H.1 Sample Brief in Support of Motion for Partial Summary Judgment

This sample brief is intended for demonstration, and must be adapted by a legal professional to meet the facts, actual needs, and requirements of each case, as well as local practice. The brief is also available online as companion material to this treatise.

Consumer law pleadings on this and other topics can be found in National Consumer Law Center, *Consumer Law Pleadings* (Online with Index).

UNITED STATES DISTRICT COURT
FOR THE [*district name*] DISTRICT OF [*state name*]

[plaintiff][*name of plaintiff*]
Plaintiff,
[v.]

[defendant][*name of defendant*]
Defendant.

[number]Civil Action No. [*number*]

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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I. PROCEDURAL HISTORY

On [*date complaint filed*], Plaintiff [*name*] filed his Complaint and Demand for Jury Trial with this Court, alleging that Defendant [*name*] violated the Fair Debt Collection Practices Act. On or about [*date answer filed*], Defendant filed its Answers and Defenses admitting that it had mailed letter(s) seeking to collect a debt from the Plaintiff, but denying that the Fair Debt Collection Practices Act was violated. The parties have exchanged and answered written discovery.

Plaintiff now files this Motion for Partial Summary Judgment and this brief in support thereof.

II. STATEMENT OF FACTS

By correspondence dated [*date*], Defendant [*name*] mailed letter(s) to Plaintiff [*name*] seeking to collect an alleged debt. (Copies of these letters are attached hereto as Addenda "A" through "[rule].") These communications state: [*insert language from the collector's correspondence that is attacked by the motion for partial summary judgment*]. The debt collector's demand for payment within [*number*] days is juxtaposed to the 30-day period provided in the validation notice, within which the consumer may make a request in writing to the collector for verification of the debt.

The Defendant's letter suggests that legal action may be taken, stating: [*insert the appropriate language*].

The debt collector's letter(s) fail to contain the debt collection warning: This is an attempt to collect a debt and any information obtained will be used for that purpose.

III. STATEMENT OF QUESTIONS PRESENTED

A. Did the Defendant's Letter Fail to Provide the Debt Collection Warning in Violation of 15 U.S.C. § 1692e(11)?

B. Did the Defendant's Threat to File Suit in a Time Barred Debt Violated the FDCPA?

C. Did Defendant's Telephone Messages Violate the FDCPA?

IV. ARGUMENT

A. Standard for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment:

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

The entry of summary judgment is inappropriate where there exists a genuine and material issue of fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–248, 106 S. Ct. 2505, 2509–2510, 91 L. Ed. 2d 202 (1986). Substantive law defines which facts are material and only disputes over facts that might affect the outcome of the case will defeat summary judgment. *Id.* at 248, 106 S. Ct. at 2510. A factual dispute is genuine if a "reasonable jury could return a verdict for the non-moving party." *Id.* Although all inferences to be drawn from the underlying facts must be viewed in the light most favorable to the non-moving party, once the movant has met its burden of demonstrating the absence of a genuine issue of material fact, the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts" to prevent its entry. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 547, 586–587, 106 S. Ct. 1348, 1355–1356, 89 L. Ed. 2d 538 (1986). It is not sufficient for the party opposing summary judgment to provide a scintilla of evidence supporting its case. *Anderson v. Liberty Lobby, Inc.*, *supra*, 477 U.S. at 252, 106 S. Ct. at 2512.

There is no dispute of facts regarding the letter(s) and their content which Defendant sent to Plaintiff [*name*]. Thus, a grant of partial summary judgment is appropriate for any violations of the Fair Debt Collection Practices Act arising from Defendant's letters.

B. The "Least Sophisticated Consumer" Standard Is Used to Analyze Violations of the Act

The "least sophisticated consumer" standard is used to evaluate whether the debt collector's conduct violated the FDCPA. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1193–1194 (11th Cir. 2010); *2Miller v. Javitch, Block & Rathbone*, 561 F.3d 588 (6th Cir. 2009). The FDCPA states that its purpose, in part, is "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). It is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt. *Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982). The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt. *Heintz v. Jenkins*, 514 U.S. 291, 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995). "[I]t limits 'debt' to consumer debt." 15 U.S.C. §§ 1692d, 1692e, and 1692f and requires the debt collector to provide the consumer with his or her rights, 15 U.S.C. § 1692g, under the Act.

The U.S. Court of Appeals for the Fourth Circuit has held that whether a communication or other conduct violates the FDCPA is to be determined by analyzing it from the perspective of the "least sophisticated debtor." *United States v. National Financial Services, Inc*., 98 F.3d 131 135–136 (4th Cir. 1996). [*Substitute the leading decision from your circuit court, e.g., Brown v. Card Serv. Ctr., 464 F.3d 450, 454 (3d Cir. 2006).*]

"The basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993). *See also Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1236 (5th Cir. 1997); *U.S. v. Nat'l Fin. Serv., Inc.*, 98 F.3d 131, 136 (4th Cir. 1996); *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2d Cir. 1996); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2d Cir. 1993); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991); *Swanson v. S. Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1225–1226 (9th Cir. 1988); *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1172–1175 (11th Cir. 1985). "While protecting naive consumers, the standard also 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." *United States v. National Financial Services, Inc.*, 98 F.3d at 136 (citation omitted). *See also Taylor v. Perrin Landry, deLaunay & Durand*, 103 F.3d 1232, 1236 (5th Cir. 1997); *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2d Cir. 1996); *Avila v. Rubin*, 84 F.3d 222, 226-227 (7th Cir. 1996) ("the standard is low, close to the bottom of the sophistication meter"); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2d Cir. 1993); *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991); *Jeter v. Credit Bur., Inc*., 760 F.2d 1168 (11th Cir. 1985).

3"The FDCPA is a strict liability statute to the extent it imposes liability without proof of an intentional violation." *4Allen ex rel. Martin v. LaSalle Bank, N.A.*, [rule] F.3d [rule], 2011 WL 94420, at *3 (3d Cir. Jan. 12, 2011). *See also LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1190 (11th Cir. 2010); *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010); *Ellis v. Solomon and Solomon, P.C.*, 591 F.3d 130, 135(2d Cir. 2010); *Ruth v. Triumph P'ships*, 577 F.3d 790, 805 (7th Cir. 2009). "As the FDCPA is a strict liability statute, proof of one violation is sufficient to support summary judgment for the plaintiff." *Cacace v. Lucas*, 775 F. Supp. 502, 505 (D. Conn. 1990). *See also Stojanovski v. Strobl and Manoogian, P.C.*, 783 F. Supp. 319,

323 (E.D. Mich. 1992); *Riveria v. MAB Collections, Inc.*, 682 F. Supp. 174, 178–179 (W.D.N.Y. 1988). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." *Guerrero v. RJM Acquisitions L.L.C.*, 499 F.3d 926 (9th Cir. 2007); *Russell v. Equifax A.R.S.*, 74 F.3d at 33. *See also Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1176 (9th Cir. 2006); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d at 62; *Clomon v. Jackson*, 988 F.2d at 1318. Furthermore, the question of whether the consumer owes the alleged debt has no bearing on a suit brought pursuant to the FDCPA. *McCartney v. First City Bank*, 970 F.2d 45 (5th Cir. 1992); *Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982).

Whether [*name*] violated the FDCPA must be evaluated from the standpoint of the least sophisticated consumer.

C. Defendant's Failure to Provide the Debt Collection Warning in Its Initial Letter Violates 15 U.S.C. § 1692e(11)

The Act at 15 U.S.C. § 1692e provides, in pertinent part:

[T]he following conduct is a violation of this section:

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

The U.S. Courts of Appeals, considering the application of the above provision, have consistently held that in an initial communication the debt collection warning must be provided. *Guerrero v. RJM Acquisitions L.L.C.*, 499 F.3d 926 (9th Cir. 2007); *Tolentino v. Friedman*, 46 F.3d 645 (7th Cir. 1995); *Dutton v. Wolpoff & Abramson*, 5 F.3d 649 (3d Cir. 1993); *Frey v. Gangwish*, 970 F.2d 1516 (6th Cir. 1992); *Carroll v. Wolpoff & Abramson*, 961 F.2d 459 (4th Cir. 1992); *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 26 (2d Cir. 1989); *Emanuel v. American Credit Exchange*, 870 F.2d 805, 808 (2d Cir. 1989); *Pressley v. Capital Credit & Collection Services, Inc.*, 760 F.2d 922, 925 (9th Cir. 1985); *Hulshizer v. Global Credit Services, Inc.*, 728 F.2d 1037, 1038 (8th Cir. 1984).

The U.S. Court of Appeals for the Eighth Circuit found the quoted statutory language "unambiguous" and ruled that the failure to include "the clear language of the statute" violated the Act. *Hulshizer v. Global Credit Services, Inc.*, 728 F.2d at 1038. The Court of Appeals for the Ninth Circuit agreed with such an interpretation when the communication involved is an initial communication. *Pressley v. Capital Credit & Collection Services, Inc.*, 760 F.2d at 926.

D. Defendant's Threat to Sue on a Time-Barred Debt Violates the FDCPA

Defendants' practice of sending letters in the form of Exhibits A and/or B to Pennsylvania residents to collect time barred dishonored checks threatening that "[p]ursuant to Pennsylvania law" the consumer "may be subject to a civil penalty, court costs and reasonable attorneys fees after suit has been filed" violates the FDCPA at 15 U.S.C. §§ 1692e(2)(A), e(3), e(5), e(10), 1692f(1), and 1692g(a)(2). The Pennsylvania statute provides that an action to recover "an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first." 13 Pa. C.S. § 3118(c). Here Defendants have attempted to collect Plaintiff's dishonored checks written on March 18 and 20, 1994 with collection letters dated April 24, 2004. PSMF # 14 and 22. Those checks were dishonored shortly after presentment in March, 1994. PSMF # 1. Whether applying the time limitation of three years or 10 years, this time limitation had expired at the time Defendants' letters were sent. Thus, the alleged debts of Plaintiff is time barred.

A debt collector's threat of suit on a time-barred debt violates the FDCPA at 15 U.S.C. §§ 1692e and 1692f. *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 (M.D. Ala. 1987). Although a debt collector may request voluntary payment of a time-barred obligation, it may not threaten to file suit. *Freyermuth v. Credit Bureau Servs.*, 248 F.3d 767 (8th Cir. 2001); *Gervais v. Riddle & Assocs., P.C.*, 479 F. Supp. 2d 270 (D. Conn. 2007); *Reese v. Arrow Fin. Serv., L.L.C.*, 202 F.R.D. 83, 92–93 (D. Conn. 2001); *Walker v. Cash Flow Consultants*, 200 F.R.D. 613, 615–616 (N.D. Ill. 2001); *Shorty v. Capital One Bank*, 90 F. Supp. 2d 1330 (D.N.M. 2000) and *Stepney v. Outsourcing Solutions, Inc.*, 1997 WL 722972, 1997 U.S. Dist. LEXIS 18264 (N.D. Ill. Nov. 13, 1997).

The FDCPA prohibits "[t]he threat to take any action that cannot legally be taken or that is not intended to be taken." 15 U.S.C. § 1692e(5). Defendants' statement in Exhibits A and B that "you may be subject to a civil penalty, court costs and reasonable attorneys fees after suit has been filed" was "part and parcel of general representations which a reasonable jury could find to be violative of §§ 1692e(5) and (10), i.e., potentially deceptive or false use of threats to recommend legal action." *Jeter v. Credit Bureau*, 760 F.2d 1168, 1179 (11th Cir. 1985).

In a similar case, the district court found defendant violated the FDCPA by sending misleading letters that threatened suit on a time-barred debt. The court stated:

As discussed above, the February 17 letter at issue here unambiguously threatened litigation. Defendants respond by arguing only that the statute of limitations did not bar them from pursuing litigation against Goins because the statute of limitations is not a jurisdictional bar, but merely an affirmative defense that can be waived. As the statute of limitations would be a complete defense to any suit, however, the threat to bring suit under such circumstances can at best be described as a "misleading" representation, in violation of § 1692e. As an officer of the court, Boyajian has an obligation to represent to the court to the best of his knowledge, "after an inquiry reasonable under the circumstances," that the claims presented 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." *See* Fed. R. Civ. P. 11; *see also* State v. Turner, 267 Conn. 414, 430, 838 A.2d 947 (2004) (defining frivolous action as one in which "the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing

law."). Sanctions therefore would be appropriate if an attorney knowingly filed suit on an undisputedly time-barred claim. *See* Steinle v. Warren, 765 F.2d 95 (7th Cir. 1985) (awarding attorney fees to opposing party and imposing Rule 11 sanctions where attorney knew claim was time-barred). That the statute of limitations is an affirmative defense does not relieve defendants of their professional responsibility, when they do not dispute the applicability or viability of the defense. Because defendants were not entitled to sue in such circumstances, the threats to sue in the February 17 letter are improper. *See* Kimber v. Federal Financial Corp., 668 F. Supp. 1480 (M.D. Ala. 1987) (finding FDCPA violation where attorney threatened to sue on a time-barred claim).

Goins v. JBC & Assoc., P.C., 352 F. Supp. 2d 262, 272 (D. Conn. 2005). *See Thinesen v. JBC Legal Group, P.C.*, 2005 WL 2346991, 2005 U.S. Dist. LEXIS 21637, *11 (D. Minn. Sept. 26, 2005).

In *Gervais v. Riddle & Assocs., P.C.*, 363 F. Supp. 2d 345, 352 (D. Conn. 2005) (citation omitted), the district court concluded that statements by the debt collector would indicate to the least sophisticated consumer that " 'the clear import of the language, taken as a whole, is a that [some] type of legal action has already been or is about to be initiated and can be averted from running its course only by payment.' "

Likewise, the district court in *Perretta v. Capital Acquisitions & Mgmt. Co.*, 2003 WL 2183757, at *4, 2003 U.S. Dist. LEXIS 10070, at *14 (N.D. Cal. May 5, 2003), reviewing the debt collector's statements stated: "this court does not hold that as a matter of law, it would be unreasonable for the least sophisticated debtor to interpret defendant's statements as a threat of legal action." The court stated further: "the court concludes that the least sophisticated debtor would be reasonable to interpret the threat of 'further steps' to mean legal action. Indeed, given our rather litigious society, an individual not well versed in the mechanics of debt collection may very well consider legal action to be the next possible--and probable--'step.' Also, the vague nature of defendant's statement lends itself to such an interpretation. . . ." *Id*. at *15 (citation omitted). Also, *see Stepney v. Outsourcing Solutions, Inc.*, 1997 WL 722972, 1997 U.S. Dist LEXIS 18264, at *12–*14 (N.D. Ill. Nov. 4, 1997).

The district court in *Francis v. Snyder*, 389 F. Supp. 2d 1034, 1041 (N.D. Ill. 2005), pondered what the point of saying the consumer is in violation of a state's law would be "other than to indicate to the debtor that she may be sued, particularly when the letter is from an attorney." Similarly, Defendants here invoke "Pennsylvania law" and threaten the consumer with "a civil penalty, costs, and reasonable attorneys fees after suit is filed." This court should find that Defendants have violated 15 U.S.C. § 1692e(5) as did the *Francis v. Snyder* court.

The district court in *Florence v. National Sys.*, 1983 U.S. Dist. LEXIS 20344, at *10–*11 (N.D. Ga. Oct. 14, 1983), stated: "This letter clearly falls within the prohibition of §§ 1692e(5) and e(10) by creating 'the impression that legal action by defendant is a real possibility.' " *Baker v. G.C. Services Corp*., 677 F.2d 775 (1982), and also misrepresents the legal status of the debt in violation of § 1692e(2). Defendant has unquestionably violated the prohibitions of § 1692e.

Defendants' letters, Exhibits A and B, mislead the least sophisticated consumer to believe that litigation to recover a time-barred debt will be initiated. Exhibits A and B appear on the letterhead of a law firm are purportedly signed by the law firm. Defendants invoke Pennsylvania law stating: "Pursuant to Pennsylvania law, you have thirty (30) days from receipt of this letter to pay the full amount of each check plus a service charge of $30.00 per check for the total payment of $***.**. You are cautioned that unless this total amount is paid in full within the thirty (30) day after the date this letter is received, you may be subject to a civil penalty, court costs and reasonable attorneys fees after suit has been filed." The least sophisticated consumer is lead to the conclusion that a suit could and would be filed. This is a false statement. A lawsuit may not be brought because it is barred by the limitations period of either of the three or ten year timeframe in which to bring suit on a dishonored check. Thus, Defendants have threatened the least sophisticated consumer with action that could not legally be taken and misrepresented its ability to do so in violation of 15 U.S.C. §§ 1692e(5) and (10).

5E. Defendants' Telephone Messages Violate the FDCPA

The FDCPA prohibits "the placement of telephone calls without meaningful disclosure of the caller's identity." 15 U.S.C. § 1692d(6). Also prohibited is "the failure to disclose . . . that the communication is from a debt collector." 15 U.S.C. § 1692e(11); *Edwards v. Niagara Credit Solutions Inc.*, 586 F. Supp. 2d 1346, 1351–1353 (N.D.Ga. 2008), *aff'd on other grounds*, 584 F.3d 1350 (11th Cir. 2009); Drossin v. National Action Financial Services, Inc., 641 F. Supp. 2d 1314, 1318–1320 (S.D. Fla. 2009).

The district court in *Foti v. NCO Fin. Sys*., 424 F. Supp. 2d 643, 668–670 (S.D.N.Y. 2006), stated:

> Rather, there is nothing in the context of the January 18 Pre-Recorded Message that would clearly inform a consumer that s/he is speaking to a debt collector, or, for that matter, that the subject of the "business matter" requiring "immediate attention" is a debt. Instead, a consumer would have to, upon hearing the message, recall that it previously received mail from a debt collection agency by the name of "NCO Financial Systems." Such a burden on the consumer is unreasonable. The least sophisticated consumer, who may receive voluminous messages and calls, could easily be confused about the identify of "NCO Financial Systems," particularly given the vague reference in the message to "a personal business matter that requires your immediate attention."

"The Court thus finds that the messages at issue the violated 15 U.S.C. § 1692e(11) because they were communications to a consumer in which the debt collector (Defendant) failed to identify the communication as coming from a debt collector." *Edwards v. Niagara Credit Solutions, Inc.*, *supra*, 1361–1362. *See also Berg v. Merchants Ass'n Collection Div., Inc.*, 586 F. Supp. 2d 1336 (S.D. Fla. 2008).

In *Belin v. Litton Loan Servicing*, 2006 WL 1992410, at *5, 2006 U.S. Dist. LEXIS 47953 (M.D. Fla. July 14, 2006), Judge Bucklew wrote: "the court finds that the messages left on Ms. Belin's answering machine constitute communications that can support a violation of 15

U.S.C. § 1692e(11)." In another case involving telephone messages the court granted summary judgment for the consumer on her claims that the debt collector's telephone messages violated 15 U.S.C. § 1692e(11); *Leyse v. Corporate Collection Servs.*, 2006 WL 2708451, at *4, 6, 2006 U.S. Dist. LEXIS 67719 (S.D.N.Y. Sept. 18, 2006). "Because it appears that defendant's messages are 'communications' subjecting defendant to the provisions of § 1692e(11), it also appears that defendant has violated § 1692e(11) because the messages do not convey the information required by § 1692e(11), in particular, that the messages were from a debt collector." *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F. Supp. 2d 1104, 1116 (C.D. Cal. 2005).

Defendants' telephone messages to Plaintiffs failed to meaningfully identify the caller or to state that the call was from a debt collector. Thus, Plaintiffs have demonstrated that Defendants' telephone messages violated 15 U.S.C. § 1692d(6) and § 1692e(11).

F. Plaintiff Reserves the Determination of Damages for the Jury

By this motion, the Plaintiff seeks only an award of partial summary judgment with regard to the Defendant's liability for violations of the Fair Debt Collection Practices Act. The determination of damages, as requested in the Complaint, is reserved for trial by jury. *Kobs v. Arrow Service Bureau, Inc.*, 134 F.3d 893 (7th Cir. 1986); *Sibley v. Fulton DeKalb Collection Services*, 677 F.2d 830 (11th Cir. 1982).

After the determination of liability and damages, Plaintiff will seek an award of attorney fees pursuant to the Fair Debt Collection Practices Act. 15 U.S.C. § 1692k(a)(3). "Because the FDCPA was violated, however, the statute requires the award of costs and reasonable attorney's fee . . ." *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d at 28. *See also Graziano v. Harrison*, 950 F.2d at 113.

V. CONCLUSION

Defendant [*name*]'s collection letter(s), dated [*date(s)*], violated the Fair Debt Collection Practices Act by failing to provide the debt collection warning in its initial letter in violation of 15 U.S.C. § 1692e(11); (2) threatening to sue on a time-barred debt; and (3) leaving messages without meaningful identification of the caller's identity in violation of 15 U.S.C. § 1692d(6). Applying the least sophisticated consumer standard of analysis, partial summary judgment on the question of liability should be awarded in favor of the Plaintiff on these violations. Plaintiff requests that damages be determined at a trial before jury as requested in his Complaint.

Respectfully submitted,

[*signature*]
[*attorney*]
[*firm*]
[*street address*]
[*city, state zip*]
[*telephone number*]

Attorney for Plaintiff