

BARSHAY SANDERS, PLLC
100 Garden City Plaza, Suite 500
Garden City, New York 11530
Tel: (516) 203-7600
Fax: (516) 706-5055
Email: *ConsumerRights@BarshaySanders.com*
Attorneys for Plaintiff
Our File No.: 114134

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

Michelle Bergin, individually and on behalf of all those
similarly situated,

Plaintiff,

vs.

Amsher Collection Services, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

BARSHAY | SANDERS PLLC
100 GARDEN CITY PLAZA, SUITE 500
GARDEN CITY, NEW YORK 11530

Michelle Bergin, individually and on behalf of all those similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Amsher Collection Services, Inc. (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”).

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).

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.

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

PARTIES

5. Plaintiff Michelle Bergin is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

7. On information and belief, Defendant Amsher Collection Services, Inc., is an Alabama Corporation with a principal place of business in Jefferson County, Alabama.

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 May 3, 2017. (“**Exhibit 1.**”)

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).

FIRST COUNT

Violation of 15 U.S.C. § 1692g

Validation of Debts

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

18. 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.

19. One such requirement is that the debt collector provides “the name of the creditor to whom the debt is owed.” 15 U.S.C. § 1692g(a)(2).

20. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to convey such clearly.

21. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to state such explicitly.

22. Merely naming the creditor without specifically identifying the entity as the current creditor to whom the debt is owed is not sufficient to comply with 15 U.S.C. § 1692g(a)(2).

23. Even if a debt collector conveys the required information, the debt collector nonetheless violates the FDCPA if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty.

24. When determining whether the name of the creditor to whom the debt is owed has been conveyed clearly, an objective standard, measured by how the “least sophisticated consumer” would interpret the notice, is applied.

25. Although the Letter identifies an “Original Creditor” of “T-Mobile,” it fails to identify fails to identify by name and label any entity as “current creditor,” “account owner,” or “creditor to whom the debt is owed.”

26. The Letter states that Plaintiff’s account “has been placed” with Defendant.

27. The Letter fails to indicate who placed the account with Defendant.

28. The Letter fails to indicate who Defendant represents.

29. The Letter fails to indicate who is Defendant’s client.

30. The Letter fails to indicate to whom Plaintiff should make her payment.

31. The Letter states that payment should be sent to Defendant.

32. The least sophisticated consumer, reading the letter in its entirety, and especially because of the Letter’s instructions to make payment to Defendant, would not know whether the “ORIGINAL CREDITOR” is also the creditor to whom the debt is owed, whether Defendant is the creditor to whom the debt is owed, or whether the creditor to whom the debt is owed is some unnamed entity.

33. Defendant failed to clearly state the name of the creditor to whom the debt is owed.

34. The least sophisticated consumer would likely be confused as to the name of the creditor to whom the debt is owed.

35. The least sophisticated consumer would likely be uncertain as to the name of the creditor to whom the debt is owed.

36. Defendant violated § 1692g as it failed to clearly and explicitly convey the name of the creditor to whom the debt is owed.

SECOND COUNT

**Violation of 15 U.S.C. § 1692e
False or Misleading Representations as to the Name of
the Creditor to Whom the Debt is Owed**

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

38. 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.

39. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.

40. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”

41. A collection letter is deceptive under 15 U.S.C. § 1692e if it can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate.

42. A collection letter is also deceptive under 15 U.S.C. § 1692e if it is reasonably susceptible to an inaccurate reading by the least sophisticated consumer.

43. For purposes of 15 U.S.C. § 1692e, the failure to clearly and accurately identify the creditor to whom the debt is owed is unfair and deceptive to the least sophisticated consumer.

44. The identity of creditor to whom the debt is owed is a material piece of information to a consumer.

45. Knowing the identity of creditor to whom the debt is owed affects how a consumer responds to a debt collector’s attempts to collect the debt.

46. Because the Letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive within the meaning of 15 U.S.C. § 1692e.

47. Because the Letter is reasonably susceptible to an inaccurate reading by the least sophisticated consumer, as described, it is deceptive within the meaning of 15 U.S.C. § 1692e.

48. The least sophisticated consumer would likely be deceived by the Letter.

49. The least sophisticated consumer would likely be deceived in a material way by the Letter.

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

CLASS ALLEGATIONS

51. 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 consumer debt using a collection letter substantially similar to the Letter herein, from one year before the date of this Complaint to the present.

52. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

53. Defendant regularly engages in debt collection.

54. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter substantially similar to the Letter herein.

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 consumer protection laws.

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 Representative of the Class, and Plaintiff's attorneys as Class Counsel; and
- c. Find that Defendant's actions violate the FDCPA; and
- d. Grant damages against Defendant pursuant to 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: April 30, 2018

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

BARSHAY | SANDERS PLLC
100 GARDEN CITY PLAZA, SUITE 500
GARDEN CITY, NEW YORK 11530

csanders@barshaysanders.com
Attorneys for Plaintiff
Our File No.: 114134



AMSHER COLLECTION SERVICES, INC.
 4524 Southlake Parkway, Suite 15
 Birmingham, AL 35244



May 3, 2017

Michelle Bergin
 93 8th Ave
 Holtsville, NY 11742-2375

Dear Michelle Bergin:

The account shown here is unpaid and the balance owed has been placed with this office for collection.

Unless 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 in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Payment can be mailed to 4524 Southlake Parkway, Suite 15, Hoover, AL 35244. Our phone number is 1-844-751-0087 or you can pay online using the website address and password below.

PAY ONLINE AT: <http://mbergin3aabm.revexpress.com>

PASSWORD: [REDACTED]587

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

Jason Borkovec
 Director of Operations

New York Residents: New York City Department of Consumer Affairs License Number 1388973-DCA.

In accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., debt collectors are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to the use or threat of violence, the use of obscene or profane language, and repeated phone calls made with the intent to annoy, abuse, or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits;
10. Federal student loans, federal student grants, and federal work study funds; and
11. Ninety percent of your wages or salary earned in the last sixty days.

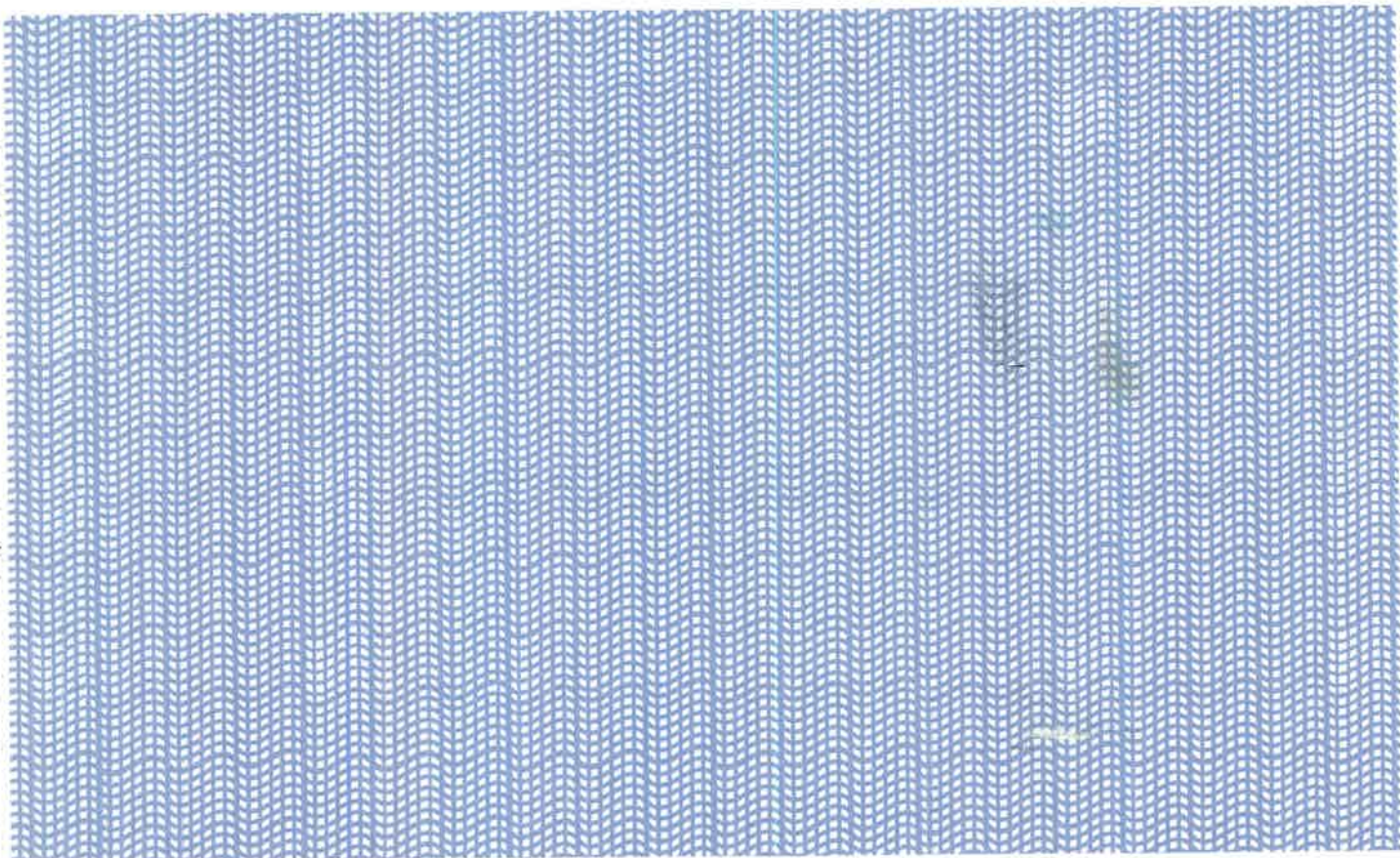
Account Summary	
Original Creditor	T-MOBILE
Creditor's Acct #	[REDACTED]3004
AmSher Acct #	[REDACTED]1060
Total Due	\$2,260.67



Scan this code with your smartphone to pay your bill online



2018



To Open - Fold & Tear Along Perforation

To Open - Fold & Tear Along Perforation

4524 Southlake Parkway, Suite 15
Birmingham, AL 35244

2

ELECTRONIC SERVICE REQUESTED

FIRST CLASS
PRESORT
U.S. POSTAGE
PAID
PCI

IMPORTANT INFORMATION ENCLOSED



Michelle Bergin
93 8th Ave
Holtsville, NY 11742-2375

To Open This Side - Slide Finger Under This Edge

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Michelle Bergin, individually and on behalf of all those similarly situated)	
_____)	
<i>Plaintiff(s)</i>)	
)	Civil Action No.
v.)	
)	
Amsher Collection Services, Inc.)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Amsher Collection Services, Inc.
CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK, 12207-2543

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 PLAZA, SUITE 500
GARDEN CITY, NY 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 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: MICHELLE BERGIN; DEFENDANTS: AMSHER COLLECTION SERVICES, INC. (b) County of Residence of First Listed Plaintiff: SUFFOLK; County of Residence of First Listed Defendant: JEFFERSON. (c) Attorneys: BARSHAY SANDERS, PLLC.

II. BASIS OF JURISDICTION: U.S. Government Plaintiff; U.S. Government Defendant; Federal Question; Diversity. III. CITIZENSHIP OF PRINCIPAL PARTIES: Citizen of This State; Citizen of Another State; Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN: 1 Original Proceeding; 2 Removed from State Court; 3 Remanded from Appellate Court; 4 Reinstated or Reopened; 5 Transferred from Another District; 6 Multidistrict Litigation - Transfer; 8 Multidistrict Litigation - Direct File.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing: 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: May 1, 2018; SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, APPLYING IFF, 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
 - c) If this is a Fair Debt Collection Practice Act case, specific the County in which the offending communication was received: SUFFOLK

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? Yes No

(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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Amsher Collection Services Accused of Failing to Clearly Identify Woman's Creditor](#)
