

BARSHAY SANDERS, PLLC
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Attorneys for Plaintiffs
Our File No.: 111675

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

Nancy Farrell and Mumtaz Yuksel, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Encore Receivable Management, Inc.,

Defendant.

Docket No:

COMPLAINT-CLASS ACTION

JURY TRIAL DEMANDED

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

Nancy Farrell and Mumtaz Yuksel, 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 Nancy Farrell is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff Mumtaz Yuksel is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

8. On information and belief, Defendant’s principal place of business is located in Olathe, Kansas.

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

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

ALLEGATIONS

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

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

13. Sometime after the incurrence of the debts, Plaintiffs fell behind on payments owed.

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

15. In its efforts to collect the debt, Defendant contacted Plaintiff Farrell by letter dated February 29, 2016 (“**Exhibit 1.**”)

16. In its efforts to collect the debt, Defendant contacted Plaintiff Yuksel by letter dated February 10, 2016. (“**Exhibit 1.**”)

17. The letters were the initial communication to each Plaintiff received from Defendant.

18. The letters are identical in all material respects.

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

20. 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.

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

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

23. 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.

24. 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.

25. 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.

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

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

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

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

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

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

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

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

CLASS ALLEGATIONS

39. 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 the same unlawful means described 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 conduct 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 conduct described herein.

43. 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.

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. Defendants have acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

45. 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 Defendants' 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 the FDCPA.

JURY DEMAND

46. 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 Representative of the Class, and their 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: January 29, 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 Plaintiffs
Our File No.: 111675

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

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

ADDRESS SERVICE REQUESTED

February 29 2016

CONV0400 NY
102069094651040

NANCY J FARRELL
5 DOANE AVE
BELLPORT NY 11713-1701

Creditor: Synchrony Bank
Re: P C RICHARD & SON
For Account Ending in: XXXXXXXXXXXXX3563
Encore Account #: [REDACTED] 1044
Total Account Balance: \$1,219.00
Total Amount Due: \$204.00



Dear NANCY J FARRELL:

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 \$1,219.00 of which \$204.00 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: XXXXXXXXXXXXX3563
Encore Account #: [REDACTED] 1044
Total Account Balance: \$1,219.00
Total Amount Due: \$204.00

CONV0400 NY

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

NANCY J FARRELL
5 DOANE AVE
BELLPORT NY 11713-1701

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

February 10 2016

CONV0400 NY
102069093738756

MUMTAZ YUKSEL
3 JENNEY RD
BAYPORT NY 11705-1218

Creditor:	Synchrony Bank
Re:	CARECREDIT
For Account Ending in:	XXXXXXXXXXXX2944
Encore Account #:	██████████3628
Total Account Balance:	\$662.00
Total Amount Due:	\$213.00



Dear MUMTAZ YUKSEL:

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 \$662.00 of which \$213.00 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:	CARECREDIT
For Account Ending in:	XXXXXXXXXXXX2944
Encore Account #:	██████████3628
Total Account Balance:	\$662.00
Total Amount Due:	\$213.00

CONV0400 NY

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

MUMTAZ YUKSEL
3 JENNEY RD
BAYPORT NY 11705-1218

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
NANCY FARRELL
(b) County of Residence of First Listed Plaintiff SUFFOLK
(c) Attorneys (Firm Name, Address, and Telephone Number)
BARSHAY SANDERS, PLLC
100 Garden City Plaza, Ste 500, Garden City, NY 11530
(516) 203-7600

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.
Attorneys (If Known)

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 (U.S. Government Not a Party)
O 4 Diversity (Indicate Citizenship of Parties in Item III)

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
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

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
CIVIL RIGHTS
PRISONER PETITIONS
Habeas Corpus:
Other:
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
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 O No

VIII. RELATED CASE(S) IF ANY
(See Instructions)
JUDGE DOCKET NUMBER

DATE February 6, 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

Paula D. Huntley and Kristin A. Dykes

Plaintiff(s)

v.

Civil Action No.

Professional Bureau of Collections of Maryland, Inc.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Professional Bureau of Collections of Maryland, Inc.
5295 DTC Parkway
GREENWOOD VILLAGE, Colorado 80111

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 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: [FDCPA Lawsuit Filed Against Encore Receivable Management over 'Fine Print'](#)
