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

Kara Deguardia, Andres F. Zuluaga and Douglas Handy,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

Encore Receivable Management, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Kara Deguardia, Andres F. Zuluaga and Douglas Handy, 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 Encore Receivable Management, 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 Kara Deguardia is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff Andres F. Zuluaga is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

7. Plaintiff Douglas Handy is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

9. On information and belief, Defendant Encore Receivable Management, Inc., is a Kansas Corporation with a principal place of business in JOHNSON County, Kansas.

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

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

ALLEGATIONS

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

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

14. Sometime after the incurrence of the Debts, Plaintiffs fell behind on payments owed.

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

16. In its efforts to collect the debt alleged owed by Plaintiff Deguardia, Defendant contacted Plaintiff Deguardia by letter (“the Deguardia Letter”) dated September 12, 2016. (“**Exhibit 1.**”)

17. In its efforts to collect the debt alleged owed by Plaintiff Zuluaga, Defendant contacted Plaintiff Zuluaga by letter (“the Zuluaga Letter”) dated August 30, 2016. (“**Exhibit 1.**”)

18. In its efforts to collect the debt alleged owed by Plaintiff Handy, Defendant contacted Plaintiff Handy by letter (“the Handy Letter”) dated September 21, 2016. (“**Exhibit 1.**”)

19. The Deguardia Letter was the initial communication Plaintiff Deguardia received from Defendant.

20. The Zuluaga Letter was the initial communication Plaintiff Zuluaga received from Defendant.

21. The Handy Letter was the initial communication Plaintiff Handy received from Defendant.

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

23. The Letters are identical in all material respects.

FIRST COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF DEGUARDIA

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

25. The Debt was incurred on a credit card underwritten by Synchrony Bank.

26. The Deguardia Letter sets forth a balance.

27. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff interest on any balance carried on the account.

28. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff late fees on any payments due but not timely made by Plaintiff.

29. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff other fees on the account.

30. The right to collect from Plaintiff interest on any balance carried on the account was not waived by Synchrony Bank.

31. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by Synchrony Bank.

32. The right to collect from Plaintiff other fees on the account was not waived by Synchrony Bank.

33. The right to collect from Plaintiff interest on any balance carried on the account

was not waived by any assignee or successor-in-interest.

34. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by any assignee or successor-in-interest.

35. The right to collect from Plaintiff other fees on the account was not waived by any assignee or successor-in-interest.

36. Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

37. Pursuant to the terms and conditions of the credit card, interest continued to accrue on any balance unpaid.

38. Pursuant to the terms and conditions of the credit card, late fees continued to accrue on any payments due but not timely made by Plaintiff.

39. Pursuant to the terms and conditions of the credit card, other fees continued to accrue on the account.

40. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest on any balance carried on the account.

41. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff.

42. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff other fees on the account.

43. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff interest on any balance carried on the account is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest.

44. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee

or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned late fees.

45. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff other fees on the account is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned other fees.

46. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

47. The Deguardia Letter failed to disclose that the balance stated may increase due to interest.

48. The Deguardia Letter failed to disclose that the balance stated may increase due to late fees.

49. The Deguardia Letter failed to disclose that the balance stated may increase due to other fees.

50. The Deguardia Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e.

SECOND COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF DEGUARDIA

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

52. Alternatively, even if Plaintiff's account was not subject to continued interest pursuant to the terms and conditions of the credit card – which it was – the account was subject to interest by operation of law.

53. Plaintiff's debt was incurred pursuant to a contract between Plaintiff and Synchrony Bank.

54. N.Y.C.P.L.R. § 5001(a) provides that interest shall be recovered upon a sum awarded because of a breach a contract.

55. An award of interest under § 5001 is mandatory.

56. N.Y.C.P.L.R. § 5001(b) provides that interest shall be computed from the earliest ascertainable date the cause of action existed.

57. Synchrony Bank and any assignee or successor-in-interest possessed a guaranteed right to interest on the Debt from, at the latest, the date of the Deguardia Letter.

58. As such, the amount stated in the Deguardia Letter was subject to the accrual of interest.

59. The Deguardia Letter failed to disclose that the amount stated may increase due to interest.

60. The Deguardia Letter, because of the aforementioned failure, violates 15 U.S.C. § 1692e.

THIRD COUNT
Violation of 15 U.S.C. § 1692g
AS TO PLAINTIFF DEGUARDIA

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

62. 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.

63. 15 U.S.C. § 1692g(a)(1) requires the written notice provide “the amount of the debt.”

64. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly from the perspective of the least sophisticated consumer.

65. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

66. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

67. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.

68. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least

sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.

69. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

70. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.

71. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).

72. The Deguardia Letter fails to indicate the minimum amount Plaintiff owed at the time of the Deguardia Letter.

73. The Deguardia Letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the Deguardia Letter.

74. The Deguardia Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

75. The Deguardia Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

76. The Deguardia Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

77. For instance, the Deguardia Letter fails to indicate the applicable interest rate.

78. For instance, the Deguardia Letter fails to indicate the date of accrual of interest.

79. For instance, the Deguardia Letter fails to indicate the amount of interest during any measurable period.

80. The Deguardia Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late fees owed.

81. For instance, the Deguardia Letter fails to indicate the amount of late fees.

82. For instance, the Deguardia Letter fails to indicate the date such fees will be added.

83. For instance, the Deguardia Letter fails to indicate the amount of late fees during any measurable period.

84. The Deguardia Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

85. The Deguardia Letter fails to state whether interest, late fees and/or other fees are accruing.

86. The Deguardia Letter fails to state what part of the amount stated is attributable to principal.

87. The Deguardia Letter fails to state what part of the amount stated is attributable to interest.

88. The Deguardia Letter fails to state what part of the amount stated is attributable to late fees.

89. The Deguardia Letter fails to state what part of the amount stated is attributable to other fees.

90. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Deguardia Letter.

91. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

92. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

93. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

94. The Deguardia Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

95. The Deguardia Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

96. The Deguardia Letter, because of the aforementioned failures, did not convey “the

amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

97. The Deguardia Letter, because of the aforementioned failures, renders the statement of the amount of the debt, even if otherwise accurate, violative of 15 U.S.C. § 1692g(a)(1).

98. The Deguardia Letter, because of the aforementioned failures, did not adequately set forth “the amount of the debt” as required by 15 U.S.C. § 1692g.

99. The Deguardia Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692g.

FOURTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF DEGUARDIA

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

101. As previously set forth, the Deguardia Letter sets forth a balance.

102. As previously set forth, Plaintiff was always charged interest on any balance carried on the account.

103. As previously set forth, Plaintiff was always charged late fees on any payments due but not timely made by Plaintiff.

104. As previously set forth, Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

105. The Deguardia Letter fails to disclose whether the amount stated may increase due to additional interest.

106. The Deguardia Letter fails to disclose whether the amount stated may increase due to additional late fees.

107. The Deguardia Letter fails to indicate whether the creditor will accept payment of the amount stated in full satisfaction of the debt if payment is made by a specified date.

108. A collection letter violates 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.

109. The Deguardia Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by

anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that interest was still accruing.

110. The Deguardia Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that late fees were still accruing.

111. The Deguardia Letter could also reasonably be read by the least sophisticated consumer to mean that interest was no longer accruing.

112. The Deguardia Letter could also reasonably be read by the least sophisticated consumer to mean that late fees were no longer accruing.

113. The Deguardia Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated.

114. The Deguardia Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the Deguardia Letter.

115. The Deguardia Letter could also reasonably be read by the least sophisticated consumer to mean that the amount stated was accurate only on the date of the Deguardia Letter because of the continued accumulation of interest and/or late fees.

116. Because the Deguardia 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.

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

FIFTH COUNT
Violation of 15 U.S.C. §§ 1692e and 1692g
Amount of the Debt
AS TO PLAINTIFF DEGUARDIA

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

119. The Deguardia Letter states, “Your Total Account Balance and Total Amount Due on the day you pay may be greater than the amounts listed above as a result of finance charges, late fees or other fees imposed on your account from day to day as outlined in terms of your account and your account agreement.”

120. The Deguardia Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

121. The Deguardia Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

122. The Deguardia Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

123. For instance, the Deguardia Letter fails to indicate the applicable interest rate.

124. For instance, the Deguardia Letter fails to indicate the date of accrual of interest.

125. For instance, the Deguardia Letter fails to indicate the amount of interest during any measurable period.

126. The Deguardia Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

127. The Deguardia Letter fails to state what part of the amount stated is attributable to principal.

128. The Deguardia Letter fails to state what part of the amount stated is attributable to interest.

129. The Deguardia Letter fails to state what part of the amount stated is attributable to late fees.

130. The Deguardia Letter fails to state what part of the amount stated is attributable to other fees.

131. The Deguardia Letter fails to state that the creditor will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date.

132. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Deguardia Letter.

133. The Deguardia Letter, because of the aforementioned failures, would render the

least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

134. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

135. The Deguardia Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

136. The Deguardia Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

137. The Deguardia Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

138. The Deguardia Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

139. The Deguardia Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e and 15 U.S.C. § 1692g. *See Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

SIXTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF ZULUAGA

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

141. The Debt was incurred on a credit card underwritten by Synchrony Bank.

142. The Zuluaga Letter sets forth a balance.

143. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff interest on any balance carried on the account.

144. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff late fees on any payments due but not timely made by Plaintiff.

145. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff other fees on the account.

146. The right to collect from Plaintiff interest on any balance carried on the account was not waived by Synchrony Bank.

147. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by Synchrony Bank.

148. The right to collect from Plaintiff other fees on the account was not waived by Synchrony Bank.

149. The right to collect from Plaintiff interest on any balance carried on the account was not waived by any assignee or successor-in-interest.

150. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by any assignee or successor-in-interest.

151. The right to collect from Plaintiff other fees on the account was not waived by any assignee or successor-in-interest.

152. Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

153. Pursuant to the terms and conditions of the credit card, interest continued to accrue on any balance unpaid.

154. Pursuant to the terms and conditions of the credit card, late fees continued to accrue on any payments due but not timely made by Plaintiff.

155. Pursuant to the terms and conditions of the credit card, other fees continued to accrue on the account.

156. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest on any balance carried on the account.

157. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff.

158. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff other fees on the account.

159. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff interest on any

balance carried on the account is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest.

160. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned late fees.

161. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff other fees on the account is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned other fees.

162. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

163. The Zuluaga Letter failed to disclose that the balance stated may increase due to interest.

164. The Zuluaga Letter failed to disclose that the balance stated may increase due to late fees.

165. The Zuluaga Letter failed to disclose that the balance stated may increase due to other fees.

166. The Zuluaga Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e.

SEVENTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF ZULUAGA

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

168. Alternatively, even if Plaintiff's account was not subject to continued interest pursuant to the terms and conditions of the credit card – which it was – the account was subject to interest by operation of law.

169. Plaintiff's debt was incurred pursuant to a contract between Plaintiff and Synchrony Bank.

170. N.Y.C.P.L.R. § 5001(a) provides that interest shall be recovered upon a sum awarded because of a breach a contract.

171. An award of interest under § 5001 is mandatory.

172. N.Y.C.P.L.R. § 5001(b) provides that interest shall be computed from the earliest ascertainable date the cause of action existed.

173. Synchrony Bank and any assignee or successor-in-interest possessed a guaranteed right to interest on the Debt from, at the latest, the date of the Zuluaga Letter.

174. As such, the amount stated in the Zuluaga Letter was subject to the accrual of interest.

175. The Zuluaga Letter failed to disclose that the amount stated may increase due to interest.

176. The Zuluaga Letter, because of the aforementioned failure, violates 15 U.S.C. § 1692e.

EIGHTH COUNT
Violation of 15 U.S.C. § 1692g
AS TO PLAINTIFF ZULUAGA

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

178. 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.

179. 15 U.S.C. § 1692g(a)(1) requires the written notice provide “the amount of the debt.”

180. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the

amount of the debt clearly from the perspective of the least sophisticated consumer.

181. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

182. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

183. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.

184. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.

185. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

186. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.

187. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).

188. The Zuluaga Letter fails to indicate the minimum amount Plaintiff owed at the time of the Zuluaga Letter.

189. The Zuluaga Letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the Zuluaga Letter.

190. The Zuluaga Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

191. The Zuluaga Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

192. The Zuluaga Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

193. For instance, the Zuluaga Letter fails to indicate the applicable interest rate.

194. For instance, the Zuluaga Letter fails to indicate the date of accrual of interest.

195. For instance, the Zuluaga Letter fails to indicate the amount of interest during any measurable period.

196. The Zuluaga Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late fees owed.

197. For instance, the Zuluaga Letter fails to indicate the amount of late fees.

198. For instance, the Zuluaga Letter fails to indicate the date such fees will be added.

199. For instance, the Zuluaga Letter fails to indicate the amount of late fees during any measurable period.

200. The Zuluaga Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

201. The Zuluaga Letter fails to state whether interest, late fees and/or other fees are accruing.

202. The Zuluaga Letter fails to state what part of the amount stated is attributable to principal.

203. The Zuluaga Letter fails to state what part of the amount stated is attributable to interest.

204. The Zuluaga Letter fails to state what part of the amount stated is attributable to late fees.

205. The Zuluaga Letter fails to state what part of the amount stated is attributable to other fees.

206. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Zuluaga Letter.

207. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

208. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

209. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer

would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

210. The Zuluaga Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

211. The Zuluaga Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

212. The Zuluaga Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

213. The Zuluaga Letter, because of the aforementioned failures, renders the statement of the amount of the debt, even if otherwise accurate, violative of 15 U.S.C. § 1692g(a)(1).

214. The Zuluaga Letter, because of the aforementioned failures, did not adequately set forth “the amount of the debt” as required by 15 U.S.C. § 1692g.

215. The Zuluaga Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692g.

NINTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF ZULUAGA

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

217. As previously set forth, the Zuluaga Letter sets forth a balance.

218. As previously set forth, Plaintiff was always charged interest on any balance carried on the account.

219. As previously set forth, Plaintiff was always charged late fees on any payments due but not timely made by Plaintiff.

220. As previously set forth, Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

221. The Zuluaga Letter fails to disclose whether the amount stated may increase due to additional interest.

222. The Zuluaga Letter fails to disclose whether the amount stated may increase due to additional late fees.

223. The Zuluaga Letter fails to indicate whether the creditor will accept payment of the amount stated in full satisfaction of the debt if payment is made by a specified date.

224. A collection letter violates 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.

225. The Zuluaga Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that interest was still accruing.

226. The Zuluaga Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that late fees were still accruing.

227. The Zuluaga Letter could also reasonably be read by the least sophisticated consumer to mean that interest was no longer accruing.

228. The Zuluaga Letter could also reasonably be read by the least sophisticated consumer to mean that late fees were no longer accruing.

229. The Zuluaga Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated.

230. The Zuluaga Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the Zuluaga Letter.

231. The Zuluaga Letter could also reasonably be read by the least sophisticated consumer to mean that the amount stated was accurate only on the date of the Zuluaga Letter because of the continued accumulation of interest and/or late fees.

232. Because the Zuluaga 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.

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

TENTH COUNT
Violation of 15 U.S.C. §§ 1692e and 1692g
Amount of the Debt

AS TO PLAINTIFF DEGUARDIA

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

235. The Zuluaga Letter states, “Your Total Account Balance and Total Amount Due on the day you pay may be greater than the amounts listed above as a result of finance charges, late fees or other fees imposed on your account from day to day as outlined in terms of your account and your account agreement.”

236. The Zuluaga Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

237. The Zuluaga Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

238. The Zuluaga Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

239. For instance, the Zuluaga Letter fails to indicate the applicable interest rate.

240. For instance, the Zuluaga Letter fails to indicate the date of accrual of interest.

241. For instance, the Zuluaga Letter fails to indicate the amount of interest during any measurable period.

242. The Zuluaga Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

243. The Zuluaga Letter fails to state what part of the amount stated is attributable to principal.

244. The Zuluaga Letter fails to state what part of the amount stated is attributable to interest.

245. The Zuluaga Letter fails to state what part of the amount stated is attributable to late fees.

246. The Zuluaga Letter fails to state what part of the amount stated is attributable to other fees.

247. The Zuluaga Letter fails to state that the creditor will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date.

248. The Zuluaga Letter, because of the aforementioned failures, would render the

least sophisticated consumer unable to determine the minimum amount owed at the time of the Zuluaga Letter.

249. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

250. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

251. The Zuluaga Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

252. The Zuluaga Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

253. The Zuluaga Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

254. The Zuluaga Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

255. The Zuluaga Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e and 15 U.S.C. § 1692g. *See Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

ELEVENTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF HANDY

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

257. The Debt was incurred on a credit card underwritten by Synchrony Bank.

258. The Handy Letter sets forth a balance.

259. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff interest on any balance carried on the account.

260. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged

Plaintiff late fees on any payments due but not timely made by Plaintiff.

261. Pursuant to the terms and conditions of the credit card, Synchrony Bank charged Plaintiff other fees on the account.

262. The right to collect from Plaintiff interest on any balance carried on the account was not waived by Synchrony Bank.

263. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by Synchrony Bank.

264. The right to collect from Plaintiff other fees on the account was not waived by Synchrony Bank.

265. The right to collect from Plaintiff interest on any balance carried on the account was not waived by any assignee or successor-in-interest.

266. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by any assignee or successor-in-interest.

267. The right to collect from Plaintiff other fees on the account was not waived by any assignee or successor-in-interest.

268. Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

269. Pursuant to the terms and conditions of the credit card, interest continued to accrue on any balance unpaid.

270. Pursuant to the terms and conditions of the credit card, late fees continued to accrue on any payments due but not timely made by Plaintiff.

271. Pursuant to the terms and conditions of the credit card, other fees continued to accrue on the account.

272. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest on any balance carried on the account.

273. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff.

274. Pursuant to the terms and conditions of the credit card, Synchrony Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff other fees on the

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100 GARDEN CITY PLAZA, SUITE 500
GARDEN CITY, NEW YORK 11530

account.

275. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff interest on any balance carried on the account is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest.

276. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned late fees.

277. Pursuant to the terms and conditions of the credit card, the legal right of Synchrony Bank and any assignee or successor-in-interest to collect from Plaintiff other fees on the account is not waived by Synchrony Bank or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned other fees.

278. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

279. The Handy Letter failed to disclose that the balance stated may increase due to interest.

280. The Handy Letter failed to disclose that the balance stated may increase due to late fees.

281. The Handy Letter failed to disclose that the balance stated may increase due to other fees.

282. The Handy Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e.

TWELFTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF HANDY

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

284. Alternatively, even if Plaintiff's account was not subject to continued interest pursuant to the terms and conditions of the credit card – which it was – the account was subject to interest by operation of law.

285. Plaintiff's debt was incurred pursuant to a contract between Plaintiff and Synchrony Bank.

286. N.Y.C.P.L.R. § 5001(a) provides that interest shall be recovered upon a sum awarded because of a breach a contract.

287. An award of interest under § 5001 is mandatory.

288. N.Y.C.P.L.R. § 5001(b) provides that interest shall be computed from the earliest ascertainable date the cause of action existed.

289. Synchrony Bank and any assignee or successor-in-interest possessed a guaranteed right to interest on the Debt from, at the latest, the date of the Handy Letter.

290. As such, the amount stated in the Handy Letter was subject to the accrual of interest.

291. The Handy Letter failed to disclose that the amount stated may increase due to interest.

292. The Handy Letter, because of the aforementioned failure, violates 15 U.S.C. § 1692e.

THIRTEENTH COUNT
Violation of 15 U.S.C. § 1692g
AS TO PLAINTIFF HANDY

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

294. 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.

295. 15 U.S.C. § 1692g(a)(1) requires the written notice provide “the amount of the

debt.”

296. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly from the perspective of the least sophisticated consumer.

297. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

298. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

299. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.

300. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.

301. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

302. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.

303. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).

304. The Handy Letter fails to indicate the minimum amount Plaintiff owed at the time of the Handy Letter.

305. The Handy Letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the Handy Letter.

306. The Handy Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

307. The Handy Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

308. The Handy Letter fails to provide information that would allow the least

sophisticated consumer to determine the amount of interest owed.

309. For instance, the Handy Letter fails to indicate the applicable interest rate.

310. For instance, the Handy Letter fails to indicate the date of accrual of interest.

311. For instance, the Handy Letter fails to indicate the amount of interest during any measurable period.

312. The Handy Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late fees owed.

313. For instance, the Handy Letter fails to indicate the amount of late fees.

314. For instance, the Handy Letter fails to indicate the date such fees will be added.

315. For instance, the Handy Letter fails to indicate the amount of late fees during any measurable period.

316. The Handy Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

317. The Handy Letter fails to state whether interest, late fees and/or other fees are accruing.

318. The Handy Letter fails to state what part of the amount stated is attributable to principal.

319. The Handy Letter fails to state what part of the amount stated is attributable to interest.

320. The Handy Letter fails to state what part of the amount stated is attributable to late fees.

321. The Handy Letter fails to state what part of the amount stated is attributable to other fees.

322. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Handy Letter.

323. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

324. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

325. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

326. The Handy Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

327. The Handy Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

328. The Handy Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

329. The Handy Letter, because of the aforementioned failures, renders the statement of the amount of the debt, even if otherwise accurate, violative of 15 U.S.C. § 1692g(a)(1).

330. The Handy Letter, because of the aforementioned failures, did not adequately set forth “the amount of the debt” as required by 15 U.S.C. § 1692g.

331. The Handy Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692g.

FOURTEENTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF HANDY

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

333. As previously set forth, the Handy Letter sets forth a balance.

334. As previously set forth, Plaintiff was always charged interest on any balance carried on the account.

335. As previously set forth, Plaintiff was always charged late fees on any payments due but not timely made by Plaintiff.

336. As previously set forth, Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

337. The Handy Letter fails to disclose whether the amount stated may increase due to additional interest.

338. The Handy Letter fails to disclose whether the amount stated may increase due to additional late fees.

339. The Handy Letter fails to indicate whether the creditor will accept payment of the amount stated in full satisfaction of the debt if payment is made by a specified date.

340. A collection letter violates 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.

341. The Handy Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that interest was still accruing.

342. The Handy Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that late fees were still accruing.

343. The Handy Letter could also reasonably be read by the least sophisticated consumer to mean that interest was no longer accruing.

344. The Handy Letter could also reasonably be read by the least sophisticated consumer to mean that late fees were no longer accruing.

345. The Handy Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated.

346. The Handy Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the Handy Letter.

347. The Handy Letter could also reasonably be read by the least sophisticated consumer to mean that the amount stated was accurate only on the date of the Handy Letter because of the continued accumulation of interest and/or late fees.

348. Because the Handy 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.

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

FIFTEENTH COUNT
Violation of 15 U.S.C. §§ 1692e and 1692g
Amount of the Debt
AS TO PLAINTIFF HANDY

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

351. The Handy Letter states, “Your Total Account Balance and Total Amount Due on the day you pay may be greater than the amounts listed above as a result of finance charges, late fees or other fees imposed on your account from day to day as outlined in terms of your account and your account agreement.”

352. The Handy Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

353. The Handy Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

354. The Handy Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

355. For instance, the Handy Letter fails to indicate the applicable interest rate.

356. For instance, the Handy Letter fails to indicate the date of accrual of interest.

357. For instance, the Handy Letter fails to indicate the amount of interest during any measurable period.

358. The Handy Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

359. The Handy Letter fails to state what part of the amount stated is attributable to principal.

360. The Handy Letter fails to state what part of the amount stated is attributable to interest.

361. The Handy Letter fails to state what part of the amount stated is attributable to late fees.

362. The Handy Letter fails to state what part of the amount stated is attributable to other fees.

363. The Handy Letter fails to state that the creditor will accept payment of the amount

set forth in full satisfaction of the debt if payment is made by a specified date.

364. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Handy Letter.

365. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

366. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

367. The Handy Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

368. The Handy Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

369. The Handy Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

370. The Handy Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

371. The Handy Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e and 15 U.S.C. § 1692g. *See Balke v. Alliance One Receivables Management, Inc.*, No. 16-CV-5624(ADS)(AKT), 2017 WL 2634653 (E.D.N.Y. June 19, 2017).

SIXTEENTH COUNT
Violation of 15 U.S.C. § 1692g
AS TO ALL PLAINTIFFS

372. Plaintiffs repeat and reallege the foregoing paragraphs as if fully restated herein.

373. 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.

374. The written notice must contain the amount of the debt.

375. The written notice must contain the name of the creditor to whom the debt is owed.

376. The written notice must contain 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.

377. The written notice must contain a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.

378. The written notice must contain a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

379. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly.

380. A debt collector has the obligation, not just to convey the required information, but also to convey such effectively.

381. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly, so that the least sophisticated consumer will not be uncertain as to her rights.

382. A debt collector has the obligation, not just to convey the required information, but also to convey such effectively, so that the least sophisticated consumer will not be uncertain as to her rights.

383. While Defendant's letters contain the validation language required by 15 U.S.C. § 1692g, such is written in a font so small that it is difficult to read, and easy to overlook.

384. While Defendant's letters contain the validation language required by 15 U.S.C. § 1692g, such is written in a font so small that it encourages the least sophisticated consumer to believe that the language is unimportant.

385. While Defendant's letters contain the validation language required by 15 U.S.C. § 1692g, such is written in a font so small that it discourages the least sophisticated consumer from

reading it.

386. Defendant has failed to adequately set forth the language required by 15 U.S.C. § 1692g.

387. Defendant has failed to clearly set forth the language required by 15 U.S.C. § 1692g.

388. Defendant's conduct would likely make the least sophisticated consumer uncertain as to her rights.

389. Defendant's conduct would likely make the least sophisticated consumer confused as to her rights.

390. Defendant's conduct would likely make the least sophisticated consumer overlook her rights.

391. Defendant has violated § 1692g as the above-referenced language overshadows the information required to be provided by that Section.

CLASS ALLEGATIONS

392. Plaintiffs bring 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 materially identical to those used herein, from one year before the date of this Complaint to the present.

393. 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.

394. Defendant regularly engages in debt collection.

395. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter materially identical to those used herein.

396. Plaintiffs' 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.

397. 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.

398. Plaintiffs 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, Plaintiffs have retained counsel experienced in actions brought under consumer protection laws.

JURY DEMAND

399. Plaintiffs hereby demand a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiffs as Class Representatives of the Class, and Plaintiffs' 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 Plaintiffs' attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- f. Grant Plaintiffs' costs; together with
- g. Such other relief that the Court determines is just and proper.

DATED: August 21, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders
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Encore Receivable Management, Inc.

A C O N V E R G Y S C O M P A N Y

400 N Rogers Rd * PO Box 3330 * Olathe KS 66063-3330
Telephone: 866-247-1087

ADDRESS SERVICE REQUESTED

September 12 2016

CONV0400 NY
██████████ 4359

KARA DEGUARDIA
6 ETHEL ST
EAST PATCHOGUE NY 11772-4721

Creditor: Synchrony Bank
Re: P C RICHARD & SON
For Account Ending in: XXXXXXXXXXXXX6139
Encore Account #: ██████████ 7442
Total Account Balance: \$2,321.00
Total Amount Due: \$357.00



Dear KARA DEGUARDIA:

The above referenced account has been referred to our office for collection. Previous attempts have been made by the creditor to obtain payment of this debt. As of this date, those attempts have not been successful.

Note: As of the date of this letter, your Total Account Balance is \$2,321.00 of which \$357.00 represents the Total Amount Due. Your Total Account Balance and Total Amount Due on the day you pay may be greater than the amounts listed above as a result of finance charges, late fees or other fees imposed on your account from day to day as outlined in the terms of your account and your account agreement. For further information, call or write us.

Please detach the lower portion of this notice and return with your payment in the enclosed envelope or call us at the above number if you would like to make a payment using a check by telephone. You can also log on and pay at www.mysynchrony.com.

Note: If payment has already been made, please notify this office at 866-247-1087 or by writing to Encore at the address listed below.

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 a copy of such judgment or verification. If you request 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 from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

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); | 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. | |

ENCORE RECEIVABLE MANAGEMENT, INC. • 400 N Rogers Rd. • PO Box 3330 • Olathe KS 66063-3330 • 866-247-1087

*** Detach Lower Portion and Return With Payment ***

Creditor: Synchrony Bank
Re: P C RICHARD & SON
For Account Ending in: XXXXXXXXXXXXX6139
Encore Account #: ██████████ 7442
Total Account Balance: \$2,321.00
Total Amount Due: \$357.00

CONV0400 NY

P C RICHARD & SON
P.O. Box 960061
Orlando FL 32896-0061

KARA DEGUARDIA
6 ETHEL ST
EAST PATCHOGUE NY 11772-4721

Encore Receivable Management, Inc.

A C O N V E R G Y S C O M P A N Y

400 N Rogers Rd * PO Box 3330 * Olathe KS 66063-3330
Telephone: 866-247-1087

ADDRESS SERVICE REQUESTED

August 30 2016

CONV0400 NY
102069105089947

ANDRES F ZULUAGA
3 PATCHOGUE DR
ROCKY POINT NY 11778-9645

Creditor: Synchrony Bank
Re: P C RICHARD & SON
For Account Ending in: XXXXXXXXXXXXXXX9993
Encore Account #: [REDACTED] 1703
Total Account Balance: \$1,599.00
Total Amount Due: \$332.00



Dear ANDRES F ZULUAGA:

The above referenced account has been referred to our office for collection. Previous attempts have been made by the creditor to obtain payment of this debt. As of this date, those attempts have not been successful.

Note: As of the date of this letter, your Total Account Balance is \$1,599.00 of which \$332.00 represents the Total Amount Due. Your Total Account Balance and Total Amount Due on the day you pay may be greater than the amounts listed above as a result of finance charges, late fees or other fees imposed on your account from day to day as outlined in the terms of your account and your account agreement. For further information, call or write us.

Please detach the lower portion of this notice and return with your payment in the enclosed envelope or call us at the above number if you would like to make a payment using a check by telephone. You can also log on and pay at www.mvsynchrony.com.

Note: If payment has already been made, please notify this office at 866-247-1087 or by writing to Encore at the address listed below.

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 a copy of such judgment or verification. If you request 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 from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

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); | 2. Social security; |
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| 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. | |

ENCORE RECEIVABLE MANAGEMENT, INC. • 400 N Rogers Rd • PO Box 3330 • Olathe KS 66063-3330 • 866-247-1087

*** Detach Lower Portion and Return With Payment ***

Creditor: Synchrony Bank
Re: P C RICHARD & SON
For Account Ending in: XXXXXXXXXXXXXXX9993
Encore Account #: [REDACTED] 1703
Total Account Balance: \$1,599.00
Total Amount Due: \$332.00

CONV0400 NY

P C RICHARD & SON
P. O. Box 960061
Orlando FL 32896-0061

ANDRES F ZULUAGA
3 PATCHOGUE DR
ROCKY POINT NY 11778-9645

A C O N V E R G Y S C O M P A N Y

400 N Rogers Rd * PO Box 3330 * Olathe KS 66063-3330
Telephone: 866-247-1087

ADDRESS SERVICE REQUESTED

September 21 2016

CONV0400 NY
102069106210006

HOLLY J HANDY
DOUGLAS E HANDY
280 BELMORE AVE APT 162
EAST ISLIP NY 11730-1323

Creditor: Synchrony Bank
Re: CARECREDIT
For Account Ending in: XXXXXXXXXXXXX1746
Encore Account #: [REDACTED] 0666
Total Account Balance: \$627.00
Total Amount Due: \$173.00



Dear HOLLY J HANDY & DOUGLAS E HANDY:

The above referenced account has been referred to our office for collection. Previous attempts have been made by the creditor to obtain payment of this debt. As of this date, those attempts have not been successful.

Note: As of the date of this letter, your Total Account Balance is \$627.00 of which \$173.00 represents the Total Amount Due. Your Total Account Balance and Total Amount Due on the day you pay may be greater than the amounts listed above as a result of finance charges, late fees or other fees imposed on your account from day to day as outlined in the terms of your account and your account agreement. For further information, call or write us.

Please detach the lower portion of this notice and return with your payment in the enclosed envelope or call us at the above number if you would like to make a payment using a check by telephone. You can also log on and pay at www.mysynchrony.com.

Note: If payment has already been made, please notify this office at 866-247-1087 or by writing to Encore at the address listed below.

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 a copy of such judgment or verification. If you request 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 from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

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:

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- (ii) the use of obscene or profane language; and
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| 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. | |

ENCORE RECEIVABLE MANAGEMENT, INC. • 400 N Rogers Rd • PO Box 3330 • Olathe KS 66063-3330 • 866-247-1087

*** Detach Lower Portion and Return With Payment ***

Creditor: Synchrony Bank
Re: CARECREDIT
For Account Ending in: XXXXXXXXXXXXX1746
Encore Account #: [REDACTED] 0666
Total Account Balance: \$627.00
Total Amount Due: \$173.00

CONV0400 NY

CARECREDIT
P.O. Box 960061
Orlando FL 32896-0061

HOLLY J HANDY
DOUGLAS E HANDY
280 BELMORE AVE APT 162
EAST ISLIP NY 11730-1323

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Kara Deguardia, Andres F. Zuluaga and Douglas Handy, individually and on behalf of all others similarly situated)	
)	
)	
<i>Plaintiff(s)</i>)	Civil Action No.
)	
v.)	
)	
Encore Receivable Management, Inc.)	
<i>Defendant(s)</i>		

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Encore Receivable Management, Inc.
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:

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: KARA DEGUARDIA
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: ENCORE RECEIVABLE MANAGEMENT, INC.
County of Residence of First Listed Defendant: JOHNSON
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: August 21, 2017
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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three Plaintiffs Bring FDCPA Lawsuit Against Encore Receivable Management](#)
