

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

MICHAEL AREVALO, on behalf of
himself and all others similarly situated,

Plaintiffs,

-against-

CMRE FINANCIAL SERVICES, INC.

Defendant.

Civil Action Number:

**CIVIL ACTION
CLASS ACTION COMPLAINT
AND
DEMAND FOR JURY TRIAL**

Plaintiff MICHAEL AREVALO (hereinafter, “Plaintiff”), a New York resident, brings this class action complaint by and through his attorneys, Sirotkin Varacalli & Hamra, LLP, against Defendant CMRE FINANCIAL SERVICES, INC. (hereinafter “Defendant”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

NATURE OF THE ACTION

3. Plaintiff brings this class action on behalf of a class of New York consumers seeking redress for Defendant’s illegal practices, in connection with the collection of a debt

allegedly owed by Plaintiff in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).

4. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the “FDCPA,” which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.
5. Plaintiff is seeking damages, and declaratory and injunctive relief.

PARTIES

6. Plaintiff is a natural person and a resident of the State of New York, and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).
7. Defendant is a collection agency with its principal office located at Brea, CA.
8. Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.
9. Defendant is a “debt collector,” as defined by the FDCPA under 15 U.S.C. § 1692a(6).

CLASS ALLEGATIONS

10. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter “FRCP”) Rule 23, individually and on behalf of the following nationwide consumer class (the “Class”):
 - The class consists of all persons whom Defendants' records reflect resided in the State of New York and who were sent a collection letter in substantially the same form letter as the letter sent to the Plaintiff on or about July 18, 2016 and (a) the collection letter was sent to a consumer seeking payment of a personal debt purportedly owed to Park Avenue Radiologists, PC.; and (b) the collection letter was not returned by the postal service as undelivered; (c) and Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692e, 1692e(10), and 1692g for sending a collection letter which, among other things, fails to effectively provide the Validation Rights Notice required by law, and for engaging in deceptive practices.

- The Class period begins one year to the filing of this Action.

11. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that was sent to hundreds of persons (*See **Exhibit A***, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
 - a. Whether Defendant violated various provisions of the FDCPA;
 - b. Whether Plaintiff and the Class have been injured by Defendant's conduct;
 - c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
 - d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed proceed to without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.
- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

ALLEGATIONS PARTICULAR TO MICHAEL AREVALO

12. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “11” herein with the same force and effect as if the same were set forth at length herein.
13. Some time prior to July 18, 2016, an obligation was allegedly incurred by Plaintiff.
14. The aforesaid obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.
15. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) of the FDCPA.
16. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) of the FDCPA.
17. At a time known only to Defendant, PARK AVENUE RADIOLOGISTS, PC, directly or through an intermediary, contracted Defendant to collect on its alleged debt.
18. In its effort to collect on the PARK AVENUE RADIOLOGISTS, PC obligation, Defendant contacted Plaintiff by written correspondence on July 18, 2016. (“Exhibit A”).
19. Defendant’s written correspondence to Plaintiff is a “communication” as defined by 15 U.S.C. § 1692a(2).
20. As set forth in the following Counts, Defendant’s communication violated the FDCPA.

First Count
Violation of 15 U.S.C. § 1692g(a)(3)
Validation of Debts

21. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “20” herein with the same force and effect as if the same were set forth at length herein.
22. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.
23. 15 U.S.C. § 1692g(3) requires the notice to include a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.
24. There is no requirement that the consumer dispute the debt in writing.
25. It is a violation of FDCPA to require disputes be made in writing.
26. It is a violation of the FDCPA to include language in the letter that overshadows the required 15 U.S.C. § 1692g(3) statement.
27. It is a violation of the FDCPA to include language in the letter that contradicts the required 15 U.S.C. § 1692g(3) statement.
28. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, overshadows the required 15 U.S.C. § 1692g(a)(3) statement.
29. It is a violation of the FDCPA to include language in the letter that, when examined from

the perspective of the least sophisticated consumer, contradict the required 15 U.S.C. § 1692g(a)(3) statement.

30. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that his her dispute must be in writing.
31. Defendant's July 18, 2016 letter states, "If you notify this office that you dispute the validity of the debt or any portion thereof *in writing* within 30 days from receiving this notices, this office will obtain verification of the debt or obtain a copy of judgment or verification and mail you a copy of such judgment. You may send your *written request* to "CMRE FINANCIAL SERVICES INC, 3075 E IMPERIAL HWY SUITE 200, BREA, CA 92821, ATTENTION: COMPLIANCE UNIT" emphasis added.
32. The language concerning written disputes overshadows the required 15 U.S.C. § 1692g(3) statement.
33. The language concerning written disputes contradicts the required 15 U.S.C. § 1692g(3) statement.
34. The language concerning written disputes when examined from the perspective of the least sophisticated consumer overshadows the required 15 U.S.C. § 1692g(a)(3) statement.
35. The language concerning written disputes when examined from the perspective of the least sophisticated consumer contradicts the required 15 U.S.C. § 1692g(a)(3) statement.
36. The language concerning written disputes when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be in writing.
37. Defendants' conduct, as set forth above, violates § 1692g(a)(3).

Second Count
Violation of 15 U.S.C. § 1692g
Validation of Debts

38. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “37” herein with the same force and effect as if the same were set forth at length herein.
39. A debt collector has the obligation, not just to convey the information required by 15 U.S.C. § 1692g, but also to convey such clearly.
40. Even if a debt collector conveys the required information accurately, the collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication, or by other collection activities during the 30-day validation period following the communication.
41. A collection activity or communication overshadows or contradicts the validation notice if it would make the “least sophisticated consumer” uncertain or confused as to her rights.
42. Defendants’ letter contradicts the validation notice in that it would make the least sophisticated consumer uncertain or confused as to her right to dispute the debt by something other than in writing.
43. Defendants’ letter overshadows the validation notice in that it would make the least sophisticated consumer uncertain or confused as to her right to dispute the debt by something other than in writing.
44. Defendants’ conduct violates 15 U.S.C. § 1692g.

Third Count
Violation of 15 U.S.C. § 1692e, *et seq*
False or Misleading Representations

45. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “44” herein with the same force and effect as if the same were set forth at length herein.
46. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.
47. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on non-enumerated practice.
48. For purposes of 15 U.S.C. § 1692e, the failure to clearly provide the consumer with complete and accurate information notifying them of their rights and obligations is unfair and deceptive to the least sophisticated consumer.
49. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.
50. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”
51. Because the collection letter in the instant case was reasonably susceptible to an inaccurate reading concerning Plaintiff’s right to dispute the debt by something other than in writing, it is deceptive within the meaning of the FDCPA.
52. The least sophisticated consumer would likely be deceived by Defendants’ conduct.
53. The least sophisticated consumer would likely be deceived in a material way by Defendants’ conduct.

54. The least sophisticated consumer would be unsure as to whether a writing or oral communication is necessary to dispute the underlying debt.
55. Defendants' conduct violated 15 U.S.C. §1692e.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and the Sirotkin Varacalli & Hamra, LLP, as Class Counsel;
- (b) Awarding Plaintiff and the Class statutory damages;
- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: November 8, 2016

Respectfully submitted,

By: /s/ Ibrahim Abohamra
Ibrahim Abohamra, Esq.
Sirotkin Varacalli & Hamra, LLP
110 East 59th Street, Suite 3200
New York, New York 10022
Phone: (646) 590-0571
Attorney for Plaintiff

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: November 8, 2016

Respectfully Submitted,

By: /s/ Ibrahim Abohamra

Ibrahim Abohamra

Creditor Balance	Total
\$449.32	\$449.32
CMRE Account#: [REDACTED] 7136	Pin# 7136
Creditor Name: PARK AVENUE RADIOLOGISTS P.C.	
Creditor Account#: [REDACTED] 0816	

PHONE: (800) 783-9118 FAX: (714) 528-5863
HOURS: 8:00 am - 5:30 pm Pacific Standard Time

082670

MICHAEL AREVALO
[REDACTED]

CMRE FINANCIAL SERVICES, INC.
3075 E IMPERIAL HWY SUITE 200
BREA CA 92821-6753

Patient: MICHAEL AREVALO
Statement Date: 07/18/2016

New York Department of Consumer Affairs
Detach and Return Top Portion With Your Payment
Consumer Complaint Number: 3495596

This has been sent to you by a collection agency.

PARK AVENUE RADIOLOGISTS P.C. has attempted to collect this unpaid balance; this account has been placed with collections. We may be reached at (800) 783-9118, Monday through Friday between the hours of 8:00 am and 5:30 pm PST.

For your convenience, you may pay with your Visa, MasterCard, American Express, Discover Card, Western Union Quick Collect, personal check, or money order. To pay your bill online, go to www.cmrefsi.com. You may also access our automated payment center 24 hours a day, 7 days a week using your CMRE account number and Pin numbers located at the bottom left hand portion of this notice when making your payment.

If you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office that you dispute the validity of the debt or any portion thereof in writing within 30 days from receiving this notice, this office will obtain verification of the debt or any portion of judgment or verification and mail you a copy of such judgment. You may send your written request to CMRE FINANCIAL SERVICES INC, 3075 E IMPERIAL HWY SUITE 200, BREA, CA 92821, ATTENTION: COMPLIANCE. Your letter should refer to the above-referenced CMRE account number, and statement date. If you request of verification in writing within 30 days of receiving this notice, this office will provide you with the name and address of the creditor or if different from the current creditor.

If you send a check for payment to this office, you must also provide a voided check to complete the payment by electronic deposit. If you do not provide a voided check, your check will be returned to you. If you provide a voided check, your check will be deposited to your bank.

Information from this office may be monitored.

0922
082670

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

MICHAEL AREVALO, on behalf of himself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) SIROTKIN VARACALLI & HAMRA, LLP 110 E. 59th Street, Suite 3200, New York, New York 10022 (646) 590-0571

DEFENDANTS

CMRE FINANCIAL SERVICES, INC.

County of Residence of First Listed Defendant Orange (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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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: FDCPA 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 11/08/2016 SIGNATURE OF ATTORNEY OF RECORD /S/ Ibrahim Abohamra

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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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, Ibrahim Abohamra, 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:

NONE

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/ IBRAHIM ABOHAMRA

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

MICHAEL AREVALO, on behalf of himself and all others similarly situated,

Plaintiff(s)

v.

CMRE FINANCIAL SERVICES, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CMRE FINANCIAL SERVICES, INC. C/O C T CORPORATION SYSTEM 111 EIGHTH AVENUE NEW YORK, NEW YORK, 10011

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: SIROTKIN VARACALLI & HAMRA LLP 110 E. 59th Street, Suite 3200 New York, New York 10022

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.

DOUGLAS C. PALMER 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

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CMRE Financial Services Hit with FDCPA Class Action](#)
