

**BARSHAY SANDERS, PLLC**  
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Our File No.: 111501

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

Brian C. Bogart and Lawrence Fascella, individually and  
on behalf of all others similarly situated,

Plaintiffs,

vs.

Allied Interstate LLC,

Defendant.

Docket No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Brian C. Bogart and Lawrence Fascella, individually and on behalf of all others similarly situated (hereinafter referred to collectively as “*Plaintiffs*”), by and through the undersigned counsel, complain, state and allege against Allied Interstate 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.

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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 Brian C. Bogart is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff Lawrence Fascella is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

7. Plaintiffs are “consumers” as defined by 15 U.S.C. § 1692a(3).

8. On information and belief, Defendant’s principal place of business is located in New Albany, Ohio.

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

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

### ALLEGATIONS

11. Defendant alleges each of the Plaintiffs owe a debt (“the debt”).

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

13. Sometime after the incurrence of the debts, Plaintiffs fell behind on payments owed.

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

15. In its efforts to collect the debt, Defendant contacted Plaintiff Bogart by letter dated March 23, 2016. (“Exhibit 1.”)

16. In its efforts to collect the debt, Defendant contacted Plaintiff Fascella by letter dated May 2, 2016. (“Exhibit 1.”)

17. The letters were the initial communication to each Plaintiff received from Defendant.

18. The letters are “communications” as defined by 15 U.S.C. § 1692a(2).

19. 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.

20. 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.

21. There is no requirement that the consumer dispute the debt in writing.

22. It is a violation of FDCPA to require disputes be made in writing.

23. It is a violation of the FDCPA to include language in the letter that overshadows the required 15 U.S.C. § 1692g(3) statement.

24. It is a violation of the FDCPA to include language in the letter that contradicts the required 15 U.S.C. § 1692g(3) statement.

25. 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 § 1692g(a)(3) statement.

26. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.

27. 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 her dispute must be in writing.

28. Defendant's letter to Plaintiff dictate that Plaintiff should correspond with Defendant, other than payments, at: Allied Interstate LLC, PO Box 361445, Columbus, Ohio, 43236.

29. Disputes need not be in writing. *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282 (2d Cir. 2013)

30. Disputes may be made orally.

31. The language concerning written disputes overshadows the required 15 U.S.C. § 1692g(3) statement.

32. The language concerning written disputes contradicts the required 15 U.S.C. § 1692g(3) statement.

33. The language concerning written disputes, when examined from the perspective

of the least sophisticated consumer, overshadows the required § 1692g(a)(3) statement.

34. The language concerning written disputes, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.

35. 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.

36. Defendant has violated § 1692g as the above-referenced language overshadows the information required to be provided by that Section. *See Vetrano v. CBE Grp., Inc.*, 2016 WL 4083384 (E.D.N.Y. Aug. 1, 2016).

37. 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.

38. 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.

39. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.

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

41. The collection letters could be reasonably interpreted by the least sophisticated consumer as incorrectly representing that a dispute must be communicated in writing. *See Vetrano v. CBE Grp., Inc.*, 2016 WL 4083384 (E.D.N.Y. Aug. 1, 2016).

42. Because Defendant’s letter is reasonably susceptible to an inaccurate reading, as described above, it is deceptive within the meaning of the FDCPA.

43. The least sophisticated consumer would likely be deceived by the letter.

44. The least sophisticated consumer would likely be deceived in a material way by the letter.

45. The misrepresentation is material because it could impede the least sophisticated consumer’s ability to respond to the letter or dispute the debt.

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

### 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 the same unlawful form letter herein, 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 § 1692k(a)(2) of the FDCPA.

49. Defendant regularly engages in debt collection, using the same unlawful letter described herein, in its attempts to collect delinquent consumer debts from other persons.

50. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using the same unlawful letter described herein.

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 the FDCPA.





877-476-5222

March 23, 2016

Brian C Bogart  
19 Schuyler Dr  
Commack, NY 11725-4018

Re: Old Navy Credit Card Account  
Creditor: Synchrony Bank Account No. \*\*\*\*\*2311  
Amount Owed: \$1,066.00  
Reference No.: [REDACTED] 6308

Brian C Bogart:

We are a debt collection company and Synchrony Bank has contracted with us to collect the debt noted above. This is an attempt to collect a debt and any information obtained will be used for that purpose.

As of the date of this letter, the Amount Owed is \$1,066.00. Because the creditor continues to assess interest on the debt, the amount due on the day you pay may be greater. Hence, if you pay the Amount Owed shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you of any remaining balance. To make a payment, please telephone us at 877-476-5222 or mail your payment using the coupon on the reverse side of this letter. You may also pay your balance online. Please visit [eservice.oldnavy.com](http://eservice.oldnavy.com), a safe and secure website. By sending us a check or giving us your checking account information for payment, you authorize us to collect funds electronically, in which case your check may not be returned to you. We may also arrange for a direct debit from your checking account.

Unless you notify us within 30 days after receiving this letter that you dispute the validity of this debt or any portion thereof, we will assume that this debt is valid. If you notify us in writing within 30 days after receiving this letter that you dispute the validity of this debt, or any portion thereof, we will obtain and mail to you verification of the debt or a copy of a judgment. If you request of us in writing within 30 days after receiving this letter, we will provide you with the name and address of the original creditor, if different from the current creditor.

We look forward to receiving your payment.

Sincerely,  
Allied Interstate LLC  
Jeffrey Swedberg

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, 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);                     | 7. Workers' compensation benefits;   |
| 2. Social security;   | 8. Public or private pensions;   |
| 3. Public assistance (welfare);                             | 9. Veterans' benefits;   |
| 4. Spousal support, maintenance (alimony) or child support; | 10. Federal student loans, federal student grants, and federal work study funds; and |
| 5. Unemployment benefits;                                   | 11. Ninety percent of your wages or salary earned in the last sixty days.            |
| 6. Disability benefits;                                     |  |

7525 West Campus Road, New Albany, OH  
(Do not send payments or correspondence to this address)

If you have a question or comment, please (i) write us at P.O. Box 361445, Columbus, OH 43236; (ii) email us at: [advocacygroup@allied-interstate.com](mailto:advocacygroup@allied-interstate.com), or, (iii) call us toll-free at (800)-811-4214 between 9:00 AM Eastern Time and 6:00 PM Eastern Time Monday through Friday.

New York City Department of Consumer Affairs license numbers: 1474413-DCA, 1473185-DCA, 1473141-DCA, 1473196-DCA, 1473186-DCA, 1466817-DCA, 1473155-DCA, 1473165-DCA, 1473170-DCA, 1473181-DCA, 1473180-DCA, 1473198-DCA, 1473177-DCA, 1473174-DCA.

Correspond with Allied (other than payments) at: Allied Interstate LLC, PO Box 361445, Columbus, OH 43236

RETURN MAIL ONLY  
P.O.Box 1954  
Southgate, MI 48195-0954

(Detach and return with payment)

██████████ 6308 ██████████



0009989/0000001



Brian C Bogart  
19 Schuyler Dr  
Commack, NY 11725-4018

Synchrony Bank  
Old Navy  
P.O. Box 530942  
Atlanta, GA 30353-0942







May 2, 2016

Lawrence Fascella Jr  
299 Brettonwoods Dr  
Coram, NY 11727-3687

Re: Chase Bank USA, N.A Account Number ending in 2862  
Amount Owed: \$3,641.04  
Reference No.: [REDACTED] 9304

Lawrence Fascella Jr:

We are a debt collection company and our client, Chase Bank USA, N.A, has retained us to collect the debt noted above. This is an attempt to collect a debt and any information obtained will be used for that purpose.

As of the date of this letter, the Amount Owed is \$3,641.04. Because the creditor continues to assess interest on the debt, the amount due on the day you pay may be greater. Hence, if you pay the Amount Owed shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you of any remaining balance. To make a payment, please mail your payment using the coupon on the reverse side of this letter or telephone us at 877-488-3558. We process checks electronically and your checking account will be debited on the day we receive your payment. Your check will not be returned.

Unless you notify us within 30 days after receiving this letter that you dispute the validity of this debt or any portion thereof, we will assume that this debt is valid. If you notify us in writing within 30 days after receiving this letter that you dispute the validity of this debt, or any portion thereof, we will obtain and mail to you verification of the debt or a copy of a judgment. If you request of us in writing within 30 days after receiving this letter, we will provide you with the name and address of the original creditor, if different from the current creditor.

We look forward to receiving your payment.

Sincerely,

*Allied Interstate LLC*

Jeffrey Swedberg

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: BRIAN C. BOGART
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: ALLIED INTERSTATE LLC
County of Residence of First Listed Defendant: FRANKLIN
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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)
Grid with categories: U.S. Government Plaintiff/Defendant, Federal Question, Diversity, 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)
Grid with categories: 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 30, 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

Brian C. Bogart and Lawrence Fascella, individually
and on behalf of all others similarly situated

Plaintiff(s)

v.

Allied Interstate LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Allied Interstate LLC
C/O CT 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: Craig B. Sanders, Esq.
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: [FDCPA Lawsuit Filed Against Allied Interstate](#)

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