

BARSHAY SANDERS, PLLC
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Attorneys for Plaintiff
Our File No.: 111643

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Stefanie Anthony, individually and on behalf of all
others similarly situated

Plaintiff,

vs.

Hillcrest Davidson & Associates, LLC,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Stefanie Anthony, individually and on behalf of all others similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Hillcrest Davidson & Associates, LLC (hereinafter referred to as “*Defendant*”), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, (“FDCPA”) and New York General Obligations Law § 5–328 (“NYGOL”).

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d), and jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

3. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

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100 GARDEN CITY PLAZA, SUITE 500
GARDEN CITY, NEW YORK 11530

4. At all relevant times, Defendant conducted business within the State of New York.

PARTIES

5. Plaintiff Stefanie Anthony is an individual who is a citizen of the State of New York residing in Nassau County, New York.

6. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

7. On information and belief, Defendant Hillcrest Davidson & Associates, LLC, is a Texas Limited Liability Company with a principal place of business in Dallas County, Texas.

8. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

9. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

10. Defendant alleges Plaintiff owes a debt (“the debt”).

11. The debt was primarily for personal, family or household purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

12. Sometime after the incurrence of the debt Plaintiff fell behind on payments owed.

13. Thereafter, at an exact time known only to Defendant, the debt was assigned or otherwise transferred to Defendant for collection.

14. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the letter”) dated April 14, 2016.

15. The letter was the initial communication Plaintiff received from Defendant.

16. The letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

17. The letter directs Plaintiff to Defendant’s website.

18. Plaintiff accessed the website to pay the debt.

19. The website is a “communication” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT

Violations of NYGOL § 5–328 and 15 U.S.C. § 1692f

20. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

21. Defendant’s website sets forth certain terms and conditions that must be agreed to

by consumers wishing to pay their debts by check.

22. One of the terms and conditions is, “All returned checks are subject to a \$25 return check fee.”

23. Pursuant to NYGOL § 5–328 the maximum fee allowed for a returned check is \$20.00.

24. 15 U.S.C. § 1692f(1) prohibits the collection of any amount, including any fee or charge incidental to the debt unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

25. Defendant’s attempt to collect a fee of \$25.00 for a returned check is a violation of NYGOL § 5–328.

26. Defendant’s attempt to collect a fee of \$25.00 for a returned check when the maximum amount allowed in New York State is \$20.00 is a violation of 15 U.S.C. § 1692f(1).

SECOND COUNT
Violations of 15 U.S.C. § 1692e

27. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

28. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

29. Defendant’s threat to impose a fee of \$25.00 for a returned check when the maximum amount allowed in New York State is \$20.00 is a false representation of the character, amount, or legal status of any debt.

30. 15 U.S.C. § 1692e(2)(B) prohibits the false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

31. Defendant’s threat to impose a fee of \$25.00 for a returned check when the maximum amount allowed in New York State is \$20.00 is a false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

32. 15 U.S.C. § 1692e(5) prohibits the threat to take any action that cannot legally be taken or that is not intended to be taken.

33. Defendant’s threat to impose a fee of \$25.00 for a returned check when the

maximum amount allowed in New York State is \$20.00 is a threat to take action that cannot legally be taken or that is not intended to be taken.

34. 15 U.S.C. § 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.

35. Defendant's statement that it is entitled to collect a fee of \$25.00 for a returned check when the maximum amount allowed in New York State is \$20.00 is a false representation or deceptive means to collect or attempt to collect any debt.

36. For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692e(2)(A), 1692e(2)(B), 1692e(5) and 1692e(10).

THIRD COUNT
Violation of 15 U.S.C. § 1692f
Unlawful Processing Fee

37. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

38. 15 U.S.C. § 1692f provides a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

39. 15 U.S.C. § 1692f(1) prohibits the collection of any amount, including any interest, fee, charge, or expense incidental to the debt, unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

40. Defendant's website indicates that Defendant charges a processing fee of \$4.00 for payments made.

41. Such processing fee is neither expressly authorized by the agreement creating the debt, nor permitted by law.

42. Such processing fee is prohibited by 15 U.S.C. § 1692f(1).

43. Defendant violated 15 U.S.C. § 1692f by charging a processing fee.

FOURTH COUNT
Violation of 15 U.S.C. § 1692e
False Representation as to Unlawful Processing Fee

44. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

45. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or

misleading representations or means in connection with the collection of any debt.

46. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

47. 15 U.S.C. § 1692e(2)(B) prohibits the false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

48. Defendant violated § 1692e by making a false representation that it is entitled to receive compensation for payment via a processing fee.

49. The least sophisticated consumer would likely be deceived by the processing fee language into believing that Defendant was legally entitled to collect the fee.

50. The least sophisticated consumer would likely be deceived in a material way by Defendant's conduct.

51. Defendant violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

52. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the state of New York from whom Defendant attempted to collect a fee of \$25.00 for a returned check, and/or a processing fee, from one year before the date of this Complaint to the present.

53. This action seeks a finding that Defendant's conduct violates NYGOL § 5-328 and 15 U.S.C. §§ 1692f, 1692e(2)(A), 1692e(2)(B), 1692e(5) and 1692e(10), and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

54. The Class consists of more than 35 persons from whom Defendant attempted to collect a fee of \$25.00 for a returned check.

55. Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

56. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

57. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under the FDCA.

JURY DEMAND

58. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiff as Class Representatives of the Class, and her attorneys as Class Counsel; and
- c. Find that Defendants' actions violate the FDCA; and
- d. Grant damages against Defendants pursuant to the FDCA, 15 U.S.C. § 1692k; and
- e. Grant Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- f. Grant Plaintiff's costs; together with
- g. Such other relief that the Court determines is just and proper.

DATED: March 5, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

Craig B. Sanders, Esq.

100 Garden City Plaza, Suite 500

Garden City, New York 11530

Tel: (516) 203-7600

Fax: (516) 706-5055

csanders@barshaysanders.com

Attorneys for Plaintiff

Our File No.: 111643

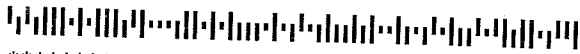
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GARDEN CITY, NEW YORK 11530



HILLCREST DAVIDSON

and associates

715 N Glenville Dr. #450 • Richardson, TX 75081 • Phone: 866.524.9866 • Fax: 972.346.6870 • www.hillcrestdavidson.com



*****AUTO**MIXED AADC 75197 5 129
STEFANIE ANTHONY
99 GARDEN ST
GARDEN CITY, NY 11530-6506

Contact Us

Address: 715 N Glenville Dr., Suite 450
Richardson, TX 75081

Phone: (866) 524-9866

Hours of Operation:

M-Th 9:00am-8:00pm
Fri. 8:00am-5:00pm

Regarding: Current Creditor: Alliance Security
Current Due: \$3,019.64

Original Account #: [REDACTED] 5843
Hillcrest Davidson Account #: [REDACTED] 3514

April 14, 2016
Dear Stefanie Anthony:

Please be advised that the above-referenced account has been assigned to our agency for the purposes of collection. It is our goal to resolve this matter in a convenient manner. If you would like to clear this matter up, please take this opportunity to pay your account through one of the following payment options:

- Option 1: Pay securely and confidentially online at www.payhda.com. Note: In order to pay online, you will need to have your Hillcrest Davidson Account #, and either the last four digits of your SSN or your zip code.
- Option 2: Send your check or money order to the address listed above. Note: Please reference your Hillcrest Davidson Account # in the memo section of your check or money order.
- Option 3: Call us toll free at (866) 524-9866 to discuss payment options via check by phone, debit card or credit card.

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

Our office staff is available to assist you with the processing of payments Monday through Friday from 9:00 a.m. – 8:00 p.m. CST. We accept payment by most methods including credit card, debit card, check or money order. To insure that you receive proper credit to your account, please include a reference to the number 663514 with your payment.

PRIVACY STATEMENT

The following statement is intended to communicate to you our policy regarding the handling of any personal or confidential information we obtain about you and the protection of your privacy as is required by federal law. As has been previously stated, your account has been assigned to Hillcrest, Davidson and Associates (hereinafter referred to as HDA). The privacy policies and practices described in this notice will apply to current as well as former account holders.

Information We Collect

HDA may collect non-public, personal information about you from different sources including a) The original creditor b) Consumer reporting agencies and c) Other parties for the purpose of acquiring location information as provided by the Fair Debt Collection Practices Act, 15 USC Section 1692, et seq.

Information We Disclose

We do not disclose any non-public personal information about you to anyone, except as provided by the Fair Debt Collection Practices Act, 15 USC Section 1692, et seq. and the Fair Credit Reporting Act, 15 USC Section 1681, et seq.

Security

HDA restricts access to non-public personal information about you to those employees who need to know that information to process this account. HDA maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard your non-public personal information.

We look forward to being able to resolve this matter in a mutually acceptable manner.

Very Truly Yours,

Hillcrest, Davidson and Associates

TO ALL CONSUMERS – Notice about Electronic Check Conversion: When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment and you will not receive your check back from your financial institution. Also, you authorize us to represent a check as an electronic fund transfer from your account if your payment is returned unpaid.

Please be aware of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

California:

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They must not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have a reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Colorado:

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE www.coloradoattorneygeneral.gov/ca.

Massachusetts:

NOTICE OF IMPORTANT RIGHTS

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALL REGARDING YOUR DEBT NOT TO BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE COLLECTION AGENCY.

New York City:

Hillcrest, Davidson LLC is licensed by the City of New York, Department of Consumer Affairs, License # 1351792.

Utah:

As required by Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

North Carolina:

North Carolina Department of Insurance Permit #112307

Colorado:

For information about the Colorado Fair Debt Collection Practices Act, see www.ago.state.co.us/CADC/CADCmain.cfm.

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 STEFANIE ANTHONY
DEFENDANTS HILLCREST DAVIDSON & ASSOCIATES, LLC
(b) County of Residence of First Listed Plaintiff NASSAU
(c) Attorneys (Firm Name, Address, and Telephone Number) BARSHAY SANDERS, PLLC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 USC §1692
Brief description of cause: 15 USC §1692 Fair Debt Collection Practices Act Violation

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 DOCKET NUMBER

DATE March 6, 2017 SIGNATURE OF ATTORNEY OF RECORD /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Craig B. Sanders, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1. Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? NO
2. If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
 Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
 Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s Craig B. Sanders

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Stefanie Anthony, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

Hillcrest Davidson & Associates, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Hillcrest Davidson & Associates, LLC
715 N Glenville - Suite 450
Richardson, TX 75081

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Barshay Sanders, PLLC
100 Garden City Suite 500
Garden Clty, New York 11530

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Hillcrest Davidson & Associates' Debt Collection Practices Under Fire](#)
