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Attorneys for Plaintiff
Our File No.: 110810

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

Sean Desmond, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CAC Financial Corp,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Sean Desmond, 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 CAC Financial Corp (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 Sean Desmond is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

7. On information and belief, Defendant CAC Financial Corp, is an Oklahoma Corporation with a principal place of business in Oklahoma County, Oklahoma.

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. The debt was incurred on a credit card issued by Synchrony Bank.

14. At all relevant times herein, Plaintiff’s debt accrued, and was subject to, interest.

15. At all relevant times herein, Plaintiff’s debt accrued, and was subject to, late fees.

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

17. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the letter”) dated April 12, 2016. (“Exhibit 1.”)

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

19. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

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

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

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

inaccurate.

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

24. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose whether the balance may increase due to interest and fees. *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

25. A debt collector has the obligation not just to convey the amount of the debt, but to convey such clearly.

26. The letter sets forth an “Amount.”

27. The letter fails to disclose whether the “Amount” may increase due to additional interest.

28. The letter fails to disclose whether the “Amount” may increase due to additional late fees.

29. The letter fails to indicate whether payment of the amount stated would satisfy the debt.

30. The letter fails to indicate whether payment of the amount stated by any date certain would satisfy the debt.

31. The letter fails to include any “safe harbor” language concerning the accrual of interest and/or fees. *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

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

33. The letter because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or 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.

34. The letter, because of the aforementioned failures, could be read by the least sophisticated consumer to mean that the “Amount” was static.

35. The letter, because of the aforementioned failures, could also reasonably read the letter to mean that the “Amount” was dynamic due to the continued accumulation of interest and/or late fees.

36. Because the letter is susceptible to an inaccurate reading by the least sophisticated

consumer, as described, it is deceptive under 15 U.S.C. § 1692e.

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

38. Defendant violated 15 U.S.C. § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

39. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendant attempted to collect a consumer debt using the same unlawful form letter herein, from one year before the date of this Complaint to the present.

40. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

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

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

43. 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.

44. 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.

45. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and

legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under the FDCPA.

JURY DEMAND

46. 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 Representatives of the Class, and his attorneys as Class Counsel; and
- c. Find that Defendant's actions violate the FDCPA; and
- d. Grant damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- e. Grant Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- f. Grant Plaintiff's costs; together with
- g. Such other relief that the Court determines is just and proper.

DATED: April 4, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders
Craig B. Sanders, Esq.
100 Garden City Plaza, Suite 500
Garden City, New York 11530
Tel: (516) 203-7600
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Attorneys for Plaintiff
Our File No.: 110810

CAC FINANCIAL CORP
2601 NW EXPRESSWAY, SUITE 1000 EAST
OKLAHOMA CITY, OKLAHOMA 73112-7236
(405) 425-1550 • 1-800-304-6070
FAX (405) 425-1590
04-12-16

Desmond, Sean
46 Ocean Ave
Bayport, NY 11705-1819

CREDITOR : Synchrony Bank/PC Richard
AMOUNT : \$3805.06
ACCOUNT NO : ██████████70 - 39
CLIENT ACCT # :*****7616

YOU ARE REQUESTED TO CALL THIS OFFICE TO RESOLVE THIS ACCOUNT.

IMPORTANT: PLEASE CONTACT ROSALVA GRANT AT 877-218-5896 EXTENSION 556.

OUR OFFICE HOURS ARE: MONDAY - FRIDAY 8:00 A.M. TO 5:00 P.M. C.S.T.

THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS HAS ASSIGNED LICENSE #0991650 TO THIS AGENCY.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND 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) WORKER'S 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.

—
—
—
—

----- DETACH AND RETURN WITH PAYMENT -----

PO BOX 20909
PORTLAND OR 97294-0909
CHANGE SERVICE REQUESTED



BALANCE DUE: \$3805.06
ACCOUNT #: [REDACTED] 6070

YOU MAY MAKE PAYMENTS TO:



DESMOND, SEAN
46 OCEAN AVE
BAYPORT NY 11705-1819



CAC FINANCIAL CORP
2601 NW EXPRESSWAY STE 1000E
OKLAHOMA CITY OK 73112-7236



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 SEAN DESMOND
DEFENDANTS CAC FINANCIAL CORP
(b) County of Residence of First Listed Plaintiff SUFFOLK
(c) Attorneys (Firm Name, Address, and Telephone Number) BARSHAY SANDERS, PLLC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
O 1 U.S. Government Plaintiff
O 2 U.S. Government Defendant
O 3 Federal Question
O 4 Diversity

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

IV. NATURE OF SUIT (Place an "X" in One Box Only)
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)
O 1 Original Proceeding
O 2 Removed from State Court
O 3 Remanded from Appellate Court
O 4 Reinstated or Reopened
O 5 Transferred from Another District (specify)
O 6 Multidistrict Litigation - Transfer
O 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 April 11, 2017 SIGNATURE OF ATTORNEY OF RECORD /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Craig B. Sanders, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1. Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: NO
2. If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
 Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
 Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s Craig B. Sanders

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Sean Desmond, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

CAC Financial Corp

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CAC Financial Corp
Registered Agent
NATIONAL REGISTERED AGENTS, INC.
111 EIGHTH AVENUE
NEW YORK, NEW YORK, 10011

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Craig B. Sanders, Esq. 100 Garden City Suite 500 Garden Clty, New York 11530

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CAC Financial Corp Sued Over 'Deceptive' Collection Letters](#)
