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Attorneys for Plaintiff
Our File No.: 113816

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

Thomas Devitt, individually and on behalf of those
similarly situated,

Plaintiff,

vs.

Resurgent Capital Services, LP and LVNV
Funding, LLC,

Defendants.

Docket No:

COMPLAINT

JURY TRIAL DEMANDED

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

Thomas Devitt, individually and on behalf of those similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Resurgent Capital Services, LP and LVNV Funding, LLC (hereinafter referred to collectively as “*Defendants*”), 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, Defendants conducted business within the State of New York.

PARTIES

5. Plaintiff Thomas Devitt is an individual who is a citizen of the State of New York residing in Nassau County, New York.

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

7. On information and belief, Defendant Resurgent Capital Services, LP, is a South Carolina Limited Partnership with a principal place of business in Richland County, South Carolina.

8. On information and belief, Defendant LVNV Funding, LLC, is a Delaware Limited Liability Company with a principal place of business in New Castle County, Delaware.

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

10. Defendants are “debt collectors” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

11. Defendants allege Plaintiff owes a debt (“the Debt”).

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

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

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

15. In their efforts to collect the debt, Defendants contacted Plaintiff by letter (“the Letter”) dated May 5, 2017. (“**Exhibit 1.**”)

16. The letter was the initial communication Plaintiff received from Defendants.

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

FIRST COUNT

Violation of 15 U.S.C. § 1692g(a)(3)

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

19. 15 U.S.C. § 1692g(a)(3) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.”

20. The Letter fails to contain the required 15 U.S.C. § 1692g(a)(3) disclosure.

21. Defendants violated 15 U.S.C. § 1692g(a)(3) by their failure to provide the information required by that Section.

SECOND COUNT

Violation of 15 U.S.C. § 1692g(a)(4)

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

23. 15 U.S.C. § 1692g(a)(4) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing 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.

24. The Letter fails to contain the required 15 U.S.C. § 1692g(a)(4) disclosure.

25. Defendants violated 15 U.S.C. § 1692g(a)(4) by their failure to provide the information required by that Section.

THIRD COUNT

Violation of 15 U.S.C. § 1692g(a)(5)

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

27. 15 U.S.C. § 1692g(a)(5) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing 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.

28. The Letter fails to contain the required 15 U.S.C. § 1692g(a)(5) disclosure.

29. Defendants violated 15 U.S.C. § 1692g(a)(5) by their failure to provide the information required by that Section.

CLASS ALLEGATIONS

30. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendants attempted to collect a consumer debt without sending Plaintiff his or her validation rights as required by 15 U.S.C. § 1692g(a), from one year before the date of this Complaint to the present.

31. This action seeks a finding that Defendants' conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

32. Defendants regularly engage in debt collection.

33. The Class consists of more than 35 persons from whom Defendants attempted to collect delinquent consumer debts without sending Plaintiff his or her validation rights as required by 15 U.S.C. § 1692g(a).

34. Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

35. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendants have acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

36. Plaintiff will fairly and adequately protect and represent the interests of the Class.

The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendants' conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under consumer protection laws.

JURY DEMAND

37. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiff as Class Representative of the Class, and Plaintiff's attorneys as Class Counsel; and
- c. Find that Defendants' actions violate the FDCPA; and
- d. Grant damages against Defendants 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: October 17, 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
Fax: (516) 706-5055
csanders@barshaysanders.com
Attorneys for Plaintiff
Our File No.: 113816



S-SFIRUX10 L-0011 R-18
P6XATA00300031 - 516516089 I00082
THOMAS DEVITT
2066 LONGFELLOW AVE
EAST MEADOW NY 11554-5129

Current Creditor: LVNV Funding LLC
Account ID: [REDACTED] 5136
Account Number: Ending in 8078
Last Payment Date: 08/18/2016
Current Balance: \$733.44
Original Creditor: WebBank
Balance Itemization:
Total Amount Due as of ChargeOff: \$733.44
Total Amount of Interest Accrued Since ChargeOff: \$0.00
Total Amount of Non-Interest Charges: \$0.00
Total Amount of Payments Made Since ChargeOff: \$0.00

Hello. Your account has a new home.

Dear Thomas Devitt:

05/05/2017

This letter will serve as notification that effective 05/03/2017 LVNV Funding LLC has placed your account with Resurgent Capital Services L.P. ("RCS") for servicing. To ensure a smooth transfer, please review the following information.

If your account is currently being paid via ACH (automatic payment drafting from your checking account) the information will not transfer to us from your prior servicer. Please call our office at 877-893-0165 if you wish to re-establish automatic payment drafting with RCS.

If your account is being managed by a third party debt management provider, please notify them of the servicing change in order for RCS to properly service your account and ensure payments are processed in a timely manner. If the account is no longer being serviced by a third party please contact us to discuss the many payment options available to you in order to resolve this debt.

It is easy to work with RCS

- Call and confirm your payment plan
- Select your payment method
- Verify your contact information

As of the date of this letter, the account balance is \$733.44. Should you desire to make a payment on this account, please contact us at the number below.

One of our professional account managers will be in touch with you by telephone to assist in finding the best solution for you or contact us today at 877-893-0165.

Please note that a negative credit bureau report reflecting on your credit record may be submitted to a credit reporting agency by the current account owner if you fail to fulfill the terms of your credit obligations. This notice in no way affects any rights you may have.

Sincerely,

Resurgent Capital Services L.P.
877-893-0165

Please remit payments to:
Resurgent Capital Services L.P.
P.O. Box 10465
Greenville, SC 29603-0465

Pay online at: www.rcspay.com



Monday-Friday: 8:00AM-5:00PM



Correspondence should be mailed to:
P.O. Box 10465
Greenville, SC 29603-0465



Phone Number: 877-893-0165
Fax: 866-467-0912
e-Mail: CCA1@resurgent.com

SEE REVERSE SIDE OR ATTACHED FOR AN IMPORTANT STATEMENT OF YOUR RIGHTS.

PRIVACY NOTICE

This Privacy Notice is being provided on behalf of each of the following related companies (collectively, the Sherman Companies"). It describes the general policy of the Sherman Companies regarding the personal information of customers and former customers.



Resurgent Capital Services L.P	LVNV Funding, LLC	Ashley Funding Services LLC
Sherman Acquisition L.L.C.	PYOD LLC	SFG REO, LLC
Resurgent Capital Services PR LLC	Anson Street LLC	Pinnacle Credit Services, LLC

Information We May Collect. The Sherman Companies may collect the following personal information: (1) information that we receive from your account file at the time we purchase or begin to service your account, such as your name, address, social security number, and assets; (2) information that you may give us through discussion with you, or that we may obtain through your transactions with us, such as your income and payment history; (3) information that we receive from consumer reporting agencies, such as your creditworthiness and credit history, and (4) information that we obtain from other third party information providers, such as public records and databases that contain publicly available data about you, such as bankruptcy and mortgage filings. All of the personal information that we collect is referred to in this notice as "collected information".

Confidentiality and Security of Collected Information. At the Sherman Companies, we restrict access to collected information about you to individuals who need to know such collected information in order to perform certain services in connection with your account. We maintain physical safeguards (like restricted access), electronic safeguards (like encryption and password protection), and procedural safeguards (such as authentication procedures) to protect collected information about you.

Sharing Collected Information with Affiliates From time to time, the Sherman Companies may share collected information about customers and former customers with each other in connection with administering and collecting accounts to the extent permitted under the Fair Debt Collection Practices Act or applicable state law.

Sharing Collected Information with Third Parties The Sherman Companies do not share collected information about customers or former customers with third parties, except as permitted in connection with administering and collecting accounts under the Fair Debt Collections Practices Act and applicable state law.

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 THOMAS DEVITT (b) County of Residence of First Listed Plaintiff NASSAU (c) Attorneys BARSHAY SANDERS, PLLC II. DEFENDANTS RESURGENT CAPITAL SERVICES, LP County of Residence of First Listed Defendant RICHLAND NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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) O 1 U.S. Government Plaintiff O 2 U.S. Government Defendant O 3 Federal Question (U.S. Government Not a Party) O 4 Diversity (Indicate Citizenship of Parties in Item III) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PTF DEF O 1 O 1 O 2 O 2 O 3 O 3 Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation PIF DEF O 4 O 4 O 5 O 5 O 6 O 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT REAL PROPERTY PERSONAL INJURY CIVIL RIGHTS PRISONER PETITIONS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES O 110 Insurance O 120 Marine O 130 Miller Act O 140 Negotiable Instrument O 150 Recovery of Overpayment & Enforcement of Judgment O 151 Medicare Act O 152 Recovery of Defaulted Student Loans (Excludes Veterans) O 153 Recovery of Overpayment of Veteran's Benefits O 160 Stockholders' Suits O 190 Other Contract O 195 Contract Product Liability O 196 Franchise O 210 Land Condemnation O 220 Foreclosure O 230 Rent Lease & Ejectment O 240 Torts to Land O 245 Tort Product Liability O 290 All Other Real Property O 310 Airplane O 315 Airplane Product Liability O 320 Assault, Libel & Slander O 330 Federal Employers' Liability O 340 Marine O 345 Marine Product Liability O 350 Motor Vehicle O 355 Motor Vehicle Product Liability O 360 Other Personal Injury O 362 Personal Injury - Medical Malpractice O 365 Personal Injury - Product Liability O 367 Health Care/ Pharmaceutical Personal Injury Product Liability O 368 Asbestos Personal Injury Product Liability O 370 Other Fraud O 371 Truth in Lending O 380 Other Personal Property Damage O 385 Property Damage Product Liability O 422 Appeal 28 USC 158 O 423 Withdrawal 28 USC 157 O 462 Naturalization Application O 465 Other Immigration Actions O 470 Racketeer Influenced and Corrupt Organizations O 480 Consumer Credit O 490 Cable/Sat TV O 495 Arbitration O 870 Taxes (U.S. Plaintiff or Defendant) O 871 IRS—Third Party 26 USC 7609 O 899 Administrative Procedure Act/Review or Appeal of Agency Decision O 950 Constitutionality of State 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 November 8, 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

Thomas Devitt, individually and on behalf of those
similarly situated

Plaintiff(s)

v.

Resurgent Capital Services, LP and LVNV Funding,
LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Resurgent Capital Services, LP
CORPORATION SERVICE COMPANY
703 LAUREL STREET
Columbia, South Carolina 29201

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

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Thomas Devitt, individually and on behalf of those similarly situated)	
_____)	
<i>Plaintiff(s)</i>)	
)	
v.)	Civil Action No.
)	
Resurgent Capital Services, LP and LVNV Funding, LLC)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
LVNV Funding, LLC
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Resurgent Capital Services, LNVN Omitted Required Disclosures from Letter, Suit Says](#)
