

STATEMENT OF FACTS

A. Facts pertaining to Atlantic

5. Atlantic, as its name reflects, is a collection agency. During the time period encompassed by this complaint, most (if not all) of the debts which Atlantic collected and attempted to collect in Massachusetts were incurred primarily for personal, family, or household purposes, otherwise known as “consumer” debts.
6. During the time period encompassed by this complaint, Atlantic engaged in a business in Massachusetts the principal purpose of which was consumer debt collection.
7. During the time period encompassed by this complaint, Atlantic regularly attempted and attempted to collect, directly or indirectly, consumer debts owed or due or asserted to be owed or due another by Massachusetts residents.
8. During the time period encompassed by this complaint, Atlantic was a “debt collector” within the meaning of the Fair Debt Collection Practices Act, 15 U.S.C. §1692a (“FDCPA”) and within the meaning of the Massachusetts Debt Collection Practices Act, M.G.L. c. 93, §24 (“MDCPA”).
9. At all times relevant to this complaint, the MDCPA required that persons and entities meeting one or both of the Act’s definitions of “debt collector” be licensed by the Division of Banks.
10. The MDCPA provides important protections for Massachusetts consumers. Before it may operate as a debt collector, an applicant and its officers and directors must demonstrate to the Commissioner’s satisfaction that their “financial responsibility, character, reputation, integrity and general fitness . . . are such as to command the confidence of the public and to warrant the belief that the business . . . will be operated lawfully, honestly and fairly.” M.G. L. c. 93, §24B(a). Thus, for example, the Commissioner may deny a license if the applicant does not

have a positive net worth; has violated any state or federal law governing debt collection practices; has defaulted on a debt; has committed any dishonest or deceptive act bearing on the applicant's fitness to function as a debt collector; or has an adverse credit history. 209 CMR 18.04(2)(a); 209 CMR 18.042)(a)– (f). Debt collection licenses are issued for one-year terms (M.G. L. c. 93, §24B(b)), and upon request a licensee must disclose such books and records as to enable the Commissioner to determine whether it is complying with the requirements of chapter 93 and all laws and regulations covering debt collection practices in Massachusetts. M.G. L. c. 93, §24D.

11. At no time relevant to this complaint was Atlantic licensed as a debt collector in Massachusetts, as was required.
12. A failure to comply with the Massachusetts licensing requirement constitutes a *per se* violation of M. G. L. c. 93A, §2. Such failure also constitutes a criminal offense. G. L. c. 93, §28.

B. Facts pertaining to Plaintiff

13. On or prior to March 23, 2018, Merrimack Valley Anesthesia Associates, Inc. (“Merrimack”) placed for collection with Atlantic a past-due debt in the amount of \$71.57 allegedly owed by Plaintiff's deceased spouse, Kathleen Craft.
14. On or about March 23, 2018, Atlantic sent a dunning letter concerning the alleged debt addressed to Kathleen. Plaintiff, who resided in the home that had also been Kathleen's home, received and read the letter.
15. Around the same time that it sent the dunning letter, Atlantic began calling Plaintiff's cell phone and leaving messages for her. Atlantic left approximately seven messages for Plaintiff in attempting to collect the alleged debt to Merrimack.

16. In or about July, 2018, having become increasingly distressed by Atlantic's collection calls, Plaintiff called Atlantic and spoke to a representative. Plaintiff explained to Atlantic's representative that Kathleen had passed away and that Plaintiff was not liable for the alleged debt to Merrimack. Atlantic's representative stated he did not believe Plaintiff, that the debt was owed, and that Plaintiff should make payment as soon as possible.
17. The following day, Plaintiff again called Atlantic and spoke to its president, Kevin Brahm. Plaintiff again explained that Kathleen had passed away and that Plaintiff was not responsible for the alleged debt. Brahm insisted that the debt was owed and that Plaintiff should pay it. Plaintiff informed Brahm that she was aware Atlantic was not licensed as a debt collector in Massachusetts, and asked Brahm why Atlantic was recording the conversation without disclosing that fact to her as required by Massachusetts law. Brahm became combative and insulting, so Plaintiff terminated the call.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of herself and classes and sub-classes of persons similarly situated:
- (a) The class for purposes of count I is all persons who, when they resided in Massachusetts and on or after the date that was four (4) years prior to the filing of this action, were subjected to any collection activity by Atlantic concerning a consumer debt, which activity included but was not necessarily limited to the sending of dunning letters, leaving phone messages, engaging in phone conversations, sending emails, and reporting alleged debts to credit bureaus.
 - (b) The class for purposes of count II is comprised of count I class members who were subjected to any collection activity by Atlantic on or after the date that was one (1) year prior to the filing of this action.

(c) The class for purposes of count II is comprised of count I class members who were subjected to any collection activity by Atlantic on or after the date that was three (3) years prior to the filing of this action.

Excluded from the class and each sub-class are current and former officers, directors, and employees of Defendants and persons who released one or both defendants for the claims set forth herein.

19. On information and belief, there are thousands of class members. Therefore, the class is sufficiently numerous such that joinder would be impracticable.
20. There are issues of law and fact common to each class, which common issues predominate over any issues particular to individual class members. The principal common issues are: whether Atlantic engaged in trade or commerce in Massachusetts within the scope of M.G.L. c. 93A; §1; whether Atlantic is a debt collector within the scope of the MDCPA and the FDCPA; whether Atlantic was required to be licensed as a debt collector by the Division of Banks during the class periods; whether Atlantic was licensed as a debt collector by the Division during the class periods; whether Atlantic violated the rights of Plaintiff and class members as alleged; and whether Atlantic's violations of M.G.L. c. 93A were willful or knowing in nature.
21. Plaintiff's claims are typical of the claims of class members. Plaintiff and all class members were all injured by being subjected to consumer debt collection activity that was prohibited by law because Atlantic was not licensed as a debt collector in Massachusetts. All claims are based on the same legal theories, and all claims arise from the same unlawful conduct.
22. Plaintiff will fairly and adequately protect the interests of all class members. Plaintiff is committed to a vigorous and successful prosecution of this action, is familiar with the legal and factual issues involved, and has retained counsel experienced in the litigation of consumer rights cases, including cases

involving unfair and/or deceptive debt collection practices. Neither Plaintiff nor counsel have any interest or conflict that might cause them to not vigorously pursue this action.

23. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since: (a) the economic harm suffered by many individual class members is either non-existent or not substantial, therefore, the expense and burden of individual litigation would be economically unfeasible; and (b) the prosecution of separate lawsuits by individual class members would entail the risk of inconsistent and conflicting adjudications that could establish conflicting standards of conduct for Defendant; and (c) there will be no unusual or extraordinary management difficulties in administering this case as a class action.

COUNT I

(Violations of M.G.L. c. 93A)

24. The allegations of all preceding paragraphs are incorporated herein as if fully set forth.
25. At relevant times, Atlantic was engaged in trade or commerce in Massachusetts within the scope of M.G.L. c. 93A, §1.
26. Atlantic violated M.G.L. c. 93, §24A and M.G.L. c. 93A, §2, by engaging in the business of consumer debt collection in Massachusetts without being licensed to do so by the Division of Banks.
27. Atlantic's violations of M.G.L. c. 93, §24A and M.G.L. c. 93A, §2, were willful and knowing in nature.
28. Plaintiff suffered harm by being subjected to collection activities that were prohibited by Massachusetts law. All class members suffered identical harm, and some class members suffered financial loss by paying money to Atlantic or to creditors as a result of the unlawful collection activities.

29. A pre-suit demand under M.G.L. c. 93, §9, is not required, as Atlantic does not maintain an office or keep assets in the Commonwealth of Massachusetts.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment:

- (a) Awarding her and each class member actual damages equal to monies paid to Atlantic or creditors due to Atlantic's unlawful conduct or statutory damages of \$25.00, whichever is greater;
- (b) Doubling or trebling all actual damages awarded;
- (c) Awarding interest on all damages awarded;
- (d) Awarding costs and reasonable attorney's fees;
- (e) Awarding such further relief as shall be just and proper.

COUNT II

(Violations of the Fair Debt Collection Practices Act)

30. The allegations of all preceding paragraphs are incorporated herein as if fully set forth.

31. Atlantic's unlicensed debt collection activities in Massachusetts violated the following provisions of the FDCPA:

- (a) section 1692e(5), by taking and threatening to take actions that could not legally be taken;
- (b) section 1692e(10), by using deceptive means to collect or attempt to collect debts;
- (c) section 1692d(1), by engaging in conduct involving the threat and use of criminal means to harm the property of Plaintiff and class members;
- (d) section 1692d, by engaging in conduct the natural consequence of which was to oppress and abuse Plaintiff and class members.

32. Plaintiff suffered harm by being subjected to debt collection activities that were prohibited by Massachusetts law. All class members suffered identical harm, and some class members suffered financial loss by paying money to Atlantic or to creditors as a result of the collection activities.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment:

- (a) Awarding her and each class member actual damages equal to amounts paid to Atlantic or creditors due to Atlantic's unlawful collection activities;
- (b) Awarding her and class members statutory damages;
- (c) Awarding interest on all damages awarded;
- (d) Awarding costs and reasonable attorney's fees;
- (e) Awarding such further relief as shall be just and proper.

COUNT III

(Unjust Enrichment)

- 33. The allegations of all preceding paragraphs are incorporated herein as if fully set forth.
- 34. Atlantic wrongfully and unlawfully collected consumer debts in Massachusetts without being licensed as a debt collector by the Division of Banks.
- 35. Atlantic earned fees as a result of recovering money for creditors.
- 36. Atlantic has been unjustly enriched by obtaining fees due to its unlawful debt collection activities.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment:

- (a) Ordering Atlantic to disgorge all fees obtained due to its unlawful collection activities;
- (b) Awarding interest on all monies awarded;
- (c) Awarding costs and reasonable attorney's fees;
- (d) Awarding such further relief as shall be just and proper.

PLAINTIFF REQUESTS JURY TRIAL.

ROBIN RYAN, Plaintiff, by:

/s/Kenneth D. Quat
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JS 44 (Rev. 08/18)

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 ROBIN RYAN

(b) County of Residence of First Listed Plaintiff Essex
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Kenneth D. Quat, 929 Worcester Rd., Framingham MA 01701
 508-872-1261

DEFENDANTS
 ATLANTIC COLLECTION AGENCY, INC.

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known) _____

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 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 - Transfer 8 Multidistrict Litigation - Direct File

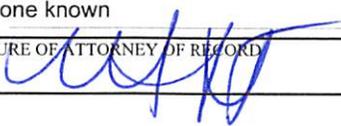
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 15 U.S.C. 1692 (fair debt collection practices act)

Brief description of cause:
 Unlicensed consumer debt collection

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE None known DOCKET NUMBER _____

DATE 10/05/2018 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Robin Ryan v. Atlantic Collection Agency, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 835*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 485, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None known.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kenneth D. Quat

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