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Our File No.: 114650

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

Edward Duffy, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

I.C. System, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Edward Duffy, 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 I.C. System, 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 Edward Duffy 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 I.C. System, Inc., is a Minnesota Corporation with a principal place of business in Ramsey County, Minnesota.

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 September 15, 2017. (“**Exhibit 1.**”)

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

16. The Letter states “Principal Due: \$449.78.”

17. The Letter states “Billing Fees Due: \$54.52.”

18. The Letter states “Late Charge Due: \$75.00.”

19. The Debt was subject to “Billing Fees.”

20. The Debt was subject to “Late Charges.”

21. The Letter includes a settlement offer of \$376.54.

22. The Letter states, “This settlement offer is valid for the balance shown on your account(s) as of the date of this letter. Any additional balances added after this date are not included.”

23. The date of the letter is September 15, 2017.

24. Plaintiff received the letter after September 15, 2017.

25. The settlement amount was invalid by the time Plaintiff received the Letter.

26. Payment of \$376.54 on the date Plaintiff received the Letter would not have satisfied the Debt.

27. The settlement is illusory.

28. The tender of an illusory settlement is deceptive.

29. The tender of an illusory settlement is a deceptive means to attempt to collect the debt.

30. The tender of an illusory settlement is a deceptive means to attempt to coerce a payment from the debtor.

31. The tender of an illusory settlement is a deceptive means to attempt to coerce a payment from the debtor that would not satisfy the debt.

32. The Letter fails to include any “safe harbor” language concerning the accrual of billing fees. *Carlin v. Davidson Fink*, 852 F.3d 207, 216 (2d Cir. 2017); *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

33. The Letter fails to include any “safe harbor” language concerning the accrual of late charges. *Carlin v. Davidson Fink*, 852 F.3d 207, 216 (2d Cir. 2017); *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

34. The Letter fails to indicate the minimum amount Plaintiff owed at the time of receipt of the Letter.

35. The 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 receipt of the Letter.

36. The Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at the time of receipt of the Letter.

37. The 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 the time of receipt of the Letter.

38. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of billing fees owed.

39. For instance, the Letter fails to indicate whether additional billing fees will be added.

40. For instance, the Letter fails to indicate the date additional billing fees will be added.

41. For instance, the Letter fails to indicate the amount of additional billing fees that may be added.

42. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late charges owed.

43. For instance, the Letter fails to indicate the amount of late charges.

44. For instance, the Letter fails to indicate the date such late charges will be added.

45. For instance, the Letter fails to indicate the amount of late charges during any measurable period.

46. The Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any late charges and/or billing fees that may cause the amount stated to increase.

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

48. The 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 the time of receipt of the Letter.

49. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt at the time of receipt of the Letter.

50. The 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 billing fees and/or late charges would continue to accrue, or whether the amount of the debt was static.

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

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

53. The Letter, because of the aforementioned failures, did not convey “the amount of

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

54. Because of the aforementioned failures, the least sophisticated consumer would likely be confused as to the amount of the debt.

55. Because of the aforementioned failures, the least sophisticated consumer would likely be uncertain as to the amount of the debt.

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

57. The Letter, for all of the foregoing reasons, violates 15 U.S.C. § 1692e.

CLASS ALLEGATIONS

58. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendant attempted to collect a consumer debt using a collection letter that includes a settlement offer and also includes the language, “This settlement offer is valid for the balance shown on your account(s) as of the date of this letter. Any additional balances added after this date are not included,” from one year before the date of this Complaint to the present.

59. 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.

60. Defendant regularly engages in debt collection.

61. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter that includes a settlement offer and also includes the language, “This settlement offer is valid for the balance shown on your account(s) as of the date of this letter. Any additional balances added after this date are not included.”

62. 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.

63. 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.

64. 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

65. 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: September 10, 2018

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.: 114650

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

PERSONAL & CONFIDENTIAL

September 15, 2017



444 Highway 96 East, PO Box 64378
St. Paul, MN 55164-0378
Toll-Free No: 800-737-3122



ACCOUNT SUMMARY

Creditor: Mason Easy Pay	Principal Due:	\$449.78
Account No: [REDACTED] 0424 02E	Billing Fees Due:	\$54.52
I.C. System Reference No: [REDACTED] 9-1-29	Late Charge Due:	\$75.00
	BALANCE DUE:	\$579.30
\$0.00 has been Paid Since Placement		

0278 - System - 086892877 - 3SA - ICSYSTEM.WFD - 815197 - 00001588 - 02783SA

Ed Duffy
9 Richmond Hill Rd
Sound Beach, NY 11789-3044

Ed Duffy:
Would you be willing to pay 65% of your balance of \$579.30 now to settle your account in full?

To help you resolve this delinquent account, our office will accept a reduced payment amount of \$376.54 to settle your account in full.

You may take advantage of this settlement offer today by calling 800-737-3122 in order to make arrangements to accept this offer.

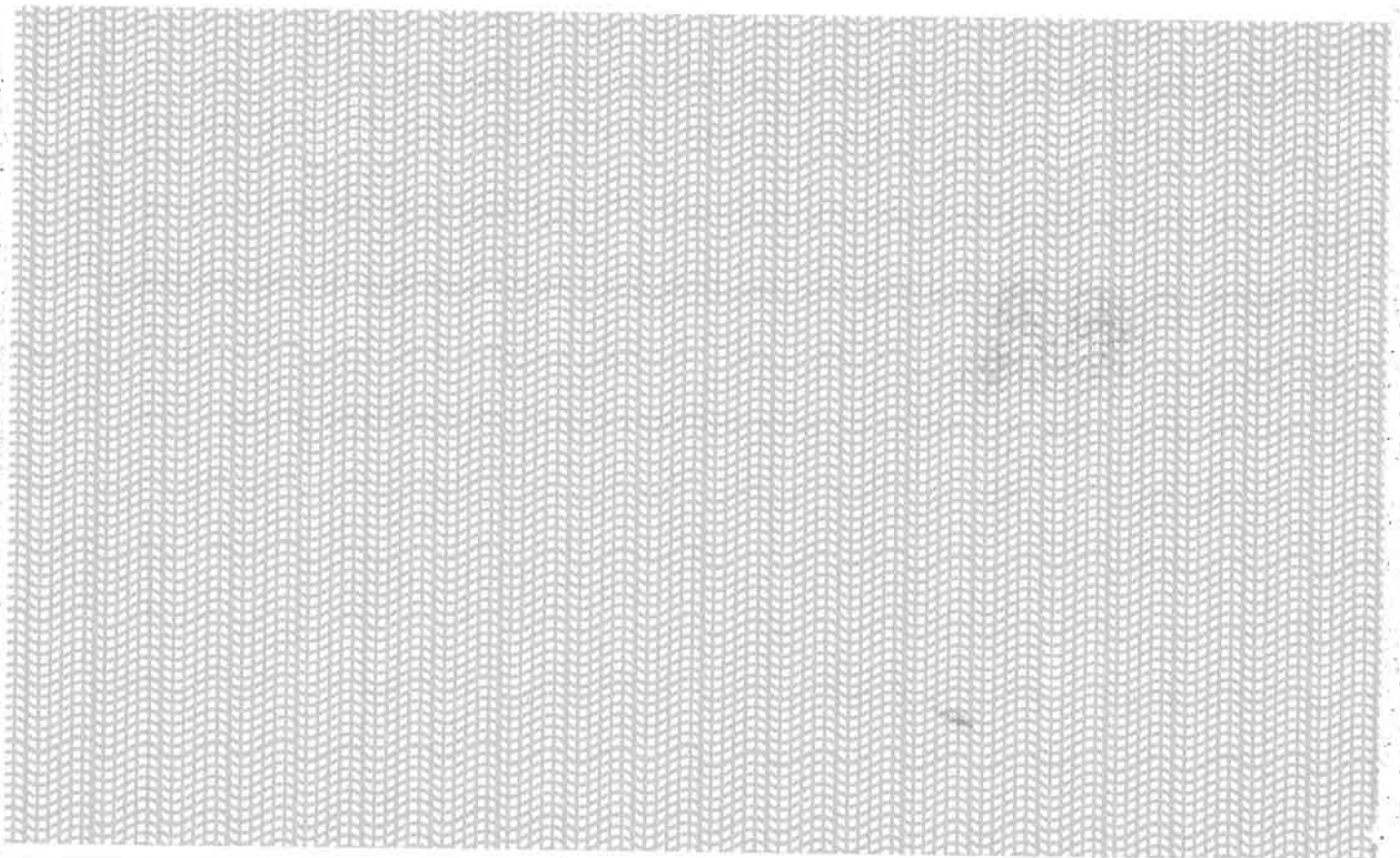
This settlement offer is valid for the balance shown on your account(s) as of the date of this letter. Any additional balances added after this date are not included.

Sincerely,
Barbara Miller

We are a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

This does not contain a complete list of the rights consumers have under Federal, State, or Local laws.


New York City Department of Consumer Affairs License No. 0908324 and 1266437.



I.C. System, Inc.
P.O. Box 64437
St. Paul, MN 55164-0437
Electronic Service Requested

4

FIRST CLASS
PRESORT
U.S POSTAGE
PAID
PCI


Ed Duffy
9 Richmond Hill Rd
Sound Beach, NY 11789-3044

↙ To Open This Side - Slide Finger Under This Edge ↘

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 EDWARD DUFFY
DEFENDANTS I.C. SYSTEM, INC.
(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)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS 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 JUDGE DOCKET NUMBER

DATE September 13, 2018 SIGNATURE OF ATTORNEY OF RECORD /s Craig 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.

Case is Eligible for Arbitration

I, _____, counsel for _____, 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? Yes 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 No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specific the County in which the offending communication was received: SUFFOLK

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? Yes No

(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

Edward Duffy, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

I.C. System, Inc.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

I.C. System, Inc.
444 Highway 96 East, PO Box 64378
Saint Paul, Minnesota 55164

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: [I.C. System Sent Misleading Letter Indicating Expired Settlement Offer, Class Action Alleges](#)
