P&P File # P155967

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,	**PRESSLER AND PRESSLER, LLP'S NOTICE OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56**
Defendant	

TO: Clerk of the Court
United States District Court
District of New Jersey
M.L. King Jr. Federal Bldg. & US Courthouse
50 Walnut Street
Newark, NJ 07102

Philip D. Stern, Esq.
Philip D. Stern Attorney at Law, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040

PLEASE TAKE NOTICE that the undersigned, Mitchell L. Williamson, Esq., of Pressler and Pressler, L.L.P., counsel for the defendant, Pressler and Pressler, LLP, shall apply to the United States District Court, District of New Jersey, Newark, New Jersey, for an Order entering summary judgment in favor of Defendant pursuant to FED. R. CIV. P. 56.

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely upon the Legal Brief, the Affidavit of Ralph Gulko, Esq., the Affidavit of Gerard J. Felt, Esq. (filed under seal), the Certificate of Mitchell L. Williamson, Esq., and the Defendant's L. Civ. R. 56.1 Statement of Material Facts in support of said application.

PLEASE TAKE FURTHER NOTICE that Defendant respectfully requests oral argument pursuant to L. Civ. R. 78.1(b).

Calendar Call: None

Final Pre Trial Conference: None

Trial Date: None

Dated: October 1, 2013

By: __*s/Mitchell L. Williamson*_____
Mitchell L. Williamson, Esquire
Pressler and Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054-5020
(973) 753-5110 /Fax (973) 753-5353
mwilliamson@pressler-pressler.com
Attorneys for Defendant:
Pressler and Pressler, LLP

CERTIFICATION OF FILING AND MAILING

I, Mitchell L. Williamson, Esquire, certify as follows:

1. On October 1, 2013, I filed electronically the within Notice of Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56.

2. I will promptly send one (1) courtesy copy of the within Notice of Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 marked "Courtesy Copy" to the Honorable Kevin McNulty, U.S.D.J., via regular mail to M.L. King, Jr. Federal Bldg. & Courthouse, Court Room 03, 50 Walnut Street, Newark, NJ 07102.

3. On October 1, 2013, I served a copy of the Notice of Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 via the ECF system on Philip D. Stern, Esq., Philip D. Stern Attorney at Law, LLC, 697 Valley Street, Suite 2d, Maplewood, NJ 07040.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 1, 2013

By: __*s/Mitchell L. Williamson*_____
Mitchell L. Williamson, Esquire
Pressler and Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054-5020
(973) 753-5110 /Fax (973) 753-5353
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Attorneys for Defendant:
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IN THE UNITED STATES DISTRICT COURT
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DANIEL BOCK, Jr.,	**2:11-cv-07593-KM-MCA**
Plaintiff	
vs.	
PRESSLER & PRESSLER, LLP,	
Defendant	

DEFENDANT'S L. CIV. R. 56.1 STATEMENT OF MATERIAL FACTS

1. On September 12, 2011, Pressler and Pressler, LLP ("Pressler") started an electronic file in its office for the collection of a HSBC Bank Nevada, N.A. account ending in "8245 belonging to the Plaintiff in the instant matter, Daniel Bock, Jr. on behalf of its client, Midland Funding, LLC ("Midland"). Certificate of Mitchell L. Williamson, Esq. ("MLW Cert."), ¶ 2.

2. On September 15, 2011, Pressler sent Plaintiff an initial notice letter ("Initial Letter") pursuant to 15 U.S.C. § 1692g of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") to Plaintiff's correct address. MLW Cert., ¶ 3.

3. Plaintiff did not respond to the Initial Letter nor was it returned to Pressler as undeliverable. MLW Cert., ¶ 4.

4. On October 21, 2011, Pressler, by and through its attorney Ralph Gulko, Esq., filed a complaint on behalf of its client 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"). MLW Cert., ¶ 5.

5. Mr. Gulko was the attorney who reviewed, read, and signed the complaint in the State Court Action. Affidavit of Ralph Gulko ("Gulko Affidavit"), ¶ 4.

6. Mr. Gulko has specialized his practice of law in retail collections since 1980. Gulko Affidavit, ¶ 1.

7. Mr. Gulko is familiar with the process at Pressler regarding the preparation of a new claim prior to it being presented to him for review and approval for the filing of a complaint. Gulko Affidavit, ¶ 2.

8. Several departments at the Pressler law firm review the electronic file and Pressler's computer system performs several "scrubs" prior to a complaint being presented to Mr. Gulko for review. See generally, Affidavit of Gerard J. Felt ("Felt Affidavit").

9. Plaintiff filed a pro se answer in the State Court Action on November 18, 2011. MLW Cert., ¶ 6.

10. On January 26, 2012, Plaintiff's instant counsel appeared in the State Court Action. MLW Cert., ¶ 8.

11. The State Court Action was litigated by Plaintiff's counsel and Pressler (on behalf of Midland) by conducting discovery and engaging in motion practice. MLW Cert., ¶ 9.

12. Trial was scheduled in the State Court Action on February 24, 2013. MLW Cert., ¶ 9.

13. A settlement was reached in the State Court Action on February 24, 2013. MLW Cert., ¶ 9, Exhibit E.

14. Plaintiff paid the settlement on February 29, 2012 in full satisfaction of the State Court Action pursuant to the agreement reached. MLW Cert., ¶ 10.

15. The State Court Action was dismissed with prejudice by way of Stipulation between the parties after the payment was made. MLW Cert., ¶ 10.

16. Pressler was never served with a demand for the withdrawal of the State Court Action by Plaintiff or his counsel pursuant to New Jersey Court Rule 1:4-8. MLW Cert., ¶ 11; Gulko Affidavit, ¶ 14.

17. Midland has been a client of Pressler since 2003. Felt Affidavit, ¶ 10.

18. Midland has been transferring new claims electronically to Pressler since 2004. Felt Affidavit, ¶ 10.

19. Mr. Gulko was logged onto Pressler's electronic file for four seconds prior to approving Mr. Bock's complaint. Gulko Affidavit, ¶ 12.

20. Mr. Gulko is not currently nor has he ever been the subject of an ethical Complaint for failing to comply with the Rules of Professional Conduct. Gulko Affidavit, ¶ 15.

Dated: October 1, 2013

Respectfully submitted,

By: ___*s/Mitchell L. Williamson*__

Mitchell L. Williamson, Esq.
Pressler and Pressler, LLP
7 Entin Road
Parsippany, NJ 07054
(973)-753-5100 / Fax (973)-753-5353
Attorneys for Defendant,
Pressler and Pressler, LLP

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

DANIEL BOCK, JR.	
Plaintiff	**2:11-cv-07593-KM-MCA**
vs.	
PRESSLER & PRESSLER, LLP,	
Defendant	

DEFENDANT, PRESSLER & PRESSLER, LLP'S,
MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
PURSUANT TO FED. R. CIV. P. 56

****ORAL ARGUMENT IS HEREBY REQUESTED****
PURSUANT TO L. CIV. R. 78.1(b)

Michael J. Peters, Esq.
Mitchell L. Williamson, Esq.
On the Brief

Dated: October 1, 2013

s/Mitchell L. Williamson
Mitchell L. Williamson, Esq.
Pressler and Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054
Telephone: (973) 753-5100
Facsimile: (973) 753-5353
mwilliamson@Pressler-Pressler.com
Attorneys for Defendant:
Pressler and Pressler, LLP

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PRELIMINARY STATEMENT

Plaintiff, Daniel Bock, Jr., by and through his counsel, has alleged in the instant federal lawsuit that Defendant, Pressler and Pressler, LLP ("Pressler") violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") because one of Pressler's attorney's, Ralph Gulko, Esq., failed to be meaningfully involved in the filing of a complaint in an underlying collection action. This lawsuit is based on Plaintiff's counsel's "information and belief" as there are no facts relevant to what Mr. Gulko or Pressler does prior to filing a complaint within the Plaintiff's personal knowledge.

Pressler respectfully submits that Plaintiff's complaint amounts to an attempt to enforce the mandates of New Jersey Court Rule 1:4-8 and the Rules of Professional Conduct ("RPCs") through the FDCPA and the federal court system. This is improper. The FDCPA and federal court system are not enforcement mechanisms for state-controlled and state-regulated areas of law, *i.e.*, New Jersey court rules and the RPCs governing New Jersey attorneys. Accordingly, Plaintiff's complaint should be dismissed.

"Meaningful" attorney involvement (or the alleged lack thereof) is the theory of Plaintiff's complaint. This court-created doctrine which is absent from the plain language of the FDCPA's text was developed in conjunction with attorneys "renting" their letterhead to collection agencies without any involvement and zero review of any information before pre-suit collection letters are sent. This is wholly distinct from the instant set of facts. Here, Defendant sent an initial letter to the Plaintiff pursuant to 15 U.S.C. § 1692g at the correct address, Plaintiff failed to respond, the Defendant was permitted to assume the debt to be valid (15 U.S.C. § 1692g(a)(3)), and a collection lawsuit was subsequently filed against Mr. Bock that he answered and settled by way of payment to Defendant's client. The case law that interprets the doctrine of

"meaningful" attorney involvement was not intended to apply to the state-regulated area of law, *i.e.*, the requirement of complying with New Jersey Court Rule 1:4-8, N.J.S.A. § 2A:15-59.1, and the RPCs. Accordingly, Plaintiff's complaint should be dismissed.

Assuming *arguendo* that the court finds "meaningful" review in the context of a collection complaint is an area of inquiry that is properly before the federal court for review, Pressler submits that it was meaningfully involved in the filing of the collection complaint against Plaintiff in the state court action. Lawsuits based on credit cards are straight-forward cases and do not require a significant amount of information to be asserted in good faith. Case law holds 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. Thus, the amount of time needed to review a claim is greatly reduced and can be reduced even further by relying on a long-time client and the review by other staff in Defendant's office. Plaintiff's complaint fails to recognize that the State Court Action complaint was filed by the Pressler firm on behalf of its client so an isolated review of Mr. Gulko's activities does not provide the full picture of the amount of review conducted. These are the circumstances of this case and they do not amount to "rental" of the Pressler letterhead or the abdication of attorneys' duties. Accordingly, Plaintiff's complaint should be dismissed.

Lastly, since the collection complaint is a "communication" under the FDCPA, to assert liability under 15 U.S.C. § 1692e there must be something about the collection complaint that is false, deceptive or misleading to the objective least sophisticated consumer. Plaintiff has pled nothing in his complaint about an impropriety as to the substance of the collection complaint. This begs the questions: 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. Liability, therefore, cannot attach and the complaint should be dismissed.

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"). Defendant's L. Civ. R. 56.1 Statement of Material Facts ("SOF"), ¶ 1. 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. SOF, ¶ 2. No response was received from the Plaintiff in connection with the Initial Letter sent on September 15, 2011. SOF, ¶ 3. Nor was the Initial Letter returned to Pressler as undeliverable. SOF, ¶ 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"). SOF, ¶ 4. On November 18, 2011, the Plaintiff filed a pro se Answer with the court in the State Court Action. SOF, ¶ 9. Plaintiff also retained his instant counsel during to represent him during the State Court Action. 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. SOF, ¶¶ 11-13. The Settlement was paid on or about February 29, 2012 in full

satisfaction of the claim. SOF, ¶ 14. The State Court Action complaint was then dismissed with prejudice by way of stipulation. SOF, ¶ 15.

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. On August 14, 2013, the parties appeared for a phone conference with the court and a briefing schedule for summary judgment motions was set. (ECF Doc. 31 "TEXT ORDER"). All motions for summary judgment are required to be filed by October 1, 2013 or they are deemed waived. Id. Opposition by either party is due November 1, 2013 and replies, if any, are due November 15, 2013. Id. Pressler now brings the instant motion for summary judgment on all claims.

LEGAL ARGUMENT

I. STANDARD OF REVIEW FOR FED. R. CIV. P. 56 MOTION

Summary judgment is governed by FED. R. CIV. P. 56. Same states in relevant part:

> A party may move for summary judgment, identifying each claim and defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows 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).]

"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)).

"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. v. Catrett, 477 U.S. 317, 322 (1986).

"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). "If the non-moving party's

evidence 'is merely colorable, . . . or is not significantly probative, . . . summary judgment may be granted.'" (citations omitted) Id. at 890-91.

"[T]he court's role is not to evaluate the evidence and decide the truth of the matter, but to determine whether there is a genuine issue for trial." Torres, supra, 2011 U.S. Dist. LEXIS at *6 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)).

Finally, New Jersey's Local Civil Rules require that the movant "furnish a statement which sets forth material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to the affidavits and other documents submitted in support of the motion." L. Civ. R. 56.1; Williams v. City of Northfield, 2011 U.S. Dist. LEXIS 141795, at *10 (D.N.J. Dec. 9, 2011). The non-moving party must furnish "a responsive statement of material facts, addressing each paragraph of the movant's statement, indicating agreement or disagreement and, if not agreed, stating each material fact in dispute and citing to the affidavits and other documents submitted in connection with the motion[.]" L. Civ. R. 56.1; Williams, supra, 2011 U.S. Dist. LEXIS at *10. If a material fact is not disputed, it "shall be deemed undisputed for purposes of the summary judgment motion." L. Civ. R. 56.1; Williams, supra, 2011 U.S. Dist. LEXIS at *10.

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)). Due to the complexity of the

FDCPA, "technical violations are likely to be common." Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573, 130 S. Ct. 1605, 1632, 176 L. Ed. 2d 519 (2010)(Kennedy, J., dissenting). "It seems unlikely that Congress sought to create a system that encourages costly and time-consuming litigation over harmless violations committed in good faith despite reasonable safeguards." Id. at 1632 (Kennedy, J., dissenting).

> Ironically, it appears that it is often the extremely sophisticated consumer who takes advantage of the civil liability scheme defined by this statute, not the individual who has been threatened or misled. The cottage industry that has emerged does not bring suits to remedy the 'widespread and serious national problem' of abuse that the Senate observed in adopting the legislation, 1977 U.S.C.C.A.N. 1695, 1696, nor to ferret out collection abuse in the form of 'obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation 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 pretense, impersonating public officials and attorneys, and simulating legal process.' (citation omitted). Rather, the inescapable inference is that the judicially developed standards have enabled a class of professional plaintiffs . . . .
>
> It is interesting to contemplate the genesis of these suits. The hypothetical Mr. Least Sophisticated Consumer ("LSC") makes a $400 purchase. His debt remains unpaid and undisputed. He eventually receives a collection letter requesting payment of the debt which he rightfully owes. Mr. LSC, upon receiving a debt collection letter that contains some minute variation from the statute's requirements, immediately exclaims 'This clearly runs afoul of the FDCPA!' and – rather than simply pay what he owes – repairs to his lawyer's office to vindicate a perceived 'wrong.' '[T]here comes a point where this Court should not be ignorant as judges of what we know as men.' (citation omitted).
>
> [Fed. Home Loan Mortgage Corp. v. Lamar, 503 F.3d 504, 513-14 (6th Cir. 2007)(quoting Jacobson v. Healthcare Fin. Servs., Inc., 434 F. Supp. 2d 133, 138-39 (E.D.N.Y. 2006)).]

B. The least sophisticated debtor standard.

Plaintiff's complaint asserts violations of 15 U.S.C. § 1692e and its subparts for Pressler's communication in the form of the State Court Action collection complaint. "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 purpose of this standard "is to ensure 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, it has been noted that "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.'" Lesher 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)(emphasis added).]

Lastly, it is important to note that the determination of whether a communication under the FDCPA 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.

III. PLAINTIFF'S CLAIMS MUST FAIL AS A MATTER OF LAW BECAUSE THE FDCPA IS NOT MEANT TO BE AN ENFORCEMENT MECHANISM FOR COURT RULES OR RULES OF PROFESSIONAL CONDUCT.

A. Neither the FDCPA nor the federal court system is an appropriate mechanism to enforce an alleged failure of an individual attorney to exercise his duties as an attorney in compliance with New Jersey Court Rule 1:4-8.

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).

Some federal courts have previously found 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 v. Am. Home Mortg.

Servicing, 503 Fed. Appx. 89, 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]).

Plaintiff's complaint specifically alleges three facts relevant to his claim regarding an attorney from Pressler, Ralph Gulko, Esq.:

> 35. Ralph Gulko, Esq. signed the Collection Complaint as an attorney with PRESSLER.
>
> 36. By signing the Collection Complaint, Gulko certified that he read the Collection Complaint and that, "to the best of his … knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," "the factual allegations have evidentiary support". New Jersey Court Rule 1:4-8; *cf*., Fed.R.Civ.P. 11.[1]
>
> 37. Gulko signs so many complaints that it is either physically impossible or so highly improbably [sic] that he read the Collection Complaint or made a sufficient inquiry from which to conclude that the factual allegations have evidentiary support. Therefore, Ralph Gulko on behalf of PRESSLER made false representations to collect or attempt to collect the Debt. (Pursuant to Fed.R.Civ.P. 11, this allegation will likely have evidentiary support after a reasonable opportunity for further investigation or discovery).
>
> [ECF Doc. 1, ¶¶ 35-37.]

[1] Omitted from Plaintiff's quote of New Jersey Court Rule 1:4-8 is that part of the rule which states "or, as to specifically identified allegations, they are likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support."

Based upon these three factual allegations, Mr. Bock, through his attorney, has alleged violations of the FDCPA for "insufficient attorney involvement" under 15 U.S.C. § 1692e(3), a false representation that Mr. Gulko "read the Collection Complaint prior to signing it" under 15 U.S.C. § 1692e(10), and for falsely representing that Mr. Gulko complied with the mandates of R. 1:4-8 under 15 U.S.C. § 1692e(10). See (ECF Doc. 1, ¶¶ 44.02-44.04). The underlying State Court Action was the place to assert a violation of R. 1:4-8 by Mr. Gulko since the state courts are the more appropriate venue to determine a violation of a state-regulated court rule. A violation of Rule 1:4-8 or the enforcement thereof is, therefore, not properly asserted as a violation of § 1692e or its subparts. Accordingly, Plaintiff's complaint should be dismissed.

B. Plaintiff's complaint alleges a *sub silentio* violation of the Rules of Professional Conduct as a basis of asserting his FDCPA violations.

Although not explicitly stated in Plaintiff's Complaint, the allegations that Mr. Gulko had insufficient involvement when he reviewed the complaint (ECF Doc. 1, ¶¶ 37 and 44.02) such that he failed to comply with New Jersey Court Rule 1:4-8 (frivolous litigation) amounts to a *sub silentio* allegation of an ethical violation as the basis for his FDCPA claim.

The RPCs govern attorneys in the State of New Jersey. It is the Supreme Court of New Jersey 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").

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 . . . ." MLW Cert., Exhibit H.

Based upon the allegations made in the complaint the issues are squarely covered by the RPCs that govern 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 the matter of Cohen v. Wolpoff & Abramson, LLP, 2008 U.S. Dist. LEXIS 77052, at *15-23 (D.N.J. 2008), there was an allegation by the 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 the alleged ethical violations in context of a claim under § 1692f, the concept has also been addressed in the context of alleged misrepresentations *i.e.*, § 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 use of unfair and unconscionable means to collect debt *or 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, it is clear that the FDCPA and the RPCs are distinct bodies of law. Thus, although not expressly stated in Plaintiff's complaint, the allegation that an attorney failed to adequately exercise diligence in his duties as an attorney amounts to an allegation of an ethical violation. Plaintiff did not plead any improprieties with the State Court

Action collection complaint itself. Thus, standing as the sole basis to find the Defendant liable of an FDCPA violation, 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, not the FDCPA or federal court system. See Cohen and Eddis, supra. Thus, Plaintiff's claims should be dismissed.[2]

C. Failure to send a written notice and demand pursuant to R. 1:4-8 in the State Court Action constitutes a waiver of any claim that said rule was violated and warrants a negative inference that there was a good-faith basis to bring the collection complaint.

All of the alleged theories that form the basis for Plaintiff's complaint existed before the settlement and subsequent dismissal with prejudice of the State Court Action. Not only did the Plaintiff (or his current counsel after appearing in the State Court Action) fail to allege that R. 1:4-8 was violated in the State Court Action, but the claim was settled and then dismissed with prejudice upon payment (by Plaintiff) of the settlement amount to Defendant's client, Midland. The Plaintiff, therefore, has abandoned and/or waived any claim that Rule 1:4-8 was violated or falsely certified to by Mr. Gulko through his failure to a) send a demand letter pursuant to the provisions of Rule 1:4-8 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

[2] 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 MLW Cert., Exhibit G, Interrogatory Answer No. 9. To the extent Plaintiff's counsel will argue that Mr. Gulko (or any attorney) cannot possibly comply with Rule 1:4-8 in four seconds (the time Mr. Gulko was on Mr. Bock's electronic file, see Affidavit of Ralph Gulko, Esq., ¶ 12), 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.

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 Rule 1:4-8 in the State Court Action constitute a knowing and intentional waiver of any allegation in the instant matter that Rule 1:4-8 was violated resulting in liability under the FDCPA. Moreover, the failure to comply with Rule 1:4-8 during the State Court Action should warrant a negative inference that Defendant was in compliance with same. Accordingly, Plaintiff's complaint should be dismissed.

IV. "MEANINGFUL" ATTORNEY INVOLVEMENT AROSE TO PREVENT THE RENTING OF LAW FIRM LETTERHEAD TO SEND OUT MASS-MAILINGS OF COLLECTION LETTERS WHERE ZERO ATTORNEY INVOLVEMENT OCCURRED AND NOT IN THE CONTEXT OF THE FILING OF A COMPLAINT WHICH IS ALREADY REGULATED BY THE STATE THROUGH COURT RULES AND THE RPCs

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 appears to be relatively straight-forward. Nonetheless, courts, beginning in 1993, began applying the court-created doctrine of "meaningful" review in situations where debt collectors 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); Goins v. Brandon, 367 F. Supp. 2d 240 (D. Conn. 2005); Greco v. Trauner, Cohen & Thomas, LLP, 412 F.3d 360 (2d Cir. 2006); Lesher v. Law Office of Mitchell N. Kay, P.C., 650 F.3d 993 (3d Cir. 2011). All of these cases pertain to the sending of pre-suit collection letters prior to the filing of a lawsuit and not the filing of a complaint.

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).

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:

> 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.
>
> [Id. at 230.]

The cases that have addressed the issues raised in Plaintiff's complaint were meant to stop lawyers from creating a form-based document that a collection agency could use to rubber-stamp and scare debtors into paying.

> 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).]

This is not the situation before this court. Pressler is, in fact, 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. 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 of Plaintiff's instant claims and the case law previously interpreting § 1692e(3) claims.

Even the fact that the Initial Letter pursuant to 15 U.S.C. § 1692g was sent by Defendant 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 (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.[3] Since there was no response from the

[3] § 1692g. Validation of debts

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is

Plaintiff to the Initial Letter sent by Pressler and same was not returned as undeliverable (SOF, ¶ 3), the entire posture of the case is altered distinguishing this matter even further from pre-suit letter cases like Clomon.

A somewhat analogous argument to the cause of action asserted by the Plaintiff herein was alleged in the matter of Alaan v. Asset Acceptance, LLC, 2011 U.S. Dist. LEXIS 88104 (S.D. Cal. 2011). In Alaan, the plaintiff asserted a claim in its complaint "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.]

Notably, CCP 128.7 is substantially similar to New Jersey Court Rule 1:4-8.[4] The Court granted the debt collector's motion for summary judgment on this claim by relying on the case law that says:

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contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes that validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

[4] 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 unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

> "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 the claims in Alaan are somewhat different than the instant matter, it supports Defendant's position that mere reliance on the cases that find no "meaningful" attorney involvement are not the basis for determining the instant matter. If a debt collector does not need to have the immediate means to prove the debt then, clearly, the amount of review to bring the type of claim at issue – a credit card claim – is minimal. Additionally, as discussed in more detail below (see Point VI, infra), a debt collector is also not required to verify the debt prior to initiating collection activities. See Slanina and Yentin, infra. Thus, reliance on the Clomon line

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(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.

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. Accordingly, Plaintiff's complaint should be dismissed.

V. THERE WAS NO MISREPRESENTATION, MATERIAL OR OTHERWISE, IN THE STATE COURT ACTION COMPLAINT THAT WOULD AFFECT HOW THE LEAST SOPHISTICATED DEBTOR WOULD RESPOND THERETO; THUS, THERE IS NO VIOLATION OF ANY SUBSECTION OF 15 U.S.C. § 1692e.

A. Materiality is a required element for claims alleging a false, deceptive or misleading representation under §1692e and its subparts.

In the context of 15 U.S.C. § 1692e, federal courts have recently begun to 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 stated 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).]

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(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

The requirement that a false or misleading statement be "material" prevents absurd or idiosyncratic interpretations of hyper-technical violations of the FDCPA. Notably, the Hahn Court looked to the purpose and design of what § 1692e was meant to protect against and determined that requiring the statement to be "material" furthered that goal.

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, supra, 2012 U.S. App. LEXIS at *9-10 (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). As set forth below, the failure of Plaintiff to plead an error in the State Court Action complaint indicates there was no misrepresentation therein.

B. There is no liability under 15 U.S.C. § 1692e or its subsections because there were no misrepresentations in the State Court Action collection complaint.

The instant Plaintiff settled the State Court Action. SOF, ¶ 13. After paying a not so insignificant amount of money as the settlement, the State Court Action was dismissed with prejudice by way of stipulation. SOF, ¶¶ 13-15; 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.

In the absence of any misrepresentation therein, there can be no liability under any provision of § 1692e. To the extent that Plaintiff's counsel will argue the misrepresentation was in the failure to comply with Rule 1:4-8 such an argument was waived (see Point III, section C) 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.

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. Since Plaintiff did not plead any irregularities that could have resulted from a lack of "sufficient" review and 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 objective least sophisticated debtor. It is equally supported that Mr. Gulko read the complaint prior to approving it. SOF, ¶ 4. Thus, all of Plaintiff's claims under 15 U.S.C. § 1692e and its subsections should be dismissed.

VI. ASSUMING *ARGUENDO* THAT THE COURT SHOULD BE REVIEWING THE PROCESS AND PRACTICE OF PRESSLER AND MR. GULKO, PRESSLER AND MR. GULKO WERE "MEANINGFULLY INVOLVED" IN THE FILING OF THE STATE COURT ACTION COMPLAINT.

Plaintiff's argument focuses solely on the actions of Mr. Gulko when raising his FDCPA claim of insufficient attorney involvement. Plaintiff, however, misses the boat because Mr. Gulko is not a sole practitioner and is employed by the Pressler law firm. In other words, Mr. Gulko is one cog in the machine (*i.e.*, the Pressler law firm). Plaintiff has singled out the actions of Mr. Gulko to be reviewed in a vacuum. To truly understand and assess whether there has been sufficient attorney involvement requires consideration of the entirety of the process prior to a complaint being filed with the court. 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 is set up as follows (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. SOF, ¶ 17. In other words, if Mr. Gulko left Pressler, a substitution of attorney would not need to be filed in order for Pressler to continue representing Midland. This is important considering that Plaintiff focuses his complaint solely on the actions of Mr. Gulko without any consideration of the review done by the Pressler law firm prior to Mr. Gulko's review.

A detailed description of the process 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 Affidavit of

Gerard J. Felt, Esq. that is being simultaneously filed under seal with the court subject to a prior confidentiality order. (ECF Doc. 30). Same is therefore incorporated herein as if set forth at length.

When considering and analyzing the process described in Mr. Felt's affidavit, it must be reiterated that under the FDCPA, a debt collector is not required to have the immediate means to prove the debt at the time a collection complaint is filed. 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).]

Similarly, in the instant action, the complaint is devoid of any allegation that the State Court Action complaint was false or that the complaint was baseless. Moreover, the Plaintiff would be hard pressed to contend that the State Court Action Complaint was baseless considering he retained an attorney to litigate it and eventually settled the claim. SOF, ¶¶ 10-15. Defendant respectfully 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 type of claims in Deere and Harvey and b) fails to appreciate and/or consider the amount of review conducted by the Pressler law firm prior to State Court Action Complaint being 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, there is also a group of cases that hold that 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 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].
>
> [Id. at *28.]

These nuances in FDCPA law are paramount to the amount of information necessary to be able to review a complaint. They further support Defendant'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 above) 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 to be filed 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. Any argument by Plaintiff that a cardmember agreement or statements or underlying creditor's internal notes are required documents to review in order to deem involvement "sufficient" prior to filing a complaint would be completely contrary to the Harvey and Yentin line of cases. Accordingly, Defendant 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. Defendant, therefore, respectfully requests that Plaintiff's complaint be dismissed with prejudice as a "sufficient" amount of review was conducted by Mr. Gulko with the aid of Pressler.

VII. SINCE PLAINTIFF'S CLAIM IN PARAGRAPH 44.01, 44.03 AND 44.04 OF THE COMPLAINT UNDER 15 U.S.C. §§1692e and 1692e(10) ARE BASED ON THE SAME THEORY OR LANGUAGE AS THE CLAIM IN PARAGRAPH 44.02, THE ANALYSIS OF THE CLAIM ASSERTED IN PARAGRAPH 44.02 IS DISPOSITIVE.

15 U.S.C. §1692e(10) of the FDCPA 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, based solely on the reasons set forth above, Plaintiff's general claims under 15 U.S.C. §§1692e (¶ 44.01) and both claims under 1692e(10) (¶¶ 44.03-04) must fail because his specific claim under 15 U.S.C. §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 overarching theory of Plaintiff's complaint is that there was insufficient attorney involvement in the review of the complaint. Whether that takes the form of the allegation that he did not read the complaint or that he failed to comply with the New Jersey Court Rule 1:4-8, they are all based on the allegation or theory that there was not enough involvement by Mr. Gulko when he approved the complaint in the State Court

Action. Thus, the theory, although worded in different manners by Plaintiff's counsel, remains the same and should be denied for any and all of the reasons stated above.

CONCLUSION

Wherefore, based upon the foregoing, Pressler respectfully requests that summary judgment be entered in favor of Pressler and that Plaintiff's complaint be dismissed with prejudice in its entirety.

Respectfully submitted,
Pressler and Pressler, LLP

Dated: October 1, 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.

P&P File # P155967

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

DANIEL BOCK, Jr.,	**2:11-cv-07593-KM-MCA**
Plaintiff	**AFFIDAVIT OF RALPH GULKO, ESQ**
vs.	
PRESSLER & PRESSLER, LLP,	
Defendant	

State of New Jersey:
: SS
County of Morris :

I, Ralph Gulko, under penalty of perjury, declare and state as follows:

I. BACKGROUND

1. I am a practicing attorney at law in the States of New Jersey, New York and Pennsylvania. New Jersey since December 1978, Pennsylvania since December 1980 and New York since November 1996. Since August 2005, I have been associated with the New Jersey law firm of Pressler and Pressler, L.L.P. ("Pressler") with offices located at 7 Entin Road, Parsippany, New Jersey, attorneys for Defendant Pressler. Prior to my association with Pressler, I was a partner with the New Jersey law firm of Eichenbaum, Kantrowitz, Leff and Gulko, ("EKLG") which specialized in retail collections. I was with EKLG from May 1980 through August 2005. I am familiar with the facts of this case and the underlying matter and I make the following statements from personal knowledge and a review of Pressler's files.

2. Based on my experience, I am knowledgeable and familiar with Pressler's process regarding the preparation of a new claim prior to it being presented to me for review and approval for suit.

3. I submit this Affidavit in support of Pressler's Motion for Summary Judgment in the within matter. The facts set forth herein are based upon my personal knowledge, and if I were called upon to testify to them, I could and would competently do so.

II. REVIEW OF COMPLAINTS

4. I am the attorney at Pressler who is responsible for the review of complaints in the State of New Jersey. It is my name that is signed on behalf of the law firm. I reviewed the complaint at issue in the underlying collection action titled Midland Funding, LLC v. Daniel Bock, Jr., filed in the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County, under docket number DC-022331-11 (the "State Court Action").

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 from 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. All this information can be found on the opening screen of an electronic file at Pressler.

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, as necessary based upon my review of the file. A specific factor that would trigger my review of a credit report would be an incomplete address and/or an incomplete or misspelled name on the complaint. There was nothing on Mr. Bock's complaint that would have required me to review a credit report.

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. The State Court Action pertained to a credit card, so this step was not necessary.

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. 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.

9. I am aware that various computerized "scrubs" and several other departments in our office have handled the electronic file prior to it being presented to me for approval at the SAC stage. I am, therefore, able to review credit card claims which are relatively straight forward and drafted by using a pre-approved complaint form that has been reviewed and approved by other senior attorneys in our office without having to further verify information that has been previously verified. This greatly expedites the process for me.

10. Midland Funding, LLC ("Midland"), the client who was the plaintiff in the State Court Action has been a client of Pressler since I began with the firm. After eight years of seeing,

reviewing and dealing with Midland claims, I have come to rely on the fact that the data they present to our office to pursue new claims is reliable and sufficient to file a complaint.

11. After complaints I have reviewed are filed in New Jersey, other attorneys at our office are assigned to handle the litigation of the claim and make appearances as necessary.

12. I am aware that on the particular day that I reviewed the collection complaint in the State Court Action I was logged onto Pressler's electronic file for four seconds. I am further aware that on October 20, 2011, the day I reviewed and approved Mr. Bock's complaint, I also reviewed and approved 663 SACs and rejected 10 SACs. Based on my familiarity with the computer system, my familiarity with the reliability of Midland's records and having reviewed complaints for Pressler for approximately eight years, I believe I am complying with my ethical responsibilities as an attorney in the State of New Jersey.

13. I am also aware that the plaintiff herein, Mr. Bock, answered the complaint in the State Court Action, litigated the case pro se and then through his current counsel, and subsequently settled the State Court Action which included a reduced payment by Mr. Bock on the subject debt as satisfaction in full.

14. I am aware that no letter or demand pursuant to New Jersey Court Rule 1:4-8 was served upon Pressler or myself in the State Court Action for failing to comply with said rule.

15. I am aware that no ethics Complaints have been filed against me for failing to comply with the Rules of Professional Conduct.

Ralph Gulko

Sworn to and subscribed before me this 1ST day of October, 2013 as his free and voluntary act and deed for the purposes set forth above.

(Notary Public)

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

P&P File # P155967

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 NOTICE OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56**
PRESSLER & PRESSLER, LLP,	
Defendant	

I**, MITCHELL L. WILLIAMSON**, of full age, do herby 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. On September 12, 2011, Pressler opened 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").

3. On September 15, 2011, Pressler sent Plaintiff an initial notice letter ("Initial Letter") pursuant to 15 U.S.C. § 1692g of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. ("FDCPA") at his address of 15 North Street, Apt. 2, Bayonne, NJ 07002 ("15 North Street"). Annexed hereto as **Exhibit A** is a true and accurate copy of the September 15, 2011 letter.

4. Pressler's files indicate that no response was received from the Plaintiff in connection with the Initial Letter sent on September 15, 2011 nor was the Initial Letter returned as undeliverable.

5. On October 21, 2011, Pressler, by and through its attorney Ralph Gulko, Esq., filed a complaint on behalf of its client 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"). Said Summons was directed to the 15 North Street address. Annexed hereto as **Exhibit B** is a true and accurate copy of the Summons and Complaint obtained from New Jersey's Judiciary Electronic Filing and Imaging System ("JEFIS").

6. On November 18, 2011, the Plaintiff filed a pro se Answer with the Court in the State Court Action. Annexed hereto as **Exhibit C** is a true and accurate copy of the Plaintiff's Answer in the State Court Action obtained from JEFIS.

7. On December 30, 2011, Plaintiff's current counsel filed the instant federal lawsuit against Pressler. Annexed hereto as **Exhibit D** is a true and accurate copy of the Complaint filed in the instant matter. See also (ECF Doc. 1).

8. On January 26, 2012, Plaintiff's instant counsel, through a former associate, filed an objection to a motion brought by Pressler on behalf of its client for more responsive answers to interrogatories served on Plaintiff in the State Court Action. This was the first appearance by

Plaintiff's instant counsel in the State Court Action.

9. The State Court Action was litigated through discovery with considerable motion practice regarding discovery issues, and scheduled for trial on February 24, 2012. On the trial date, Plaintiff through his attorney and Midland, through Pressler agreed to a settlement of the action which was memorialized in a Stipulation of Settlement. Annexed hereto as **Exhibit E** is a true and accurate copy of the Stipulation of Settlement in the State Court Action.

10. The settlement in the State Court Action was paid on or about February 29, 2012 in full satisfaction of the State Court Action and the State Court Action was subsequently dismissed with prejudice by way of Stipulation between the parties.

11. A review of Pressler's electronic file regarding the State Court Action indicates that there was no demand made by Plaintiff therein for the withdrawal of the complaint based upon an alleged violation of New Jersey Court Rule 1:4-8.

12. Annexed hereto as **Exhibit F** is a true and accurate copy of Plaintiff's Rule 26 Disclosures dated March, 30, 2012.

13. Annexed hereto as **Exhibit G** is a true and accurate copy of plaintiff's responses to Defendant's First Set of Interrogatories and First Request for Production of Documents dated August 22, 2012.

14. Annexed hereto as **Exhibit H** is a true and accurate copy of the Joint Opinion on "Debt Collection Practices" issued by the Committee on the Unauthorized Practice of Law and the Advisory Committee on Professional Ethics on May 30, 2012.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 1, 2013

s/Mitchell L. Williamson

Mitchell L. Williamson, Esq.
Pressler and Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054
Telephone: (973) 753-5100
Facsimile: (973) 753-5353
mwilliamson@pressler-pressler.com
Attorneys for Defendant: Pressler and Pressler, LLP

EXHIBIT A

MAURICE P. PRESSLER(1930-2002)
SHELDON L. PRESSLER

GERARD J. TELL
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

MITCHELL L. WILLIAMSON
THOMAS M. BROGAN
RALPH SULKO
JOANNE L. D'AMPIZIO
CHRISTOPHER P. DOUGHILI

PRESSLER AND PRESSLER, L.L.P.
COUNSELLORS AT LAW
7 Entin Road
Parsippany, NJ 07054-5020
Off: (973) 753-5100
Fax: (973) 753 5353

NY Office
535 Broadway
9th Floor
New York, NY 10007
Off: (516)222-7929
Fax: (973)753 5353
Reply to [X] NJ Office [ ] NY Office

DALE L. GELBER
CRAIG S. STILLER*
STEVEN A. LANG
DANIEL B. SULLIVAN
GINA M. LO BUE
GREG P. GELSKY

DARYL J. KIPNIS
JARRIN J. TANAKA
MITCHELL E. ZIPKIN
MICHAEL J. PETERS
RITA E. AYOUB

* NY State License Only

OFFICE HOURS:
Monday-Thursday: 8am-9pm
Friday: 8am-7pm
Saturday: 9am-2pm

DANIEL BOCK JR
15 NORTH ST APT 2
BAYONNE, NJ 07002

09/15/11
P&P FILE B228739
Amount of the Debt $8,021.57

Dear DANIEL BOCK JR

This is to notify you that your account with HSBC BANK NEVADA, N.A. , account # 5458001561298245 has been purchased by MIDLAND FUNDING LLC and has been placed with the firm of Pressler and Pressler, LLP for collection.

We shall afford you this opportunity to pay this debt immediately and avoid further action against you. Make your check or money order payable to Pressler and Pressler, LLP and include your File Number B228739 and remit to:

Pressler and Pressler, LLP 7 Entin Rd. Parsippany, NJ 07054-5020

Payment can be made on the website www.paypressler.com. We also accept Visa/MasterCard and American Express. If you choose this payment option return this letter along with:

Name as it appears on Credit Card_____
Street # & Zip_____ Expires ____/____
Credit Card # _____/Security Code_____
Amount $ _____
Signature _____

If you are unable to pay the balance in full and would like to discuss payment arrangements, please contact us at (888) 312-8600.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, our client may consider additional remedies to recover the balance due.

PLEASE READ THE FOLLOWING PROVIDED TO YOU PURSUANT TO FEDERAL STATUTE:

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receipt of this notice that you dispute the validity of the debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receipt of this notice that the debt or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. Upon your request in writing, within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

EXHIBIT B

SPECIAL CIVIL PART SUMMONS AND RETURN OF SERVICE – PAGE 2

Plaintiff or Plaintiff's Attorney Information:
Name:
Ralph Gulko
Address:
Pressler & Pressler
7 Entin Road

Parsippany, NJ 07054-502
Telephone No.: (973) 753-5100

Demand Amount:	$8,124.55
Filing Fee:	$7.00
Service Fee:	$50.00
Attorney's Fees	$177.49
TOTAL	$8,359.04

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, SPECIAL CIVIL PART

HUDSON **COUNTY**
595 Newark Avenue
Jersey City, NJ 07306-0000
(201) 795-6680

Midland Funding Llc

Plaintiff(s)

versus

Docket Number: DC-022331-11
(to be provided by the court)

Daniel Bock Jr

Civil Action

SUMMONS

Defendant(s)

Contract_Reg

Defendant(s) Information: Name, Address & Phone

Daniel Bock Jr
15 North St Apt 2 Bayonne, NJ 07002 (201) 455-2444

Date Served: 10/21/2011

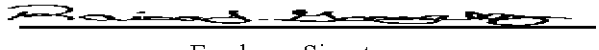
RETURN OF SERVICE IF SERVED BY COURT OFFICER (For Court Use Only)

Docket Number: _____ Date: _____ Time: _____
WM___WF___BM___BF___OTHER____HT_____WT_____AGE_____MUSTACHE_____BEARD_____GLASSES_____
NAME: _____ RELATIONSHIP:_____
Description of Premises: _____
_____
I hereby certify the above to be true and accurate:

_____Court Officer

RETURN OF SERVICE IF SERVED BY MAIL (For Court Use Only)

I, Raisa Gonzalez, hereby certify that on 10/21/2011, I mailed a copy of the within summons and complaint by regular and certified mail, return receipt requested.



Employee Signature

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 5458001561298245 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

EXHIBIT C

Superior Court Of New Jersey
Law Division, Special Civil Part

Ralph Gulko (Pressler & Pressler)
Plaintiff's Name

7 Entin Rd.
Street Address

Parsippany, NJ 07054
Town, State, Zip Code

973.753.5100
Telephone Number

vs.

Daniel Bock Jr.
Defendant's Name

15 North St.
Street Address

Bayonne, NJ 07002
Town, State, Zip Code

201.455.2444
Telephone Number

Hudson County

Docket No. DC-022331-11

CIVIL ACTION

Answer

Check the appropriate statement or statements below which set forth why you claim you do not owe money to the plaintiff.

_____ (1) The good or services were not received.
_____ (2) The goods or services received were defective.
_____ (3) The bill has been paid.
_____ (4) I/We did not order the goods or services.
_____ (5) The dollar amount claimed by the plaintiff(s) is incorrect.
✓ (6) Other – Set forth any other reasons why you believe money is not owed to the plaintiff(s). (You may attach more sheets if you need to.)

I am not aware of an outstanding bill to HSBC or the current owner Midland Funding LLC. I would like either entity to provide evidence of the outstanding bill in the amount of $8,359.04.

_____ Trial by jury requested; an extra $50 check or money order is enclosed.

At the trial Defendant requests:
An interpreter: ____ Yes ____ No Indicate Language: _____
An accommodation for a disability: ____ Yes ____ No Requested accommodation: _____

I certify 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).

I further certify that this answer was served on all other parties within 35 days of the date the summons and complaint were mailed to me as indicated on page 2 of the summons.

Dated: 11.17.11

Daniel Bock
Defendant's Signature

Daniel Bock Jr.
Defendant's Name – Type or Printed

SC-022331-11

7009 0080 0000 1033 1510

OFFICIAL USE

Postage	$0.44
Certified Fee	$2.85
Return Receipt Fee (Endorsement Required)	$2.30
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$5.59

0405 JERSEY CITY NJ 07305
04 Postmark
NOV 18 2011
USPS
11/18/2011

Sent To Ralph Gulko (Pressler & Pressler)
Street, Apt. No., or PO Box No. 7 ENTIN RD.
City, State, ZIP+4 PARSIPPANY, NJ 07054

PS Form 3800, August 2006 See Reverse for Instructions

EXHIBIT D

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(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.	**COMPLAINT** **AND JURY DEMAND**

Plaintiff, Daniel Bock, Jr. ("BOCK" or "Plaintiff"), by way of Complaint against Defendant, Pressler and Pressler, L.L.P. ("PRESSLER"), says:

I. NATURE OF THE ACTION

1. This action stems from the Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq.

II. PARTIES

2. BOCK is a natural person.

3. At all times relevant to the factual allegations of this Complaint, BOCK was a citizen of the State of New Jersey, residing in Hudson County, New Jersey.

4. At all times relevant to the factual allegations of this Complaint, PRESSLER is a for-profit limited liability partnership existing pursuant to the laws of the State of New Jersey and is engaged in the private practice of law. PRESSLER maintains its principal business address at 7 Entin Road, in the Township of Parsippany, Morris County, New Jersey.

III. JURISDICTION AND VENUE

5. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

6. Venue is appropriate in this federal district pursuant to 28 U.S.C. § 1391 because the events giving rise to BOCK's claims occurred within this federal judicial district, and because PRESSLER regularly transacts business within this federal judicial district and, therefore, resides in the State of New Jersey within the meaning of 28 U.S.C. § 1391(b) and (c).

IV. LEGAL BASIS FOR FAIR DEBT COLLECTION PRACTICES ACT CLAIMS

7. The FDCPA simultaneously advances two objectives: it protects vulnerable citizens while promoting a competitive marketplace. 15 U.S.C. § 1692(e).

8. 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. __, 130 S. Ct. 1605, 1623, 176 L. Ed. 2d 519 (2010) (internal quotes and ellipsis omitted); *Lesher v. Law Offices of Mitchell N. Kay, P.C.*, 650 F.3d 993, 996 (3d Cir. 2011).

9. Congress had found abundant evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors contributed to the number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. 15 U.S.C. § 1692(a). It also found that existing consumer protection laws were inadequate. 15 U.S.C. § 1692(b). Therefore, "Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act." *Lesher*, 650 F.3d at 997.

10. Thus, the intended effect of these private enforcement actions was not only to reduce the number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy caused by abusive, deceptive, and unfair debt collection practices but, simultaneously, to promote a competitive marketplace for those debt collectors who voluntarily treat consumers with honesty and respect.

11. "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). Nevertheless, "'[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,* 502 F.3d at 165 (emphasis added) quoting *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1324 (7th Cir. 1997).

12. The FDCPA is construed broadly so as to effectuate its remedial purposes and a debt collector's conduct is judged from the standpoint of the "least sophisticated consumer," *Brown v. Card Serv. Ctr*, 464 F.3d 450, 453n1 (3d Cir. 2006). Thus, by way of example, "A debt collection letter is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate." *Id.* at 455.

13. "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 v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

14. Except where the Act expressly requires knowledge or intent, the "FDCPA is a strict liability statute to the extent it imposes liability without proof of an intentional violation," *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 368 (3d Cir. 2011) (citing, in footnote 7, supporting authorities from the Second, Seventh, Ninth and Eleventh Circuits).

15. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, provides that a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt and, without limiting the generality of the prohibited

conduct, enumerates sixteen acts and omissions which are deemed to be *per se* violations of that section. 15 U.S.C. § 1692e(1)-(16). That list includes:

15.01. Communications from a law firm without there being meaningful attorney involvement, 15 U.S.C. § 1692e(3); and

15.02. Using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10).

16. Liability under the FDCPA is excused *only* when a debt collector establishes, as an affirmative defense, the illegal conduct was either "not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error," 15 U.S.C. § 1692k(c), or an "act done or omitted in good faith in conformity with any advisory opinion of the" Federal Trade Commission, 16 U.S.C. § 1692k(e). Thus, common law privileges and immunities are not available to absolve a debt collector from liability under the FDCPA. See, *Heintz v. Jenkins*, 514 U.S. 21, (1995); *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 369 (3rd Cir. 2011); and *Sayyed v. Wolpoff & Abramson*, 485 F. 3d 236, 232-233 (4th Cir. 2007).

17. 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).

18. A debt collector who violates any provision of the FDCPA is liable for any actual damages, "additional damages" (also called "statutory damages"), and attorney's fees and costs. 15 U.S.C. § 1692k(a). Indeed, "the FDCPA permits and encourages parties who have suffered no loss to bring civil actions for statutory violations." *Jacobson, supra,* 516 F.3d at 96.

19. 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.* For example, there is no "litigation privilege" for 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).

20. BOCK asserts that PRESSLER violated the FDCPA and, pursuant to that Act, seeks statutory damages, attorney fees, and costs.

V. FACTS

21. Sometime prior to September 15, 2011, BOCK is alleged to have incurred a financial obligation ("Debt") to HSBC Bank Nevada, N.A.

22. The Debt is alleged to arise from one or more transactions.

23. BOCK has no recollection of ever incurring any financial obligation in a transaction other than for primarily personal, family, or household purposes and, therefore, on information and belief alleges that the Debt arose from a transaction for primarily personal, family, or household purposes.

24. PRESSLER is regularly engaged in the collection of debts.

25. The principal purpose of PRESSLER is the collection of debts and it uses the mails, telephone, the internet and other instruments of interstate commerce.

26. PRESSLER contends that the Debt is in default.

27. The Debt was placed with, obtained by or assigned to PRESSLER for the purpose of collecting or attempting to collect the Debt.

28. The Debt was in default or alleged to be in default at the time it was placed with, obtained by or assigned to PRESSLER.

29. In an attempt to collect the Debt, PRESSLER sent BOCK a letter dated September 15, 2011 ("INITIAL LETTER").

30. A true and correct copy of the INITIAL LETTER is attached as Exhibit A on page 9, below.

31. By PRESSLER's own admission as stated in the INITIAL LETTER: "*At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.*"

32. In an attempt to collect the Debt, PRESSLER commenced an action ("Collection Action") against BOCK by filing a complaint

("Collection Complaint") on October 21, 2011 in the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County, entitled "Midland Funding vs. Daniel Bock Jr" and designated in that court by Docket No. DC-022331-11.

33. A true copy of the Collection Complaint is attached as Exhibit B on page 10, below.

34. The Collection Complaint was served on BOCK on or about October 25, 2011.

35. Ralph Gulko, Esq. signed the Collection Complaint as an attorney with PRESSLER.

36. By signing the Collection Complaint, Gulko certified that he read the Collection Complaint and that, "to the best of his … knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," "the factual allegations have evidentiary support". New Jersey Court Rule 1:4-8(a); *cf*., Fed.R.Civ.P. 11.

37. Gulko signs so many complaints that it is either physically impossible or so highly improbably that he read the Collection Complaint or made a sufficient inquiry from which to conclude that the factual allegations have evidentiary support. Therefore, Ralph Gulko on behalf of PRESSLER made false representations to collect or attempt to collect the Debt. (Pursuant to Fed.R.Civ.P. 11, this allegation will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.)

VI. CAUSE OF ACTION FOR VIOLATIONS OF THE FDCPA

38. BOCK realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

39. BOCK is a "consumer" within the meaning of 15 U.S.C. § 1692a(3).

40. PRESSLER is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

41. The Debt is a "debt" within the meaning of 15 U.S.C. §1692a(5).

42. The INITIAL LETTER is a "communication" as defined by 15 U.S.C. § 1692a(2).

43. The Collection Complaint is a "communication" as defined by 15 U.S.C. § 1692a(2).

44. PRESSLER's use of the written communication in the form attached as Exhibit 2 violated the FDCPA in one or more of the following ways:

44.01. Using false, deceptive, or misleading representations and/or means in connection with the collection of any debt, which constitutes a violation of 15 U.S.C. §1692e;

44.02. The making of a communication which appears to be a communication from an attorney where there has been insufficient attorney involvement to constitute a communication from an attorney, which constitutes a violation of 15 U.S.C. § 1692e(3);

44.03. Falsely representing that Ralph Gulko, Esq. read the Collection Complaint prior to signing it, which constitutes a violation of 15 U.S.C. § 1692e(10);

44.04. Falsely representing that, to the best of Ralph Gulko's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the factual allegations set forth in the Collection Complaint have evidentiary support, which constitutes a violation of 15 U.S.C. § 1692e(10).

45. Based on any one of those violations, PRESSLER is liable to BOCK for statutory damages, attorney's fees and costs.

VII. PRAYER FOR RELIEF

46. WHEREFORE, Plaintiff, Daniel Bock, Jr., respectfully requests that the Court enter judgment against Defendant, Pressler and Pressler, LLP, as follows:

46.01. An award of statutory damages for BOCK pursuant to 15 U.S.C. § 1692k(a)(2)(A);

46.02. Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(3); and

46.03. For such other and further relief as may be just and proper.

VIII. JURY DEMAND

47. Plaintiff, Daniel Bock, Jr., demands a trial by jury on all issues so triable.

IX. CERTIFICATION PURSUANT TO LOCAL CIVIL RULE

48. Pursuant to L. Civ. R. 11.2, I hereby certify to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that I know of no party, other than putative class members, who should be joined in the action at this time.

Philip D. Stern & Associates, LLC
Attorneys for Plaintiff, Daniel Bock, Jr.
s/Philip D. Stern
Philip D. Stern

Dated: December 30, 2011

EXHIBIT A

MAURICE H. PRESSLER(1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

MITCHELL L. WILLIAMSON
THOMAS M. BROGAN
RALPH GULKO
JOANNE L. D'AURIZIO
CHRISTOPHER P. ODOGBILI

PRESSLER AND PRESSLER, L.L.P.
COUNSELLORS AT LAW
7 Entin Road
Parsippany, NJ 07054-5020
Off: (973) 753-5100
Fax: (973) 753-5353

NY Office
305 Broadway
9th Floor
New York, NY 10007
Off: (516)222-7929
Fax: (973)753-5353
Reply to [X] NJ Office [ ] NY Office

DALE L. GELBER
CRAIG S. STILLER*
STEVEN A. LANG
DANIEL B. SULLIVAN
GINA M. LO BUE
GLEN H. CHULSKY
DARYL J. KIPNIS
DARREN H. TANAKA
MITCHELL E. ZIPKIN
MICHAEL J. PETERS
RITA E. AYOUB
---
* NY State License Only

OFFICE HOURS:
Monday-Thursday: 8am-9pm
Friday: 8am-7pm
Saturday: 9am-2pm

DANIEL BOCK JR
15 NORTH ST APT 2
BAYONNE, NJ 07002

09/15/11
P&P FILE B228739
Amount of the Debt $8,021.57

Dear DANIEL BOCK JR

This is to notify you that your account with HSBC BANK NEVADA, N.A. , account # 5458001561298245 has been purchased by MIDLAND FUNDING LLC and has been placed with the firm of Pressler and Pressler, LLP for collection.

We shall afford you this opportunity to pay this debt immediately and avoid further action against you. Make your check or money order payable to Pressler and Pressler, LLP and include your File Number B228739 and remit to:

Pressler and Pressler, LLP 7 Entin Rd. Parsippany, NJ 07054-5020

Payment can be made on the website www.paypressler.com. We also accept Visa/MasterCard and American Express. If you choose this payment option return this letter along with:

Name as it appears on Credit Card_____
Street # & Zip_____ Expires ____/____
Credit Card # _____/Security Code_____
Amount $ _____
Signature _____

If you are unable to pay the balance in full and would like to discuss payment arrangements, please contact us at (888) 312-8600.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, our client may consider additional remedies to recover the balance due.

PLEASE READ THE FOLLOWING PROVIDED TO YOU PURSUANT TO FEDERAL STATUTE:

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receipt of this notice that you dispute the validity of the debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receipt of this notice that the debt or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. Upon your request in writing, within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

EXHIBIT B

RECEIVED FRIDAY 10/21/2011 1:27:58 PM 8484552

FILED Oct 21, 2011

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

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DANIEL BOCK, JR.

(b) County of Residence of First Listed Plaintiff HUDSON, NJ

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040
pstern@philipstern.com (973) 379-7500

DEFENDANTS

PRESSLER AND PRESSLER, LLP

County of Residence of First Listed Defendant MORRIS, NJ

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Pro Se (Mitchell L. Williamson, Esq.)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury

PERSONAL INJURY
- ❒ 362 Personal Injury - Med. Malpractice
- ❒ 365 Personal Injury - Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 444 Welfare
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 440 Other Civil Rights

PRISONER PETITIONS
- ❒ 510 Motions to Vacate Sentence

Habeas Corpus:
- ❒ 530 General
- ❒ 535 Death Penalty
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition

FORFEITURE/PENALTY
- ❒ 610 Agriculture
- ❒ 620 Other Food & Drug
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 630 Liquor Laws
- ❒ 640 R.R. & Truck
- ❒ 650 Airline Regs.
- ❒ 660 Occupational Safety/Health
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Mgmt. Relations
- ❒ 730 Labor/Mgmt.Reporting & Disclosure Act
- ❒ 740 Railway Labor Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 463 Habeas Corpus - Alien Detainee
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ☒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 810 Selective Service
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 875 Customer Challenge 12 USC 3410
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 892 Economic Stabilization Act
- ❒ 893 Environmental Matters
- ❒ 894 Energy Allocation Act
- ❒ 895 Freedom of Information Act
- ❒ 900Appeal of Fee Determination Under Equal Access to Justice
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district (specify) ❒ 6 Multidistrict Litigation ❒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
15 USC §1692

Brief description of cause:
Debt Collection Abuse

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 1,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ❒ No

VIII. RELATED CASE(S) (See instructions): JUDGE _____ DOCKET NUMBER _____

Explanation:

DATE

12/30/2011

SIGNATURE OF ATTORNEY OF RECORD

s/Philip D. Stern

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT E

Pay Off Ltr 100.
B228739

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SPECIAL CIVIL PART

HUDSON COUNTY
DOCKET # DC-22331-11

Midland Funding, LLC
Plaintiff

Daniel Bock, Jr.
Defendant

STIPULATION OF SETTLEMENT

It is hereby agreed by and between the undersigned parties that this claim is settled as follows: (all settlements must include a specific dollar amount)

Defendant shall pay to Pressler & Pressler LLP Attorneys for Plaintiff, the sum of $3,000 as follows: $2,000 by 3/2/12, $167 per month for five months (Apr. 2012 - Aug. 2012) each due on the 2nd day of the month & $165 on 9/2/12. In the event Defendant disavows (as distinguished from default) this Agreement, Philip D. Stern, Esq. shall pay the $3,000 provided for herein, less *

Upon payment, the parties release each other from liability covering the matters in this dispute. In the event any party Defaults as to the term(s) of this Settlement, the aggrieved party must file a Certification with the Clerk of Special Civil Part together with proof of Service upon the Adversary, requesting that a Judgment be entered in the amount of the original Complaint. **

* Payments made pursuant to this Agreement.

Plaintiff's Signature

Andrew Waldhorn
Plaintiff's Attorney

Date: 2/24/12

Defendant's Signature

Defendant's Attorney

Mediator: _____

**Plaintiff to give Defendant's Counsel five days notice of default & opportunity to cure with said 5 days running via fax, e-mail or mail.

EXHIBIT F

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(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-ES-CLW **INITIAL DISCLOSURES PURSUANT TO FED.R.CIV.P. 26(a)(1) WITH CERTIFICATE OF SERVICE**

Plaintiff, Daniel Bock, Jr. by and through counsel, in accordance with Fed.R.Civ.P. 26(1)(a), disclose:

1. "*the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment*":

    1.01. The parties, who can be contacted through their respective counsel.

2. "*a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment*":

    2.01. The documents attached as exhibits to the complaint.

3. "*a computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the*

nature and extent of injuries suffered":

3.01. Plaintiff does not assert any actual damages.

3.02. Plaintiff asserts a claim for statutory damages in an amount as allowed by the Court pursuant to 15 U.S.C. § 1692k(a)(2)(A).

4. "*for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment*":

4.01. None.

Philip D. Stern & Associates, LLC
Attorneys for Plaintiff, Daniel Bock, Jr.
s/Philip D. Stern
Philip D. Stern

Dated: March 30, 2012

CERTIFICATE OF SERVICE

I, Philip D. Stern, a member of the bar of this Court, certify that these Disclosures were served on counsel for all parties who have appeared in this action in a manner permitted under Fed. R. Civ. P. 5(b) on the date set forth below.

s/Philip D. Stern
Philip D. Stern

Dated: March 30, 2012

EXHIBIT G

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW

PHILIP D. STERN *NJ & DC Bars*
pstern@philipstern.com

697 VALLEY STREET, SUITE 2D
MAPLEWOOD, NJ 07040-2642
(973) 379-7500
www.philipstern.com

August 22, 2012

Mitchell L. Williamson, Esq.
Pressler and Pressler, LLP
7 Entin Road
Parsippany, NJ 07054-9944

Re: Daniel Bock, Jr. vs. Pressler and Pressler, LLP
Case 2:11-cv-07593-ES-CLW

Dear Mr. Williamson,

I enclose and serve Plaintiff's responses to Defendant's First Set of Interrogatories and First Request for Production of Documents.

Very truly yours,

Philip D. Stern
enclosures
via regular mail

cc: Daniel Bock, Jr.

P&P File # P155967

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

DANIEL BOCK, JR.	
Plaintiff,	**2:11-cv-07593 (ES)(CLW)**
-vs-	
PRESSLER AND PRESSLER, LLP	**DEFENDANT'S FIRST SET OF INTERROGATORIES PROPOUNDED UPON PLAINTIFF (dated May 7, 2012)**
Defendant.	

To: **Philip D. Stern, Esquire**
Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040
Attorney for Plaintiff

Defendant, by and through their counsel, Mitchell L. Williamson, Esquire, does hereby request fully responsive answers to the following Interrogatories propounded under oath pursuant to FED. R. CIV. P. 33.

(1) These Interrogatories are deemed to be continuing and any further information secured subsequent to the service of your Answers, which would have been includable in the Answers had this information been known or available, are to be supplied by Supplemental Answers.

(2) These Interrogatories are addressed to you as a party to this action, and your Answers shall be based upon the information known to you, your attorney, your agents, servants, workmen, employees, or other representatives.

(3) Pursuant to FED. R. CIV. P. 33 the Answers to Interrogatories shall be in writing under oath and signed by the person making them. If there is insufficient space to complete an answer to an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

(4) Pursuant to L. Civ. R. 33.1(a) the Answers to interrogatories shall be in writing under oath and in such manner that the final document shall have each interrogatory immediately succeeded by the separate answer thereto.

DEFINITIONS

(a) All verbs are intended to include all tenses.

(b) References to the singular are intended to include the plural and vice versa.

(c) "**Any**" as well as "**all**" shall be construed to mean "each and every."

(d) "**And**" as well as "**or**" shall be construed disjunctively as well as conjunctively, as necessary, in order to bring within the scope of these requests all information that might otherwise be construed to be outside their scope.

(e) "**Credit Report**" refers to any **document** regarding the credit history, credit summary, credit inquiries, collections, public records and status of an individual's credit standing including but not limited to any and all **documents** of Experian, Equifax, and TransUnion.

(f) "**Defendant**" **or** "**Defendants**" refers to Pressler and Pressler, LLP.

(g) "**Documents or documentation**" shall include the singular and plural and shall mean without limitation all written or printed matter of any kind, including the originals, all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, and all identical copies if the originals are not available, including without limitation: memoranda; notes; books and records; certificates; policies; assignments; statements; correspondence; notations; diaries; calendars; summaries; pamphlets; books; inter-office and intra-office communications; notations of any sort of conversation (including telephone conversations and meetings); bulletins; printed matter; computer printouts and records; invoices; worksheets; work papers; all drafts, alterations, modifications, changes and amendments of any of the foregoing; and writings, drawings, graphs, charts, photographs. The term "**documents**" **as** defined above includes "**documents**" whether or not in your possession, custody or control, where the "**documents**" are known to you and can be located or discovered by reasonably diligent efforts.

(h) "**Fair Debt Collection Practices Act**" **or** "**FDCPA**" refers to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

(i) "**Media**" shall include the singular and plural and shall mean without limitation tapes; dvd's; cd-roms; cassettes; disks and records; magnetic media; phone records, computer programs, deleted files, spreadsheets, databases, system usage logs, internet history, cache files, enterprise user information (such as contact lists and calendars), e-mail, removable electronic media, electronically created data and other compilations of data from which information can be obtained or translated (if necessary by detection devices) into reasonably usable form.

(j) "**Plaintiff**", "**Plaintiffs**" **or** "**You**" refers **to** Daniel Bock, Jr.

(k) "**Purchase**" refers to buy, acquire, obtain or procure.

(l) "**Relating to**" or "**relative**" means regarding, constituting, defining, describing, discussing, involving, concerning, containing, embodying, reflecting, identifying, stating, analyzing, mentioning, responding to, referring to, dealing with, commenting upon or in anyway pertaining to.

(m) "**Complaint**" refers to the Complaint filed by the Plaintiff in the instant action.

(n) **"State Court Action(s)"** refers to the matters entitled: Midland Funding, LLC v. Daniel Bock Jr, Docket Number DC-022331-11, venued in the Superior Court of New Jersey, Hudson County, Law Division, Special Civil Part.

INTERROGATORIES

1. State your full legal name, any aliases used by You, your date of birth and list each address used by You within the last 5 years.

RESPONSE: Plaintiff's full name is Daniel Paul Bock, Jr. Plaintiff's date of birth is August 21, 1972. Plaintiff has used the following address(es) within the last 5 years: 15 North Street, Bayonne, NJ 07022.

2. State in detail the educational background, including school(s) attended, dates attended, address of school(s) and whether Plaintiff received a certificate/diploma or other sort of recognition of completing an individual course of study.

RESPONSE: On advice of counsel, the question is improper. Plaintiff objects as beyond the scope of discovery and intended to harass. Subject to and without waiving the objection, Plaintiff attended J.W. Wakerman School, 100 St. Paul's Avenue, Jersey City, NJ 07306 from 1977 to 1986 where he completed and received a Grammar School diploma. Plaintiff attended Dickinson High School, 2 Palisades Avenue, Jersey City, NJ 07306 from 1987-1990 where he completed and received a High School diploma.

3. List all of Plaintiff's employers from 2007 to present, giving name and address of the employer, dates of employment, Plaintiff's job title and/or responsibilities and the name of Plaintiff's direct supervisor(s).

RESPONSE: On advice of counsel, the question is improper. Plaintiff objects as beyond the scope of discovery and intended to harass. Subject to and without waiving the objection:
Ron Nats Services, 45 Essex Rd. Parrsippany, NJ 07054. 2007-2010. Operations Manager. Responsible for day to day operations. Direct Supervisor: Ron Natoli.
Around The Clock Sweeping Services, 15 North Street, Bayonne, NJ 07002. Owner. Responsible for all aspects of the company. Direct Supervisor: Self.

4. List all defaulted accounts in the name of Plaintiff between the years 2007 and present, identifying them by name of the creditor, date account went into default or was charged off, amount allegedly due, and whether Plaintiff has been contacted by any third parties regarding the collection of same.

RESPONSE: On advice of counsel, Plaintiff objects to this request as beyond the scope of discovery and intended to harass.

5. State in detail all acts, not previously listed or included in the Complaint, which Plaintiff contends Defendant committed and which allegedly violate or tend to support a violation of the FDCPA or any other law or statute.

RESPONSE: None except for component actions of acts alleged in the Complaint which may be revealed through ongoing discovery.

6. Identify all individuals you intend to call at a hearing and/or trial in this matter or that may provide Certifications and/or Affidavits as part of any Notice of Motion for Summary Judgment either in support of said motion or in opposition thereto, including any expert witness, and set forth the facts that said individual(s) will provide. Attach any documents which relate to this interrogatory and your response.

RESPONSE: Plaintiff leaves to his counsel to determine which individuals will be called at a hearing or trial or who may provide certifications or affidavits in connection with any summary judgment motion. On advice of counsel, such individuals include those named in any items filed on the docket in this matter (which is available through PACER), those named in the parties' Rule 26 Disclosures, those named in discovery requests and responses, and those named in written communications between counsel for the parties.

7. State the date and method Plaintiff used when he first contacted his current counsel and include the date that said counsel was retained.

RESPONSE: On advice of counsel, objection as privileged.

8. State in detail each and every fact known by Plaintiff which support the allegations contained in the Complaint and which support each claim raised in the Complaint.

RESPONSE: On advice of counsel, the request is so overly broad as to be incapable of a *fully responsive* answer. Subject to objection, Plaintiff has personal knowledge of his receipt of written communications from Defendant, and his involvement in the "State Court Action(s)."

9. State in detail each and every fact known by Plaintiff up to and including December 30, 2011, which supports or tends to support the allegation contained in Plaintiff's Complaint at paragraph thirty-seven (37) which alleges that "Gulko signs so many complaints that it is either physically impossible or so highly improbable that he read the Collection Complaint or made a sufficient inquiry from which to conclude that the factual allegations have evidentiary support. Therefore, Ralph Gulko on behalf of PRESSLER made false representations to collect or attempt to collect the Debt."

RESPONSE: Plaintiff relies on his attorney with respect to such proof. On advice of counsel, Plaintiff has sought discovery from Plaintiff regarding the number of complaints.

10. State in detail each and every fact which supports or tends to support the statement in Plaintiff's Complaint at paragraph thirty-nine (39) which alleges "BOCK is a 'consumer' within the meaning of 15 U.S.C. § 1692a(3)."

RESPONSE: Objection as overly broad and burdensome. Subject to and without waiving this objection, all facts reflected in the documents on the docket, produced in discovery, and identified in the parties' disclosures, as well as information obtained through depositions may contain facts supporting the allegation, and the fact that Plaintiff is a natural person and Defendant alleged that Plaintiff owed a debt.

11. State in detail each and every fact which supports or tends to support the statement in Plaintiff's Complaint at paragraph forty-one (41) which alleges "The Debt is a 'debt' within the meaning of 15 U.S.C. § 1692a(5)."

RESPONSE: Objection as overly broad and burdensome. Subject to and without waiving this objection, all facts reflected in the documents on the docket, produced in discovery, and identified in the parties' disclosures, as well as information obtained through depositions may contain facts supporting the allegation, and the fact that Plaintiff has not incurred any debts on any account with a financial institutionother than for personal, family or household purposes.

12. State whether Plaintiff's initial contact with his current counsel was over the internet and if so, state whether he filled out a form and gave any details as to the nature of his complaints which led to him to contact counsel.

RESPONSE: Objection as privileged.

13. If Plaintiff filled out any forms online as discussed in Interrogatory number twelve (12) above, provide the information listed at the time.

RESPONSE: See response to Interrogatory # 12.

14. State in detail each and every fact which supports or tends to support the allegation in Plaintiff's Complaint that Exhibit 2 constitutes the use of a "false, deceptive, or misleading representations and/or means in connection with the collection of any debt, which constitutes a violation of 15 U.S.C. § 1692e"

RESPONSE: Objection as overly broad and burdensome. Furthermore, the request does not seek facts or mixed questions of law and fact but, instead, an explanation of the reasons why the language contained in Exhibit 2 violates the law. Subject to and without waiving the objection, see the language contained in Exhibit 2 to the Complaint.

15. State in detail each and every fact which supports or tends to support the allegation in Plaintiff's Complaint that Exhibit 2 annexed to the said Complaint constitutes "[t]he making of a communication which appears to be a communication from an attorney where there has been insufficient attorney involvement to constituted a communication from an attorney, which constitutes a violation of 15 U.S.C. § 1692e(3)."

RESPONSE: Objection as overly broad and burdensome. Furthermore, the request does not seek facts or mixed questions of law and fact but, instead, an explanation of the reasons why the language contained in Exhibit 2 violates the law. Subject to and without waiving the objection, see the language contained in Exhibit 2 to the Complaint.

16. State in detail each and every fact which supports or tends to support the allegation in Plaintiff's Complaint that Exhibit 2 annexed to the said Complaint "falsely represent[s] that Ralph Gulko, Esq. read the Collection Complaint prior to signing it, which constitutes a violation of 15 U.S.C. § 1692e(10)."

RESPONSE: Objection as overly broad and burdensome. Furthermore, the request does not seek facts or mixed questions of law and fact but, instead, an explanation of the reasons why the language contained in Exhibit 2 violates the law. Subject to and without waiving the objection, see the language contained in Exhibit 2 to the Complaint.

17. State in detail each and every fact which supports or tends to support the allegation in Plaintiff's Complaint that Exhibit 2 annexed to the said Complaint "falsely represent[s] that, to the best of Ralph Gulko's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the factual allegations set forth in the Collection Complaint have evidentiary support, which constitutes a violation of 15 U.S.C. § 1692e(10)."

RESPONSE: Objection as overly broad and burdensome. Subject to and without waiving the objection, information provided by Defendant in Williams, et al. v. Pressler and Pressler, LLP as well as further investigation and discovery.

By: *Mitchell L. Williamson* Dated: May 7, 2012

Mitchell L. Williamson, Esq.
Pressler and Pressler, L.L.P.
Attorney for Defendant, Pressler and Pressler, LLP, *pro se*
7 Entin Road
Parsippany, New Jersey 07054
Telephone: (973) 753-5100 / Facsimile: (973) 753-5353
mwilliamson@pressler-pressler.com

DECLARATION

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.

Dated: August , 2012

Daniel Bock, Jr.

As to objections:

Dated: August 22, 2012

Philip D. Stern
Philip D. Stern & Associates, LLC
Attorneys for Plaintiff, Daniel Bock, Jr.

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

DANIEL BOCK, JR. **Plaintiff,** **-vs-** **PRESSLER AND PRESSLER, LLP** **Defendant.**	**2:11-cv-07593 (ES)(CLW)** **DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON PLAINTIFF (dated May7, 2012)**

To: Philip D. Stern, Esquire
Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040
Attorney for Plaintiff

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to FED. R. CIV. P. 34. Defendant hereby requests that Plaintiff produce the documents described herein. Should any requests or parts thereof be objected to, said objection must also be in writing as set forth in FED. R. CIV. P. 34(b)(2)(B).

DEFINITIONS

(a) All verbs are intended to include all tenses.

(b) References to the singular are intended to include the plural and vice versa.

(c) "**Any**" as well as "**all**" shall be construed to mean "each and every."

(d) "**And**" as well as "**or**" shall be construed disjunctively as well as conjunctively, as necessary, in order to bring within the scope of these requests all information that might otherwise be construed to be outside their scope.

(e) "**Credit Report**" refers to any **document** regarding the credit history, credit summary, credit inquiries, collections, public records and status of an individual's credit standing including but not limited to any and all **documents** of Experian, Equifax, and TransUnion.

(f) "**Defendant" or "Defendants**" refers to Pressler and Pressler, LLP.

(g) **"Documents or documentation"** shall include the singular and plural and shall mean without limitation all written or printed matter of any kind, including the originals, all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, and all identical copies if the originals are not available, including without limitation: memoranda; notes: books and records; certificates; policies; assignments; statements; correspondence; notations; diaries; calendars; summaries; pamphlets; books; inter-office and intra-office communications; notations of any sort of conversation (including telephone conversations and meetings); bulletins: printed matter; computer printouts and records; invoices; worksheets; work papers; all drafts, alterations, modifications, changes and amendments of any of the foregoing; and writings, drawings, graphs, charts, photographs. The term **"documents" as** defined above includes **"documents"** whether or not in your possession, custody or control, where the "**documents**" are known to you and can be located or discovered by reasonably diligent efforts.

(h) **"Fair Debt Collection Practices Act" or "FDCPA"** refers to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

(i) "**Media**" shall include the singular and plural and shall mean without limitation tapes; dvd's; cd-roms; cassettes; disks and records; magnetic media; phone records, computer programs, deleted files, spreadsheets, databases, system usage logs, internet history, cache files, enterprise user information (such as contact lists and calendars), e-mail, removable electronic media, electronically created data and other compilations of data from which information can be obtained or translated (if necessary by detection devices) into reasonably usable form.

(j) "**Plaintiff", "Plaintiffs" or "You"** refers **to** Daniel Bock, Jr.

(k) "**Purchase**" refers to buy, acquire, obtain or procure.

(l) "**Relating to**" or "**relative**" means regarding, constituting, defining, describing, discussing, involving, concerning, containing, embodying, reflecting, identifying, stating, analyzing, mentioning, responding to, referring to, dealing with, commenting upon or in anyway pertaining to.

(m) "**Complaint**" refers to the Complaint filed by the Plaintiff in the instant action.

(n) **"State Court Action(s)"** refers to the matters entitled: Midland Funding, LLC v. Daniel Bock Jr, Docket Number DC-022331-11, venued in the Superior Court of New Jersey, Hudson County, Law Division, Special Civil Part.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. A complete itemization of all damages suffered by Plaintiff, including but not limited to, any and all damages alleged in the Complaint.

RESPONSE: Objection. The request is improper is improper as it does not seek production of something that exists but, instead, requests that Plaintiff create documents. Subject to and without waiving the objection, see 15 USC § 1692k(a)(2)(A).

2. Copies of all documents which support or tend to support the allegation contained in paragraph thirty-nine (39) of the Plaintiff's Complaint that: "BOCK is a 'consumer' within the meaning of 15 U.S.C. § 1692a(3)."

RESPONSE: None other than those identified in response to #3.

3. Copies of all documents which support or tend to support the allegation contained in paragraph forty-one (41) of the Plaintiff's Complaint that: "The Debt is a 'debt' within the meaning of 15 U.S.C. § 1692a(5)."

RESPONSE: None other than documents which are in the possession of the Defendant which Plaintiff has sought to be produced in discovery but have not yet been produced.

4. Copies of any retainer agreements or other written agreements between Plaintiff and his current attorney (current or past if related to the instant litigation), as well as all bills for services to date.

RESPONSE:

Objection as beyond the scope of discovery and as privileged attorney-client communications.

5. A print out of the initial form filled out by Plaintiff, whether via the internet or by filling out a paper form, which was subsequently transmitted to and/or given to his present attorney(s) prior to the retention by Plaintiff.

RESPONSE:

Objection as beyond the scope of discovery and as privileged attorney-client communications.

6. Copies of all documents which support or tend to support the allegation in paragraph thirty-seven (37) of Plaintiff's Complaint that: "Gulko signs so many complaints that it is either physically impossible or so highly improbably [sic] that he read the Collection Complaint or made a sufficient inquiry from which to conclude that the factual allegations have evidentiary support. Therefore, Ralph Gulko on behalf of PRESSLER made false representations to collect or attempt to collect the Debt."

RESPONSE: The April 2, 2012 Affidavit of Ralph Gulko, Esq. which Defendant gave to Plaintiff under cover letter dated April 2, 2012 from Mitchell L. Williamson, Esq., Defendant's response to interrogatories in Williams et al v. Pressler and Pressler, LLP, and such additional facts to be obtained through additional investigation and discovery.

7. Copies of all documents which you intend to submit as an exhibit to any Certification and/or Affidavit as part of any Notice of Motion for Summary Judgment either in support of said motion or in opposition thereto.

RESPONSE: On advice of counsel, Plaintiff objects to this request as invading the attorney work product privilege. Subject to objection, Plaintiff's counsel has made no decision as to whether to file a summary judgment motion.

8. Copies of all documents which you intend to utilize at a deposition and/or trial in this matter.

RESPONSE: On advice of counsel, Plaintiff objects to this request as invading the attorney work product privilege. Subject to the object and on advice of counsel, Plaintiff's counsel has made no decision as to what, if any, documents will be utilized at a deposition or trial.

By: *Mitchell L. Williamson* Dated: May 7, 2012

Mitchell L. Williamson, Esq.
Pressler and Pressler, L.L.P.
Attorney for Defendant, Pressler and Pressler, LLP, *pro se*
7 Entin Road
Parsippany, New Jersey 07054
Telephone: (973) 753-5100 / Facsimile: (973) 753-5353
mwilliamson@pressler-pressler.com

EXHIBIT H

-- *N.J.L.J.* --
(June --, 2012)
Issued by UPLC and ACPE May 30, 2012

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

JOINT OPINION

OPINION 48

COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

OPINION 725

ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Debt Collection Practices
Reaffirming UPLC Opinion 8 and ACPE Opinions 259 and 506

The Supreme Court requested the Committee on the Unauthorized Practice of Law (UPLC) and the Advisory Committee on Professional Ethics (ACPE) to review UPLC Opinion 8 and ACPE Opinions 259 and 506 in light of current methods used by collections firms and consider whether modification to the opinions may be appropriate. The Committees hereby reaffirm the basic holdings of these opinions. The Committees further reaffirm that, before sending a debt collection letter, lawyers must exercise professional judgment by independently evaluating collection demands and determining that proceedings to enforce collection are warranted.

The Court requested the Committees to review these opinions after it imposed discipline on a New Jersey lawyer for having lent his name and letterhead to a collection agency in exchange for a monthly fee. The lawyer permitted the collection agency to use his law firm letterhead and status as an attorney. Collection agency employees, not the lawyer, exercised judgment in collection efforts. The collection agency was found to have engaged in the unauthorized practice of law and the lawyer was found to have violated RPC 5.5(a)(2) (assisting a nonlawyer in the unauthorized practice of law) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

As the UPL Committee expressly stated forty years ago in Opinion 8, 95 N.J.L.J. 105 (February 10, 1972), when a collection agency sends a letter to a debtor threatening legal action or implying that the collection letter is sent at the direction of a lawyer, the agency is engaging in the unauthorized practice of law. In contrast, when a law firm sends a debtor a collection letter, the recipient has reason to believe that "there has been an evaluation by an attorney of the claim asserted with a determination by the attorney that proceedings to enforce collection are warranted."

In accordance with these principles, the ACPE thereafter issued two opinions, ACPE Opinion 259, 96 N.J.L.J. 754 (June 21, 1973), and Opinion 506, 110 N.J.L.J. 408 (October 7, 1982), expressly stating that a lawyer may not lend law firm letterhead to clients to write and send collection letters. The ACPE concluded in those opinions that a lawyer who lends letterhead to clients is engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c).

This issue was also addressed by the American Bar Association in 1976. ABA Informal Ethics Opinion 1368, "Mass Mailing of Form Collection Letters" (July 15,

1976). The inquiring lawyer represented a large retail organization that sold consumer goods on credit. The lawyer drafted three form letters seeking payment from debtors for amounts past due and stated that "the letters will be prepared and dispatched under his 'direct supervision' but that he will not review any account to determine its 'validity' before any of the letters is sent. He will rely on the client's written certification that the debts on each list furnished are 'justly due.'" The ABA concluded that "it is not enough that the lawyer rely upon the client's certification of the 'validity' of the account. The lawyer must take responsibility for the reasonable accuracy of each letter and must exercise due care that no letter misstates a fact with respect to the account of the debtor." The ABA stressed that the lawyer must "accept[] full professional responsibility" for the collection effort; "independent judgment [is] required to see that each letter sent is accurate and appropriate as to the account of the debtor when it is sent." The UPLC and ACPE agree with this ABA opinion.

Exercising independent professional judgment is a fundamental and indispensable element of the practice of law. A lawyer who fails to exercise independent professional judgment has abdicated the practice of law, has demonstrated a lack of competence, and has committed gross negligence, in violation of RPC 1.1(a).[1]

When a lawyer does not properly supervise nonlawyer staff, or the supervision is merely illusory, the nonlawyers are engaging in unauthorized practice of law. In re Opinion No. 24 of the Committee on the Unauthorized Practice of Law, 128 N.J. 114, 127 (1992). Similarly, when a lawyer permits his or her nonlawyer staff, or a client, to

[1] RPC 1.1(a) (Competence) provides that "[a] lawyer shall not . . . [h]andle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence."

send collection letters that the lawyer has not personally reviewed under the professional standard set forth above, the lawyer has assisted in the unauthorized practice of law in violation of RPC 5.5(a)(2)[2], and engaged in deceptive conduct in violation of RPC 8.4(c).[3]

While the New Jersey ethics rules and the federal Fair Debt Collection Practices Act, 15 U.S.C.A. Section 1692 et seq. (FDCPA), are distinct bodies of law, developments in FDCPA case law touch on the analysis of the practice (and unauthorized practice) of law. FDCPA cases differentiate between lawyers acting in a "lawyer capacity" – which would require the exercise of professional judgment and meaningful involvement in the collection matter – and lawyers not acting in a "lawyer capacity," acting as a lay debt collector. Hence, FDCPA case law provides that when a law firm sends a debtor a collection letter and clearly explains that no lawyer has reviewed the file, the law firm is not acting in a "lawyer capacity" but, rather, is acting as a mere lay debt collector. See, e.g., Gonzalez v. Kay, 577 F.3d 600, 607 (5th Cir. 2009) ("The disclaimer must explain to even the least sophisticated consumer that lawyers may also be debt collectors and that the lawyer is operating only as a debt collector at that time"); Miller v. Wolpoff & Abramson, 321 F.3d 292, 301 (2nd Cir. 2003) ("some degree of attorney involvement is required before a letter will be considered 'from an attorney' within the meaning of the FDCPA"); Avila v. Rubin, 84 F.3d 222, 229 (7th Cir. 1996) ("The attorney letter implies that the attorney has reached a considered, professional judgment that the debtor is

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[2] RPC 5.5(a)(2) (Lawyers Not Admitted to the Bar of this State and the Lawful Practice of Law) provides that "[a] lawyer shall not . . . assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law."

[3] RPC 8.4(c) (Misconduct) provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

delinquent and is a candidate for legal action"); Lesher v. Law Offices of Mitchell N. Kay, PC, 650 F.3d 993, 1003 (3d Cir. 2011), cert. den. __ U.S. __ (2012) (the recipient of a demand letter sent by a law firm "may reasonably believe that an attorney has reviewed his file and has determined that he is a candidate for legal action").

While the FDCPA arguably permits a law firm to send debt collection letters in a lay capacity, New Jersey ethics rules have always prohibited the practice. The ACPE, in Opinion 657, 130 N.J.L.J. 656 (February 24, 1992), 1 N.J.L. 129 (February 17, 1992), found that a lawyer may engage in both a legal and a nonlegal business provided the two businesses are entirely separate, in physically distinct locations, and there is no joint advertising or marketing or demonstration of a relationship between the two businesses. Hence, while a lawyer may engage in a nonlegal or lay debt collection business, a lawyer may not operate that nonlegal business from a law firm. Therefore, a New Jersey law firm may not engage in the lay debt collection business.

Since the UPL Committee issued Opinion 8 in 1972, it has been clear that lawyers who send collection letters are engaged in the practice of law. A lawyer cannot disclaim the fact that he or she is engaging in the practice of law when using law firm letterhead. A lawyer who has not reviewed the file, made appropriate inquiry, and exercised professional judgment has engaged in an incompetent and grossly negligent practice of law in violation of RPC 1.1(a). A lawyer who permits office staff, or a client, to send collection letters when the lawyer has not individually reviewed the file, made appropriate inquiry, and exercised professional judgment, is assisting in unauthorized practice of law in violation of RPC 5.5(a)(2) and engaging in deceitful conduct in violation of RPC 8.4(c).

Accordingly, UPLC Opinion 8 and ACPE Opinions 259 and 506 are hereby reaffirmed. A lawyer who fails to exercise professional judgment by independently evaluating collection demands and determining that proceedings to enforce collection are warranted before sending a debt collection letter on law firm letterhead fails to satisfy ethical requirements of competence and has committed gross negligence.

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 OPPOSITION TO DEFENDANT'S SUMMARY JUDGMENT MOTION

PHILIP D. STERN, ESQ., *on the Brief*
PHILIP D. STERN ATTORNEY AT LAW, LLC
697 VALLEY STREET, SUITE 2D
MAPLEWOOD, NJ 07040
(973) 379-7500
pstern@philipstern.com

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INTRODUCTION

Pressler's Summary Judgment Motion needed to establish that there are undisputed material facts of meaningful attorney involvement when it signed, filed and served the collection complaint against Bock. Pressler failed. It argued against theories which were never raised, and relied on dissenting and reversed opinions. It unreasonably argued for narrowly applying the *Clomon*[1] line of cases, and asked for a rule which would permit collection attorneys to send letters and file complaints without *any* investigation.

Despite its self-described data processing "machine" in which Gulko is but a replaceable "cog,"[2] nothing in Pressler's submissions described a lawyer's considered professional judgment as to the merits of the claim against Bock. Through the use of computers, third party databases, and teams of non-attorney staff, the Pressler Machine repeatedly confirmed data fields, verified addresses, ascertained debtors' deaths or bankruptcies, and checked for duplicated and time-barred claims. But no licensed attorney evaluated Bock's claim for the purpose of rendering a lawyer's professional opinion as to its merits.

Therefore, Pressler's Motion should be denied.

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[1] *Clomon v. Jackson,* 988 F.2d 1314, 1320 (2d Cir. 1993).
[2] E.D. 32-2 at PageID 155.

COUNTER STATEMENT OF FACTS

As Pressler's Summary Judgment Motion and Bock's Summary Judgment Motion are being briefed and adjudicated simultaneously, to avoid repetition, Bock incorporates by reference the Statement of Facts set forth in his Brief, E.D. 34-5 at Page ID 343 *et seq*.

The following specific facts are noted:

1. Pressler's initial demand letter expressly disclaimed any attorney involvement. E.D. 32-5 at PageID 169 (initial letter).

2. [3] REDACTED

[3] This paragraph is redacted in the unsealed copy of this Brief pending a decision on E.D. 43.

3. Gulko "make[s] sure all information contained in the Summons and Complaint ('SAC') is the same that was received from the client." E.D. 32-3 at ¶5. He then checks whether any file notes of payments or address changes have been reflected. *Id.*
4. Gulko will check for other claims in the system and, if found, any documents associated with them; and, if an address is incomplete or a name is missing or misspelled, he will look at any credit reports. E.D. 32-3 at ¶6.
5. Gulko assumes that data on Midland's new claims is "reliable and sufficient to file a complaint." E.D. 32-3 at ¶10.
6. Gulko does not:
    a. inquire whether there are any affidavits from records witnesses (see E.D. 34-2 at ¶46 and record citations therein);
    b. review the governing credit card agreement despite knowing that a choice-of-law or arbitration clause would be relevant (see E.D. 34-2 at ¶47 and record citations therein);
    c. review any periodic billing statements (see E.D. 34-2 at ¶47 and record citations therein);
    d. routinely check whether any chain-of-assignment documents exist (see E.D. 34-2 at ¶¶49-50 and record citations therein); or
    e. have access to review the debt-buyer assignment agreements (see

E.D. 34-2 at ¶¶49-50 and record citations therein).

7. On October 20, 2011, Gulko opened 673 office files and approved 663 SACs for filing including the complaint against Bock. E.D. 34-4 at PageID 290 (Russo Affidavit).

8. Gulko never read the complaint against Bock prior to approving it for filing. Although Pressler's Statement of Material Fact No. 5 asserted, in part, that Gulko "read" the collection complaint, it cited ¶4 of Gulko's Affidavit (E.D. 32-3 at PageID 162) in support of that Fact. Neither that ¶4 nor anything else in Gulko's Affidavit stated that he "read" the collection complaint.

9. The next day, October 21, 2011, Pressler commenced a lawsuit against Bock by filing the Gulko-approved complaint and Bock was then served by mail. E.D. 32-5 at PageID 171-172 (the summons and complaint).

LEGAL ARGUMENTS

POINT I: PRESSLER ARGUES AGAINST THEORIES OF LIABILITY WHICH HAVE NEVER BEEN RAISED.

In the hopes of avoiding further confusion, Bock never asserted:

1. any violation of New Jersey State Court Rules constitutes a violation of the Fair Debt Collection Practices Act.
2. any violation of New Jersey Rules of Professional Conduct constitutes a violation of the Fair Debt Collection Practices Act.
3. Pressler violated the Fair Debt Collection Practices Act by filing a debt-collection lawsuit without the immediate means of proving the debt.

A. The Nature of Pressler's FDCPA Violations.

Pressler violated the FDCPA by falsely represented facts in its written communication to a consumer from whom Pressler was attempting to collect a debt. Based on substantial legal authority, those facts were implied by Pressler's conduct.

To begin the analysis, Pressler conceded that its collection complaint is a communication.[4] As explained by one court, "a complaint served directly on a consumer to facilitate debt-collection efforts is a communication subject to the requirements of §§ 1692e and 1692f."[5] Thus, as with every other written

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[4] E.D. 32-2 at PageID 133.

[5] *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1031-32 (9th Cir. 2010); see, also, *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961, 966 (N.D. Ohio 2009).

communication from a law firm, a collection complaint "conveys authority and credibility"[6] and implies that a lawyer made "a considered, professional judgment" about the debt.[7]

When there is such little involvement that the communication – here, a collection complaint – is not *from* a lawyer "in any meaningful sense of that word,"[8] then the collection lawyer misrepresents facts and violates the FDCPA.

By Gulko signing and Pressler filing the collection complaint, Pressler also implied that Gulko, like every other person who signs and files a court pleading, read the collection complaint and "that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances … the factual allegations have evidentiary support."[9] The Sixth Circuit, in rejecting the consumer's claim that the collection attorney violated the FDCPA by not having the "immediate means" to prove the debt, observed that the consumer failed to allege the attorney's misrepresentation as to having conducted a reasonable inquiry into the existence of evidentiary support.[10] Here, Bock does allege the very misrepresentation which the Sixth Circuit recognized.

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[6] *Crossley v. Lieberman*, 868 F.2d 566, 570 (3d Cir. 1989).
[7] *Avila v. Rubin*, 84 F.3d 222, 229 (7th Cir. 1996).
[8] *Clomon, supra* at 1320.
[9] *New Jersey Court Rule* 1:4-8(a) (3).
[10] *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 333 (6th Cir. 2006).

Bock's claim, therefore, is that Pressler violated the FDCPA by misrepresenting, in connection with its communication, that there was meaningful attorney involvement and it had conducted a reasonable inquiry.

B. Bock is Note Enforcing State Court Rules.

By state court rule,[11] certain representations are made by anyone signing and filing a court pleading regardless whether the person is a lawyer or a *pro se* litigant.

If someone desired to seek sanctions, he or she could follow the court rule[12] which includes a notice to cure and a subsequent motion if uncured. Bock does not seek sanctions for violation of the state court rule; Bock seeks the remedies[13] for false representations in violation of the FDCPA.

Those representations were made by a person – albeit a lawyer or a pro se litigant – who signs and files a court pleading. When those representations are made falsely by a debt collector attempting to collect a debt, the debt collector violates the FDCPA.

Consequently, Pressler's arguments concerning enforcement of the state court rule are inapposite.

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[11] *New Jersey Court Rule* 1:4-8(a).
[12] *New Jersey Court Rule* 1:4-8(b).
[13] 15 U.S.C. § 1692k.

C. Bock is Not Enforcing State Attorney Ethics Rules.

Pressler points to New Jersey attorney ethics rules which would be violated if Pressler exercised gross neglect or pursued meritless claims. Bock has not asked this Court to find that Pressler violated ethics rules. Those are matters to be determined through New Jersey's ethics process.

D. FDCPA Violations Are Enforced Even When Pressler's Conduct Gives Rise to State Law Sanctions.

Bock is not barred from pursuing FDCPA claims because he did not seek sanctions under the state court rule or because his attorney did not report an ethics violation.

The FDCPA was enacted because "[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers."[14] Thus, the FDCPA seeks "to promote consistent State action to protect consumers against debt collection abuses."[15] State laws which limit FDCPA rights are expressly preempted.[16] Thus, if the New Jersey rules are interpreted to bar Bock's FDCPA claims, then those rules are preempted.

Similar arguments have been rejected by the Supreme Court and the Third Circuit. In holding that FDCPA violations may be pursued notwithstanding

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[14] 15 U.S.C. § 1692(b).
[15] 15 U.S.C. § 1692(e).
[16] 15 U.S.C. § 1692n.

Bankruptcy Code violations, the Third Circuit relied, in part, on the Supreme Court's first FDCPA decision.[17] "The Supreme Court held that the FDCPA applied [to attorney's litigation activities] despite the availability during litigation of judicial oversight, due-process protections, detailed procedural rules, and remedies to curtail and punish improper actions by creditors' attorneys."[18] Quoting the Seventh Circuit, the Third Circuit observed, "State 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."[19]

Thus, Bock's right to enforce the FDCPA against Pressler exists regardless whether the same conduct simultaneously violates state court procedural or attorney ethics rules.

POINT II: PRESSLER RELIED ON DISCREDITED AUTHORITIES TO MISCHARACTERIZE THE FDCPA.

In an apparent attempt to minimize the significance of the FDCPA, Pressler cited to Justice Kennedy's dissenting opinion in the Supreme Court's 7-2 decision,[20] where he referred to "technical violations" under the FDCPA.

Pressler failed to recognize that the:

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[17] *Heintz v. Jenkins*, 514 U.S. 291 (1995).
[18] *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 277 (3d Cir. 2013).
[19] *Simon, supra* (emphasis added).
[20] *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010).

> FDCPA is, at least in part, a "strict liability" statute. "[I]t imposes liability without proof of an intentional violation." *Allen v. LaSalle Bank,* 629 F.3d 364, 368 (3d Cir.2011). And for many claims of deceptive conduct under 15 U.S.C. § 1692e, and specifically under § 1692e(10), "evidence of actual deception is unnecessary." *United States v. Nat'l Fin. Servs.,* 98 F.3d 131, 139 (4th Cir.1996). Further, because FDCPA evaluates the challenged communication from the perspective of the "least sophisticated debtor," *see Campuzano–Burgos v. Midland Credit Mgmt.,* 550 F.3d 294, 298 (3d Cir.2008), a particular plaintiff's actual reliance is not necessary.[21]

Thus, whatever might have been the dissenter's view, an FDCPA violation involving misrepresentation – even in the absence of actual deception or reliance – is nevertheless an actionable violation of the FDCPA.

Pressler also restated the Sixth Circuit's quote from Judge Glasser's decision. Pressler neglected to disclose, however, that the Second Circuit subsequently reversed Judge Glasser.[22] Having granted summary judgment dismissing the plaintiff's FDCPA claims, Judge Glasser concluded that plaintiff's counsel knew the claims were meritless, and, therefore, awarded attorney's fees against plaintiff. Using a broad brushstroke, Judge Glasser blasted the plaintiff and the consumer bar as a whole. The Second Circuit took corrective action. Not only did it find no basis for awarding fees, it found that the FDCPA claim was

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[21] *Williams v. Pressler & Pressler, LLP*, CIV. 11-7296 KSH, 2013 WL 5435068 (D.N.J. Sept. 27, 2013) (omitting some citations).

[22] *Jacobson v. Healthcare Fin. Servs., Inc.*, 434 F. Supp. 2d 133 (E.D.N.Y. 2006) *rev'd* 516 F.3d 85 (2d Cir. 2008).

very much meritorious. To override Judge Glasser's disparaging "cottage industry" comments, the Second Circuit expressly recognized that, while the standard for assessing FDCPA violations is from the perspective of the least sophisticated consumer,

> the FDCPA enlists the efforts of sophisticated consumers … as "private attorneys general" to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.[23]

In our own Circuit, the Court of Appeals similarly recognized that "Congress also intended the FDCPA to be self-enforcing by private attorney generals,"[24] and that the FDCPA "mandates an award of attorney's fees as a means of fulfilling Congress's intent that the Act should be enforced by debtors acting as private attorneys general."[25]

Contrary to Pressler's view, the FDCPA does not exist to let spendthrifts annoy debt collectors. Rather, by enlisting the sophisticated consumer and competent counsel to act as private attorneys general, *all* of the Act's purposes are advanced. One of those purposes is "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively

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[23] *Jacobson,* 516 F.3d at 91 (internal citations omitted).
[24] *Weiss v. Regal Collections*, 385 F.3d 337, 345 (3d Cir. 2004) .
[25] *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991).

disadvantaged."[26] Thus, by enforcing the FDCPA, a debt collector who misrepresents facts does not gain an unfair advantage over those who do not – and collection law firms which spend the time and money for a lawyer to meaningfully review their clients' claims are not competitively disadvantaged by those firms who skip that process.

POINT III: A COMMUNICATION FROM A COLLECTION ATTORNEY REQUIRES MEANINGFUL ATTORNEY INVOLVEMENT OR A SUFFICIENT DISCLAIMER OF SUCH INVOLVEMENT.

Pressler mistakenly contended that *Clomon* and its progeny should be narrowly applied to letters thereby freeing collection attorneys from *any* attorney involvement with non-letter communications. Pressler also argued that it should have no duty to investigate anything about its clients' claims.

A. There is No Basis to Restrict Clomon to Renting Letterhead.

Pressler would unreasonably limit the *Clomon* line of cases to situations in which an attorney is renting its letterhead.[27]

Pressler's misinterpretation flies in the face of binding Third Circuit authority where the law firm did not rent its letterhead.[28] In *Lesher,* the law firm

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[26] 15 U.S.C. § 1692(e).

[27] E.D. 32-2 at PageID 15.

[28] *Lesher v. Law Offices Of Mitchell N. Kay, PC*, 650 F.3d 993 (3d Cir. 2011) *cert. denied,* 132 S. Ct. 1143 (U.S. 2012)

sent letters but the Third Circuit held that the disclaimer of attorney involvement failed to negate the implied representation that the letter came from a law firm acting as lawyers and not acting merely as lay collectors.

Pressler's overly restrictive reading is also inconsistent with *Miller III,*[29] where the court applied the *Clomon* principles of meaningful attorney involvement to the collection law firm's filing of a collection complaint.

Pressler reliance on a 2007 Central District of California case[30] is misplaced. There, the court properly refused to impose "some general standard under the FDCPA for adequate attorney involvement in debt collection actions." Here, the Court is not asked to set some standard for the conduct of debt collection actions. Instead, Pressler's violation arises from a collection attorney's communication where there has long-existed a standard requiring either meaningful attorney involvement or a sufficient disclaimer of such involvement.[31]

Continuing to misunderstand Bock's claim, Pressler cited a Southern District of California decision[32] which is equally inapposite. There, the consumer

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[29] *Miller v. Upton, Cohen & Slamowitz*, 687 F. Supp. 2d 86, 97-98 (E.D.N.Y. 2009)

[30] *Taylor v. Quall*, 471 F. Supp. 2d 1053 (C.D. Cal. 2007).

[31] *Lesher, supra.*

[32] *Alaan v. Asset Acceptance LLC*, 10CV328-WQH-BLM, 2011 WL 3475378 (S.D. Cal. Aug. 8, 2011).

alleged that the debt collector falsely represented the existence of evidence. When moving for summary judgment, the debt collector pointed out that, under *Harvey*, the FDCPA does not require the collection attorney to have the immediate means to prove the debt. The consumer did not respond to that argument and, the court agreed that there was no violation for not having the evidence.

Here, Bock does not assert that there was no evidence, and does not contend that Pressler's representation as to the existence of evidence was false. Instead, his claim is that misrepresented that it had conducted a reasonable inquiry from which it could make any affirmative statement about any evidence. There was, in fact, no inquiry – Gulko accepted the downloaded data without inquiring about or reviewing records witnesses, the governing contract, periodic billing statements, or debt-buyer assignment documents. Consequently, Pressler's representation as to such an inquiry was false. That claim is not the claims which were rejected in *Taylor* or *Alaan*.

B. Pressler's No-Duty-to-Investigate Cases Do Not Apply When Pressler Misrepresented that an Attorney was Involved and Made a Reasonable Inquiry.

Pressler cited three decisions for the proposition that it had no duty to

conduct any investigation prior to filing the collection complaint.[33]

They are all distinguishable. Those three decisions affirm the general principle that a *collection agency* has no obligation to independently investigate the claims provided by its customer. Bock does not disagree but those cases have no application to the instant circumstances.

None of those cases involved a misrepresentation. Unlike Pressler here, those collection agencies had not represented that there was attorney involvement or a reasonable inquiry. Here, by virtue of the fact that the collection complaint was a communication from a collection lawyer without any disclaimer of attorney involvement, Pressler represented that a licensed attorney made a considered, professional judgment based on something more than blindly accepting the client-provided "informational equivalent of 'name, rank and serial number.'"[34] Indeed, in *Miller I*,[35] a case cited approvingly by Pressler, the Second Circuit agreed that "[m]erely being told by a client that a debt is overdue is not enough."

Thus, none of Pressler's no-investigation cases exonerate Pressler from the false representation that, by signing, filing and serving the collection complaint

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[33] E.D. 32-2 at PageID 157.

[34] *Miller III.*

[35] *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 304 (2d Cir. 2003).

against Bock, it conducted a reasonable inquiry with meaningful attorney involvement.

C. Pressler Cannot Rely on the Failure to Dispute as a Substitute for Meaningful Attorney Involvement.

Pressler has no basis to argue[36] that Bock's failure to dispute the debt within 30 days after it sent him the initial letter is a substitute for its failure to make an inquiry or provide meaningful attorney involvement. Again, Pressler misconstrued the Act.

A debt collector's initial written communication must provide the consumer with a notice that, if the consumer fails to dispute the debt within 30 days, "the debt will be assumed to be valid by the debt collector."[37] Yet, nothing in the FDCPA provides any protection for a collector who makes such an assumption.

Indeed, failure to dispute "merely allows the debt collector to proceed under what Judge O'Neill aptly describes as a 'temporary fiction' that the debt stated in the validation notice is true."[38] The specific section[39] only "permits a debt collector to assume the debt correct and undertake collection efforts that

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[36] E.D. 32-2 at PageID 149.
[37] 15 U.S.C. § 1692g(a)(3).
[38] *Nelson v. Select Fin. Servs., Inc.*, 430 F. Supp. 2d 455, 457 (E.D. Pa. 2006).
[39] 15 U.S.C. § 1692g(a)(3)

would otherwise be suspended, at least temporarily, if the debt was disputed. But ***a consumer's failure to dispute a debt, in and of itself, does not license a debt collector to pursue legal action against the consumer.***"[40]

D. The Existence of Collection Complaint Defects are Irrelevant to Whether Pressler Violated the FDCPA when It Misrepresented the Involvement of an Attorney and his Inquiry Related to that Complaint.

Pressler mistakenly contended that Bock needed to allege some defect in the collection complaint in order for him to pursue a claim based on the absence of meaningful attorney involvement. Pressler's no-harm-no-foul rule does not fly.

That argument was expressly rejected in a case against Pressler's client, Midland Funding, LLC.[41] There, Midland had attached an affidavit to its collection complaint which set forth information about the debt based on the affiant's "personal knowledge." No one disputed that the debt information was wrong.

The court first recognized that it should evaluate the affidavit, like the collection complaint here, "the same as any other correspondence or communication from a debt collector, and holds those statements to the

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[40] *Gigli v. Palisades Collection, L.L.C.*, 3:CV-06-1428, 2008 WL 3853295 (M.D. Pa. Aug. 14, 2008) (emphasis added).

[41] *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961 (N.D. Ohio 2009).

requirement that they not be false or misleading."[42]

The affiant signed 200-400 affidavits each day and the court concluded that it was factually impossible for the affiant to have personal knowledge despite have said so in the affidavit. The court acknowledged that the affidavit's information about the debt might be entirely accurate and the consumer had not shown that "the amount of the debt, the fact that it is unpaid, or other vital account information, is false."[43] Nevertheless, the affidavit was a false and misleading communication because it misrepresented the affiant's personal knowledge.

Likewise, the fact that the collection complaint filed against Bock might have been accurate is irrelevant to whether Pressler falsely represented an attorney's reasonable inquiry and considered judgment.

The irrelevance of errors in the complaint is further manifested by the FDCPA's purposes. Again, one of those purposes is "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged."[44] Pressler's refusal to incur the time and expense to ensure meaningful attorney involvement means that those collection law

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[42] *Brent, supra* at 966.
[43] *Brent, supra* at 969.
[44] 15 U.S.C. § 1692(e).

firms which do so are competitively disadvantaged regardless whether there are errors in Bock's complaint.

E. Pressler's Misrepresentations Were Material.

Pressler argued that any misrepresentation must be materially false. The leading case is from the Seventh Circuit[45] which did not articulate the test for materiality. In adopting the Seventh Circuit's opinion, however, the Ninth Circuit wrote: "In assessing FDCPA liability, we are not concerned with mere technical falsehoods that mislead no one, but instead with genuinely misleading statements that may frustrate a consumer's ability to intelligently choose his or her response."[46]

The Third Circuit has yet to address the issue and counsel has found no decisions from this District. An opinion from a sister District Court[47] has questioned the reasoning of the Seventh Circuit. The court observed that § 1692e is written in the disjunctive "false, deceptive, or misleading" and, in light of Third Circuit authority to construe the Act broadly in favor of protecting consumers, the Seventh Circuit effectively re-wrote the stature in the conjunctive

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[45] *Hahn v. Triumph Partnerships LLC*, 557 F.3d 755 (7th Cir. 2009).

[46] *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1034 (9th Cir. 2010).

[47] *Mushinsky v. Nelson, Watson & Assoc., LLC*, 642 F. Supp. 2d 470 (E.D. Pa. 2009).

such that a false statement must be both false *and* misleading.[48]

Regardless of how the Third Circuit would rule, the misrepresentations here are material.

In *Brent*, the court concluded that the affidavit, being part of a collection complaint, was materially false by representing that the statements about the debt were made on personal knowledge. The court reasoned that the representation is material if, in the eyes of the least sophisticated consumer, the representation makes the allegations of the complaint more or less likely to be true than if the representations were not considered. The court reasoned that believing the affiant's statements were made on personal knowledge would lead the least sophisticated consumer to give more credence to the complaint's allegations and, therefore, the falsity of personal knowledge was material.

Here, the least sophisticated consumer is more likely to consider the complaint's allegations to be true by believing that a licensed attorney in Pressler's office had made a reasonable inquiry, reviewed the matter, considered relevant material and made a considered, professional judgment that the allegations had merit. Consequently, even if the Third Circuit were to require materiality, the misrepresentations were, in fact, material.

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[48] *Mushinsky, supra* at 473 note 3.

POINT IV: PRESSLER HAS NOT SHOWN THAT THE UNDISPUTED FACTS FAIL TO SATISFY BOCK'S PROOF BURDEN AS TO ANY ELEMENT OF HIS FDCPA CLAIM.

To avoid duplication, Bock incorporates his Summary Judgment Brief.[49]

By way of recap, Bock succeeds on liability if he proves one FDCPA violation. Pressler's Motion does not raise any issue as to the facts establishing that it is a debt collector, that it attempted to collect a consumer debt from Bock, or that Bock is a consumer – all of which establish that the FDCPA applies to Presser and that Bock has standing to bring claims for its violation.

Nothing in Pressler's evidential submissions establishes that there was attorney involvement other than when Gulko's four second approval. There is no evidence that either Gulko or another attorney made any inquire regarding the debt. Data about the debt was downloaded from a website and then uploaded into Pressler's computers. That data was never reviewed as to the merits of the claim. The focus of Pressler's self-described machine was on qualifying claims for suit based on ensuring data fields were complete, and there was no duplication, death, bankruptcy, or staleness. No attorney asked for or looked at: the written contract governing the claim even though a choice-of-law or arbitration clause would be relevant; periodic billing statements; assignment

[49] E.D. 34-5.

agreements or chain-of-title documents; or the existence of affidavits from competent records custodians.

Nielsen[50] and *Miller III* both hold that the failure to inquire about those items as well as an attorney's reliance on the claim data obtained from the client establish the absence of meaningful attorney involvement and violate the FDCPA.

Here, Pressler did not even affirmatively state that Gulko read the complaint. Frankly, it is doubtful that even Evelyn Woods could have read the complaint in four seconds and then formed a judgment as to whether the complaint should be filed.

In *Boyd*,[51] the district court granted summary judgment dismissing the consumer's FDCPA claim against a collection law firm. The firm submitted an affidavit explaining that:

> a lawyer reviews every individual file before the initial collection letter (the letters to the plaintiffs were initial, not follow-up, letters) is sent, that he himself reviewed the plaintiffs' files before approving the sending of collection letters to them, and that in every collection case handled by his office a lawyer "reviews each and every document in the client's file to insure the correctness of the data and the claim, paying strict attention to the various statutes of limitation which may apply ... [and] to make sure that we comply with

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[50] *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002).

[51] *Boyd v. Wexler*, 275 F.3d 642 (7th Cir. 2001)

> state requirements, such as the need for actual presence in the state, a collection agency license or a license to practice law in the state."[52]

Writing for the court, Judge Posner reversed. He held that the volume of collection letters compared to the number of attorneys was circumstantial evidence sufficient to create an issue of fact as to the credibility of the attorney's affidavit. Posner estimated that an attorney spending fifteen minutes per file and four hours per day (to allow for other work), could review sixteen files daily. The firm, however, was turning out, on average, fifty times that amount – or 800 letters per day.[53]

Unlike the lawyers in *Boyd* who were reviewing files only for the purpose of sending initial demand letters, Gulko was reviewing collection complaints to sue people. On the day in question, Gulko reviewed 673 complaints but had days where he reviewed in excess of 1,000. Thus, Gulko's output alone is sufficient to defeat any contention as to meaningful attorney involvement.

Pressler's explanation of its processes and the scope of Gulko's analysis only serve to concretize one conclusion: there was no meaningful attorney involvement and no reasonable inquiry made by Pressler prior to filing and serving Bock with the collection complaint.

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[52] *Boyd, supra* at 644.
[53] *Boyd, supra* at 645.

Consequently, the facts viewed in Bock's favor establish Pressler's liability for violating the FDCPA and, therefore, Pressler's Motion for Summary Judgment should be denied.

CONCLUSION

For the foregoing reasons, Plaintiff, Daniel Bock, Jr. respectfully requests that the Court deny the Motion for Summary Judgment filed by Defendant, Pressler and Pressler, LLP.

Respectfully submitted,
s/Philip D. Stern

Dated: November 25, 2013

PHILIP D. STERN
Philip D. Stern Attorney at Law, LLC
Attorney 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 RESPONSIVE STATEMENT OF MATERIAL FACTS AND SUPPLEMENTAL STATEMENT OF DISPUTED MATERIAL FACTS

Plaintiff, Daniel Bock, Jr., responds to Defendant's Statement of Material Fact (E.D. 32-1, at PageID 120-123), as follows:

Defendant's Statement of Material Fact No. 1

On September 12, 2011, Pressler and Pressler, LLP ("Pressler") started an electronic file in its office for the collection of a HSBC Bank Nevada, N.A. account ending in "8245 belonging to the Plaintiff in the instant matter, Daniel Bock, Jr. on behalf of its client, Midland Funding, LLC ("Midland"). Certificate of Mitchell L. Williamson, Esq. ("MLW Cert."), ¶ 2.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

For all other purposes, Plaintiff objects to the entire statement for three reasons: first, the declarant has failed to show that he has personal knowledge of the asserted facts; second, if the facts are based on information contained in hearsay records, the content of those records can only be considered upon a

competent witness's testimony laying the foundation for a hearsay exception; third, the declarant is litigation counsel for Defendant and, by virtue of his declaration, has improperly made himself a material witness.

Defendant's Statement of Material Fact No. 2

On September 15, 2011, Pressler sent Plaintiff an initial notice letter ("Initial Letter") pursuant to 15 U.S.C. § 1692g of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") to Plaintiff's correct address. MLW Cert., ¶ 3.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted, including that the Exhibit A referenced in MLW Cert., ¶3, is a true copy of the letter Plaintiff received. The same letter appears as Exhibit A to the Complaint (E.D. 1 at PageID 9). See, Complaint ¶¶29 and 30 (E.D. 1 at PageID 26, and Defendant's admission (E.D. 7 at PageID 26).

For all other purposes, Plaintiff objects to the entire statement for four reasons: first, the declarant has failed to show that he has personal knowledge of the asserted facts; second, if the facts are based on information contained in hearsay records, the content of those records can only be considered upon a competent witness's testimony laying the foundation for a hearsay exception; third, the declarant is litigation counsel for Defendant and, by virtue of his declaration, has improperly made himself a material witness; fourth, Plaintiff has no basis on which to be able to admit or deny the stated date of mailing but admits that the letter is dated September 15, 2011 and was received within a

several days after September 15, 2011.

Defendant's Statement of Material Fact No. 3

Plaintiff did not respond to the Initial Letter nor was it returned to Pressler as undeliverable. MLW Cert., ¶ 4.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

For all other purposes, Plaintiff objects to the entire statement for three reasons: first, the declarant has failed to show that he has personal knowledge of the asserted facts; second, if the facts are based on information contained in hearsay records, the content of those records can only be considered upon a competent witness's testimony laying the foundation for a hearsay exception; third, the declarant is litigation counsel for Defendant and, by virtue of his declaration, has improperly made himself a material witness.

Defendant's Statement of Material Fact No. 4

On October 21, 2011, Pressler, by and through its attorney Ralph Gulko, Esq., filed a complaint on behalf of its client 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"). MLW Cert., ¶ 5.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

For all other purposes, Plaintiff objects to the entire statement for three reasons: first, the declarant has failed to show that he has personal knowledge of the asserted facts; second, if the facts are based on information contained in hearsay records, the content of those records can only be considered upon a competent witness's testimony laying the foundation for a hearsay exception; third, the declarant is litigation counsel for Defendant and, by virtue of his declaration, has improperly made himself a material witness.

Defendant's Statement of Material Fact No. 5

Mr. Gulko was the attorney who reviewed, read, and signed the complaint in the State Court Action. Affidavit of Ralph Gulko ("Gulko Affidavit"), ¶ 4.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted that Gulko *signed* the complaint.

Denied that Gulko *read* the complaint. The cited ¶4 of Gulko's affidavit made no statement that he read the collection complaint. In ¶5 of his affidavit, he stated that he also compared the client-provided information to the complaint's information and reviewd the file account notes. It is undisputed that the complaint and Pressler's electronic file were open for four seconds. See Defendant's Statement of Material Fact No. 19, below. Therefore, it is not credible that, after deducting the time it took Gulko to look at the client-provided information and review Pressler's file account notes, Gulko read the complaint in the remaining time.

Denied in part and admitted in part that Gilko *reviewed t*he complaint because "review" ambiguously describes Gulko's actions. For purposes of Defendant's Summary Judgment Motion, Plaintiff admits that Gulko reviewed the complaint to the extent "review" means, as stated in ¶5 of Gulko's affidavit, that he made "sure all information contained in the Summons and Complaint ('SAC') is the same information that was received from the client." To the extent that reviewed is meant to connote a critical legal analysis, the factual record does not support the use of "review" and, therefore, Plaintiff denies that Gulko reviewed the complaint.

Defendant's Statement of Material Fact No. 6

Mr. Gulko has specialized his practice of law in retail collections since 1980. Gulko Affidavit, ¶ 1.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

Defendant's Statement of Material Fact No. 7

Mr. Gulko is familiar with the process at Pressler regarding the preparation of a new claim prior to it being presented to him for review and approval for the filing of a complaint. Gulko Affidavit, ¶ 2.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

Defendant's Statement of Material Fact No. 8

Several departments at the Pressler law firm review the electronic file and Pressler's computer system performs several "scrubs" prior to a complaint being presented to Mr. Gulko for review. See generally, Affidavit of Gerard J. Felt ("Felt Affidavit").

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

Defendant's Statement of Material Fact No. 9

Plaintiff filed a pro se answer in the State Court Action on November 18, 2011. MLW Cert., ¶ 6.

Plaintiff's Response: Admitted.

Defendant's Statement of Material Fact No. 10

On January 26, 2012, Plaintiff's instant counsel appeared in the State Court Action. MLW Cert., ¶ 8.

Plaintiff's Response: Admitted.

Defendant's Statement of Material Fact No. 11

The State Court Action was litigated by Plaintiff's counsel and Pressler (on behalf of Midland) by conducting discovery and engaging in motion practice. MLW Cert., ¶ 9.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted.

Defendant's Statement of Material Fact No. 12

Trial was scheduled in the State Court Action on February 24, 2013. MLW Cert., ¶ 9.

Plaintiff's Response: Admitted.

Defendant's Statement of Material Fact No. 13

A settlement was reached in the State Court Action on February 24, 2013. MLW Cert., ¶ 9, Exhibit E.

Plaintiff's Response: Admitted with the following clarification. This Fact is based on MLW Cert., ¶9 which stated that the State Court Action was settled when "Plaintiff through his attorney" and Pressler appeared for trial. The preceding paragraph, MLW Cert., ¶8, stated that Plaintiff's counsel here (Philip D. Stern, Esq.) appeared for Plaintiff in the State Court Action. Thus, ¶9 implied that Mr. Stern appeared for trial and negotiated the settlement – he did not. Stern Suppl. Decl. ¶¶7-9.

Defendant's Statement of Material Fact No. 14

Plaintiff paid the settlement on February 29, 2012 in full satisfaction of the State Court Action pursuant to the agreement reached. MLW Cert., ¶ 10.

Plaintiff's Response: Plaintiff admits that, although the settlement agreement permitted Plaintiff to pay $3,000 in six monthly installments beginning on March 2, 2012, he paid the full amount in advance on February 29, 2012.

Plaintiff denies that the payment was "in full satisfaction of the State Court Action." The payment was in full satisfaction of the settlement agreement. E.D. 32-5 at PageID 190. Once paid, the State Court Action was dismissed with

prejudice. Stern Suppl. Decl., ¶2 and Exhibit P-13.

Defendant's Statement of Material Fact No. 15

The State Court Action was dismissed with prejudice by way of Stipulation between the parties after the payment was made. MLW Cert., ¶ 10.

Plaintiff's Response: Admitted.

Defendant's Statement of Material Fact No. 16

Pressler was never served with a demand for the withdrawal of the State Court Action by Plaintiff or his counsel pursuant to New Jersey Court Rule 1:4-8. MLW Cert., ¶ 11; Gulko Affidavit, ¶ 14.

Plaintiff's Response: Admitted.

Defendant's Statement of Material Fact No. 17

Midland has been a client of Pressler since 2003. Felt Affidavit, ¶ 10.

Plaintiff's Response: Only for purposes of Defendant's Summary Judgment Motion, admitted. Plaintiff has no ability to admit or deny because Defendant refused to supply such information in response to Plaintiff's discovery requests and, despite the entry of a Discovery Confidentiality Order, Defendant failed to amend its discovery responses. Stern Suppl. Decl. ¶¶3-6.

Defendant's Statement of Material Fact No. 18

Midland has been transferring new claims electronically to Pressler since 2004. Felt Affidavit, ¶ 10.

Plaintiff's Response: Only for purposes of Defendant's Summary

Judgment Motion, admitted. Plaintiff has no ability to admit or deny because Defendant refused to supply such information in response to Plaintiff's discovery requests and, despite the entry of a Discovery Confidentiality Order, Defendant failed to amend its discovery responses. Stern Suppl. Decl.¶3-6.

Defendant's Statement of Material Fact No. 19

Mr. Gulko was logged onto Pressler's electronic file for four seconds prior to approving Mr. Bock's complaint. Gulko Affidavit, ¶ 12.

Plaintiff's Response: Admitted.

Defendant's Statement of Material Fact No. 20

Mr. Gulko is not currently nor has he ever been the subject of an ethical Complaint for failing to comply with the Rules of Professional Conduct. Gulko Affidavit, ¶ 15.

Plaintiff's Response: Only for purposes of Defendant's Motion for Summary Judgment, admitted.

PLAINTIFF'S SUPPLEMENTAL STATEMENT OF DISPUTED MATERIAL FACTS

Plaintiff, Daniel Bock, Jr., by way of Supplemental Statement of Material Facts incorporates Plaintiff's Statement of Material Facts E.D. 34-2 as if set forth here at length.

Respectfully submitted,
s/Philip D. Stern

Dated: November 25, 2013

PHILIP D. STERN
Philip D. Stern Attorney at Law, LLC
Attorney for Plaintiff, Daniel Bock, Jr.

PHILIP D. STERN ATTORNEY AT LAW, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(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 **SUPPLEMENTAL DECLARATION OF PHILIP D. STERN, ESQ.**

I, Philip D. Stern, declare:

1. I am Plaintiff's attorney in this action. I make this Declaration based on my own personal knowledge. This Declaration: (A) identifies the Stipulation of dismissal filed in the state court collection action, (B) identifies Pressler's responses to certain interrogatories, and (C) clarifies that I did not appear in court in the state court collection action which Pressler brought against my client, Daniel Bock.

State Court Stipulation of Dismissal with Prejudice

2. I attach a true copy of the Stipulation of Dismissal with Prejudice filed in the state court action in which Pressler sued Bock on behalf of Midland Funding, LLC. For ease of reference, I have marked it as P-13 thereby continuing the exhibit numbering from my prior declaration, E.D. 34-4.

Selected Interrogatory Responses

3. I attach a true copy of Bock's Interrogatory Nos. 2, 5, 16 and 17 with Pressler's

responses. I have marked these as P-14.

4. Those interrogatories asked:

> 2. How did it come about that you sought to collect the Obligation?
>
> 5. What procedure was used by Defendant to decide whether to file the Collection Complaint?
>
> 16. How are your records concerning your efforts to collect the Obligation stored?
>
> 17. How are your records concerning your efforts to collect the Obligation retrieved?

5. Pressler's responses did not include the facts set forth in the following Statement of Material Facts notwithstanding that the facts were within the scope of the those four interrogatories.

> 17. Midland has been a client of Pressler since 2003.
>
> 18. Midland has been transferring new claims electronically to Pressler since 2004.

6. In addition, according to Pressler's Memorandum, the Felt Affidavit (E.D. 33), contains "A detailed description of the process of how a new claim is received by Pressler from its client through the time it is filed via JEFIS with the state court." E.D. 32-2 at PageID 155. Thus, the entire Felt Affidavit contains information response to those four interrogatories but was never provided in discovery despite the filing of a Discovery Confidentiality Order (E.D. 30).

Andrew Weltchek's Appearance for the State Court Trial

7. The Certification of Mitchell L. Williamson, Esq., E.D. 32-4, at ¶¶8 and 9, imply that I appeared in state court on the trial date in the collection lawsuit which Pressler filed against Mr. Bock on behalf of Midland Funding, LLC. I did not.

8. Trial had been scheduled for February 24. It was the first trial listing. The only other attorney in my office had recently left the practice of law. I wrote to the state court on February 16 to request a postponement because I was scheduled to present at a legal conference in New Orleans on February 24. In my experience, the state court routinely grants trial adjournments under such circumstances when there is consent and, absent some real prejudice to the adversary, I had never had an attorney refuse consent. Unfortunately for me, Pressler's assigned attorney, Steven A. Lang, Esq., refused to consent.

9. I arranged for Andrew Weltcheck, Esq. to cover the court appearance. As the stipulation of settlement (E.D. 32-5 at Page ID 190) reflects, Mr. Weltchek signed the stipulation of settlement. Thus, I did not appear at trial.

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.

s/Philip D. Stern

Executed on: November 25, 2013 PHILIP D. STERN

EXHIBIT P-13

PHILIP D. STERN & ASSOCIATES, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Defendant

Plaintiff

MIDLAND FUNDING LLC

vs.

Defendant(s)
DANIEL BOCK JR

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUDSON Special Civil Part
DOCKET NO DC-022331-11
CIVIL ACTION
STIPULATION OF DISMISSAL

With Prejudice

TO THE CLERK OF THIS COURT:

The matter in difference in the above entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed.

Dated: 03/23/12

Attorneys for Defendant

by: _____ 3/26/12
~~INNA RYU~~, ESQ
PHILIP D. STERN

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff

By: _____
Rita E. Ayoub

P&P File # P155967

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

EXHIBIT P-14

DANIEL BOCK, Jr.,	**2:11-cv-07593 (ES)(CLW)**
Plaintiff	**DEFENDANT PRESSLER & PRESSLER'S RESPONSES TO PLAINTIFF'S 1ST SET OF INTERROGATORIES**
vs.	
PRESSLER & PRESSLER, LLP,	
Defendant	

1. State your full legal name, your form of business (for example, corporation or partnership), the jurisdiction in which you were formed, your principal business location, and all of your trade names and service marks.

RESPONSE: *Objection, This interrogatory is improper. This interrogatory is overbroad and would appear to seek information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of these or any or any other pertinent objections Pressler & Pressler, L.L.P.is a law firm formed as a limited liability partnership, which has law offices in New Jersey and New York with individual attorneys licensed to practice law in each of those states.*

2. How did it come about that you sought to collect the Obligation?

RESPONSE: *Objection, This interrogatory is improper. Defendant is not responsible to ascertain the plaintiff's meaning from vague and ambiguous language. Additionally this interrogatory is overbroad and would appear to seek information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, it seeks information protected by the attorney-client privilege and attorney work product privilege.*

3. Did you send the letter to Plaintiff, a copy of which is annexed to the Complaint as Exhibit 1, in an attempt to collect all or part of the Obligation?

RESPONSE: *Exhibit 1 appears to be a copy of a letter dated September 15, 2011 sent on that date to one Daniel Bock, Jr.. The remainder of this interrogatory would appear to be an improper attempt to impose on Defendant a duty to characterize the nature of a document which speaks for itself and may be subject to a multiple interpretations and legal analysis.*

4. Did you file the Collection Complaint?

RESPONSE: *Objection, This interrogatory is improper and frivolous. Defendant is not responsible to ascertain the plaintiff's meaning from vague and ambiguous language. Additionally this interrogatory is overbroad and would appear to seek information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, it seeks information protected by the attorney work product privilege. Notwithstanding said objections and any other appropriate objections Defendant has not alleged that the complaint annexed as Exhibit 1 was not filed with the court by this office on or about October 21, 2011.*

5. What procedure was used by Defendant to decide whether to file the Collection Complaint?

RESPONSE: *Objection, This interrogatory is improper. Defendant is not responsible to ascertain the plaintiff's meaning from vague and ambiguous language. Additionally this interrogatory is overbroad and would appear to seek information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, it seeks information protected by the attorney work product privilege. Notwithstanding said objections and any other appropriate objections Defendant has not claimed that the complaint annexed as Exhibit 1 was sent in error or sought to rely on the "bona-fide error" defense. On or about September 14, 2011 correspondence was sent to Plaintiff which offered him an opportunity to raise any questions or disputes regarding the underlying HSBC account. Plaintiff failed to respond to that opportunity or contact Defendant thus leaving the filing of a complaint as the only realistic option if Defendant was to protect it's clients rights. The issue raised by the instant complaint is limited to whether the filing of the complaint in the state court action entitled Midland Funding LLC v. Daniel Bock, Jr., Docket no. DC-022331-11, filed on October 21, 2011, venued in the Superior Court of New Jersey, Hudson County, Law Division-Special Civil Part, New Jersey is somehow violative of the Fair Debt Collection Practices Act, ("FDCPA" or the "Act") 16 U.S.C. § 1692 et seq. It is of note that the Plaintiff acknowledged having an HSBC account which formed the basis for the state court action and Plaintiff did not take the position that he did not bear responsibility for said account and settled said account by making payment, albeit less than the full amount sought.*

court action which was settled with Plaintiff acknowledging the debt and making payment on it. No further response will be made at this time.

14. How many complaints were signed by Ralph Gulko and filed in any court during 2011?

RESPONSE: *Objection. This interrogatory is overbroad, frivolous and would appear to seek information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. The instant lawsuit, with no evidentiary support, alleges that Ralph Gulko, Esq. failed to perform his professional responsibilities in regards to the complaint filed naming Plaintiff as a Defendant. No factual basis has been provided for this serious allegation, neither in the complaint nor in subsequent discovery responses made by Plaintiff. This is a singular claim unrelated to anyone else. Additionally counsel for Plaintiff was involved in the underlying state court action which was settled with Plaintiff acknowledging the debt and making payment on it. No further response will be made at this time.*

15. Identify all communications between Plaintiff and Defendant including, without limitation, all telephone calls, in-person conversations, letters, faxes and emails.

RESPONSE: *Objection. This interrogatory is overbroad and would appear to seek information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence and seeks information already in the possession of Plaintiff. Without waiver or this or any other pertinent objections, written communications requested by this interrogatory should be in the possession of either the Plaintiff or his counsel who both litigated the underlying state court action. Additionally, if counsel is not in possession of the documents it is an admission that Plaintiff was not in possession of evidential support for the instant complaint at the time it was filed. Finally, the instant complaint focuses solely on the complaint filed in the state court action entitled Midland Funding LLC v. Daniel Bock, Jr., Docket no. DC-022331-11, filed on October 21, 2011, venued in the Superior Court of New Jersey, Hudson County, Law Division-Special Civil Part, New Jersey see paragraph 44 of the complaint. Without waiver of the aforesaid objections, there was only one phone conversation between Plaintiff and Defendant which occurred on December 1, 2011. Said conversation was recorded and despite the fact that it bears no relevance to the allegations of the instant complaint it will be provided*

16. How are your records concerning your efforts to collect the Obligation stored?

RESPONSE: *Objection, This request is improper and frivolous. This request seeks information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Based on these objections, no further response will be made at this time. Additionally see the response to interrogatory no. 15 above.*

17. How are your records concerning your efforts to collect the Obligation retrieved?

RESPONSE: *Objection, This request is improper and frivolous. This request seeks information neither relevant to disputed issues of fact or law or the allegations contained within the complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Based on these objections, no further response will be made at this time. Additionally see the response to interrogatory no. 15 above.*

Dated: September 4, 2012

s/Mitchell L. Williamson

Mitchell L. Williamson, Esq.
Pressler and Pressler, L.L.P.
Attorneys for Defendant
7 Entin Road
Parsippany, New Jersey 07054
Telephone: (973) 753-5100 / Facsimile: (973) 753-5353
mwilliamson@pressler-pressler.com

P&P File # P155967

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

DANIEL BOCK, JR. Plaintiff vs. **PRESSLER & PRESSLER, LLP,** Defendant	**2:11-cv-07593-KM-MCA**

DEFENDANT, PRESSLER & PRESSLER, LLP'S,
MEMORANDUM OF LAW IN REPLY TO PLAINTIFF'S OPPOSITION
TO PRESSLER'S MOTION FOR SUMMARY JUDGMENT

****ORAL ARGUMENT IS HEREBY REQUESTED****
PURSUANT TO L. CIV. R. 78.1(b)

Michael J. Peters, Esq.
Mitchell L. Williamson, Esq.
On the Brief

Dated: December 2, 2013

s/Mitchell L. Williamson
Mitchell L. Williamson, Esq.
Pressler and Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054
Telephone: (973) 753-5100
Facsimile: (973) 753-5353
mwilliamson@Pressler-Pressler.com
Attorneys for Defendant:
Pressler and Pressler, LLP

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PRELIMINARY STATEMENT

> The routine of modern affairs, mercantile, financial and industrial, is conducted with so extreme a division of labor that the transactions cannot be proved at first hand without the concurrence of persons, each of whom can contribute no more than a slight part, and that part not dependent on his memory of the event. Records, and records alone, are their adequate repository, and are in practice accepted as accurate upon the faith of the routine itself, and of the self-consistency of their contents. Unless they can be used in court without the task of calling those who at all stages had a part in the transactions recorded, nobody need ever pay a debt, if only his creditor does a large enough business.[1]

Plaintiff filed this FDCPA[2] lawsuit alleging Pressler is not "meaningfully" involved in filing the complaint against Bock and misrepresented facts therein. In Plaintiff's view, the least sophisticated consumer ("LSC") is more likely to believe the allegations in the complaint are true because a licensed attorney made a professional judgment.[3] The implication of this statement is that the LSC will not offer any defense because an attorney filed a lawsuit. This is absurd.

A complaint contains allegations of fact supporting a claim to relief which can be proven or refuted. The complaint is the beginning of the process and is subject to defenses and discovery. Plaintiff's theory would hold every attorney liable for false representations of fact in a complaint if a judgment was not rendered against the consumer. This evidences the absurd result that will occur if "meaningful" involvement is applied to filing complaints.

A credit card complaint does not assert many facts and the depth of the review Plaintiff asserts is mandatory is wholly unsupported. In the end, the attorney advocates the client's claim based on the attorney's reasonable belief that the client's claim is true. That belief is codified in the certifications contained in R. 1:4-8. Bock's attorney claims that the LSC is misled by

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[1] Palmer v. Hoffman, 318 U.S. 109, 112, n.2 (1943)(quoting Judge Learned Hand in *Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co.*, 18 F.2d 934, 937 (2d Cir. 1927)).
[2] Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA").
[3] ECF Doc. 47, PageID: 512.

Pressler's implied certification. This argument stretches the bounds of credibility. R. 1:4-8 does not contain representations incorporated into the complaint. The representations are implied by an attorney's signature. So the question becomes: Was the LSC misled merely because the complaint was signed by an attorney? Pressler states the answer is no and Plaintiff offers no contradiction. The review conducted by the Pressler firm and Mr. Gulko was reasonable under the circumstances so that Pressler could file the complaint for its client. Mr. Gulko read and signed the complaint and the case was litigated to resolution favorable to Pressler's client by Pressler's attorneys. At no time was the LSC misled as to attorney involvement. Accordingly, the FDCPA was not violated.

LEGAL ARGUMENT

I. THEORIES OF LIABILITY NOT RAISED

A. Rule 1:4-8

Despite Plaintiff's claim that he is not alleging a violation of R. 1:4-8, he relies on it to argue that there was a "misrepresentation" by Pressler and Mr. Gulko. Pressler's prior arguments regarding waiver of a violation of R. 1:4-8 are incorporated herein by reference.[4]

Plaintiff's counsel also misstates the language of R. 1:4-8. By signing the complaint, the inquiry reasonable under the circumstances must lead the signatory to determine to the best of their knowledge, information and belief "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).[5]

[4] ECF Doc. 32-2, PageID: 140-46, Point III.
[5] R. 1:4-8(a)(3).

There is no requirement to single out facts "likely" to have support versus those that have support.[6] Thus, Pressler and Mr. Gulko's "inquiry" is determined under the circumstances of a simple credit card claim where records are electronically maintained. Pressler and Mr. Gulko's review of the information received was enough to conclude based on knowledge, information, and belief that the four facts in the collection complaint are "likely" to have evidentiary support.

B. RPCs

Plaintiff argues he is not enforcing the RPCs and concedes that "those are matters to be determined through New Jersey's ethics process."[7] Pressler specifically argued Plaintiff asserts a *sub silentio* claim – a/k/a something implied or not expressly stated – that the RPCs were violated.[8] The individual states are the governing bodies over the regulation of the standards of professional conduct.[9] Thus, the FDCPA was not designed to govern this inquiry.

To refute this point, Plaintiff relies on §1692n to argue state laws that conflict with FDCPA rights are expressly preempted.[10] However, §1692n states "a State law is not inconsistent with [the FDCPA] if the protection such law affords any consumer is greater than the protection provided by [the FDCPA]." The ability of the State of New Jersey to regulate, sanction and proscribe the standards of professional conduct an attorney must follow to comply with their ethical obligations is a far greater protection to consumer's than the maximum $1,000.00 statutory award and reasonable attorney's fees Plaintiff seeks in this case.

As a precaution to Plaintiff's preemption argument, neither conflict nor field preemption apply in this case. Conflict preemption occurs when compliance with both federal and state

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[6] See United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 382 (App. Div. 2009) discussed at ECF Doc. 48, PageID: 540.
[7] ECF Doc. 47, PageID: 500.
[8] ECF Doc. 32, PageID: 142.
[9] Leis v. Flynt, 439 U.S. 438, 442 (1979) and ECF Doc. 48, PageID: 535-39.
[10] ECF Doc. 47, PageID: 500.

regulations is a physical impossibility or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[11] Field preemption occurs when the scope of a federal statute indicates Congress intended the federal law to occupy a field exclusively.[12] Considering that a) attorneys were initially exempt from the FDCPA[13], b) "meaningful" attorney involvement has no application to non-attorney debt collectors, and c) that §1692e(3) has not been modified since attorneys became subject to the FDCPA, there is no basis for field preemption. Similarly, it is neither physically impossible to comply with both the FDCPA and the RPCs nor do the RPCs create an obstacle to the purposes of the FDCPA, i.e. to prevent "abuses". Accordingly, the RPCs are more appropriate to govern the inquiry into the quantum of professional judgment exercised to file a complaint.

II. MEANINGFUL ATTORNEY INVOLVEMENT

Pressler did not argue attorneys have no duty to investigate or can be un-involved for non-letter communications as Plaintiff contends.[14] Pressler submits that "meaningful" involvement does not govern what constitutes professional judgment. Furthermore, if the FDCPA does apply, professional judgment must harmonize with the cases that do not require a party to have the immediate means to prove a debt[15] and that impose no duty to investigate independently the validity of the debt.[16] These nuances evidence that the FDCPA was not meant to govern whether an attorney made a reasonable "inquiry". To the extent the court disagrees, Pressler and Mr. Gulko's "inquiry" was reasonable to believe that (1) Midland Funding, LLC

[11] Simon v. FIA Card Servs., N.A., 732 F.3d 259, 274-75 (3d Cir. 2013).
[12] Id.
[13] Heintz v. Jenkins, 514 U.S. 291, 294 (1995).
[14] ECF Doc. 47, PageID: 504.
[15] See cases discussed at ECF Doc. 32-2, PageID: 156 (Harvey, Christion, Deere, etc.)
[16] See cases discussed at ECF Doc. 32-2, PageID: 157 (Slanina and Yentin).

was the owner of (2) Bock's HSBC BANK NEVADA, N.A. account number ending in "8245" (3) which was in default (4) in a specific amount. Nothing was misrepresented.

A. Clomon-type cases should be limited to pre-lawsuit letters.

Plaintiff argues Lesher[17] and Miller III[18] support a broader application of Clomon's "meaningful" involvement.[19] Lesher involved a §1693e(3) and (5) claim that a pre-suit letter misled the consumer into believing "an attorney was involved in collecting his debt, and that the attorney could, and would, take legal action against him."[20] Lesher, relies, in part, on Clomon and Avila. The overwhelming concern in Avila is that a pre-lawsuit collection letter that threatens legal action without an attorney's professional judgment can run afoul of the FDCPA.[21]

Lesher also found that a disclaimer of attorney involvement – such as that permitted by Greco[22] - failed to mitigate the impression in the pre-lawsuit letter of "potential legal action."[23] Thus, the Third Circuit affirmed that §1692e was violated.[24] One point raised at the district court level[25] was the pre-suit letters did not point out that the law firm did not have attorneys licensed in Pennsylvania and that an "unsophisticated debtor would not be likely to doubt that the defendant law firm could follow through with legal action if an when it were directed to do so."

This case is different because there is no threat of legal action. Pressler initiates a lawsuit so clients can have their claim adjudicated in a court of law. Filing a lawsuit is not a guarantee

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[17] Lesher v. Law Offices of Mitchell N. Kay, PC, 650 F.3d 993 (3d Cir. 2011).
[18] Miller v. Upton, Cohen & Slamowitz, 687 F. Supp. 2d 86 (E.D.N.Y. 2009)(hereinafter "Miller III").
[19] ECF Doc. 47, PageID: 504.
[20] Lesher, supra, at 996.
[21] Lesher, supra at 1000; Avila v. Rubin, 84 F.3d 222, 229 (7th Cir. 1996).
[22] Greco v. Trauner, Cohen & Thomas, LLP, 412 F.3d 360 (2d Cir. 2006).
[23] Lesher, supra, at 1002.
[24] Lesher, supra, at 1000-04.
[25] Lesher v. Law Office of Mitchell N. Kay, PC, 724 F. Supp. 2d 503, 507-08 (M.D. Pa. 2010), aff'd by Lesher, supra, 650 F.3d 993 (3d Cir. 2011)

of undisputed victory. The underlying concern from Avila and echoed in Lesher – enticing consumers to pay by threatening a lawsuit – is absent here. Pressler litigates the lawsuits it files.

Miller III is also inapplicable for several reasons. First, it is a trial-level opinion from a court outside the Third Circuit. Second, part of the court's finding that there was insufficient "meaningful" involvement was based on the fact that the attorney who signed the collection letter and complaint did not have a single notation in the file until well after those documents were signed.[26] This is not at issue here. Third, Miller III recognized that Avila and §1692e as applied to law firms was "**designed to prevent law firms from renting letterhead to creditors as mere means to better 'strong-arm' putative debtors**."[27] (emphasis added). Fourth, Miller III is the exception rather than the rule as other jurisdictions have found Clomon-type cases do not set a general standard for adequate involvement in litigation.[28]

Relying on these cases, Plaintiff unreasonably expands "meaningful" involvement to filing collection complaints. Under Plaintiff's theory, where does the expansion stop? What "threat" or "strong-arm" tactic is sought to be stopped? Federal courts will be asked to determine whether an attorney was "meaningfully" involved in pleadings, letters, motions, certifications or any other document an attorney prepares. By asserting more information and/or documents must be reviewed[29] Plaintiff's counsel seeks to change the requirements in New Jersey to file a collection lawsuit.

For default judgment in New Jersey, Special Civil Part actions based on credit card claims where records are maintained electronically, a party needs either:

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[26] Miller III, supra, at 100.
[27] Miller III, supra, at 95.
[28] Taylor v. Quall, 471 F. Supp. 2d 1053 (C.D. Cal. 2007)
[29] ECF Doc. 47, PageID: 513.

> (1) "a copy of the periodic statement for the last billing cycle . . ."; or
> (2) "a computer-generated report setting forth the previous balance, identification of transactions and credits, if any, periodic rates, balance on which the finance charge is computed, the amount of the finance charge, the annual percentage rate, other charges, if any, the closing date of the billing cycle, and the new balance[.]"[30]

Pressler receives this very information in its client's electronically-transmitted data which is reviewed and vetted as indicated in the Felt Affidavit.[31] Plaintiff's dissatisfaction with the amount reviewed is not a basis to claim that Pressler needs to spend 15 minutes to determine if a claim can be filed. If the information is sufficient for default judgment, it should be sufficient to file the lawsuit. A complaint starts the process. Just because an attorney is involved does not mean the LSC will throw in the towel without defending the action.

Another reason "meaningful" involvement should not extend to govern Plaintiff's claim is based upon Plaintiff's absurd argument that "[a] communication from a collection attorney [the complaint] requires meaningful involvement **or a sufficient disclaimer of such involvement**."[32] (emphasis added). Greco disclaimers have only applied to pre-lawsuit collection letters to disclaim the level of attorney involvement so a consumer does not perceive a threat of legal action. It is unimaginable that the Greco court contemplated its disclaimer on a collection complaint to comply with "meaningful" involvement. It would be impossible to put a Greco disclaimer on a complaint yet comply with New Jersey's RPCs or R. 1:4-8. This is another reason why "meaningful" involvement does not apply here.

Plaintiff also tries to distinguish Taylor[33] by arguing he is not asking this court to impose a general standard for the conduct of debt collection actions. This argument is irreconcilable. If

[30] R. 6:6-3(a).
[31] ECF Doc. 33.
[32] ECF Doc. 47, PageID: 504.
[33] Taylor, supra discussed by Plaintiff at ECF Doc. 47, PageID: 505.

Pressler's review was not enough then inevitably more needs to be reviewed. The deterrent effects of the FDCPA are not furthered if Pressler is left guessing what must be reviewed to comply with the FDCPA and R. 1:4-8. In reality, this case asks for a standard making it no different from Taylor which refused to acknowledge a general standard under Clomon.

B. No-duty-to-investigate cases

In response to Plaintiff's argument that none of the no-duty-to-investigate cases apply, Pressler notes that these cases must be considered if the court inquires into the quantum of information necessary to make an inquiry reasonable under the circumstances. This case law affects the circumstances.

C. Failure to dispute after Pressler sent the §1692g notice

Plaintiff argues the failure to dispute a debt is not relevant.[34] Pressler does not argue the failure to dispute equals permission to file a lawsuit. It is another "circumstance" to consider.

D. Materiality and the existence of defects in the collection complaint

Plaintiff relies on the Brent[35] to argue it is unnecessary for the complaint to contain an error. In Brent the court found that an explicit statement that an affidavit was made on "personal knowledge" was false, deceptive or misleading because it was not actually based on the affiant's personal knowledge.[36] Brent determined that because the information stated in the affidavit was asserted to be based on "personal knowledge" and "personal[] . . . 'business dealings with the defendant[]'" it went directly to the validity of the debt making it a *material* misrepresentation.[37]

Unlike Brent, the alleged misrepresentation here is implied not explicit. It is unlikely that any *pro se*, let alone the LSC, is aware that a signature by an attorney implies certain

[34] ECF Doc. 47, PageID: 508.
[35] Midland Funding, LLC v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009).
[36] Brent, supra, at 967-69.
[37] Brent, supra, at 970.

certifications under R. 1:4-8. The explicit statement in the Brent affidavit from the owner of the debt is likely to influence the consumer's response a lawsuit. There is, however, zero evidence submitted that the LSC would intelligently change how they respond to a lawsuit based on the signature of an attorney and the implied effect under R. 1:4-8. If signing and filing the complaint had that effect, Bock would have paid the full amount of the debt instead of disputing then settling his claim. This exhibits the highly technical nature of Plaintiff's FDCPA claim and is why Pressler submitted there must be something substantively (or explicitly) wrong with the complaint for there to be a materially false, deceptive or misleading representation to the LSC. Brent, therefore, is distinguishable.

III. VOLUME OF REVIEW NOT DISPOSITIVE

Plaintiff relies on Boyd's[38] estimate that an attorney could review 16 files a day presuming 4 hours of work and 15 minutes per file. Pressler submits that a minimum review time is inappropriate. The time Mr. Gulko accessed the electronic file does not account for the vigorous review conducted by the Pressler firm based upon procedures created by attorneys and the long-standing relationship with Pressler's client. These are all considerations under the circumstances. Plaintiff wants more documents reviewed. For credit card claims where records are electronic, this is simply not required in New Jersey.

IV. THE DOCUMENTS PLAINTIFF CONTENDS SHOULD BE REVIEWED ARE NOT NECESSARY TO FILE A COMPLAINT

Plaintiff claims the following documents should be reviewed: (1) the "written contract" because a choice-of-law or arbitration clause would be relevant; (2) periodic billing statements; (3) assignment agreements or chain-of-title documents; or (4) the existence of affidavits from

[38] Boyd v. Wexler, 275 F.3d 642 (7th Cir. 2001).

competent records custodians.[39] These are not "necessary" pieces of information to review before filing a lawsuit.

An arbitration clause in a cardmember agreement ("CMA") relates to the forum and is irrelevant if a client does not want to arbitrate. Similarly, reviewing a CMA for choice-of-law is not necessary to filing a complaint since procedural laws of a forum typically apply even if another state's substantive law applies.[40]

Periodic billing statements are not mandatory to file a complaint. A plaintiff can obtain a default judgment in credit card cases based upon electronic records by submitting a "computer-generated report" setting forth basic account information.[41] Likewise, assignment and/or chain-of-title documents are not mandatory since a debt buyer is competent to testify to ownership of its debt[42] and no particular form of proof is needed to prove assignment of an intangible.[43]

It is also not mandatory to review for records witnesses at the time of filing a complaint because they would be subject to a subpoena.[44] Moreover, periodic statements may be introduced through a defendant who admits receiving them.[45] Thus, this is not a "necessary" inquiry before filing a complaint.

The information Pressler reviews from its client is sufficient to comply with R. 1:4-8. Thus, Mr. Gulko's signature made no misrepresentation to the LSC.

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[39] ECF Doc. 47, PageID: 513-14.
[40] N. Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999).
[41] R. 6:6-3(a) quoted above.
[42] See Waln v. Hance's Adm'rs, 53 N.J. Eq. 668 (E&A 1895); Lubinsky v. Court of Common Pleas of Passaic County, 15 N.J. Misc. 183 (N.J. Sup. Ct. 1937); Moran v. Joyce, 125 N.J.L. 558, 560 (N.J. Sup. Ct. 1941), aff'd by 27 N.J.L. 562 (E&A 1942).
[43] See Sullivan v. Visconti, 68 N.J.L. 543, 550 (N.J. Sup. Ct. 1902).
[44] See R. 1:9-1.
[45] See N.J.R.E. 803(b)(2)(adoptive admission).

V. PLAINTIFF'S MISINTERPRETATION OF THE SUMMARY JUDGMENT STANDARD

Plaintiff claims "Pressler's Summary Judgment Motion needed to establish that there are undisputed material facts of meaningful involvement when it signed, filed and served the collection complaint against Bock."[46] Pressler needs to show (1) no genuine dispute as to material facts and (2) entitlement to summary judgment as a matter of law.[47] There is neither a dispute over the amount of time Mr. Gulko reviewed Bock's file nor the amount of complaints he reviewed that day. These two pieces of information are the only basis for Bock to circumstantially assert that Gulko and Pressler were not "meaningfully" involved. Pressler is entitled to judgment as a matter of law because the FDCPA does not govern this inquiry and if it does, Pressler complied with its R. 1:4-8 obligation.

VI. PRESSLER DID NOT RELY ON DISCREDITED AUTHORITIES

Plaintiff takes issue with Pressler's citation to Justice Kennedy's dissent.[48] Pressler indicated the weight thereof and had no intention of misleading the court or Plaintiff's counsel. The citation evidences the varying positions toward FDCPA-plaintiffs and FDCPA-defendants.

Plaintiff also takes issue that Pressler did not disclose that Judge Glasser was reversed in Jacobsen[49]. The reversal, however, has no bearing on the fact that other courts have "echoed" Judge Glasser's sentiments.[50] Pressler is aware the FDCPA does not exist "to let spendthrifts annoy debt collectors,"[51] but Judge Glasser recognized the purpose of the FDCPA can be abused.

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[46] ECF Doc. 47, PageID: 493.
[47] Fed. R. Civ. P. 56(a).
[48] Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573 (2010) cited at ECF Doc. 32, PageID: 137-38.
[49] Jacobsen v. Healthcare Fin. Servs. Inc., 434 F. Supp. 2d 133, 138-39 (E.D.N.Y. 2006) cited at ECF Doc. 32, PageID: 138.
[50] Fed. Home Loan Mortgage Corp. v. Lamar, 503 F.3d 504, 513-514 (6th Cir. 2007)("we echo *Jacobsen's* sentiments and concerns"). See also Miller v. Javitch, Block & Rathbone, 561 F.3d

Here, Bock does not have any personal knowledge relevant to Mr. Gulko or Pressler's review[52] nor does he claim that he was aware of and misled by Mr. Gulko's signature on the complaint. This lawsuit can be filed by any attorney who finds a consumer sued by the Pressler firm with nothing but a circumstantial guess that a high volume of claims processed must mean the FDCPA was violated. This was not the purpose of the FDCPA.

CONCLUSION

Wherefore, based upon the foregoing and Pressler's moving papers, summary judgment should be entered in favor of Pressler.

PRESSLER AND PRESSLER, LLP

Dated: December 2, 2013 By: *s/Mitchell L. Williamson*

Mitchell L. Williamson, Esq.
Attorney for Defendant, Pressler & Pressler, LLP

588, 596 (6th Cir. 2009)(quoting Judge Glasser approvingly); Majerowitz v. Stephen Einstein & Assocs., P.C., 2013 U.S. Dist. LEXIS 115664, *12-14 (E.D.N.Y. 2013)(Judge Glasser recalling his own sentiment from Jacobsen and noting that the Miller court echoed his sentiment).

[51] ECF Doc. 47, PageID: 503.

[52] ECF Doc. 32-2, PageID: 145, n. 2.

P&P File # P155967

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

DANIEL BOCK, JR. Plaintiff vs. **PRESSLER & PRESSLER, LLP,** Defendant	**2:11-cv-07593-KM-MCA** **CERTIFICATE OF SERVICE**

I**, MITCHELL L. WILLIAMSON**, of full age, do herby certify as follows:

1. On December 2, 2013, I filed electronically the within Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

2. I will promptly send one (1) courtesy copy of the within Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment marked "Courtesy Copy" to the Honorable Kevin McNulty, U.S.D.J., via regular mail to M.L. King, Jr. Federal Bldg. & Courthouse, Court Room 03, 50 Walnut Street, Newark, NJ 07102.

3. On December 2, 2013, I served a copy of the Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment via the ECF system on Philip D. Stern, Esq.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: December 2, 2013

By: __*s/Mitchell L. Williamson*_____
Mitchell L. Williamson, Esquire
Pressler and Pressler, L.L.P.
7 Entin Road
Parsippany, New Jersey 07054-5020
(973) 753-5110 /Fax (973) 753-5353
mwilliamson@pressler-pressler.com
Attorneys for Defendant: Pressler and Pressler, LLP