

BARSHAY SANDERS, PLLC
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Attorneys for Plaintiff
Our File No.: 113817

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

Thomas Devitt, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Synergetic Communication, Inc.,

Defendant.

Docket No:

CLASS ACTION 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 all others similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Synergetic Communication, 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 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 Synergetic Communication, Inc., is a Texas Corporation with a principal place of business in Harris County, Texas.

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

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

ALLEGATIONS

10. Defendant alleges Plaintiff owes a debt (“the Debt”).

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

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

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

14. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated May 23, 2017. (“**Exhibit 1.**”)

15. The Letter was the initial communication Plaintiff received from Defendant.

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

FIRST COUNT

Violation of 15 U.S.C. § 1692g(a)(3)

Validation of Debts

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

18. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

19. 15 U.S.C. § 1692g(3) requires the notice to include a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.

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

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

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

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

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

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

26. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be in writing.

27. The Letter states, “To request substantiation of the debt please write to us describing the reason for your dispute. Include your name, address, the name of the creditor, and the account number listed on this letter and mail your request to us at Synergetic Communication Inc., 2700 E Seltice Way Suite 4, Post Falls, ID 83854.”

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

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

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

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

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

of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be in writing.

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

SECOND COUNT
Violation of 15 U.S.C. § 1692g
Validation of Debts

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

35. A debt collector has the obligation, not just to convey the information required by 15 U.S.C. § 1692g, but also to convey such clearly.

36. Even if a debt collector conveys the required information accurately, the collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication, or by other collection activities during the 30-day validation period following the communication.

37. A collection activity or communication overshadows or contradicts the validation notice if it would make the "least sophisticated consumer" uncertain or confused as to her rights.

38. The letter contradicts the validation notice in that it would make the least sophisticated consumer uncertain or confused as to her right to dispute the debt by something other than in writing.

39. The letter overshadows the validation notice in that it would make the least sophisticated consumer uncertain or confused as to her right to dispute the debt by something other than in writing.

40. Defendant's conduct violates 15 U.S.C. § 1692g.

THIRD COUNT
Violation of 15 U.S.C. § 1692e
False or Misleading Representations

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

42. 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.

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

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

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

46. Because the Letter is reasonably susceptible to an inaccurate reading concerning Plaintiff’s right to dispute the debt by something other than in writing, it is deceptive within the meaning of the FDCPA.

47. The least sophisticated consumer would likely be deceived by Defendant’s conduct.

48. The least sophisticated consumer would likely be deceived in a material way by Defendant’s conduct.

49. The least sophisticated consumer would be unsure as to whether a writing or oral communication is necessary to dispute the underlying debt.

50. Defendant’s conduct violates 15 U.S.C. § 1692e.

CLASS ALLEGATIONS

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

52. 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.

53. Defendant regularly engages in debt collection.

54. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter substantially the same as the Letter herein.

55. 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.

56. 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.

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

JURY DEMAND

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

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

DATED: 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.: 113817

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



Synergetic Communication, Inc.
 5450 N.W. Central #220
 Houston TX 77092-2016
www.syncomcorp.net

Hours of Operation
 Monday – Thursday 8am-8pm
 Friday 8am-5pm
 Saturday 8am-12pm

PHONE: 866-760-3967
 FAX: 713-590-2746

May 23, 2017

All Times Central

Current Creditor: TD Bank N.A.
 Client Account #: [REDACTED] 0583
 Our Account #: [REDACTED] 1765
 Amount of Debt: \$ 262.27
 Original Creditor: TD Bank N.A.

Our client, TD Bank N.A., has placed this account with our office for collection in the amount of \$ 262.27.

We want to help you!

There are several repayment possibilities that we can discuss with you.

Please contact our office so a trained representative can assist you or to make a payment online, please visit us at www.syncomcorp.net and click on "Make a Payment". Log in using Account ID: TDB and Account #: [REDACTED] 1765

This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose.

Sincerely,

Ken Walsh, Director Of Operations

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 of 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.

New York City Department of Consumer Affairs License Number 1192031
 THIS COLLECTION AGENCY IS LICENSED BY THE CITY OF BUFFALO

We are required by regulation of the New York State Department of Financial Services to notify you of the following information.

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.

New York State Department of Financial Services Regulations provides that you may dispute the debt and request substantiation at any time. To request substantiation of the debt please write to us describing the reason for your dispute. Include your name, address, the name of the creditor, and the account number listed on this letter and mail your request to us at Synergetic Communication Inc., 2700 E Seltice Way Suite 4, Post Falls, ID 83854.

In order to credit your account properly, please return bottom portion with your payment

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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 SYNERGETIC COMMUNICATION, INC. County of Residence of First Listed Defendant HARRIS 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 TORTS Habeas Corpus: Other: LABOR IMMIGRATION FORFEITURE/PENALTY O 625 Drug Related Seizure of Property 21 USC 881 O 690 Other O 710 Fair Labor Standards Act O 720 Labor/Management Relations O 740 Railway Labor Act O 751 Family and Medical Leave Act O 790 Other Labor Litigation O 791 Employee Retirement Income Security Act O 462 Naturalization Application O 465 Other Immigration Actions BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS O 422 Appeal 28 USC 158 O 423 Withdrawal 28 USC 157 O 820 Copyrights O 830 Patent O 840 Trademark O 861 HIA (1395ff) O 862 Black Lung (923) O 863 DIWC/DIWW (405(g)) O 864 SSID Title XVI O 865 RSI (405(g)) O 870 Taxes (U.S. Plaintiff or Defendant) O 871 IRS—Third Party 26 USC 7609 OTHER STATUTES O 375 False Claims Act O 400 State Reapportionment O 410 Antitrust O 430 Banks and Banking O 450 Commerce O 460 Deportation O 470 Racketeer Influenced and Corrupt Organizations O 480 Consumer Credit O 490 Cable/Sat TV O 850 Securities/Commodities/Exchange O 890 Other Statutory Actions O 891 Agricultural Acts O 893 Environmental Matters O 895 Freedom of Information Act O 896 Arbitration 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 all others similarly situated)	
_____)	
<i>Plaintiff(s)</i>)	
)	Civil Action No.
v.)	
)	
Synergetic Communication, Inc.)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Synergetic Communication, Inc.
C T CORPORATION SYSTEM
1999 BRYAN ST., STE. 900
DALLAS, TX 75201

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: [Synergetic Communication Hit with FDCPA Class Action](#)
