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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRENT COLBERT)
2019 W. Girard Avenue)
Philadelphia, PA 19130-1420)
on behalf of himself and all)
others similarly situated,)

Plaintiff,)

vs.)

DYMACOL, INC.)
3070 Lawson Blvd.)
Oceanside, NY 11572-9017)
and)
INTELLIRISK MANAGEMENT CORP.)
5050 Squirrel Bend)
Columbus, OH 43220)

Defendants.)

FILED JUL 17 2001

CIVIL ACTION NO. 01CN3577

JURY TRIAL DEMANDED

CLASS ACTION

COMPLAINT – CLASS ACTION

I. INTRODUCTION

1. This is a consumer class action brought on behalf of consumers subjected to defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA") and the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1 *et seq.* ("FCEUA"), constituting unfair and deceptive acts and practices under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* ("CPL"). These laws prohibit debt collectors from engaging in abusive, deceptive, and unfair collection practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1331, 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.

3. Venue lies in this district pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

4. Plaintiff Brent Colbert is an adult individual residing at 2019 W. Girard Avenue, Philadelphia, PA 19130-1420.

5. Defendant Dymacol, Inc. (“Dymacol”) is a business entity engaged in the business of collecting debts in this Commonwealth with its principal place of business located at 3070 Lawson Blvd., Oceanside, NY 11572-9017. The principal purpose of this defendant is the collection of debts using the mails and telephone and defendant regularly attempts to collect debts alleged to be due another.

6. Defendant IntelliRisk Management Corp. (“IntelliRisk”) is a business entity engaged in the business of collecting debts in this Commonwealth with its principal place of business located at 5050 Squirrel Bend, Columbus, OH 43220. The principal purpose of this defendant is the collection of debts using the mails and telephone and defendant regularly attempts to collect debts alleged to be due another. IntelliRisk is the owner of Dymacol, profited from Dymacol’s actions as described herein and is liable for all actions and omissions of Dymacol.

IV. FACTUAL ALLEGATIONS

7. At all pertinent times hereto, Dymacol was hired by Sound and Spirit to collect a debt relating to consumer purchases that were allegedly originally owed to Sound and Spirit.

8. The alleged debt at issue arose out of transactions which were primarily for

personal, family or household purposes.

9. On or about July 19, 2000, Dymacol wrote and sent to plaintiff by U.S. mail a collection or “dunning” letter (hereafter the “Letter”) which attempted to coerce plaintiff into paying the alleged debt. Additionally, the Letter, *inter alia*, stated the following:

SOUND AND SPIRIT has filed a record of this delinquency with a NATIONAL CONSUMER REPORTING SERVICE. This record remains on their files for a minimum of five years, and can be accessed by other companies using this service. A resolution to this debt will remove your name from this file.

(A true and correct copy of the Letter is attached hereto as Exhibit A and is incorporated herein).

10. The Letter was false, deceptive, misleading and unfair in that plaintiff, as well as the least sophisticated consumer, would interpret the Letter to mean that the alleged debt had already been reported to a major credit reporting agency when in fact Dymacol had never reported the alleged debt to a major credit reporting agency.

11. The Letter was false, deceptive, misleading and unfair in that plaintiff, as well as the least sophisticated consumer, would interpret the Letter to mean that plaintiff’s name would be “removed” by a credit reporting agency and no longer be reported as delinquent when in fact a delinquent debt would continue to be reported as delinquent for seven years whether paid or not.

12. The Letter was false, deceptive, misleading and unfair in that it stated that derogatory credit information only remains on a consumer’s credit file for five years when, under applicable law, such information remains on a consumer’s credit file for at least seven years.

13. At all times pertinent hereto, Dymacol was acting by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of the defendants herein.

14. Dymacol knew or should have known that the Letter violated the FD CPA,

FCEUA and the CPL. Additionally, Dymacol could have taken the steps necessary to bring the Letter within compliance with the FDCPA, FCEUA and the CPL, but neglected to do so and failed to adequately review the Letter to insure compliance with said laws.

15. At all times pertinent hereto, the conduct of defendants, as well as that of their agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the plaintiff herein.

16. As a result of defendants' conduct, plaintiff has sustained actual damages including, but not limited to, injury to plaintiff's reputation, damage to plaintiff's credit, out-of-pocket expenses, physical, emotional and mental pain and anguish and pecuniary loss, and plaintiff will continue to suffer same for an indefinite time in the future, all to plaintiff's great detriment and loss.

V. CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action individually and as a class action, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of the following Class: All persons in the Commonwealth of Pennsylvania who, during the two years prior to the filing of this Complaint, were sent the Letter or other communications from defendants substantially in the form of the Letter in an attempt to collect a non-business debt.

18. The Class is so numerous that joinder of all members is impracticable. Dymacol continually sent out hundreds if not thousands of dunning letters virtually identical to the Letter to consumers throughout the Commonwealth. Thus, although the precise number of Class members is known only to the defendants, the Class is believed to number in the hundreds, and possibly thousands.

19. There are questions of law and fact common to the Class which predominate over

any questions affecting only individual Class members. The principal question is whether defendants violated the FDCPA, FCEUA and the CPL by mailing the Letter or written communications substantially in the form of the Letter to the consumers during the applicable time period.

20. Plaintiff's claim is typical of the claims of the Class, which all arise from the same operative facts and are based on the same legal theories.

21. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is committed to vigorously litigating this matter and has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this claim.

22. This action should be maintained as a class action because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct for the parties opposing the Class, as well as a risk of adjudications with respect to individual members which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

23. The defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

24. Whether a Class member was sent the offending Letter can be determined by ministerial inspection of defendants' records.

25. A class action is a superior method for the fair and efficient adjudication of this

controversy. The interest of Class members in individually controlling the prosecution of separate claims against defendants is small because the maximum statutory damages in an individual action under the FDCPA is up to \$1,000. Management of the Class claims is likely to present significantly fewer difficulties than those presented in many class claims. The identities of the Class members may be obtained from defendants' records.

VI. CLAIMS

Count One - FDCPA

26. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

27. Defendants are "debt collectors" as defined by 15 U.S.C. § 1692a(6) of the FDCPA.

28. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) of the FDCPA.

29. The Letter sent to the plaintiff by Dymacol is a "communication" relating to a "debt" as defined by 15 U.S.C. § 1692a(2) and 1692a(5) of the FDCPA.

30. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, violations of 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(8), 1692e(10) and 1692f, as evidenced by the following conduct:

- a) The false representation of the amount, character or legal status of a debt;
- b) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false; and
- c) Otherwise using false, deceptive or misleading and unfair or unconscionable means to collect or attempt to collect a debt.

31. Defendants' acts as described above were done with malicious, intentional,

willful, reckless, wanton and negligent disregard for plaintiff's rights under the law and with the purpose of coercing plaintiff to pay the alleged debt.

32. As a result of the above violations of the FDCPA, defendants are liable to plaintiff and the class for statutory damages, actual damages and attorney's fees and costs.

Count Two – FCEUA and CPL

33. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

34. Defendants are “debt collectors” as defined by 73 P.S. § 2271.3 of the FCEUA.

35. Plaintiff is a “debtor” as defined by 73 P.S. § 2271.3 of the FCEUA.

36. The Letter sent to plaintiff by Dymacol is a “communication” relating to a “debt” as defined by 73 P.S. § 2271.3 of the FCEUA.

37. A violation of the FCEUA constitutes an unfair and deceptive practice in violation of the CPL, pursuant to section 2270.5(a) of the FCEUA.

38. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, as defined by the CPL, by attempting to collect the alleged debt in violation of the FCEUA. Defendants’ violations of the FCEUA and CPL include, but are not limited to, violations of 73 P.S. § 2270.4(a), as evidenced by the following conduct:

- a) The false representation of the amount, character or legal status of a debt;
- b) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false; and
- c) Otherwise using false, deceptive or misleading and unfair or unconscionable means to collect or attempt to collect a debt.

39. Defendants’ acts as described above were done with malicious, intentional,

willful, reckless, wanton and negligent disregard for plaintiff's rights under the law and with the purpose of coercing plaintiff to pay the alleged debt.

40. As a result of the above violations of the FCEUA and CPL, plaintiff and the Class have suffered ascertainable losses entitling them to an award of statutory, actual and treble damages and attorney's fees and costs.

VII. JURY TRIAL DEMAND

41 Plaintiff demands trial by jury as to all issues so triable.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that relief be granted as follows:

(a) That an order be entered certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing plaintiff and his counsel to represent the Class;

(b) That an order be entered declaring that defendants' actions as described above are in violation of the FDCPA, the FCEUA and the CPL;

(c) That an order be entered enjoining defendants from continuing to communicate with plaintiff and members of the Class in violation of the FDCPA, the FCEUA and the CPL;

(d) That judgment be entered against defendants for actual damages, pursuant to 15 U.S.C. § 1692k(a)(1), and for actual and treble damages pursuant to 73 P.S. § 201-9.2(a);

(e) That judgment be entered against defendants for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(B) and 73 P.S. § 201-9.2(a);

(f) That the Court award costs and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1692k(a)(3) and 73 P.S. § 201-9.2(a); and

(g) That the Court grant such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED,

FRANCIS & MAILMAN, P.C.

BY: 

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Philadelphia, PA 19103
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Attorneys for Plaintiff and the Class

Date: July 17, 2001

EXHIBIT A

EMV. A A S P B I
ALN A I V A / Y L C L D L

Client # 8445540076
BALANCE DUE...\$43.09

JULY 19, 2000 INCORPORATED

RE...SOUND AND SPIRIT

92217001079 00043091

BRENT E COLBERT
PO BOX 56102
PHILADELPHIA PA 19130

DYMACOL
3070 LAWSON BLVD.
P.O. BOX 9017
OCEANSIDE, NY 11572-9017



TEL# 516-561-6497

↑ DETACH HERE AND PLACE IN RETURN ENVELOPE ↑

Dear BRENT E COLBERT,

We have been in the collection business long enough to know that past due bills, such as this one, are often set aside until the consequences of the delay in making timely payments are clearly stated. So, we'll give you the facts and let your self-interest be your guide.

1. Our client shipped merchandise to you in good faith.
2. Payment has been requested on numerous occasions and no response has been received.
3. SOUND AND SPIRIT has filed a record of this delinquency with a NATIONAL CONSUMER REPORTING SERVICE. This record remains on their files for a minimum of five years, and can be accessed by other companies using this service. A resolution to this debt will remove your name from this file.

We believe that you would appreciate an opportunity to satisfy this claim. A check for the amount you owe will close our file and will certainly show your good intentions.

Sincerely,
Dymacol Corp.

"THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE".

IF THIS IS OUR FIRST COMMUNICATION, PLEASE BE ADVISED THAT:

If you dispute the validity of all or any part of this debt, notify us within 30 days after you receive this notice or we will assume that the debt is valid. If you notify us within 30 days after you receive this notice, we will obtain verification of the debt from the creditor or a copy of a judgment if one exists and mail it to you. If you notify us within 30 days after you receive this notice, we will provide the name and address of the original creditor if different from the creditor on this notice.

If you notify us to stop contacting you by telephone at your place of employment, no further contact will be made. If you refuse to pay the debt or you direct us to stop all further communication with you, notify us and we will not communicate with you further, except to advise you that: 1. We intend to make specific remedies which we ordinarily invoke, or 2. Our efforts are being terminated.

Colorado Residents: Collection agencies are licensed by the Collection Agency Board in the Dept. of Law, 1525 Sherman St., 8th Fl., Denver, CO 80202.

IF YOU ARE A RESIDENT OF CALIFORNIA, YOU WILL RECEIVE A SEPARATE NOTICE BY FIRST CLASS MAIL.

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IF YOU ARE A RESIDENT OF CALIFORNIA, YOU WILL RECEIVE A SEPARATE NOTICE BY FIRST CLASS MAIL.
AND SEND BY REGISTERED MAIL

IF THIS IS OUR FIRST COMMUNICATION, PLEASE BE ADVISED THAT:

If you dispute the validity of all or any part of this debt, notify us within 30 days after you receive this notice or we will assume that the debt is valid. If you notify us within 30 days after you receive this notice, we will obtain verification of the debt from the creditor or a copy of a judgment if one exists and mail it to you. If you notify us within 30 days after you receive this notice, we will provide the name and address of the original creditor if different from the creditor on this notice.

If you notify us to stop contacting you by telephone at your place of employment, no further contact will be made. If you refuse to pay the debt or you want us to stop all further communication with you, notify us and we will not communicate with you further except to advise you that: 1. We intend to invoke specific remedies which we ordinarily invoke; or 2. Our efforts are being terminated.

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1. Mail this letter to "Consumer Affairs Division, Number 904624
North Credit Company of America, Parcel 43372

2. Enclose your response with the detached section of this letter in the

return envelope provided - AND SEND BY RETURN MAIL.
Please pay attention to the enclosed return envelope.

2. Enclose your response with the detached section of this letter in the
return envelope provided - AND SEND BY RETURN MAIL.