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Attorneys for Plaintiff
Our File No.: 113396

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

Stacy Berkowitz, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Capital Accounts, LLC,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Stacy Berkowitz, 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 Capital Accounts, 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”).

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 Stacy Berkowitz 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 Capital Accounts, LLC, is a Tennessee Limited Liability Company with a principal place of business in Williamson County, Tennessee.

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 incurred in connection with personal medical services provided to Plaintiff by Brian Margolis MD.

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

13. Sometime after the incurrence of the Debt, Plaintiff fell behind on payments owed.

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

15. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated May 11, 2017. (“Exhibit 1.”)

16. The Letter was the initial communication Plaintiff received from Defendant.

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

FIRST COUNT

Violation of 15 U.S.C. § 1692e

FALSE AND MISLEADING REPRESENTATIONS

18. On information and belief, the original amount of the Debt was \$50.00.

19. The Letter sets forth a “Balance” of \$54.02.

20. The reverse side of the Letter states, “Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you before depositing the payment for collection. For further information, write the undersigned or call 800-983-4730.”

21. While interest was accumulating on the Debt at the time the Letter was sent, “late charges” and “other charges” were not.

22. While interest was accumulating on the Debt at the time the Debt was with Defendant, “late charges” and “other charges” were not.

23. On information and belief, and at all times herein relevant, any increase in the amount of the Debt was caused solely by the accrual of interest.

24. The statement concerning “interest, late charges, and other charges,” as transcribed in Paragraph 20, *supra*, would lead the least sophisticated consumer to believe that the Debt was accruing interest.

25. The statement concerning “interest, late charges, and other charges,” as transcribed in Paragraph 20, *supra*, would lead the least sophisticated consumer to believe that the Debt was accruing late fees.

26. The statement concerning “interest, late charges, and other charges,” as transcribed in Paragraph 20, *supra*, would lead the least sophisticated consumer to believe that the Debt was accruing “other fees.”

27. The inclusion of the above-referenced statement, when the debt was not accruing late fees at the time the letter was sent, is deceptive within the meaning of 15 U.S.C. § 1692e.

28. The inclusion of the above-referenced statement, when the debt was not accruing late fees at the time it was with Defendant, is deceptive within the meaning of 15 U.S.C. § 1692e.

29. The inclusion of the above-referenced statement, when the debt was not accruing “other charges” aside from interest at the time the letter was sent, is deceptive within the meaning of 15 U.S.C. § 1692e.

30. The inclusion of the above-referenced statement, when the debt was not accruing “other charges” aside from interest at the time it was with Defendant, is deceptive within the meaning of 15 U.S.C. § 1692e.

31. 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 under 15 U.S.C. § 1692e.

32. For these reasons, Defendant violated 15 U.S.C. § 1692e.

SECOND COUNT
Violation of 15 U.S.C. §§ 1692c(b) and 1692b(2)
UNLAWFUL THIRD-PARTY DISCLOSURES

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

34. 15 U.S.C. § 1692c(b) provides that “without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.”

35. 15 U.S.C. § 1692b(2) provides that “[a]ny debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall . . . not state that such consumer owes any debt.”

36. On or around November 22, 2017, Defendant placed a telephone call to Plaintiff’s home landline.

37. Plaintiff’s mother answered the phone.

38. The caller, an employee of Defendant, asked if Plaintiff was there.

39. When Plaintiff’s mother replied “yes,” the caller stated that the call was from a debt collector, that it was an attempt to collect a debt, and that any information obtained would be used for that purpose.

40. Plaintiff never provided Defendant with consent to communicate with any person other than herself in connection with the collection of the subject Debt.

41. Defendant did not otherwise have express permission from any court of competent jurisdiction to communicate with any person other than Plaintiff, her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector in connection with the collection of the subject Debt.

42. Defendant did not make the November 22, 2017 phone call in connection with any effort to effectuate a post judgment judicial remedy.

43. By disclosing to Plaintiff's mother that the call was from a debt collector, that it was an attempt to collect a debt, and that any information obtained would be used for that purpose, Defendant unlawfully communicated with a third party in connection with the collection of Plaintiff's subject Debt.

44. By disclosing to Plaintiff's mother that the call was from a debt collector, that it was an attempt to collect a debt, and that any information obtained would be used for that purpose, Defendant violated 15 U.S.C. § 1692c(b).

45. By disclosing to Plaintiff's mother that the call was from a debt collector, that it was an attempt to collect a debt, and that any information obtained would be used for that purpose, Defendant unlawfully conveyed to a third party that Plaintiff owes a debt.

46. By disclosing to Plaintiff's mother that the call was from a debt collector, that it was an attempt to collect a debt, and that any information obtained would be used for that purpose, Defendant violated 15 U.S.C. § 1692b(2).

CLASS ALLEGATIONS

47. 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 substantially similar form collection letter that states "because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater," but where the debt was not actually subject to interest, late charges, and other charges, from one year before the date of this Complaint to the present.

48. 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.

49. Defendant regularly engages in debt collection.

50. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a substantially similar form collection letter that states, “because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater,” but where the debt was not actually subject to interest, late charges, and other charges, from one year before the date of this Complaint to the present.

51. 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.

52. 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.

53. 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

54. 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: May 7, 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

csanders@barshaysanders.com

Attorneys for Plaintiff

Our File No.: 113396

P.O. Box 140065
Nashville, TN 37214

00113



CAPITALACCOUNTS

866.854.5359 (phone) • 800.296.3317 (fax)



67453-11A
Stacy Berkowitz
861 Village Dr
Hauppauge NY 11788-3212

Date: 05/11/2017
Account: [REDACTED] 1909
Creditor: BRIAN MARGOLIS MD
Balance: \$54.02

Dear Stacy Berkowitz:

Capital Accounts has been retained by BRIAN MARGOLIS MD to collect in full the above referenced delinquent obligation. An amicable resolution is desirable to us, and to you, we hope.

This is a demand for payment in full.

*****You can pay online or explore options at www.capitalbillpay.com*****

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 of any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a 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.

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

Pay by phone at 866.854.5359

Direct all payments to Capital Accounts

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

RETURN BOTTOM PORTION WHEN PAYING BY MAIL

Visa [] MasterCard [] AMEX [] Discover []

Card Holder Name: _____

Card Holder Signature: _____

CREDIT CARD NO.: \

□ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

EXPIRATION DATE:

PAYMENT AMOUNT:

□ □ □ □

\$ _____

Stacy Berkowitz
861 Village Dr
Hauppauge NY 11788



Account Number : [REDACTED] 1909
Amount Due Now : \$54.02

Capital Accounts
PO Box 140065
Nashville TN 37214-0065

Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you before depositing the payment for collection. For further information, write the undersigned or call 800-983-4730.

CO = 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.COAG.GOV/CAR

Our local address is 80 Garden Center, Suite 3, Broomfield, CO 80020. Our local phone number is 303-920-4763.

ME = Our hours of operation are Mon - Thu 8:30 am to 7:00 pm EST, Fri 8:30 am to 5:00 pm EST and Sat closed.

NC = North Carolina Department of Insurance permit number 103277.

TN = This collection agency is licensed by the Collection Service Board, State Department of Commerce and Insurance. 500 James Robertson Parkway, Nashville, Tennessee 37243.

CA = Nonprofit credit counseling services may be available in the area.

UT = 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. We will not submit a negative credit report to a credit reporting agency about this credit obligation until the expiration of the time period described on the front of this letter.

MN = This collection agency is licensed by the Minnesota Department of Commerce.

WI = This collection agency is licensed by the Division of Banking in the Wisconsin Department of Financial Institutions, www.wdfi.org.

IL = In accordance with 815 Ill. Comp. Stat. 205/1 and 205/2, we will assess interest at an annual rate of 5% beginning 30 days after the date of this letter.

NY = New York City Department of Consumer Affairs license number 1282141.

NY = 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: (i) the use or threat of violence; (ii) the use of obscene or profane language; and (iii) 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.

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Stacy Berkowitz, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

Capital Accounts, LLC

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Capital Accounts, LLC
c/o INCORP SERVICES INC
ONE COMMERCE PLAZA SUITE 805-A
99 WASHINGTON AVENUE
ALBANY, NEW YORK, 12210-2822

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: STACY BERKOWITZ
DEFENDANTS: CAPITAL ACCOUNTS, LLC
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC

II. BASIS OF JURISDICTION: U.S. Government Plaintiff
III. CITIZENSHIP OF PRINCIPAL PARTIES: Citizen of This State

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

VI. CAUSE OF ACTION: 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.

VIII. RELATED CASE(S) IF ANY: (See Instructions) JUDGE DOCKET NUMBER

DATE: May 8, 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: [Capital Accounts Hit with Class Action Alleging Multiple FDCPA Violations](#)
