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Our File No.: 113882

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

Veronica M. Davis-Fisk, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

Richard J. Miller & Associates, P.C. d/b/a Miller &
Associates,

Defendant.

Docket No: 1:17-CV-1048 (MAD/CFH)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Veronica M. Davis-Fisk, 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 Richard J. Miller & Associates, P.C. d/b/a Miller & Associates (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 Veronica M. Davis-Fisk is an individual who is a citizen of the State of New York residing in Albany County, New York.

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

7. On information and belief, Defendant Richard J. Miller & Associates, P.C. d/b/a Miller & Associates, is a New York Professional Corporation with a principal place of business in Albany County, New York.

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 January 20, 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(a)(3)

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. 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.

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

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

22. 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.

23. Defendant's letter requires debt disputes be made in writing.

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

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

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

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

28. 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.

29. Defendant's conduct, as set forth above, violates § 1692g(a)(3).

CLASS ALLEGATIONS

30. 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 that requires debt disputes be made in writing, from one year before the date of this Complaint to the present.

31. 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.

32. Defendant regularly engages in debt collection.

33. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter that requires debt disputes be made in writing.

34. 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.

35. 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.

36. 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

37. 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: August 8, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

Craig B. Sanders, Esq.

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Our File No.: 113882

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January 20, 2017

VERONIC M DAVIS FISK
7 MANN AVE
COHOES, NY 12047

DEBT COLLECTION NOTICE

Creditor: St. Peter's Hospital
Case Number: [REDACTED] 2435
Claim Amount: \$1,101.16 Date of Service: 06/09/2016

TAKE NOTICE that we are a debt collector attempting to collect this debt and that any information obtained by this office will be used for that purpose.

TAKE FURTHER NOTICE that unless within 30 days after the receipt of this letter, you dispute the validity of this debt, or any portion of it in writing, we will assume the debt is valid. If you do so notify us in writing within the 30-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment (if applicable) and mail it to you. Also upon your written request within the 30-day period, we will provide you with the name and address of the original creditor, if different from the current creditor.

IF YOU had Medicaid or Insurance Coverage at the time these medical services were rendered, contact this office at (518) 465-7591 within the next 30 days and provide us with the specifics. If you did not have coverage, you must apply for insurance by calling the Hospital at (518)525-1565 or (518)471-3000.

THE HOSPITAL also offers financial assistance to those in need who qualify. To qualify, you must first exhaust the possibility of insurance coverage, as suggested, and then submit an application by telephoning this office.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, your failure to respond to this letter within the 30-day period may result in the continuation of our efforts to collect this debt and the reporting of this account to a credit reporting agency.

Kindly use our case number on your check or money order; thank you.

Very truly yours,

MILLER & ASSOCIATES

-Please see reverse side for important information-
A Professional Corporation

We are required by regulations of the State of New York to advise you of the following information. This is not legal advice:

That debt collectors, in accordance with the Federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., are prohibited from engaging in abusive, deceptive and unfair debt collection efforts, including, but not limited to:

- (a) the use or threat of violence;
- (b) the use of obscene or profane language; and
- (c) repeated phone calls made with intent to annoy, abuse or harass.

If a creditor or debt collector receives a money judgment against you in a Court Action, 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 60 days.

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: VERONICA M. DAVIS-FISK; (b) County of Residence of First Listed Plaintiff: ALBANY; (c) Attorneys: BARSHAY SANDERS, PLLC, 100 Garden City Plaza, Ste 500, Garden City, NY 11530, (516) 203-7600. DEFENDANTS: RICHARD J. MILLER & ASSOCIATES, P.C. D/B/A MILLER & ASSOCIATES; County of Residence of First Listed Defendant: ALBANY; 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): 01 U.S. Government Plaintiff, 03 Federal Question (U.S. Government Not a Party), 04 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, PIF, DEF.

IV. NATURE OF SUIT (Place an "X" in One Box Only): CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only): 01 Original Proceeding, 02 Removed from State Court, 03 Remanded from Appellate Court, 04 Reinstated or Reopened, 05 Transferred from Another District (specify), 06 Multidistrict Litigation - Transfer, 08 Multidistrict Litigation - Direct File.

VI. CAUSE OF ACTION: (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.) 15 USC §1692 - Fair Debt Collection Practices. VII. Previous Bankruptcy Matters: ((For nature of suite 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.))

VIII. 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

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

X. This Case (check one box) [] Is not a refiling of a previously dismissed action [] is a refiling of case number previously dismissed by Judge

DATE: September 21, 2017 SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders RECEIPT #: 0206-4140872 AMOUNT: \$400.00 APPLYING IFP: JUDGE: MAD MAG. JUDGE: CFH

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Richard J. Miller & Associates Unlawfully Demands Written Debt Disputes, Suit Says](#)
