of the defendant(s) GE CAPITAL - REGULAR WAL-MART account number C77W03423244788 which is now in default. There is due the plaintiff from the defendant(s) NATALIE FREEMAN the sum of \$720.11 plus interest from 10/27/2010 to 12/15/2010 in the amount of \$1.45 for a total of \$721.56.

WHEREFORE, plaintiff demands judgment for the sum of \$721.56 plus accruing interest to the date of judgment plus costs.

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance in Rule 1:38-7(b).

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff(s)
By: S/Ralph Gulko

Ralph Gulko

PENGAD 800-631-6889
PLAINTIFF'S EXHIBIT
P-10
10/15/12 ac

EXHIBIT P-11

1:4-8. Frivolous Litigation

(a) Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and
- (4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

If the pleading, written motion or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the document had not been served. Any adverse party may also seek sanctions in accordance with the provisions of paragraph (b) of this rule.

(b) Motions for Sanctions.

(1) *Contents of Motion, Certification.* An application for sanctions under this rule shall be by motion made separately from other applications and shall describe the specific conduct alleged to have violated this rule. No such motion shall be filed unless it includes a certification that the applicant served written notice and demand pursuant to R. 1:5-2 to the attorney or pro se party who signed or filed the paper objected to. The certification shall have annexed a copy of that notice and demand, which shall (i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand. If, however, the subject of the application for sanctions is a motion whose return date precedes the expiration of the 28-day period, the demand shall give the movant the option of either consenting to an adjournment of the return date or waiving the balance of the 28-day period then remaining. A movant who does not request an adjournment of the return date as provided herein shall be deemed to have elected the waiver. The certification shall also certify that the paper objected to has not been withdrawn or corrected within the appropriate time period provided herein following service of the written notice and demand.

No motion shall be filed if the paper objected to has been withdrawn or corrected within 28 days of service of the notice and demand or within such other time period as provided herein.



(2) *Time for Filing; Attorney's Fees.* A motion for sanctions shall be filed with the court no later than 20 days following the entry of final judgment. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys' fees incurred in presenting or opposing the motion. For purposes of this rule, the term "final judgment" shall include any order deciding a post-judgment motion whether or not that order is directly appealable.

(3) *Scope of Responsibility.* Except in extraordinary circumstances, a law firm shall be jointly responsible for violations committed by its partners, shareholders, associates and employees.

(c) Sanction on Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate this rule and directing the attorney or pro se party to show cause why he or she has not violated the rule. The order to show cause shall issue before a voluntary dismissal or settlement of the claims made by or against the pro se party or the attorney who is the subject of the order to show cause.

(d) Order for Sanctions. A sanction imposed for violation of paragraph (a) of this rule shall be limited to a sum sufficient to deter repetition of such conduct. The sanction may consist of (1) an order to pay a penalty into court, or (2) an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation, or both. Among the factors to be considered by the court in imposing a sanction under (2) is the timeliness of the movant's filing of the motion therefor. In the order imposing sanctions, the court shall describe the conduct determined to be a violation of this rule and explain the basis for the sanction imposed.

(e) Exceptions. This rule does not apply to disclosures and discovery requests, responses, objections, and discovery motions that are subject to the provisions of R. 4:23.

(f) Applicability to Parties. To the extent practicable, the procedures prescribed by this rule shall apply to the assertion of costs and fees against a party other than a pro se party pursuant to N.J.S.A. 2A:15-59.1.

Computer Generated Report of Financial Information

From 05/31/10 to 12/08/11

Original Creditor: HSBC BANK NEVADA, N.A. of Acct # 5458001561298245

Account Holder: DANIEL BOCK JR

Present Owner: MIDLAND FUNDING LLC of MCM Acct# 8540176059

EXHIBIT P-12

Previous Balance	Transactions	Credits	Interest	Other Charges	New Balance
As of 05/31/10				(Collection/Attorney Fees)	
\$8,021.57	\$0.00	\$0.00	\$108.37	\$0.00	\$8,129.94

Periodic Rates: Presently none

Balance on which Finance Charge is computed: No finance charges computed since charge-off.

Charge-off balance: \$8,021.57

Amount of Finance Charge: None Requested

Annual Percentage Rate: No finance charge sought since charge-off

Closing Date of Billing Cycle: 05/31/10 (charge-off date)

Amount of Interest: \$108.37

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DANIEL BOCK, JR.,
Plaintiff,

vs.

PRESSLER AND PRESSLER, LLP,
Defendant.

Case 2:11-cv-07593-KM-MCA

**BRIEF ON BEHALF OF PLAINTIFF, DANIEL BOCK, JR.
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Daniel Bock, Jr. claims that Pressler and Pressler, LLP, a collection law firm, violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq., when it filed and caused to be served a collection complaint without prior meaningful attorney involvement and misrepresented that an attorney made a reasonable inquiry to conclude that evidence existed to support the complaint’s factual allegations.

The facts, as provided by Pressler, is that the collection complaint was filed after Ralph Gulko, Esq., one of Pressler’s attorneys, approved it after having Pressler’s file open for just *four seconds!* That same day, Gulko reviewed 673 collection complaints and approved all but ten for filing.

Gulko never looks at a file until a complaint has been drafted and no lawyer reviews the complaint after Gulko approves it for filing. Each day, he is given a “feed list” identifying files with complaints awaiting his review. The list averages 300-400 per day, but some days the list exceeded 1,000 complaints. Gulko completes his daily list without feeling “stressed or behind the eight ball.”

After all, Gulko only seeks to confirm that the collection complaint matches the information alleged by the client and any updates for payments or address corrections. Gulko does not review billing statements or the credit card agreement governing the account. He does not even confirm that Defendant’s client had possession of or access to the billing statements.

PROCEDURAL HISTORY

The Complaint was filed on December 30, 2011. E.D. 1. Pressler filed its pro se answer on February 27, 2012. E.D. 7.

Fact discovery was closed on August 1, 2013. E.D. 28 at ¶2.

During discovery, the Court ordered Pressler to disclose the number of collection complaints reviewed by Gulko on October 21, 2011 (the presumed date that he approved the complaint against Bock). E.D. 25. In response, Pressler provided *Russo I* (P-6).

Subsequently, the Court ordered Pressler to “provide an affidavit from IT personal reflecting the amount of time attorney Gulko spent accessing Mr. Bock’s file.” E.D. 28 at ¶1. In response, Pressler provided *Russo II* (P-7).

On July 8, 2013, Pressler filed the *McCabe Aff.* (P-4) along with a proposed protective order. E.D. 29. Pressler’s application was unopposed and a protective order was filed on July 12, 2013. E.D. 30.

Following the close of discovery, the Court scheduled the filing of motions for summary judgment. E.D. 31.

Bock now moves for summary judgment as to Pressler’s liability under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

STATEMENT OF FACTS

Pressler claims to be New Jersey's oldest and largest law firm specializing in the collection of "retail or consumer" debts. Statement of Material Facts ("SMF") ¶15. Pressler's "primary practice is devoted to a retail or consumer collection practice on behalf of [its] clients." SMF ¶13.

Pressler attempted to collect on Bock's credit card account issued by HSBC Bank Nevada, N.A. SMF ¶18. Pressler contended that the account was placed with Pressler after it was in default and that Pressler's client, Midland Funding, LLC, came to own the account. SMF ¶¶18-19.

Bock had used the account for personal transactions. SMF ¶22.

Pressler sent Bock a letter dated September 15, 2011. SMF ¶25. The letter stated that the account had "been placed with the firm of Pressler and Pressler, LLP for collection." SMF ¶25. The letter also disclaimed that "[a]t this time, no attorney with this firm has personally reviewed the particular circumstances of your account." SMF ¶27.

Pressler's non-attorney "SAC Department" drafts collection complaints. The drafting process consists of merging electronically stored information supplied by Pressler's clients with a template or form complaint.

The SAC Department then prepares a daily fee list of complaints ready for review. Except when he is on vacation, Gulko is the only attorney who reviews those complaints which are to be filed in New Jersey or Pennsylvania. He

averages 300-400 per day. He has had days when there were more than 1,000 complaints to review. Nevertheless, he gets through the list each day without feeling “stressed or behind the eight ball.” SMF ¶36.

Gulko opens a file by entering the firm’s file number in a computer and what he reviews appears on two screens. The left screen has the complaint and the right screen has the placement information which the client provided to Pressler and any updates based on payments or corrected addresses. Gulko reviews the client’s information identifying the account by name, the accountholder, the account number, the amount due and the due date which, he acknowledged, is the client’s “allegation.” SMF ¶45.

Although there are other screens available, Gulko does not look beyond the initial right screen unless something appears unusual, incomplete, peaks his interest or makes him question something. SMF ¶43.

Gulko does not review any billing statements and does not confirm whether Pressler’s client either has those statements or access to them. SMF ¶¶47-48. Even in debt-buyer cases where he knows that the client’s information was obtained from a third party, he does not inquire as to whether there exist affidavits from records witnesses. SMF ¶46.

When Pressler’s client is a debt-buyer, he will look at the chain of title if it is available but he does not even know if the chain of title is available in the majority of cases. SMF ¶49. Whatever may be in the chain of title, it does not

include the agreement under which the client acquired the account because that document is not available to him. SMF ¶50.

Gulko does not review the credit card agreement governing the claim even though he admits that the existence of a choice-of-law or arbitration clause would be information relevant to his review. SMF ¶47.

Mistakenly assuming that Gulko reviewed Bock's complaint on the same day that it was filed, Pressler identified 194 complaints reviewed by Gulko on October 21, 2011. *Russo I* (P-6), ¶¶5-6.

In a subsequent affidavit, however, Pressler confirmed that Gulko approved Bock's complaint on October 20, 2011. *Russo II* (P-7), ¶¶3-4. On that day, Gulko approved 663 complaints and rejected 10, for a total of 673. *Russo II* (P-7), ¶¶7-8. Gulko had Bock's file open for four seconds before approving it for filing.

Although Pressler did not produce any billing statements in the collection case, it produced its collection file during discovery in this action. *Stern Decl.* It produced 24 monthly statements dated from May 21, 2008 to April 22, 2010. Although the highest balance was \$7,867.47, the collection complaint alleged that Bock owed \$8,021.57.

The collection complaint also alleged that there was interest due from May 31, 2010 to October 20, 2011. Pressler's files, however, included a document which stated that there was no finance charges computed since

charge-off on May 31, 2010. SMF ¶64.

A complaint to be filed electronically in New Jersey's Special Civil Part may be signed, much as ECF filings in this Court, by way of a typed signature. Once Gulko approves a complaint which is to be filed in the Special Civil Part, his signature is added and the Pressler files the complaint. Under that court's rules, the clerk serves process by mailing two copies to the defendant – one by regular mail and one by certified mail. See, N.J. Court Rule 6:2-3(d).

Gulko, who has read N.J. Court Rule 1:4-8, admitted that the rule applies to the complaints he approves for filing. SMF ¶¶54-55. Thus, Gulko understood that one part of the rule addresses factual allegations that have evidentiary support while another part concerns specifically identified allegations which are likely to have evidentiary support. SMF ¶56.

That state court rule, like Fed.R.Civ.P. 11, provides that, by filing a pleading with the court, an attorney “certifies that to the best of [the attorney's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: * * * the factual allegations have evidentiary support.”

There are no set of facts reasonably inferable from this record that Gulko conducted “an inquiry reasonable under the circumstances.” He had the file open for four seconds, did not review any billing statements or the controlling written contract, never inquired about the availability of billing statements, and did not have access to the very agreement which would have given his client

standing to sue. Even assuming that, in the four seconds between entering the file number and “GD,” he actually compared the handful of data fields on the left and right screens, there can be no debate that such a review is not a reasonable inquiry but merely putting a lawyer’s face on a client’s allegations with no involvement of a licensed professional.

JURISDICTION AND STANDARD OF REVIEW

This action is based on claims arising under the FDCPA. Therefore, subject matter jurisdiction arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

Bock moves under Fed.R.Civ.P. 56 for an order entering summary judgment as to Pressler's liability for violating the FDCPA. Fed.R.Civ.P. 56(c) provides, in part:

The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

Once Bock satisfies his initial burden of informing the court as to the basis for the motion and identifying the evidential record which demonstrates the absence of a genuine issue of material fact, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), "an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party." Fed.R.Civ.P. 56(e)(2); and, see, *Kline v. First W. Government Securities, Inc.*, 24 F.3d 480, 485 (3rd Cir. 1994).

LEGAL ARGUMENTS

POINT I: PRESSLER VIOLATED THE FDCPA BY FILING AND SERVING BOCK WITH A COLLECTION COMPLAINT WITHOUT AN ATTORNEY'S CONSIDERED PROFESSIONAL JUDGMENT.

Pressler's collection complaint purported to be, but was not in any meaningful way, *from* attorneys and, therefore, Pressler misrepresented the complaint's source in violation of the FDCPA.

A. To Be A Communication "from" a Collection Lawyer, the Lawyer Must Review of Facts and Make a Professional Judgment, and a Complaint Must Be Predicated on a Reasonable Inquiry.

A collection complaint served on a consumer is a communication from a debt collector. To be a communication from an attorney, a lawyer must make "a considered, professional judgment." *Avila v. Rubin*, 84 F.3d 222, 229 (7th Cir. 1996). "Merely being told by a client that a debt is overdue is not enough." *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 304 (2d Cir. 2003) ("*Miller I*"). Nor can the attorney rely on the consumer's failure to dispute the validity of the debt in response to an initial demand letter which contains the notice of dispute rights required under 15 U.S.C. § 1692g. *Gigli v. Palisades Collection, L.L.C.*, 2008 WL 3853295, *6-*7 (M.D. Pa. Aug. 14, 2008).

In assembly-line fashion, Pressler's non-lawyer SAC Department prepares complaints by merging client-supplied data into Pressler's complaint template. Next, the SAC Department prepares a daily "feed list" for Gulko, who had not

previously been involved with the files. Each day, Gulko completes the feed list, which averages 300-400 complaints. Next, Gulko enters each file number from that list, looks at two adjoining screens, comparing the data displayed in each – one being the complaint and the other being the client-supplied information coupled with updated payments and addresses. Next, Gulko enters GD to approve the complaint or NG to “kill” it. Next, no other attorney reviews the approved complaints and another department takes care of filing them.

On the day in question, Gulko reviewed 673 complaints and approved Bock’s complaint just four seconds after opening the file.

Gulko exercised no professional judgment when approving Bock’s complaint. Consequently, the complaint was not *from* a lawyer “in any meaningful sense of that word.” *Clomon v. Jackson*, 988 F.2d 1314, 1320 (2d Cir. 1993). Furthermore, that same process reveals the absence of any reasonable inquiry to conclude that there existed evidential support for the complaint’s factual allegations.

B. *Background of the Fair Debt Collection Practices Act*

The FDCPA is a remedial statute and, therefore, is construed broadly to effectuate its purposes. *Leshner v. Law Offices Of Mitchell N. Kay, PC*, 650 F.3d 993, 996 (3d Cir. 2011) cert. denied, 132 S. Ct. 1143 (U.S. 2012).

Congress adopted the FDCPA with the “express purpose to eliminate abusive debt collection practices by debt collectors, and to insure that those debt

collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010) (internal quotes and ellipsis omitted).

“Congress recognized that ‘the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness or marital difficulties or divorce.’” *FTC v. Check Investors, Inc.*, 502 F.3d 159, 165 (3d Cir. 2007). “A basic tenet of the Act is that all consumers, *even those who have mismanaged their financial affairs resulting in default on their debt*, deserve ‘the right to be treated in a reasonable and civil manner.’” *FTC, supra* at 165 (emphasis added) quoting *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1324 (7th Cir. 1997).

“Congress also intended the FDCPA to be self-enforcing by private attorney generals.” *Weiss v. Regal Collections*, 385 F.3d 337, 345 (3d Cir. 2004). “In order to prevail, it is not necessary for a plaintiff to show that she herself was confused by the communication she received; it is sufficient for a plaintiff to demonstrate that the least sophisticated consumer would be confused. In this way, the FDCPA enlists the efforts of sophisticated consumers like Jacobson 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. Services, Inc., 516 F.3d 85, 91 (2d Cir. 2008); and, see, *Gonzales v. Arrow Fin. Services, LLC*, 660 F.3d 1055 (9th Cir. 2011).

Thus, “the FDCPA protects all consumers, the gullible as well as the shrewd.” *Clomon*.

C. *The FDCPA Applies to Lawyers’ Litigation Activities.*

The FDCPA applies to lawyers regularly engaged in consumer debt-collection litigation. *Heintz v. Jenkins*, 514 U.S. 291 (1995). The FDCPA creates no exceptions for attorneys – even when that conduct falls within conduct traditionally performed only by attorneys. *Id.* Thus, there is no “litigation privilege” to excuse FDCPA violations by debt collecting attorneys. *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007). “Attorneys who regularly engage in debt collection or debt collection litigation are covered by the FDCPA, and *their litigation activities must comply with the requirements of that Act.*” *Piper v. Portnoff Law Associates*, 396 F.3d 227, 232 (3d Cir. 2005) (emphasis added).

Thus, while the FDCPA does not purport to regulate the practice of law, a debt collection lawyer may have to adapt its how it conducts business or risk violating the Act.

D. *Collection-Lawyer Communications Convey Authority and Credibility.*

“Abuses by attorney debt collectors are more egregious than those of lay collectors because a consumer reacts with far more duress to an attorney's

improper threat of legal action than to a debt collection agency committing the same practice.” *Crossley v. Lieberman*, 868 F.2d 566, 570 (3d Cir. 1989). This is so, in part, because a “debt collection letter on an attorney's letterhead conveys authority and credibility.” *Crossley supra* at 570.

A complaint to collect a debt served on a consumer is as much a communication as a letter and, therefore, is subject to 15 U.S.C. §§ 1692e and 1692f. *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1032 (9th Cir. 2010).

“The leading case on whether mass-produced debt-collection mailings by an attorney violate the proscriptions of the FDCPA is *Clomon*.” *Leshner, supra* at 999. In *Clomon*, the court concluded that, due to Attorney Jackson’s limited involvement, “the collection letters were not ‘from’ Jackson in any meaningful sense of that word” and, therefore, violated §1692e(3). *Clomon, supra* at 1320. Coming from an attorney, the letters “would have led many consumers, and certainly the least sophisticated consumer, to believe that an attorney had personally considered the debtor’s case before the letters were sent.” *Clomon, supra* at 1321. The reason is that “the use of an attorney's signature implies-at least in the absence of language to the contrary-that the attorney signing the letter formed an opinion about how to manage the case of the debtor to whom the letter was sent.” *Clomon, supra* at 1321.

Similarly, a complaint signed by an attorney and served on the consumer would lead consumers to believe that an attorney had considered the case before

the complaint was filed and served.

Avila, approved in this Circuit by *Leshner, supra* at 999, observed that a consumer “getting a letter from an ‘attorney,’ knows the price of poker has just gone up.” Which explains why “the dunning campaign escalates from the collection agency, which might not strike fear in the heart of the consumer, to the attorney, who is better positioned to get the debtor's knees knocking.” *Avila supra* at 229.

“The attorney letter implies that the attorney has reached a considered, professional judgment that the debtor is delinquent and is a candidate for legal action.” *Avila, supra* at 229. A collection complaint equally implies that, before being filed and served, a licensed attorney “reached a considered, professional judgment.” *Avila, supra* at 229.

E. The Volume of Collection Activity Reflects the Level of Attorney Involvement.

Clomon observed that “there will be few, if any, cases in which a mass-produced collection letter bearing the facsimile of an attorney's signature will comply with the restrictions imposed by § 1692e.” *Clomon supra* at 1321.

In *Boyd v. Wexler*, 275 F.3d 642 (7th Cir. 2001), the court reversed summary judgment which had dismissed the consumer's FDCPA claim. The collection lawyer's affidavit explained the procedures employed in sending collection letters. Judge Posner, writing for the court, observed that the law firm

sent 439,606 letters over an 8½ month period and 23,342 in June 2000, which was 93 times the maximum based on the court's assumption of a mere 15-minute-per-letter review. Consequently, the court found the lawyer's affidavit to be incredible and, therefore, reversed the lower court's summary judgment which dismissed the FDCPA claims.

In *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002), the fact that the lawyer sent 2,000 letters per month evidenced the lack of sufficient attorney involvement. Based on Gulko's estimate, he reviews double that number of complaints each month.

In *Miller v. Upton, Cohen & Slamowitz*, 687 F. Supp. 2d 86 (E.D.N.Y. 2009) ("*Miller III*"), the court considered the monthly volume of letters in a case where the court found there was insufficient involvement as to both the dunning letter and the collection complaint. There, two lawyers signed 211 letters on the day a letter was sent to the consumer and over 3,000 the same month. *Miller III, supra* at 94. "The volume of business at UCS, coupled with practices followed in the Miller matter, supports the conclusion that debt collection letters *and litigation documents* were regularly mass-produced at UCS by non-lawyers at the push of a button." *Miller III, supra* at 100. Similarly, Gulko reviewed 673 complaints on the day he approved the Bock complaint and the complaints are regularly mass-produced by non-lawyers.

F. *Gulko's Involvement Was Insufficient.*

Gulko only reviews the information which the client provided and any updated information about payments and addresses obtained after the claim was placed with Pressler. Gulko does not review billing statements or the controlling credit card agreements. In debt-buyer cases, Gulko does not have access to the client's purchase agreement and does not verify whether the client can obtain records or an affidavit from a records witness.

In *Miller III*, the court read *Nielsen* and *Miller I* to hold that reviewing basic debt information supplied by the client "is insufficient data on which to form a reasoned professional judgment as to the appropriateness of a collection action." *Miller III, supra* at 97. Specifically, the debtor's name, social security number, current address, telephone number, account number, and amount of the debt – which the court called the equivalent of name, rank and serial number – was not enough.

Miller III held that, at the very least, the attorney needed to review the credit card agreement "prior to commencing legal action." *Miller III, supra* at 97. Having failed to even seek a copy of that agreement, the attorney did not know that there was a choice-of-law provision selecting Ohio law.

Similarly, Gulko does not review the credit card agreement despite acknowledging that a choice-of-law clause would be relevant to his review. *Miller III, supra* at 98, held that:

where an attorney commences suit in so uninformed a manner that he is ignorant even as to what law governs his suit, it cannot be said that he has undertaken a level of review sufficient to satisfy even the most general requirements applicable to attorney conduct, let alone the more focused review requirements established by the FDCPA.

Similarly, Gulko cannot be said to have undertaken a sufficient review.

Miller III also held that, as an independent basis for liability, a lawyer must review his client's file. *Miller III, supra* at 98. Here, Gulko admitted that he does not review that information – only the electronic data imported into Pressler's collection software.

Nielsen also provides guidance. There, the court affirmed summary judgment based on the lack of meaningful attorney involvement. The attorney explained the review but, much like Gulko's review, the work was ministerial and did not call for the exercise of professional judgment.

The most substantive aspect of this review involved checking an internal database to determine whether a debtor had declared bankruptcy and running a computer check (supplemented by eyeball review) to screen out debtors who lived in certain pre-determined, prohibited states. These were purely "yes/no" assessments that involved no exercise of discretion; indeed, Household itself verified that a debtor had not died or declared bankruptcy and did not live in a prohibited state before it forwarded the debtor's name to Dickerson for issuance of a dunning letter. Aside from this, Dickerson's review was aimed at identifying missing data, typographical errors, and debtors whom he had already sent letters. The ministerial nature of Dickerson's review is confirmed by his own deposition testimony. Dickerson testified that in the course of reviewing a list of 148 delinquent accounts, he spent approximately two minutes per page of forty accounts-

approximately three seconds per account, in other words.

Nielsen, supra at 636.

Based on the entirety of the circumstances, Gulko's approval was not based on any meaningful attorney involvement sufficient for the complaint to constitute a communication from an attorney.

Furthermore, the circumstances also establish that Gulko did not engage in any reasonable inquiry sufficient to certify that, to the best of his knowledge, information and belief, there was evidential support for the factual allegations. Indeed, the amount claimed exceeded the balance shown on the last billing statement and the complaint sought interest when all finance charges ceased upon charge off.

Consequently, Pressler violated 15 U.S.C. §§ 1692e, 1692e(3), 1693e(9) and 1692e(10).

POINT II: PRESSLER'S LIABILITY FOR VIOLATING THE FDCPA ARISES BECAUSE PRESSLER IS A DEBT COLLECTOR WHO SOUGHT TO COLLECT A CONSUMER DEBT FROM BOCK.

Liability under the FDCPA requires proof of three elements:

- (1) Defendant is a debt collector;
- (2) Plaintiff was the object of a collection activity arising from a consumer debt; and
- (3) Defendant engaged in an act or omission prohibited by the Act.

Johnson v. BAC Home Loans Servicing, LP, 867 F. Supp. 2d 766, 776 (E.D.N.C. 2011) *reconsideration denied*, 2012 WL 148688 (E.D.N.C. Jan. 18, 2012).

Liability under the FDCPA arises upon the showing of a single violation. *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62-3 (2d Cir. 1993).

A. *Pressler is a Debt Collector.*

A debt collector is “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). By definition, Pressler’s status as a debt collector is unrelated to whether Bock’s account is subject to the act.

Disingenuously, Pressler’s Answer asserted that it is a law firm which collects debt “on some occasions.” SMF ¶8. The facts as revealed on Pressler’s

website and in its sworn statement when applying for a protective order is that its “primary practice is devoted to a retail or consumer collection practice.” SMF ¶13. Consequently, there can be no dispute that Pressler is a debt collector.

B. *Pressler Attempted to Collect a Consumer Debt.*

The FDCPA applies to the collection of debts, defined as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.” 15 U.S.C. § 1692a(5).

The *Bock Decl.* explains that the account was used exclusively for personal reasons and not in any business transactions. Therefore, the subject account was a debt as defined by the Act.

The fact that Pressler filed a complaint seeking to enforce the account demonstrates that Pressler was seeking to collect the debt from Bock.

C. *Bock is a Consumer.*

A consumer is “any natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3). Pressler’s Answer admitted that Bock is a natural person and the collection complaint is self-evident that Bock was allegedly obligated to pay the debt. Therefore, Bock is a consumer.

D. The FDCPA Applies to Pressler's Conduct in Attempting to Collect the Debt.

Pressler, as a debt collector who sought to collect a consumer debt from a consumer, is subject to the FDCPA. As demonstrated in Point I, *supra*, Pressler violated the Act. Therefore, Pressler is liable to Bock under 15 U.S.C. § 1692k(a).

CONCLUSION

For the foregoing reasons, Plaintiff, Daniel Bock, Jr. respectfully requests that the Court grant summary judgment as to the liability of Defendant, Pressler and Pressler, LLP for violation of the Fair Debt Collection Practices Act.

Dated: October 1, 2013

Respectfully submitted,

s/Philip D. Stern

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Attorney for Plaintiff, Daniel Bock, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

=====	:	
	:	
DANIEL BOCK, JR.	:	
	:	2:11-cv-07593-KM-MCA
Plaintiff	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLP,	:	
	:	
Defendant	:	
=====	:	

DEFENDANT, PRESSLER & PRESSLER, LLP'S,
MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT'S LIABILITY

****ORAL ARGUMENT IS HEREBY REQUESTED****
PURSUANT TO L. CIV. R. 78.1(b)

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PRELIMINARY STATEMENT

Plaintiff, Daniel Bock, Jr., through his counsel, seeks to utilize the federal court system to opine on the quantum of professional judgment required for an attorney-at-law in the State of New Jersey to comply with New Jersey Court Rules. Plaintiff seeks to accomplish this by imposing liability against the Defendant-law firm, Pressler and Pressler, LLP (“Pressler”), under a federal statute, the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (“FDCPA” or the “Act”). Plaintiff alleges the Act was violated because a Pressler attorney “filed and caused to be served a collection complaint without prior meaningful attorney involvement and misrepresented that an attorney made a reasonable inquiry to conclude that evidence existed to support the complaint’s factual allegations.” (ECF Doc. 34-5, pg. 1 of 22).

The quantum of professional judgment and, therefore, what is acceptable in the discharge of an attorney’s professional responsibilities to his/her client is regulated by the State of New Jersey through its Court Rules and the Rules of Professional Conduct (“RPCs”). This is a query delegated to, and controlled by, the State of New Jersey. Pressler submits that neither the FDCPA nor the federal courts were designed to regulate and/or act as an enforcement mechanism for the claim Plaintiff brings before this court.

Plaintiff’s complaint relies upon a few basic facts and arguments. First, the collection complaint was filed in New Jersey state court by Pressler on behalf of its client and was signed by Ralph Gulko, Esq., an attorney with the Pressler firm. Second, Mr. Gulko’s signature on the collection complaint, albeit an electronic one, constitutes certain implicit representations pursuant to R. 1:4-8. Third, it is further argued that because of the amount of collection complaints Mr. Gulko signs he cannot read the complaint and/or make an inquiry reasonable under the circumstances to comply with R. 1:4-8(a)(3). Based upon these facts, arguments and a

misplaced reliance on case law pertaining only to *pre-suit* dunning letters, Plaintiff asserts liability under the FDCPA by claiming Rule 1:4-8 was violated because there was no “meaningful” involvement.

The court-created doctrine of “meaningful” involvement arose in the context of law firms renting their letterhead to collection agencies. In fact, attorneys were initially exempt from the FDCPA. Based upon the fact that §1692e(3)¹ has not changed since attorney’s were found to be subject to the FDCPA, the Act was not contemplated to regulate the discharge of professional responsibility by attorneys through “meaningful” involvement. The FDCPA does not govern the quantum of review an attorney conducts to file a lawsuit.

As to compliance with R. 1:4-8, the State Court Action was the appropriate forum to raise potential violations of said rule. The FDCPA was not created to enforce state court’s rules or set minimum standards of professional judgment for attorneys.

Assuming *arguendo* that the quantum of professional judgment is an inquiry that is properly before this court for determination, Pressler submits that it was “meaningfully” involved in the filing of the collection complaint. Lawsuits based on credit cards are straight-forward cases. They do not require a significant amount of information to be asserted. In fact, the collection complaint asserted only four basic facts: (1) Midland Funding, LLC is the owner of (2) Mr. Bock’s HSBC BANK NEVADA, N.A. account number ending in “8245” (3) which is now in default (4) in a specified amount. The facts are not complex.

The amount of time to determine if a collection complaint asserting those basic facts can be filed is greatly reduced by an attorney’s reliance on a long-time client, the review by other Pressler staff, and the practices created by attorneys of the law firm. An isolated review of Mr.

Gulko's activities does not take into account the totality of the circumstances which, if considered, show that Pressler and Mr. Gulko complied with R. 1:4-8 in representing their client.

FDCPA case law dictates that debt collector's are not required to have the immediate means to prove their debts nor are they required to conduct an investigation thereof prior to initiating collection activities. Plaintiff's contention that billing statements, the credit card agreement and the chain of title are required for an attorney to be able to determine if a collection lawsuit on a credit card can be filed is the equivalent of requiring more of a paper trail before filing. This notion has been flatly rejected under the FDCPA by courts.

Lastly, there must be something about the collection complaint that is materially false, deceptive or misleading for a violation under 15 U.S.C. §1692e (false or misleading misrepresentations) or its subparts. Plaintiff has pled nothing in his complaint² about an impropriety as to the substance of the collection complaint which begs the question: if there was nothing substantively wrong with the collection complaint, what could possibly be materially false, deceptive or misleading to the least sophisticated consumer that would affect the way they would respond to the collection complaint. The simple answer is nothing. Plaintiff's complaint cannot survive because there was no misrepresentation (material or otherwise) made in the collection complaint to the least sophisticated debtor. Thus, Plaintiff's motion should be denied.

¹ 15 U.S.C. §1692e(3). "The false representation or implication that any individual is an attorney or that any communication is from an attorney."

² Plaintiff now, in his brief on a dispositive motion, claims that there are issues with the collection complaint. Those issues are addressed at Point VI. However, it is noted that Plaintiff cannot amend his complaint to assert new factual allegations through briefing. See Bell v. City of Philadelphia, 275 Fed. Appx. 157, 160 (3d Cir. 2008)(quoting Shanahan v. City of Chi., 82 F.3d 776, 781 (7th Cir. 1996)).

PROCEDURAL HISTORY

The State Court Action

On September 12, 2011, Pressler started an electronic file in its office for the collection of a HSBC Bank Nevada, N.A. account ending in “8245” belonging to Plaintiff, Daniel Bock, Jr. on behalf of its client Midland Funding, LLC (“Midland”). (ECF Doc. 32-1 - Defendant’s L. Civ. R. 56.1 Statement of Material Facts (“SOF”), ¶ 1)³. On September 15, 2011, Pressler sent Plaintiff an initial notice letter pursuant to 15 U.S.C. § 1692g of the FDCPA (the “Initial Letter”) to Plaintiff’s correct address. Id. at ¶ 2. No response was received from the Plaintiff in connection with the Initial Letter sent on September 15, 2011. Id. at ¶ 3. Nor was the Initial Letter returned to Pressler as undeliverable. Id. at ¶ 3.

On October 21, 2011, Pressler, through Ralph Gulko, Esq. filed a complaint on behalf of Midland in the action titled Midland Funding, LLC v. Daniel Bock, Jr. in the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County under docket number DC-022331-11 (the “State Court Action”). Id. at ¶ 4. On November 18, 2011, the Plaintiff filed a pro se Answer with the court in the State Court Action. Id. at ¶ 9. Plaintiff also retained his instant counsel during to represent him during the State Court Action. (ECF Doc. 32-1 - SOF, ¶ 10). After litigating the case which included motion practice and discovery, Plaintiff and Pressler’s client agreed to a settlement of the State Court Action which was memorialized in a Stipulation of Settlement. Id. at ¶¶ 11-13. The Settlement was paid on or about February 29, 2012 in full satisfaction of the claim. Id. at ¶ 14. The State Court Action complaint was then dismissed with prejudice by way of stipulation. Id. at ¶ 15.

³ In an effort to reduce the re-filing of documents in this matter, Pressler cites to and references the L. Civ. R. 56.1 Statement of Material Facts submitted in conjunction with Pressler’s moving summary

The Instant Action

The Plaintiff filed the instant complaint with the Court on December 30, 2011. (ECF Doc. 1). Discovery in this matter was conducted by both parties and discovery closed on August 1, 2013. (ECF Doc. 27). No expert reports were submitted by either party. Moving papers were submitted by Plaintiff on October 1, 2013. (ECF Doc. 34). Opposition thereto is due November 25, 2013. (ECF Doc. 42). Pressler now opposes Plaintiff's motion for summary judgment as to liability for the reasons set forth hereinafter.

LEGAL ARGUMENT

I. STANDARD OF REVIEW FOR FED. R. CIV. P. 56 MOTION

Summary judgment is governed by FED. R. CIV. P. 56. Summary judgment should be granted by a court when the record demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). See also Celotex Corp. v. Catrett, 477 U.S. 317, 330, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

"A court reviewing a summary judgment motion must evaluate the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." EBC, Inc. v. Clark Bldg. Sys., 618 F.3d 253, 262 (3d Cir. 2010)(citation omitted). Summary judgment should be entered if the movant shows: 1) that they are entitled to judgment as a matter of law and 2) that there is no genuine dispute as to any material fact by citing to "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . admissions, interrogatory answers, or other materials." Torres v. Franklin Twp., 2011 U.S. Dist. LEXIS 148296, at *4 (D.N.J. Dec. 22, 2011)(citing FED. R. CIV. P. 56(c)(1)(A)).

judgment papers and, as necessary, to any other certification and/or affidavit Pressler submitted in support

“Facts that could alter the outcome are ‘material facts,’ and disputes are ‘genuine’ if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the dispute issue is correct.” EBC, Inc., supra, 618 F.3d at 262 (citations omitted). See Celotex Corp., supra, 477 U.S. at 322. “Although the ‘burden to demonstrate the absence of material fact issues remains with the moving party regardless of which party would have the burden of persuasion at trial . . . the moving party’s ‘burden’ under Rule 56(c) ‘is discharged by “showing” – that is, pointing out to the District Court – that there is an absence of evidence to support the non-moving party’s case.’” Trap Rock Indus. v. Local 825, Int’l Union of Operating Eng’rs, 982 F.2d 884, 890 (3d Cir. 1992)(citations omitted). “That is, the movant can support the assertion that a fact cannot be genuinely disputed by showing that ‘an adverse party cannot produce admissible evidence to support the [alleged dispute of] fact.’” Torres, supra, 2011 U.S. Dist. LEXIS at *6 (quoting FED. R. CIV. P. 56(c)(1)(B))(alteration in original). Thus, “to withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party.” Id. at *5 (citation omitted). The “non-moving party may not ‘rest upon mere allegations, general denials or . . . vague statements’” Trap Rock Indus., supra, 982 F.2d at 890 (quoting Quiroga v. Hasbro, Inc., 934 F.2d 497, 500 (3d Cir.), cert. denied, 116 L. Ed. 2d 327, 112 S.Ct. 376 (1991)).

In the instant matter, Plaintiff asserts that he believes that there could not have been “meaningful” attorney involvement yet fails to point to any evidence in support of the proposition that Pressler failed in this respect. “If the non-moving party’s evidence ‘is merely

of its moving papers.

colorable, . . . or is not significantly probative, . . . summary judgment may be granted.”
(citations omitted) Id. at 890-91.

II. THE PURPOSE OF, AND STANDARD OF REVIEW UNDER, THE FDCPA.

A. The purpose of the FDCPA.

“Congress made its purpose in enacting the FDCPA explicit: ‘to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.’” Allen v. LaSalle Bank, 629 F.3d 364, 367 (3d Cir. 2010)(quoting 15 U.S.C. §1692(e)). Specifically, the legislative history of the FDCPA suggests that the “abuses” considered by Congress consisted of: “obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentations of a consumer’s legal rights, disclosing a consumer’s personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretence, impersonating public official and attorneys, and simulating legal process.” Cohen v. Wolpoff & Abramson, LLP, 2008 U.S. Dist. LEXIS 77052, at *20-21 (D.N.J. 2008)(citing Sen. Rep. No. 382, 95th Cong., 1st Sess. 2 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1696). The FDCPA was not enacted to regulate the quantum of professional judgment exercised by attorneys which is left to the States.

B. The least sophisticated debtor standard.

Plaintiff’s complaint asserts violations of §1692e and its subparts. “Communications” from a debt collector are considered under the least sophisticated debtor standard. Brown v. Card Serv. Ctr., 464 F.3d 450, 453 (3d Cir. 2006). The standard “ensure[s] that the FDCPA protects all consumers, the gullible as well as the shrewd.” Id. (quoting Clomon v. Jackson, 988 F.2d 1314, 1318 (2d Cir. 1993)). In the Third Circuit, “although the ‘least sophisticated debtor’

standard is a low standard, it ‘prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care.’” Leshner v. Law Offices of Mitchell N. Kay, PC, 650 F.3d 993, 997 (3d Cir. 2011)(quoting Wilson v. Quadramed Corp., 225 F.3d 350, 354-55 (3d Cir. 2000)). Notably, however, courts have stated that:

Although established to ease the lot of the naïve, the standard does not go so far as to provide solace to the willfully blind or non-observant. Even the least sophisticated debtor is bound to read collection notices in their entirety. (citations omitted). Rulings that ignore these rational characteristics of even the least sophisticated debtor and instead rely on unrealistic and fanciful interpretations of collection communications that would not occur to even a reasonable or sophisticated debtor frustrate Congress’s intent to ‘insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.’ (citation omitted).

[Campuzano-Burgos v. Midland Credit Mgmt., 550 F.3d 294, 299 (3d Cir. 2008).]

Ultimately, the determination whether a communication is false, deceptive, or misleading under § 1692e is a question of law for the court to decide. Wilson, supra, 225 F.3d at 350, n.2.

C. Materiality is a required element for claims alleging a false, deceptive or misleading representation under §1692e and/or its subparts.

In the context of 15 U.S.C. § 1692e, federal courts recognize that a statement that is alleged to be false, deceptive, or misleading must be “material” prior to finding a violation of the FDCPA. If a statement is not material, it cannot mislead or deceive even the least sophisticated debtor. One of the lead decisions defining “materiality” with respect to the FDCPA is Hahn v. Triumph P’Ships LLC, 557 F.3d 755 (7th Cir. 2009). In Hahn, the court held that it did:

[N]ot see any reason why materiality should not . . . be required in an action based on §1692e. The statute is designed to provide information that helps consumers to choose intelligently, and by definition immaterial information neither contributes to that

objective (if the statement is correct) nor undermines it (if the statement is incorrect). (citations omitted). This is the upshot of our conclusion in Wahl 2009 U.S. App. LEXIS 3530 at *7 that, “if a statement would not mislead the unsophisticated consumer, it does not violate the Act—even if it is false in some technical sense.” A statement cannot mislead unless it is material, so a false but non-material statement is not actionable.

[Id. at 757-58 (emphasis added).]

The requirement that a false or misleading statement be “material” prevents absurd or idiosyncratic interpretations of hyper-technical violations of the FDCPA.

Requiring a false or misleading statement to be “material” before it can be actionable has also been adopted outside the 7th Circuit where the Hahn decision originated. See Lembach v. Stewart, 2013 U.S. App. LEXIS 12094, at *10-14 (4th Cir. 2013); Miller v. Javitch, Block & Rathbone, 561 F.3d 588, 596 (6th Cir. 2009); Donohue v. Quick Collect, Inc., 592 F.3d 1027, 1033-34 (9th Cir. 2010). It has also been recognized, if not adopted in several jurisdictions. See Gabriele v. Am. Home Mortg. Servicing, 503 Fed. Appx. 89, 94-95 (2d Cir. 2012)(generally recognizing that several circuits have begun to adopt the “material” misrepresentation requirement); Rogozinski v. NCO Fin. Sys., 2012 U.S. Dist. LEXIS 153894, *15-17 (E.D. Pa. 2012)(relying on “materiality” requirement recognized in other circuits); DeGeorge v. Fin. Recovery Servs., 2012 U.S. Dist. LEXIS 140966, at *20-21, fn. 27 (E.D. Pa. 2012)(concluding that statements were “material” so a claim was stated even if “non-material, false representations do not violate the FDCPA”); Caufield v. Am. Account & Advisors, 2013 U.S. Dist. LEXIS 66935, at *5-6 (D. Minn. 2013)(rejecting §1692e claim because statement not material); Hudspeth v. Capital Mgmt. Servs., L.P., 2013 U.S. Dist. LEXIS 25260, at *12-13 (D. Colo. 2013)(noting several circuits have adopted a requirement that a false statement must be material in order to be actionable under the FDCPA).

In the context of the instant action, the concept of material or non-material is limited in that there can be only one action to a filed complaint. Respond. Even if litigation is alleged to be frivolous, a party must still respond to a complaint.

III. THE FDCPA AND FEDERAL COURTS ARE NOT MEANT TO REGULATE THE STANDARDS OF PROFESSIONAL CONDUCT OF ATTORNEYS OR TO ENFORCE STATE COURT RULES

Federal courts have held that the FDCPA should not be utilized by federal judges to displace state procedures and practices and that the FDCPA is typically not at issue in highly regulated areas of law that already afford debtors protection. See Beler v. Blatt, Hasenmiller, Leibsker & Moore, LLC, 480 F.3d 470, 475 (7th Cir. 2007)(“State judges may decide how their judgments are to be collected. This does not mean that the FTC must steer clear of the subject, but it certainly implies that federal judges ought not use this ambulatory language to displace decisions consciously made by state legislatures and courts about how judgment creditors collect judgments entered under state law.”); Gabriele, supra, 503 Fed. Appx. at 96, n.1 (2d Cir. 2012)(“As we have recognized in past decisions, the protective purposes of the FDCPA typically are not implicated ‘when a debtor is instead protected by the court system and its officers.’ [citation omitted]. In Connecticut, ‘the state foreclosure process is highly regulated and court controlled.’ [citation omitted]. When that is the case, the state court’s authority to discipline will usually be sufficient to protect putative-debtors like Gabriele from legitimately abusive or harassing litigation conduct. [citation omitted]).

A. The states regulate attorneys and the requisite standards of professional conduct and the RPCs govern the practice of law in New Jersey.

The Supreme Court of the United States recognized that “the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their

respective jurisdictions.” Leis v. Flynt, 439 U.S. 438, 442 (1979). Thus, the States “prescribe . . . the standards of professional conduct” and “are responsible for the discipline of lawyers.” Ibid.

The RPCs govern attorneys in the State of New Jersey. The Supreme Court of New Jersey is the body that governs the practice of law for its attorneys. O Builders & Assocs., Inc. v. Yuna Corp. of NJ, 206 N.J. 109, 120-21 (2011)(“This Court’s authority to regulate the legal profession is of constitutional dimension.”). See LoBiondo v. Schwartz, 199 N.J. 62, 97 (2009)(“Our principal means of regulating the behavior of attorneys are found in our Rules of Professional Conduct (RPC) and the disciplinary system that we use to enforce them. That system, which provides the Court with a variety of sanctions through which we police the practice of law, and which permits the filing of ethics complaints, may be initiated by clients and nonclients alike”).

B. Alleged violations of RPCs are not a basis for FDCPA liability

Although not explicitly stated in Plaintiff’s Complaint, the allegation that there was insufficient involvement when the complaint was reviewed (ECF Doc. 1, ¶¶ 37 and 44.02) such that it amounted to a failure to comply with R. 1:4-8 (frivolous litigation) amounts to a *sub silentio* allegation of an ethical violation as the basis for Plaintiff’s FDCPA claim.

RPC 1.1 pertains to “competence” and states, in relevant part, that, “[a] lawyer shall not: (a) [h]andle or neglect a matter entrusted to the lawyer in such manner that the lawyer’s conduct constitutes gross negligence[.]” N.J. Court Rules, RPC 1.1. Similarly, RPC 3.1 states, in relevant part, that:

A lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law.

[N.J. Court Rules, RPC 3.1.]

In May 2012, a Joint Opinion on “Debt Collection Practices” was issued by the Committee on the Unauthorized Practice of Law and the Advisory Committee on Professional Ethics. The opinion specifically recognized that the “New Jersey ethics rules and the federal Fair Debt Collection Practices Act . . . are distinct bodies of law” (ECF Doc. 32-4 – Certification of Mitchell L. Williamson, Esq., Exhibit H). Furthermore, the opinion originated because a New Jersey lawyer was disciplined for “having lent his name and letterhead to a collection agency in exchange for a monthly fee” and discusses two opinions numbered 259 and 506 of the Advisory Committee on Professional Ethics (“ACPE”) that regulate this practice. *Id.*

The allegations in Plaintiff’s complaint are squarely covered by the RPCs that govern and regulate New Jersey attorneys. Thus, it is fair to state that Plaintiff has asserted a failure to comply with the RPCs as a basis for an FDCPA violation.

In Cohen, *supra*, 2008 U.S. Dist. LEXIS at *15-23, there was an allegation by Plaintiff that the Defendant-law firm violated RPC 5.5 (requirements of an attorney to practice law in New Jersey) and Opinion 43 of the New Jersey Supreme Court’s Committee on the Unauthorized Practice of Law and that this constituted violations of the FDCPA under §§ 1692e(3) and 1692f. Notably, the attorney for the plaintiff in Cohen is the instant Plaintiff’s current counsel. The Cohen court dismissed the § 1692e(3) claim because although the defendant-attorneys were not licensed where they sent the “communication,” they were nonetheless attorneys so there was no misrepresentation that the “communication” was from an attorney (Wolpoff & Abramson were licensed in Maryland and sent the letter to New Jersey). In analyzing the § 1692f claim, the court held:

The regulation of the practice of law is a matter of concern to the states which regulate it. Plaintiff here seeks to import this matter of concern to the states – state-specific rules of attorney discipline – into federal legislation. Plaintiff has pointed to no evidence that Congress intended the FDCPA to rely on state rules of attorney discipline or to enforce them.

[Id. at *19-20.]

Although Cohen discussed alleged ethical violations under §1692f, the concept has also been addressed under §1692e. In Eddis v. Midland Funding, LLC, 2012 U.S. Dist. LEXIS 22193, at *27-28 (D.N.J. 2012), the court concluded that “Plaintiff’s claims for violations of the Rules of Professional Conduct do not state a cause of action for ... *misrepresentations* in violation of the FDCPA.” (emphasis added). See also Smith v. Harrison, 2008 U.S. Dist. LEXIS 51685, at *9-10 (D.N.J. 2008)(the plaintiff’s arguments under general ethical obligations were not addressed in the opinion because the court noted that the “argument is not supported by case law”). The Eddis court relied upon Cohen and the New Jersey Supreme Court case of Baxt v. Liloia, 155 N.J. 190, 198-99, 714 A.2d 271 (1998) to reach its determination. Briefly, Baxt, supra found that “[n]either the Appellate Division nor this Court has held, however, that the RPCs in themselves create a duty or that a violation of the RPCs, standing alone, can form the basis for a cause of action.” 155 N.J. at 201.

Based on the case law and the Joint Opinion, the FDCPA and the RPCs are distinct bodies of law. Thus, although not expressly stated in Plaintiff’s complaint, an allegation that Mr. Gulko failed to adequately exercise diligence in his duties as an attorney amounts to an allegation of an ethical violation. Thus, standing as the sole basis to find Pressler liable under the FDCPA, Plaintiff’s allegations are contrary to the case law in this district and the State of New Jersey. See Cohen, Eddis and Baxt, supra. Matters of a potential ethical violation are

concerns for the State of New Jersey – the appropriate regulatory body - not the FDCPA or federal court system. See Cohen and Eddis, supra. Thus, Plaintiff’s motion should be denied.⁴

C. R. 1:4-8 also regulates the conduct of attorneys in the State of New Jersey.

The Rules Governing the Courts of the State of New Jersey are “promulgated by the Supreme Court [of New Jersey] pursuant to the New Jersey Constitution, Article VI, section 2, paragraph 3, which confers upon the Court the exclusive rule-making authority with respect to practice and procedure.” Pressler & Verniero, Current N.J. Court Rules, comment 2.1 on R. 1:1-1 (2014)(citing Winberry v. Salisbury, 5 N.J. 240, 255 (1950), cert. denied 340 U.S. 877 (1950)). In Winberry, New Jersey’s Supreme Court “concluded that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration as such.” 5 N.J. at 255. In fact, “[t]hrough enactment of the revised [Rule 1:4-8], the Court exercised its authority over the practice of law and procedures in the courts” Toll Brothers, Inc. v. Township of West Windsor, 190 N.J. 61, 71 (2007).

1. R. 1:4-8 was not violated although it is the basis of the alleged bad conduct complained of in this case.

Plaintiff’s counsel argues that because Mr. Gulko reviews so many complaints, his R. 1:4-8 certification was false. (See ECF Doc. 1, ¶¶ 36-37). By the very terms of R. 1:4-8, the certification is implicit in the collection complaint. Plaintiff’s counsel believes the certification is false because he misinterprets what R. 1:4-8 implies. Plaintiff’s complaint asserts that R. 1:4-8

⁴ It also bears noting that Plaintiff has answered discovery in this matter indicating he has no personal knowledge to support any of the claims alleged against Mr. Gulko. Thus, the theories alleged are those of Plaintiff’s counsel. (See ECF Doc. 32-4 - MLW Cert., Exhibit G, Interrogatory Answer No. 9). To the extent Plaintiff’s counsel argues no review was done by Mr. Gulko, Defendant would respectfully request a negative inference that the sufficiency of the review was adequate since Plaintiff’s counsel has not filed any ethical grievance against Mr. Gulko and would be required to do so. See RPC 8.3.

signifies that, upon signing a complaint, an attorney certifies that “to the best of his...knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,” “the factual allegations have evidentiary support.” (ECF Doc. 1, ¶ 37). Plaintiff’s theory follows that if you do not do a review sufficient to determine that you have evidentiary support when you sign a complaint, you violate the FDCPA.

To be able to sign and file a complaint an attorney needs only a good-faith basis to assert the claim on its client’s behalf. United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 389 (App. Div. 2009). R. 1:4-8 states that when an attorney *inter alia* signs a pleading, they certify:

that to the best of [their] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

...(3) the factual allegations have evidentiary support or, as to specifically identified allegations, **they are either likely to have evidentiary support** or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support[.] (emphasis added).

There is no requirement in R. 1:4-8 that the signatory to a pleading actually identify the specific factual allegations in the complaint as those which are likely to have support after discovery or they will be withdrawn.⁵ See United Hearts, L.L.C., *supra*, 407 N.J. Super. at 392 (holding “*Rule 1:4-8(a)(3)* makes clear that an attorney need not withdraw a pleading if it is ‘likely’ that the allegations will have evidentiary support or ‘will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support’”). The rules governing state courts in New Jersey are required to be “construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” R. 1:1-2. If R. 1:4-8 were interpreted as Plaintiff suggests,

⁵ See e.g., Plaintiff’s complaint herein, (ECF Doc. 1), at ¶¶ 35 and 37. In ¶ 35 Plaintiff’s counsel simply asserts a fact. In ¶ 37, Plaintiff’s counsel asserts a fact and identifies that it is “likely” to have support.

every attorney would add the “magic” “likely” language after each factual allegation to deter allegations of frivolous pleading. This is not required. An attorney who signs a complaint is not solely certifying that each factual allegation has evidentiary support, but that if a specific factual allegation is called into question, it is “likely” to have support after discovery or it will be withdrawn. Accordingly, the R. 1:4-8 certification is not as narrow as Plaintiff’s counsel asserts.

2. Any allegation that R. 1:4-8 was violated has been knowingly and intentionally waived by Plaintiff’s failure to assert a violation in the state court which warrants a negative inference that Pressler complied therewith.

The alleged violation of R. 1:4-8 is a theory that existed before the settlement and subsequent dismissal with prejudice of the State Court Action. Neither Plaintiff nor his current counsel alleged that R. 1:4-8 was violated in the State Court Action. Instead, they settled the claim which was then dismissed with prejudice upon payment by Plaintiff to Pressler’s client, Midland. The Plaintiff, therefore, has abandoned and/or waived any claim that R. 1:4-8 was violated by Mr. Gulko through his failure to a) send a demand letter as required by R. 1:4-8(b)(1) and b) file a motion for sanctions within twenty days of the end of the State Court Action. See R. 1:4-8(b)(2)(“A motion for sanctions shall be filed with the court no later than 20 days following the entry of final judgment”); Toll Brothers, Inc., supra, 190 N.J. at 71 (“We fashioned timeframes for bringing frivolous behavior to the attention of the offending party, counsel, or pro se litigant, so that the behavior could be corrected *promptly and litigation costs kept to a minimum*, thereby preserving judicial, lawyers’, and litigants’ resources”).

Plaintiff’s abandonment of the procedures and remedies for asserting a violation of R. 1:4-8 in the State Court Action constitute a knowing and intentional waiver of any allegation that R. 1:4-8 was violated. The failure to assert a violation of R. 1:4-8 during the State Court Action

should warrant a negative inference that Mr. Gulko was in compliance therewith. Accordingly, Plaintiff's motion for summary judgment should be denied.

IV. ASSUMING ARGUENDO THAT THE COURT IS GOING TO REVIEW THE QUANTUM OF PROFESSIONAL JUDGMENT EXERCISED BY MR. GULKO AND THE PRESSLER FIRM, MR. GULKO AND THE PRESSLER FIRM WERE "MEANINGFULLY" INVOLVED

Plaintiff focuses solely on Mr. Gulko when raising insufficient attorney involvement. Plaintiff, however, misses the boat. Mr. Gulko is not a sole practitioner but is employed by the Pressler law firm. In other words, Mr. Gulko is one cog in the machine, *i.e.* the Pressler firm. To truly understand and assess whether there has been sufficient attorney involvement (or an inquiry reasonable under the circumstances) the totality of the circumstances must be considered. Indeed, Mr. Gulko signs on behalf of the law firm that represented Midland. See R. 1:4-5 ("Signatures of a firm may be typed, followed by the signature of an attorney of the firm"). The signature block on the State Court Action complaint shows (ECF Doc. 1, Exhibit B):

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff(s)
By: S/Ralph Gulko

Ralph Gulko

Mr. Gulko himself does not represent Midland, but the Pressler law firm does. (ECF Doc. 32-1 - SOF, ¶ 17). In other words, if Mr. Gulko left Pressler, a substitution of attorney would not need to be filed. Thus, due consideration of the review by the Pressler law firm prior to and after Mr. Gulko's review must be evaluated.

A soup-to-nuts description of the processes and practices of how a new claim is received by Pressler from its client through the time it is filed via JEFIS with the state court is set forth in the Felt Affidavit. (ECF Doc. 33).⁶ Same is incorporated herein.

⁶ Said Affidavit was previously filed under seal and is currently the subject of a pending motion to seal.

Defendant submits that any argument by Plaintiff that Mr. Gulko himself was required to conduct a more “sufficient” review a) must be considered in connection with the holdings from Deere and Harvey (*infra*, Point VII) that do not require the immediate means to prove the debt at the time the complaint is filed and b) fails to appreciate and/or consider the amount of review conducted by the Pressler law firm prior to and after the State Court Action Complaint was presented to Mr. Gulko for review. See Liang v. Mary Jane M. Elliot, P.C., 2008 U.S. Dist. LEXIS 78668 (E.D. Mich. 2008)(“the FDCPA ‘can be complied with by delegation of part of the review process to a paralegal or even to a computer program . . . , provided that the ultimate professional judgment concerning the existence of a valid debt is reserved to the lawyer.” [citation omitted]).

Along similar lines, the FDCPA does not impose upon a debt collector any duty to investigate independently the validity of the debt. See Slanina v. United Recovery Systems., LP, 2011 U.S. Dist. LEXIS 121356, at *7-8 (M.D. Pa. 2011)(“The FDPCA did not require [the debt collector] to validate the debt prior to its initial contact with [the plaintiff]. . . . Requiring debt collectors to investigate and verify a debt *before* collection would create an additional duty not found in the statute’s plain language. It would render 1692g(a)(4) superfluous.”). See also Yentin v. Michaels, Louis & Assocs., Inc., 2011 U.S. Dist. LEXIS 104711 (E.D. Pa. 2011); Clark v. Capital Credit & Collection Servs., Inc., 460 F.3d 1162, 1174 (9th Cir. 2006).

Expanding upon the cases above, Yentin, *supra*, was a case where the plaintiff sued a collection agency for, *inter alia*, a) “[f]ailing to conduct a reasonable review and/or investigation to determine the merits of the alleged credit card debt;” and b) “[f]ailing to afford an individual review to the account of Plaintiffs’ alleged debt[.]” 2011 U.S. Dist. LEXIS at *20-21. These allegations were premised on the fact that the plaintiffs had previously disputed the debt with the

original creditor whom the collection agency represented. Id. at *20. The court dismissed the plaintiff's complaint "to the extent that it states claims under the FDCPA for failure to investigate or afford review." Id. at *27. The court also held, at page *28, that:

Because plaintiffs have requested leave to amend their complaint, however, we must consider whether the FDCPA creates a cause of action when a defendant debt collector fails to conduct adequate investigation or to afford individual review. **Plaintiffs have directed us to no provision of the FDCPA imposing upon a debt collector any duty to "investigate" debts that it seeks to collect – either before collection activities begin or after a consumer disputes a debt – and our review of the Act has also revealed no such provision.** [footnote omitted]. (emphasis added).

These nuances in FDCPA law are paramount to the quantum of information necessary to conduct an inquiry reasonable under the circumstances. They further support Pressler's position that the FDCPA and the federal courts are not the appropriate vehicles for pursuing what amounts to alleged violations of Rule 1:4-8 and/or ethical responsibilities which are state-mandated enforcement mechanisms to police the practice of law in New Jersey.

If the full gamut of information is not required to be in possession of the debt collector under the Harvey line of cases (see below) and the debt collector has no obligation to verify or investigate the debt before collection activity or after a dispute under the Yentin line of cases (see above), then the time to review a complaint on a straight-forward claim can be extremely quick. This is especially so considering the detailed process that the Pressler law firm has implemented coupled with the years of experience Mr. Gulko has with Midland and the complaint filing process at Pressler. Plaintiff's contention that the cardmember agreement or statements or chain of title are required documents to review in order to deem involvement "sufficient" prior to filing a complaint is contrary to the Harvey (*infra*) and Yentin (*supra*) line of cases. Accordingly, Pressler respectfully submits that Mr. Gulko is entitled to rely on the review

and processes implemented at Pressler (an actual law firm that litigates collection cases) in order to review and approve a complaint in a very short period of time. Indeed, there are only four simple facts alleged. Pressler, therefore, respectfully requests that Plaintiff's motion be denied because a "sufficient" amount of review was conducted by Mr. Gulko with the aid of the firm.

V. THE COURT-CREATED DOCTRINE OF "MEANINGFUL" INVOLVEMENT

A. Meaningful involvement is not found in the plain text or the history of the FDCPA.

15 U.S.C. § 1692e(3) states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

The statutory language is straight-forward. Neither the history, the structure, nor the plain wording of the FDCPA suggest that there is a requirement of "meaningful involvement" or that licensed attorneys who are regulated by the FDCPA, as opposed to non-attorney debt collectors who are regulated by the FDCPA, must demonstrate that they exercise a certain level of professional judgment in order to comply with the FDCPA. Notably, attorneys were exempt from the FDCPA's coverage when it was enacted, Heintz v. Jenkins, 514 U.S. 291, 294 (1995), yet §1692e(3) has not changed since the attorney exemption was removed. The FDCPA, therefore, could not have intended to cover the inquiry raised by this case when it was enacted.

B. "Meaningful" involvement was created to prevent the rental of law firm letterhead.

Despite the foregoing, courts beginning in 1993 began applying the court-created doctrine of "meaningful" review to prevent debt collectors who were essentially renting attorney

letterhead to collection agencies to send out mass amounts of letters. The seminal case of Clomon v. Jackson, 988 F.2d 1314 (2d Cir. 1993) and its progeny developed the concept of “meaningful” review. See e.g., Avila v. Rubin, 84 F.3d 222 (7th Cir. 1996); Miller v. Wolpoff & Abramson, LLP, 471 F. Supp. 2d 243 (E.D.N.Y. 2007); Greco v. Trauner, Cohen & Thomas, LLP, 412 F.3d 360 (2d Cir. 2006); Lesher, supra. All these cases pertain to sending pre-complaint collection letters and not the filing of the complaint itself.

In Clomon, the defendant-attorney “authorized the sending of debt collection letters bearing his name and a facsimile of his signature without first reviewing the collection letters or the files of the persons to whom the letters were sent.” 988 F.2d at 1316. The defendant-attorney was employed part-time as general counsel for NCB Collection Services (“NCB”) who issued approximately one million letters a year through a computerized mass-mailing system on behalf of a creditor involved in magazine subscriptions. Id.

The process began when NCB received computer tapes from the creditor and uploaded them to their computer system. Id. NCB’s system would simply input the debtor’s name, address, account number, and balance due in a form letter which would cause a letter to be prepared, folded and inserted into an envelope for mailing. Id. NCB had a program to assess the “reliability of its computer data,” however “*no employee of [NCB] reviews the file of any individual debtor until the debtor responds to the agency’s demands for payment.*” Id. (emphasis added). These letters contained a variety of threatening statements to entice the debtors to pay. Id. at 1317. The defendant-attorney admitted that he had **zero** direct personal involvement in the mailing of the letters other than approving the form-based letters and the general process utilized by NCB. Clomon, supra, 988 F.2d at 1317. The defendant-attorney (a) never reviewed the debtor’s file, (b) never reviewed or signed any letter that was sent to the debtor, (c) never gave

the creditor advice on the particular debtor's file, and (d) never received any instructions from the creditor about how to proceed against the debtor. Id. The court found that “[i]n short, [the defendant-attorney] never considered the particular circumstances of Clomon’s case prior to the mailing of the letters and he never participated personally in the mailing.” Id. This was a violation of 15 U.S.C. § 1692e(3) and the beginning of “meaningful” review.

Avila, supra, dealt with an attorney (Rubin) and a collection agency (Van Ru Credit Corp.) who were intertwined because Rubin owned a significant portion of Van Ru Credit Corp.’s stock. 84 F.3d at 224. Just like Clomon, the Avila court found that Rubin did not “personally prepare, sign, or review any of the letters sent to [debtors.]” Id. It was the collectors themselves who were trained and made the ultimate determination of when to send a letter. Id. at 225. In finding a violation of §§ 1692e(3) and 1692e(9), the court stated, at page 230:

The true source of the “attorney” letters was the collection agent who pressed a button on the agency’s computer. “Albert G. Rubin & Associates, Ltd.” is a collection agency, not a law firm at all in any real sense of the term. The “law firm” does not have a retainer agreement with plaintiff’s creditor. No attorney working in the “law firm” ever files a lawsuit or goes to court on behalf of a client.

This is not the situation before this court. Pressler is a law firm. Pressler files lawsuits and goes to court on behalf of its clients. Pressler has not given forms to its client to simply send to any debtor. Pressler has been in the business of collections since approximately 1930. (ECF Doc. 33 - Affidavit of Gerard J. Felt, Esq., ¶ 6). Years and years of experience and creation of practices and procedures for employees and attorneys at the firm to follow separate this case from all Plaintiff’s instant claims and the case law previously interpreting §1692e(3) claims.

Additionally, one of the main concerns in these cases is the consumer’s perceived threat of a lawsuit when they receive a pre-suit letter from an attorney. Hence, the well-quoted

language from Avila that “[a]n unsophisticated consumer, getting a letter from an ‘attorney,’ knows the price of poker has just gone up.” 84 F.3d at 229. However, in this case, there is no threat, Pressler has actually filed a lawsuit and litigated the case for its client.

C. “Meaningful” involvement does not create a general standard under the FDCPA to measure attorney involvement in all contexts, especially, the filing of a complaint.

The foregoing cases were meant to stop lawyers from creating a form-based document that a collection agency could rubber-stamp, without any attorney being involved, to scare debtors into paying by making them believe an attorney was involved. Meaningful involvement, to the extent it currently exists, does not go beyond this specifically identified factual scenario.

Plaintiff next contends that various errors made by [the defendant-attorney] in prosecuting the [collection action] subject Defendants to liability under the FDCPA because they demonstrate his failure to provide “meaningful” attorney involvement in the debt collection efforts undertaken on behalf of [their client]. This claim lacks merit for at least two reasons. **First, to the extent that Plaintiff asserts that there is some general standard under the FDCPA for adequate attorney involvement in debt collection actions, he misrepresents the limited holdings of various courts that have addressed specific claims of false or misleading representations under § 1692e, finding violations in circumstances related to the mass mailing of collection letters containing the signatures of attorneys who never reviewed the involved debtors’ individual files.** *See Clomon v. Jackson*, 988 F.2d 1314, 1320-21 (2d Cir. 1993); *Irwin v. Mascott*, 112 F. Supp. 2d 937, 948-50 (N.D. Cal. 2000); *Newman v. Checkrite California, Inc.*, 912 F. Supp. 1354, 1382-83 (E.D. Cal. 1995); *Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456, 1460-62 (C.D. Cal. 1991).

[Taylor v. Quall, 471 F. Supp. 2d 1053, 1061-62 (C.D. Cal. 2007) (italic in original).]

Even the fact that the Initial Letter pursuant to 15 U.S.C. § 1692g was sent by Pressler to the Plaintiff in the State Court Action before the lawsuit was filed completely changes the posture and analysis from the “meaningful” review cases. After Pressler mailed the Initial Letter

on September 15, 2011 (ECF Doc. 32-1 - SOF, ¶ 2), the Plaintiff had thirty days from receipt thereof to dispute the debt. 15 U.S.C. § 1692g(a)(3). Thirty-three days after mailing the September 15, 2011 letter (presuming 3 days for mailing, see R. 1:3-3 and R. 1:6-3(c)), Pressler was permitted under 15 U.S.C. § 1692g(a)(3) to assume the debt to be valid. Since there was no response from the Plaintiff to the Initial Letter sent by Pressler and same was not returned as undeliverable (ECF Doc. 32-1 - SOF, ¶ 3), the entire posture of the case is altered distinguishing this matter even further from pre-suit letter cases like Clomon.

Further supporting Pressler's position is the matter of Alaan v. Asset Acceptance, LLC, 2011 U.S. Dist. LEXIS 88104 (S.D. Cal. 2011), wherein an analogous argument to the cause of action asserted by the Plaintiff herein was alleged. In Alaan, the plaintiff asserted an FDCPA claim "in connection with the state court lawsuit [defendant] filed against Plaintiff" in the action on the underlying debt by pleading that:

b. Asset certified, through their agent attorneys, under CCP 128.7 *et seq.* and CCP 128.7(b)(3) that the allegation and other factual contentions had evidentiary support or were likely to have evidentiary support when in fact they did not in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10), and 1692f(1);

[Id. at *13.]

CCP 128.7 is substantially similar to R. 1:4-8.⁷ The Court granted the debt collector's motion for summary judgment on this claim by relying on case law that says:

⁷ Cal Code Civ Proc § 128.7

§ 128.7. Signing of pleadings and motion papers by attorney; Signature as of specified conditions; Sanctions

(a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An

“Even when viewed from the perspective of an unsophisticated consumer, the filing of a debt-collection lawsuit without the immediate means of proving the debt does not have the natural consequence of harassing, abusing or oppressing a debtor,” in violation of the FDCPA. *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 330-31 (6th Cir. 2006) (citation omitted); *see also id.* at 333 (“[A] debt may be properly pursued in court, even if the debt collector does not yet possess adequate proof of its claim.”); *Mansfield v. Midland Funding, LLC*, No. 09cv358-L-WVG, 2011 U.S. Dist. LEXIS 34102, 2011 WL 1212939, at *5 (S.D. Cal. Mar. 30, 2011) (“[A] debt collector may file a debt collection action even if the debt collector does not at the time of filing have adequate proof to support the claim.”).

[Id. at *18-19 (italics in original).]

Although Alaan is somewhat different, it supports Pressler’s position that the cases that address “meaningful” attorney involvement do not apply to the instant matter. Additionally, Clomon and Avila do not take into account the line of cases that hold a debt collector does not need to have the immediate means to prove the debt. See Harvey, Christion, Derricotte, and Deere, infra at Point VII. Nor do they take into account the cases that find a debt collector is not required to verify the debt prior to initiating collection activities. See Slanina and Yentin, supra.

unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Thus, reliance on the Clomon and Avila line of cases would be misplaced and is not enough to support a violation of the FDCPA for “insufficient” involvement when Pressler filed the collection complaint. The extent of review is a query delegated to the individual states, not the FDCPA or federal court system and is beyond Clomon and Avila.

D. The volume of activity alone is not dispositive of this matter.

Plaintiff relies on Clomon, supra, Nielson v. Dickerson, 307 F.3d 623 (7th Cir. 2002) and Miller v. Upton, Cohen & Slamowitz, 687 F. Supp. 2d 86 (E.D.N.Y. 2009) to assert that the volume of complaints Mr. Gulko reviews reflects his involvement. Notably, all three cases are from outside jurisdictions and are not binding on this court. Clomon has already been discussed and distinguished above.

Nielson, supra, relates to the alleged rental of an attorney’s “name and firm letterhead to the debt collection effort.” 307 F.3d at 625. Further distinguishing Nielson from the instant matter is the fact that the debt collector-attorney left the ultimate decision making to the client, never pursued any form of litigation for its client, and was essentially a “flat-rater” receiving a per-letter-sent fee. Id. at 635-40. This is not the case with Pressler.

Miller is distinguishable because the court ruled against the debt collector-attorney noting that his own contemporaneous entries in the files in question confirmed that the attorney was not involved with the file until a date well after litigation began. 687 F. Supp. 2d at 100. There is no allegation that Mr. Gulko only reviewed the complaint after it was filed. Nor does Plaintiff recognize that the complaint was filed by Pressler and signed by Mr. Gulko after rigorous review pursuant to Pressler’s procedures. (See Felt Affidavit, ECF Doc. 33). The volume of Mr. Gulko review, therefore, is not dispositive of Plaintiff’s claim.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are

VI. THERE ARE NO MISREPRESENTATIONS, MATERIAL OR OTHERWISE, IN THE COLLECTION COMPLAINT

The instant Plaintiff settled the State Court Action which was subsequently dismissed with prejudice. (ECF Doc. 32-1 - SOF, ¶¶ 13-15; ECF Doc. 32-4 - MLW Cert., Exhibit E). There is no allegation in Plaintiff's complaint that the debt was not his, that the amount set forth in the complaint was incorrect, or that he had any reason to believe the complaint was not from an attorney. (See ECF Doc. 1.) There is nothing about the State Court Action complaint that would lead the least sophisticated debtor to believe that the complaint was not from an attorney or that would change how they respond thereto.

In the absence of any misrepresentation therein, there can be no liability under any provision of § 1692e. To the extent that Plaintiff's counsel argues the alleged misrepresentation was implicit based upon the failure to comply with Rule 1:4-8 such an argument was waived (see Point III, section C-1) and, despite the fact that Plaintiff's counsel knows the effect of Rule 1:4-8, there is nothing to suggest that the alleged failure to comply therewith is something the least sophisticated debtor would rely upon when receiving a complaint.

Although Plaintiff did not plead in his complaint any irregularities that resulted from a lack of "sufficient" review, his moving papers assert that "the amount claimed exceeded the balance shown on the last billing statement and the complaint sought interest when all finance charges ceased upon charge off." (ECF Doc. 34-5, pg. 18 of 22). First, Plaintiff cannot seek to amend the factual allegations in his complaint through briefing on summary judgment. See Bell, supra, (quoting Shanahan, supra). Second, the original creditor, HSBC, provided an affidavit attesting to the amount Mr. Bock's account was charged-off for. Certification of Mitchell L. Williamson, Esq. dated November 25, 2013 ("MLW Opp. Cert."), ¶ 2, Exhibit A. That amount

reasonably based on a lack of information or belief.

matches the principal amount sought in the complaint reviewed by Mr. Gulko. Compare MLW Opp. Cert., Exhibit A with ECF Doc. 34-3. Third, a demand for equitable interest in the complaint has no relation to whether “finance charges ceased upon charge off.” Again, no demand under R. 1:4-8 was sent raising these allegations in the State Court Action. Thus, based on the fact that the Plaintiff answered then subsequently settled the collection complaint, there is ample support that there were no misrepresentations made to Mr. Bock or the least sophisticated debtor. It is equally supported and un rebutted by any evidence from Plaintiff that Mr. Gulko read the complaint which asserts four basic facts prior to approving it. (ECF Doc. 32-1 - SOF, ¶ 4). Thus, Plaintiff’s motion should be denied.

VII. PLAINTIFF’S CLAIM AMOUNTS TO AN ALLEGATION THAT THERE NEEDS TO BE MORE OF A PAPER TRAIL IN PRESSLER’S POSSESSION PRIOR TO FILING A LAWSUIT, HOWEVER, THIS HAS BEEN EXPRESSLY REJECTED BY COURTS

Plaintiff takes issue with the fact that Mr. Gulko’s does not review billing statements, the credit card agreement or the chain of title. (ECF Doc. 34-5, pgs. 1 and 4 of 22). This amounts to an argument that Pressler and Mr. Gulko need more of a paper trail in order to file complaints. This theory has been flatly rejected by several courts. See Harvey v. Great Seneca Financial Corp., 453 F.3d 324 (6th Cir. 2006); Christion v. Pressler & Pressler, LLP, 2010 U.S. Dist. LEXIS 23751 (D.N.J. 2010); Derricotte v. Pressler and Pressler, LLP, 2011 U.S. Dist. LEXIS 78921, *15-16 (D.N.J. 2011).

In Deere v. Javitch, Block and Rathbone, LLP, 413 F. Supp. 2d 886, 888 (S.D. Ohio 2006), the plaintiff alleged that the defendant-law firm filed a lawsuit without the immediate means to prove the claim. The FDCPA violations alleged were under §§ 1692d, 1692e, 1692e(10), and 1692f. Id. The court followed Harvey, supra, and held that:

A defendant in any lawsuit is entitled to request more information or details about a plaintiff's claim, either through formal pleadings challenging a complaint, or through discovery. Deere does not allege that *anything in the state court complaint was false, or that the complaint was baseless*. She essentially alleges that more of a paper trail should have been in the lawyers' hands or attached to the complaint. The FDCPA imposes no such obligation.

[Id. 891 (emphasis added).]

Thus, to the extent Plaintiff would have this court require that more documents are reviewed prior to filing a lawsuit, such a claim must be rejected. It is not absurd to believe that Plaintiff, the owner of the credit card account, may have billing statements and the credit card agreement in his possession that could be obtained in discovery. After all, the account holder is typically sent this documentation during the active life of a credit card account.

VIII. BECAUSE PLAINTIFF'S THEORIES OF LIABILITY RELATE SPECIFICALLY TO §1692e(3) AND THERE IS NO SEPARATE AND DISTINCT THEORY OF LIABILITY UNDER §1692e, §1692e(10) OR THE UNPLED ALLEGATION OF §1692e(9), THE DETERMINATION AS TO §1692e(3) IS DISPOSITIVE OF THE REMAINING SECTIONS

Plaintiff's moving brief asserts that "Pressler violated 15 U.S.C. §§1692e, 1692e(3), **1692e(9)** and 1692e(10)." (ECF Doc. 34-5, pg. 18 of 22)(emphasis added). The claim under §1692e(9) was not pled in the complaint and, as stated above, Plaintiff cannot amend his complaint through briefing on a dispositive motion. See Bell (quoting Shanahan), supra.

§1692e(10) is a general catch-call provision for assertions of false, deceptive or misleading statements. FTC v. Check Investors, Inc., 2003 U.S. Dist. LEXIS 26941, at *21 (D.N.J. 2003). Thus, Plaintiff's general claims under §1692e, both claims under §1692e(10), and the unpled claim under §1692e(9) must fail because his specific claim under §1692e(3) fails. Cf. Caprio v. Healthcare Revenue Recovery Group, LLC, 709 F.3d 142, 154-55 (3d Cir. 2013)("when allegations under 15 U.S.C. §1692e(10) are based on the same language or theories

as allegations under 15 U.S.C. §1692g, the analysis of the §1692g claim is usually dispositive”); Turner v. Professional Recovery Servs., Inc., 2013 U.S. Dist. LEXIS 95262, at *15-17 (D.N.J. 2013)(court found alleged conduct that collector called after 9pm in violation of §1692c(a)(1) could not also form a basis for a separate claim under §1692f).

The theory of Plaintiff’s complaint is insufficient attorney involvement in the review of the complaint by Mr. Gulko. Thus, in the absence of a separate and distinct theory applicable to the other sections of the FDCPA, the claims under §§1692e, 1692e(9) and 1692e(10) fail as a matter of law for the same reasons the claim under §1692e(3) fails.

CONCLUSION

“Meaningful” involvement and the FDCPA are not meant to regulate the standards of professional conduct in the individual states. To the extent the court endeavors on this inquiry, Mr. Gulko relies on information received from Pressler’s client. There is no evidence that the information received from Pressler’s client is false or defective in any manner. Mr. Gulko’s professional judgment is based on the totality of the circumstances, *i.e.* the information received from Pressler’s client and the rigorous review of same as described in Mr. Felt’s Affidavit. Thus, Pressler is “meaningfully” involved.

Wherefore, based upon the foregoing, Pressler respectfully requests that the court deny Plaintiff’s motion for summary judgment as to liability in its entirety.

Respectfully submitted,
Pressler and Pressler, LLP

Dated: November 25, 2013

By: s/Mitchell L. Williamson
Mitchell L. Williamson, Esq.
Attorney for Defendant, Pressler and Pressler, LLP

On the brief:

Michael J. Peters, Esq.
Mitchell L. Williamson, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)**

=====	:	
	:	
DANIEL BOCK, Jr.,	:	2:11-cv-07593-KM-MCA
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLP,	:	
	:	
Defendant	:	
	:	
=====	:	

DEFENDANT’S L. CIV. R. 56.1 RESPONSIVE STATEMENT OF MATERIAL FACTS

JURISDICTION AND VENUE

1. Admitted
2. Admitted
3. Admitted
4. Admitted that the FDCPA is a “law of the United States.” Objection as to the remainder as containing legal argument and/or a conclusion of law.
5. Admitted Defendant was personally served. Objection as to the remainder as containing legal argument and/or a conclusion of law.
6. Admitted that Defendant’s principal business address is located in this District and that the collection complaint on which the instant action is based was filed in New Jersey. Objection as to the remainder as containing legal argument and/or a conclusion of law.

DEFENDANT IS A “DEBT COLLECTOR”

The Pleadings

- 7. Admitted
- 8. Admitted
- 9. Admitted

Piercing the Pleadings with the Evidential Record

- 10. Admitted
- 11. Admitted
- 12. Admitted
- 13. Admitted
- 14. Admitted
- 15. Admitted
- 16. Admitted

DEFENDANT ATTEMPTED TO COLLECT A CONSUMER “DEBT”

- 17. Admitted
- 18. Admitted
- 19. Admitted
- 20. Admitted
- 21. Admitted
- 22. Unable to confirm.

PLAINTIFF IS A “CONSUMER”

- 23. Admitted
- 24. Admitted

25. Admitted

26. Admitted

DEFENDANT'S VIOLATIONS OF THE FDCA

27. Admitted

Defendant's Collection Complaint Drafting & Filing Practices

28 to 53: Defendant admits the allegations of fact contained in paragraphs 28 to 53 of Plaintiff's Statement of Material Facts. (ECF Doc. 34-2). Defendant, however, submits that these facts must be considered and expounded upon in light of the in-depth description of the practices and procedures utilized by the Pressler law firm and set forth in the Affidavit of Gerard J. Felt, Esq. submitted as an exhibit to the Certificate of Mitchell L. Williamson, Esq. (ECF Doc 33) in connection with Pressler's motion for summary judgment. (ECF Doc. 32).

Gulko's inquiry as to Evidentiary Support for the Factual Allegations.

54. Admitted

55. Admitted

56. Admitted

57. Admitted

58. Admitted

59. Admitted.

The Collection Complaint which Defendant Filed Against Plaintiff

60. Admitted

61. Admitted

62. Admitted

63. Admitted

64. Admitted. Defendant's collection file (which was produced to Plaintiff's counsel in discovery in this matter) also contains an "Affidavit of Sale of Individual Account" provided by "Ashley Oku" who describes herself as an "Assistant Vice President and Assistant Secretary, Administrative Services Division of HSBC Bank Nevada, N.A.". Certificate of Mitchell L. Williamson, Esq. dated November 25, 2013 ("MLW Cert."), ¶ 2, Exhibit A. The said "Affidavit of Sale of Individual Account" indicates that the account which is the subject of the instant lawsuit, HSBC account number ending in "8245 in the name of BOCK JR. DANIEL P with a balance of \$8021.57" was sold by HSBC. MLW Cert., ¶ 2, Exhibit A. The amount of \$8021.57 is the principal balance Defendant's client sought in the *Collection Complaint* at issue in the instant matter. Declaration of Daniel Bock, Jr., Exhibit P-1 (ECF Doc. 34-3).

Dated: November 25, 2013

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

=====	:	
	:	
DANIEL BOCK, JR.	:	2:11-cv-07593-KM-MCA
	:	
Plaintiff	:	
	:	
vs.	:	CERTIFICATE OF MITCHELL L.
	:	WILLIAMSON, ESQ. IN SUPPORT OF
	:	PRESSLER AND PRESSLER, LLP'S
PRESSLER & PRESSLER, LLP,	:	OPPOSITION TO PLAINTIFF'S
	:	MOTION FOR SUMMARY JUDGMENT
Defendant	:	
	:	
=====	:	

I, **MITCHELL L. WILLIAMSON**, of full age, do hereby certify as follows:

1. I am an attorney at law in the State of New Jersey associated with the law firm of Pressler and Pressler, L.L.P. ("Pressler"). I am duly authorized to make this Certificate in support of Pressler's Notice of Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 based upon my review of Pressler's files and my personal knowledge of the procedural facts recited herein.

2. Annexed hereto as **Exhibit A** is a true and accurate copy of the "Affidavit of Sale of Individual Account" dated March 2, 2012 executed by Ashley Oku that Pressler received from its client in the underlying State Court lawsuit which was provided to Plaintiff's counsel during discovery in the instant matter.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: November 25, 2013

s/Mitchell L. Williamson

Mitchell L. Williamson, Esq.

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EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DANIEL BOCK, JR.,
Plaintiff,

vs.

PRESSLER AND PRESSLER, LLP,
Defendant.

Case 2:11-cv-07593-KM-MCA

**REPLY BRIEF ON BEHALF OF PLAINTIFF, DANIEL BOCK, JR.
IN FURTHER SUPPORT OF
PLAINTIFF'S SUMMARY JUDGMENT MOTION**

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STATEMENT OF FACTS

The evidential record, viewed in Pressler's favor, leads a trier of fact to one conclusion: Through Gulko, Pressler signed, filed and served the *Collection Complaint* without an attorney inquiring into the claim's merits or formulating a legal opinion as to the validity of Midland's claim against Bock but, instead, sued Bock when Pressler was "merely being told by [the] client that [the] debt is overdue." *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 304 (2d Cir. 2003) (*Miller I*).

Here, each party has substantially admitted the opponent's entire Statement of Material Facts.

Pressler admitted all facts in Plaintiff's Statement of Material Facts (E.D. 34-2) ("*P-MF*") except for ¶22, and objected to what it characterized as legal arguments concerning jurisdiction and venue. As for ¶22, Pressler responded, "Unable to confirm." E.D. 48-1 at ¶22. That fact, based on the Bock Declaration (E.D. 34-3), stated the consumer purpose for transactions associated with the Account. Pressler has not contested that Midland's claim was for a consumer debt covered by the FDCPA.

Bock admitted all of Pressler's Statement of Material Facts except for

the contention that Gulko “read” the *Collection Complaint*. See, E.D. 44 at No. 5. For purposes of this Motion, Gulko is assumed to have read it.

All of Pressler’s pre-suit “scrubs” and processes concerned a claim’s *collectability*; that is, Pressler ensured that it could find Bock alive and not bankrupt and that the claim was not stale or a duplicate. Pressler never reviewed or inquired as facts affecting the claim’s *merits* or *validity*. Instead, it accepted the client’s placement information on its face.

Midland’s claim, if meritorious, involved (a) Bock’s contractual obligation to pay money to HSBC on a credit card account, (b) Bock’s default, (c) a specific amount due, (d) HSBC’s assignment of its contract rights to The Bureaus Investment Group III, LLC, and (e) The Bureaus Investment Group III, LLC’s assignment of those rights to Midland.

At the time Gulko approved the *Collection Complaint*, neither he nor any other attorney, paralegal or computer obtained, looked at, analyzed or verified (A) the existence of the governing credit card agreement which memorialized Bock’s payment obligation, (B) the periodic billing statements which would have reflected payment due dates and the amount due, or (C) any assignment documents.

Instead, on September 12, 2011, Pressler uploaded electronic

placement information and opened a collection file. E.D. 44 at ¶1. Three days later – presumably, after verifying Bock’s address, checking that he was not dead or bankrupt, and confirming that the claim was not time-barred or duplicated in Pressler’s files – Pressler mailed Bock its initial dunning letter.

That letter disclaimed any attorney involvement. As our Chief Judge concluded, that form letter confirmed Pressler was not acting as a law firm and, therefore, had not made the implied representation of attorney involvement. *Eddis v. Midland Funding, L.L.C.*, CIV. 11-3923 JBS/AMD, 2012 WL 664812 (D.N.J. Feb. 28, 2012).

Five weeks later, still without any attorney involvement, Pressler personnel drafted the *Collection Complaint* by merging Midland’s placement information into a form complaint. *P-MF* ¶29. On October 20, 2011, the complaint popped up on Gulko’s left screen and Pressler’s electronic file populated with the placement information on his right screen. *P-MF* ¶¶37, 39, 61, and 63. Four seconds later, he approved the complaint. *P-MF* ¶63.

Although Gulko relies on Pressler’s pre-suit processes, his routine nevertheless compares the drafted complaint to the client’s placement information and to information Pressler may have updated regarding

collectability such as address updates, payments, bankruptcy, death, the statute of limitations, duplicate claims, disputes, and venue correctness. Gulko Affidavit [E.D. 32-3] (“*Gulko Aff.*”) ¶¶4-6, 8-9; *P-MF* ¶¶40, 41 and 45.

Gulko performed those checks, read the *Collection Complaint*, and approved the “SAC” just as he did 662 other times that day, 300 to 400 times on an average day, and more than 1,000 times on some days, without ever feeling “stressed or behind the eight ball.” *P-MF* ¶¶34, 36. And he did all that for Bock’s claim within four seconds.

Prior to serving the *Collection Complaint*, no Pressler lawyer, paralegal or computer assessed the claim’s merits, confirmed any fact as to liability, verified the account balance, or determined the validity of the chain of assignment. No one checked whether any account or assignment documents existed or could be obtained – even though a choice-of-law or arbitration clause in the credit card agreement would, in Gulko’s mind, be “relevant” to reviewing the complaint. *P-MF* ¶¶47-50.

The absence of meaningful attorney involvement or a lawyer’s reasonable inquiry was further manifested by Pressler’s discovery responses which revealed (A) the alleged balance did not match the

balance on any billing statement, and (B) Pressler's records stated that there were no finance charges once HSBC charged off the account but the *Collection Complaint* alleged that interest was due. *P-MF* ¶64.

Pressler responded with the *Oku Affidavit* purporting to confirm the Account balance, and called its interest allegation "a demand for equitable interest." E.D. 48 at PageID 553. Those responses do not reflect meaningful attorney involvement with respect to the *Collection Complaint*.

The *Oku Affidavit* did not exist until *after* the collection case was settled and, therefore, cannot form the basis for Gulko's approval. There is no indication when Pressler received the billing statements. Furthermore, that Affidavit is not evidence because it is a statement offered for the truth based on what the affiant read in unproduced documents when produced documents are inconsistent. Meaningful attorney involvement could have considered these discrepancies.

Pressler's spin on the interest does not comport the words it used in the *Collection Complaint*. In contract cases, an award of prejudgment interest "is governed by equitable principles." *Gleason v. Norwest Mortgage, Inc.*, 253 F. App'x 198, 204 (3d Cir. 2007). The *Collection Complaint* alleged, as a matter of fact, that the amount due consisted of "\$8,021.57

plus interest ... of \$102.98 for a total of \$8,124.55.” Exhibit P-1 (E.D. 34-3 at PageID 252). The allegation sought principle and interest on the same basis. Nowhere is there any demand for an equitable award of prejudgment interest. If, as Pressler now contends, Midland merely sought such an award, meaningful attorney involvement could have considered whether the allegation, as drafted, was meritorious.

Regardless whether the *Collection Complaint’s* balance or interest allegations are erroneous, the fact that these were not noticed, reviewed, or addressed until now, when Pressler responded to Bock’s Summary Judgment Motion, corroborates the *Collection Complaint* was filed and served without any review as to the claim’s merits.

Finally, nothing supports Pressler’s factual assertion that the type of assigned credit card claim asserted against Bock is “straight-forward” and “[t]he facts are not complex” so as to justify Gulko’s four-second review. E.D. 48 at PageID 527. Two examples demonstrate otherwise. Both arise from Pressler’s attempt to collect a debt allegedly assigned to Midland.

In the first, Pressler and Midland were defendants in a putative class action which alleged FDCPA violations. Stern Declaration (December 2, 2013), Exhibit A. Pressler moved to enforce an arbitration clause

supposedly in the consumer's credit card agreement. On November 15, 2011, this District Court denied Pressler's motion because Pressler failed to submit evidence sufficient to prove that identified credit card agreement actually governed the consumer's account. *Id.* Proving the terms of the governing contract was no so easy or straight forward.

In the second case, Pressler sued on a credit card account allegedly assigned to Midland. For trial, Pressler flew in a Midland "Senior Legal Specialist and Custodian of Records." Following a two day bench trial, the court dismissed the claims for lack of standing. Stern Declaration (December 2, 2013), Exhibit B. The Court refused to admit the proffered records because the witness "lacked sufficient knowledge to authenticate either the essential assignment documents or the various predecessor assignor's records." *Id.* Proving Midland's claim was neither easy nor straight forward.

Those examples dispel any basis for Pressler's dismissive view that assigned credit card debt claims require no more than four seconds to make a reasonable inquiry as to whether the claim is provable or to render a legal opinion as to the claim's merit and validity.

The undisputed facts leave no reasonable doubt that, when filing and

serving the *Collection Complaint*, Pressler misrepresented to the person being sued that someone trained in the law and licensed by the highest court of this state, reviewed the matter and reached a professional opinion that the claim was sufficiently justified to start a lawsuit.

LEGAL ARGUMENTS

Many of Pressler's arguments in response to Bock's Motion are set forth in Pressler's Summary Judgment Motion. Bock's Brief (E.D. 47) responded to those arguments and, to avoid needless repetition, it is incorporated here by reference. Certain arguments, however, require further exposition.

A. *The FDCPA Applies To Pressler's Use of the Collection Complaint.*

Pressler did not dispute or argue against a finding that it is a debt collector, Bock is a consumer, and the alleged conduct was in connection with its attempt to collect a consumer debt. Therefore, the FDCPA applies to Pressler's attempt to collect the debt including its filing and serving the *Collection Complaint*.

B. *State Court Procedural Rules and Attorney Ethics Do Not Relieve Compliance with The Fair Debt Collection Practices Act.*

The FDCPA prohibits Pressler from using "any false, deceptive, or

misleading representation” including “[t]he false representation or implication ... that any **communication** is from an attorney.” 15 U.S.C. § 1692e and § 1692e(3) (emphasis added). Collection law firms “violate section 1692e’s general prohibition against ‘false, deceptive, or misleading’ **communications** [when] they falsely imply that an attorney, acting as an attorney, is involved in collecting debt.” *Leshner v. Law Offices of Mitchell N. Kay, PC*, 650 F.3d 993, 1003 (3d Cir. 2011) *cert. denied*, 132 S. Ct. 1143 (U.S. 2012) (emphasis added). Absent sufficient attorney involvement, law firm communications “were not ‘from’ the attorney in any meaningful sense of the word.” *Id.*, at 999.

Pressler conceded that a collection complaint served on a consumer is a “communication.” E.D. 32-2 at PageID 133. The cases make no differentiation as to a collection firm’s representations based on the form of communication. *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1031-32 (9th Cir. 2010) rejected any distinction between a lawyer’s letter and the lawyer’s collection complaint because the FDCPA regulates communications. In *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961, 966 (N.D. Ohio 2009) (“*Brent*”), a false affidavit attached to a collection complaint was a communication giving rise to FDCPA liability. *Holsinger v.*

Wolpoff & Abramson, LLP, C 05-02075 JF(PVT), 2006 WL 2092632 (N.D. Cal. July 27, 2006) held that a law firm's arbitration claim to collect a debt was a communication and that the firm violated the FDCPA if the lawyer who signed the claim had not reviewed the file. In *dicta*, *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 333 (6th Cir. 2006) concluded that a collection attorney's filing of a complaint would be liable for making a false representation when filing a collection complaint without undertaking a reasonable investigation consistent with Fed.R.Civ.P. 11.

Nevertheless, Pressler contended that its cited misconduct entitled Bock to seek sanctions under the state court's equivalent to Fed.R.Civ.P. 11, and for him to file a state ethics grievance. Enforcing the FDCPA violations, says Pressler, would interfere with New Jersey's regulation of its courts and the practice of law. As Bock did not seek sanctions or file an ethics grievance, Pressler concluded that the FDCPA claims should be barred.

Pressler is obviously confused. "The Supreme Court held that the FDCPA applied [to attorney's litigation activities] *despite* the availability during [state court collection] litigation of judicial oversight, due-process protections, detailed procedural rules, and remedies to curtail and punish

improper actions by creditors' attorneys." *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 277 (3d Cir. 2013) (emphasis added). Thus, "[s]tate law sanctions (the equivalent of Fed.R.Civ.P. 11) apply to defendants in their capacity as lawyers, and do so *jointly* with the [Fair Debt Collection Practices] Act." *Id.*

Crossley v. Lieberman, 868 F.2d 566 (3d Cir. 1989), applied these principles to a letter which failed to disclose, as mandated by state law, certain foreclosure procedures. Lieberman's letter did not inform Crossley, as required under Pennsylvania law, "of her right to cure the default and that a sheriff's sale of her home was some time away and not at all inevitable." *Id.*, at 571. Moreover, "the letter implied that nonpayment of the debt would result in the imminent sale of her home." *Id.* Therefore, use of the letter violated the FDCPA not because the letter broke state law but because it was false, deceptive and misleading. Like the case here, the state law provided the circumstances under which the debt collector's communication was misleading in violation of the FDCPA.

C. *Pressler Had a Duty To Investigate.*

The cases Pressler cited hold that collectors have no duty to

investigate but do not apply here. Law firm Communications “imply meaningful attorney involvement, which does not exist absent participation by an attorney in the debt-collection process.” *Cordes v. Frederick J. Hanna & Associates, P.C.*, 789 F. Supp. 2d 1173, 1177 (D. Minn. 2011). “[I]t suffices for us to hold that merely being told by a client that a debt is overdue is not enough.” *Miller I*, 321 F.3d at 304. Therefore, the no-investigation cases applicable to collection agencies do not apply where attorney involvement is implied by virtue of the fact that the communication comes from a law firm.

D. Gulko Cannot Delegate His Professional Judgment.

Lawyer can rely on supportive assistance. Thus, “law firms can comply with the FDCPA even when they delegate *part* of the review process, *so long as* ‘the ultimate professional judgment concerning the existence of a valid debt is reserved to the lawyer.’” *Liang v. Elliott*, 08-11340, 2008 WL 4539520 (E.D. Mich. Oct. 8, 2008) (quoting *Boyd v. Wexler*, 275 F.3d 642, 647 (7th Cir. 2001)) (emphasis added).

In *Goins v. Brandon*, 367 F. Supp. 2d 240, 244 (D. Conn. 2005), the court granted summary judgment on the consumer’s FDCPA claims where

the signing lawyer had insufficient involvement despite a sufficient review by another lawyer in the firm.

In *Miller v. Wolpoff & Abramson, L.L.P.*, 471 F. Supp. 2d 243, 251 (E.D.N.Y. 2007) (“*Miller II*”) and *Miller v. Upton, Cohen & Slamowitz*, 687 F. Supp. 2d 86 (E.D.N.Y. 2009) (“*Miller III*”), the courts held that the misrepresentation of attorney involvement was false where the collection lawyer sought to rely on the referring law firm’s claim review.

In *Mizrahi v. Network Recovery Servs., Inc.*, 98-CV-4528(ERK)(JLC), 1999 WL 33127737 (E.D.N.Y. Nov. 5, 1999), where the attorney was personally involved but also relied on her supervision of two assisting paralegals, the court was influenced by cases holding that attorneys may, consistent with Fed.R.Civ.P. 11, rely on client-provided materials. *Miller II*, at 251, clarified that “the cases interpreting Rule 11 confirm that attorneys may not *entirely* delegate to anyone, including co-counsel, their duty to inquire into the facts of a case.”

Miller II cited *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1280 (3d Cir. 1994) where the Third Circuit rejected the contention that the signing attorney’s inquiry would be superfluous when another attorney had already made a sufficient Rule 11 inquiry because “Rule 11 requires that

an attorney signing a pleading must make a reasonable inquiry *personally*.”

Consequently, Gulko’s duty to personally make a reasonable inquiry and to personally retain the ultimate professional determination as to the merits of the client’s claim was not delegable.

E. Pressler’s Misrepresentation of Attorney Involvement Does Not Require Showing That the Collection Complaint Contained Errors.

Pressler’s no-harm-no-foul argument does not fly. It was rejected in *Brent* where Midland attached affidavits to its collection complaints containing information about the debt but falsely stated that the affidavit was based on the affiant’s “personal knowledge.” The consumer had not shown that “the amount of the debt, the fact that it is unpaid, or other vital account information, is false.” *Id.*, at 969. Nevertheless, the affidavit was a false and misleading communication because it misrepresented the affiant’s personal knowledge.

The Third Circuit also rejected the argument that, to violate Fed.R.Civ.P. 11, the pleading resulting from insufficient inquiry must be shown to have errors. It reasoned, “A shot in the dark is a sanctionable event, even if it somehow hits the mark.” *Garr* at 1279 (internal quotation marks omitted).

F. Pressler's Misrepresentation is Material.

In *Brent*, the false representation of personal knowledge was material because the least sophisticated consumer would be more likely to assume the validity of Midland's claim based on the allegations' support through an affidavit appearing to have been made on personal knowledge. Similarly, the false representation of attorney involvement and an attorney's reasonable inquiry is material because the least sophisticated consumer would be likely to assume Midland's claim was valid.

Although Pressler's misrepresentation is material, Bock's Brief (E.D. 47) demonstrated that the Third Circuit has not addressed materiality and one court in this Circuit has criticized it. *Mushinsky v. Nelson, Watson & Assoc., LLC*, 642 F. Supp. 2d 470 (E.D.Pa. 2009).

CONCLUSION

For the foregoing reasons, Plaintiff, Daniel Bock, Jr. respectfully requests that the Court grant his Motion for Summary Judgment.

Dated: December 2, 2013

Respectfully submitted,
s/Philip D. Stern

PHILIP D. STERN

Philip D. Stern Attorney at Law, LLC
Attorney for Plaintiff, Daniel Bock, Jr.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL BOCK, JR.,
Plaintiff,

vs.

PRESSLER AND PRESSLER, LLP,
Defendant.

Case 2:11-cv-07593-KM-MCA

**DECLARATION OF
PHILIP D. STERN, ESQ.**

I, Philip D. Stern, declare:

1. I am Plaintiff's attorney in this action.
2. In E.D. 48-2, Mr. Williamson described an affidavit (E.D. 48-3) appearing to be made on March 2, 2012 by Ashley Oku. Mr. Williamson stated that the affidavit was provided in discovery. It was not. I have twice reviewed all received items and fail to see that the Oku affidavit was ever served or identified. Unfortunately, Pressler's disclosures and discovery responses never itemized individual documents and the supplied documents were not Bates stamped. On Plaintiff's behalf, I will not object to consideration of the affidavit in context in which it was submitted: responding to Plaintiff's summary judgment. Nevertheless, not objecting to it for that purpose should not be construed as a waiver of Plaintiff's objection to that affidavit for any other purpose.
3. I attach, as Exhibit A, a true copy of ECF Docket Document 29 filed in *Defazio, et al. v. Pressler and Pressler, LLP, et al.*, Case 2:10-cv-03602-MAH (D.N.J. Nov. 15, 2011), which I obtained through PACER.
4. I attach, as Exhibit B, a true copy of the Opinion in *Midland Funding, LLC v. Berry*, Docket No. BER-DC-26845-12 (Superior Court of New Jersey, July 25, 2013) which I obtained from the court as I represented Mr. Berry. Pressler's office had represented Midland Funding, LLC.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: December 2, 2013

s/Philip D. Stern

PHILIP D. STERN

premised on the assertion that plaintiff Lori DeFazio entered into a binding arbitration agreement with Capitol One, and that plaintiff Carol Grubb entered into a binding arbitration agreement with Citibank, see Def. Pressler & Pressler Mot. to Compel Arbitration Br. at 5–9, Aug. 31, 2011, ECF No. 23;

and it further appearing that it is undisputed that Plaintiffs entered into certain agreements for credit cards, but that Plaintiffs object to Pressler & Pressler’s certification that purports to contain the relevant arbitration provisions;

and the Court having reviewed Pressler & Pressler’s certification;¹

and the Court finding that Pressler & Pressler’s certification is deficient under Fed. R. Civ. P. 56(c)(4);²

¹ Pressler & Pressler supports its motion to compel arbitration with a certification from a Pressler & Pressler attorney. (Mitchell Cert., filed Aug. 31, 2011, ECF No. 23.) The certification states that (1) true and correct copies of the applicable agreements are annexed to the certification, (2) Pressler & Pressler was assigned to collect on the accounts created by the agreements, and (3) the certification is based on the attorney’s review of the firm’s files. (Id. ¶¶ 1, 4, 6, 9–10.) The attorney certifies the statements with the following incomplete sentence: “I certify that if any of the foregoing statements made by me are true and correct as to my knowledge.” (Id. at 2.) The certification is signed but undated. (Id.) Finally, the purported agreements are generic, unsigned, boilerplate provisions that provide no indication that they are what Pressler & Pressler purports them to be, namely, the very agreements that apply to Plaintiffs’ individual accounts. (See id. Exs. D, E.)

² Federal Rule of Civil Procedure 56(c)(4) requires that “[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” And as such, “unauthenticated documents may not be relied upon to defeat a motion for summary judgment.” Countryside Oil Co. v. Travelers Ins. Co., 928 F. Supp. 474, 482 (D.N.J. 1995).

Here, Pressler & Pressler purports that the attached arbitration provisions are the very ones applicable to Plaintiffs. Pressler & Pressler bases this assertion merely on the review of its own files. (Mitchell Cert. ¶ 1.) That representation is insufficient “to support a finding that the matter in question is what its proponent claims.” Fed. R. Evid. 901(a). This is not, for example, a case where the asserted document was disclosed during discovery, and therefore self-authenticating as an admission. See, e.g., Estes Express Lines, Inc. v. Macy’s Corporate Servs.,

and the Court also finding that Pressler & Pressler’s certification is deficient under 28 U.S.C. § 1746;³

and deficient certifications not being considered by the Court to support a summary judgment motion, see, e.g., Pagan v. Holder, 741 F. Supp. 2d 687, 694 n.11 (D.N.J. 2010);

and the deficient certification therefore not being sufficient to sustain defendant Pressler & Pressler’s motion to compel arbitration;

and Fed. R. Civ. P. 56(e) stating that “[i]f a party fails to properly support an assertion of fact . . . the court may: (1) give an opportunity to properly support or address the fact; . . . or (4)

Civ. No. 08-3582, 2010 WL 398749, at *5 (D.N.J. Jan. 28, 2010); David’s Bridal, Inc. v. House of Brides, Inc., Civ. No. 06-5660, 2010 WL 323306, at *5 (D.N.J. Jan. 20, 2010). Nor is this a case where a bank employee has reviewed records and sworn that a particular credit card agreement applies. See, e.g., Wood v. Palisades Collection, LLC, Civ. No. 09-4627, 2010 WL 2950323, at *2 (D.N.J. July 22, 2010). The Court acknowledges that the burden to authenticate is “slight,” McQueeney v. Wilmington Trust Co., 779 F.2d 916, 928 (3d Cir. 1985), and the record indicates that Plaintiffs entered into credit card contracts, but defendant Pressler & Pressler provides an insufficient basis on which they Court may infer that the purported arbitration provisions are the specific ones that apply to Plaintiffs, or that those provisions were derived from the particular agreements into which Plaintiffs entered. The Court requires a better showing that the boilerplate arbitration provisions provided are the ones that apply to Plaintiff before shifting the burden to Plaintiffs to demonstrate otherwise or concede the fact. See Fed. R. Civ. P. 56(c); see also Fed. R. Civ. P. 56(e).

³ United States Code, Title 28, Section 1746 provides a liberal framework for using unsworn declarations. It only requires that the declarant sign and date the statement as true under penalty of perjury in “substantially” the following form: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). . . . (Signature)”. 28 U.S.C. § 1746. Nevertheless, Pressler & Pressler’s attorney strays too far, especially when there is a question of whether the purported arbitration agreements apply to these particular Plaintiffs. The Court acknowledges that counsel apparently attempted to submit a certification in compliance with New Jersey Court Rule 1:4-4. See N.J. Ct. R. 1:4-4 (“I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.”). But compliance with New Jersey Court Rules does not meet compliance with this United States District Court, as the state rule does not expressly acknowledge that the declarant is subject to penalty of perjury. See Platt v. Freedom Mortg. Corp., Civ. No. 10-968, 2010 WL 4810652, at *4 (D.N.J. Nov. 16, 2010).

issue any other appropriate order”;

and Fed. R. Civ. P. 16 providing the Court with case management authority to control the schedule of proceedings and ensure motions are properly before the Court for resolution on the merits;

IT IS on this 15th day of November 2011,

ORDERED that defendant Pressler & Pressler’s motion to compel arbitration is hereby terminated without prejudice to defendant Pressler & Pressler refiling the motion with a revised certification by **December 5, 2011**.

s/ Michael A. Hammer

UNITED STATES MAGISTRATE JUDGE

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

	:	SUPERIOR COURT OF NEW JERSEY
MIDLAND FUNDING, LLC	:	LAW DIVISION : BERGEN COUNTY
	:	DOCKET NO. BER-DC-26845-12
Plaintiffs,	:	
	:	<u>OPINION</u>
vs.	:	
	:	
ERIC BERRY	:	Decided: July 25, 2013
	:	
	:	
Defendant	:	Honorable Charles E. Powers, Jr., J.S.C.

I. SUMMARY

This case involves the attempted collection of a debt. Plaintiff, a purchaser of a bad debt, alleges that it purchased a GE Money account previously issued to the Defendant, Eric Berry. Plaintiff asserts that the GE Money account was assigned by its parent company GE Capital Corp, to Hilco Receivables, LLC, who on December 31, 2009 merged with Equable Ascent Financial LLC. Plaintiff asserts that on May 14, 2012, Equable Ascent Financial, LLC assigned the Defendant’s account to Plaintiff, Midland Funding.

Defendant argues that there was no evidence presented at trial that Defendant has standing to collect on the alleged debt. Furthermore, Defendant contends that the individual, Mycah Strunk, “Senior Legal Specialist and Custodian of Records” for Plaintiff, could not properly authenticate

the records submitted to prove the assignment of the Defendant's account pursuant to N.J.R.E. 803(c)(6).

II. Legal Analysis

a. Assignment of Rights

In order to prove a valid assignment of rights, one must show, "... clear evidence of the intent to transfer the person's rights and the subject matter of the assignment must be described sufficiently to make it capable of being readily identified. To be effective, the assignment must be clear and unequivocal and must be noticed to the obligor." Tirgan v. Mega Life and Health Ins., 304 N.J. Super. 385, 390 (1997) (internal citations omitted).

In this case, Plaintiff sought to use certain documents purported to be business records to prove the assignment of the Defendant's account to Plaintiff. To authenticate these records the Plaintiff sought to use the testimony of Mycah Struck. Mycah Struck is employed as the Plaintiff's "Senior Legal Specialist and Custodian of Records."

b. Proper authentication of a business record – N.J.R.E. 806(c)(6)

N.J.R.E. 806(c)(6) excepts from the hearsay rule:

(6) *Records of regularly conducted activity.* --A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy. N.J.R.E. 806(c)(6)

To qualify under the business record exception for the hearsay rule, the proponent of the evidence must show that the writings, "(1) are made in the regular course of business, (2) are prepared reasonably contemporaneously with the events they describe, and (3) no credible

challenge has been presented to their trustworthiness.” State v. Sweet, 195 N.J. 357, 371 (2008) (internal citation omitted).

While, a foundation witness need not have personal knowledge of the facts contained in the record, See Hahnemann University Hosp. v. Dudnick, 292 N.J. Super. 11, 17 (App.Div. 1996), a foundation witness’ position must render him “sufficiently familiar with the record system used.” Id. at 18.

In this case, the Plaintiff’s foundation witness lacked sufficient knowledge to authenticate either the essential assignment documents or the various predecessor assignor’s records. Mr. Struck could not testify that he was familiar with any of the Plaintiff’s predecessors record keeping practices. It is also the impression of the Court that Mr. Struck was not familiar with any of the Plaintiff’s assignment practices. While Mr. Struck need not have personal knowledge of the documents and the legal basis for assignment, the Court is not satisfied that Mr. Struck had sufficient knowledge of the system used by his employer or others in the chain of ownership to ensure the documents relied upon to prove the debt assignment or the alleged debt were trustworthy business records.

This case can be distinguished from Garden State Bank v. Graef, 341 N.J. Super 241 (App.Div. 2001). In that case the Court, under ~~the~~ hearsay exception for business records (N.J.R.E. 803(c)(6)), found that a Bank’s credit manager was qualified to authenticate electronic computer print outs regarding loan information because the witness was sufficiently familiar with the record system used by his employer, which enabled him to establish that it was the regular practice of his employer to make a record. Id. at 245. Here, while Mr. Struck testified that it was his job to be familiar with the records of his company, which included the documents related to the assignment of accounts, there was no proof from a prior assignor of how the

assignment records were collected, stored or maintained. The Court therefore finds that the Plaintiff has failed to established the proper foundation required under N.J.R.E. 803(c)(6)). As stated above, in order to show a proper assignment, there must be clear evidence of an intent to transfer. Without the requisite documentation, which the Plaintiff failed to properly introduce into evidence, the Plaintiff's claim must fail.

b. Introduction of the Federal Trade Commission Report

The Court need not consider the Federal Trade Commission Report or take judicial notice thereof as it does not constitute facts.

III. Conclusion

For the aforementioned reasons this Court hereby dismisses the Plaintiff's claims with prejudice. The Court is not satisfied that Plaintiff has shown that it has standing to sue via a valid assignment and has failed to provide this Court with valid business records substantiating such an alleged assignment. The Defendant shall submit an Order for judgment in accordance with this opinion.