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Our File No.: 111504

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

Marcelin Flore, individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

Laufer & Associates, PLLC,

Defendant.

Docket No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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

Marcelin Flore, 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 Laufer & Associates, PLLC (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 Marcelin Flore 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 Laufer & Associates, PLLC, is a New York Professional Limited Liability Company with a principal place of business in New York County, New York.

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 June 10, 2016. (“**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(b)**

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

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

21. 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.

22. 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.

23. 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.

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

25. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication.

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

27. 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.

28. 15 U.S.C. § 1692g(b) provides, in relevant part, “If the consumer notifies the debt collector in writing within the thirty-day period . . . that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains . . . the name and address of the original creditor, and [the] name and address of the original creditor, is mailed to the consumer by the debt collector.”

29. 15 U.S.C. § 1692g(b) provides, in relevant part, “Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer . . . requests the name and address of the original creditor.”

30. 15 U.S.C. § 1692g(b) provides, in relevant part, “Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer’s right to . . . request the name and address of the original creditor.”

31. Demanding immediate payment without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt is a violation of the FDCPA.

32. Demanding immediate payment without providing transitional language explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt is a violation of the FDCPA.

33. The Letter demands payment during the validation period.

34. The Letter demands payment during the validation period without explaining that such demand does not override the Plaintiff's right to dispute the debt.

35. The Letter demands payment during the validation period without explaining that such demand does not override the Plaintiff's right to demand validation of the debt.

36. The demand for payment would likely make the least sophisticated consumer uncertain as to her rights.

37. The demand for payment would likely make the least sophisticated consumer confused as to her rights.

38. The Letter threatens a lawsuit if Plaintiff fails to make payment.

39. The threat of a lawsuit would likely make the least sophisticated consumer uncertain as to her rights.

40. The threat of a lawsuit would likely make the least sophisticated consumer confused as to her rights.

41. The threat of a lawsuit would likely make the least sophisticated consumer forego her validation rights.

42. The threat of a lawsuit would likely discourage the least sophisticated consumer from exercising her validation rights.

43. The threat of a lawsuit overshadows Plaintiff's validation rights.

44. Defendant violated § 1692g as Defendant overshadowed the information required to be provided by that Section.

45. For these reasons, the Letter violates 15 U.S.C. § 1692g.

**SECOND COUNT**  
**Violation of 15 U.S.C. §§ 1692g and 1692e**

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

47. The Letter states "Balance: \$1,1160.80 plus interest."

48. 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.

49. 15 U.S.C. § 1692g(a)(1) requires the written notice provide "the amount of the debt."

50. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly from the perspective of the least sophisticated consumer.

51. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

52. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

53. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.

54. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.

55. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

56. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an

explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.

57. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).

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

59. 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 the Letter.

60. The Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

61. 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 any given moment in the future.

62. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

63. For instance, the Letter fails to indicate the applicable interest rate.

64. For instance, the Letter fails to indicate the date of accrual of interest.

65. For instance, the Letter fails to indicate the amount of interest during any measurable period.

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

67. For instance, the Letter fails to indicate the amount of late fees.

68. For instance, the Letter fails to indicate the date such fees will be added.

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

70. The Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

71. The Letter fails to state whether interest, late fees and/or other fees are accruing.

72. The Letter fails to state what part of the amount stated is attributable to principal.

73. The Letter fails to state what part of the amount stated is attributable to interest.

74. The Letter fails to state what part of the amount stated is attributable to late fees.

75. The Letter fails to state what part of the amount stated is attributable to other fees.

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

77. 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 any given moment in the future.

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

79. 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 interest and fees would continue to accrue, or whether the amount of the debt was static.

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

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

82. 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.

83. The Letter, because of the aforementioned failures, renders the statement of the amount of the debt, even if otherwise accurate, violative of 15 U.S.C. § 1692g(a)(1).

84. The Letter, because of the aforementioned failures, did not adequately set forth “the amount of the debt” as required by 15 U.S.C. § 1692g.

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

86. At all relevant times herein, the Debt accrued, and was subject to, interest.

87. The Letter fails to provide any “safe harbor” concerning the accrual of interest.

88. The Letter fails to indicate that payment of the amount stated would satisfy the debt.

89. The least sophisticated consumer, because of the aforementioned failures, could reasonably believe that the debt could be satisfied by remitting the amount stated at any time after receipt of the Letter.

90. The least sophisticated consumer, because of the aforementioned failures, could

also reasonably believe that the amount stated was accurate only on the date of the Letter because of the continued accumulation of interest.

91. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the Letter fails to indicate the applicable interest rate.

92. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the Letter fails to indicate the date of accrual of interest.

93. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the Letter fails to provide the amount of interest during any measurable period.

94. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the Letter fails to provide any information that would enable to consumer to determine what she will need to pay to resolve on any date after the date of the Letter.

95. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the Letter fails to provide any information that would enable to consumer to determine what she will need to pay to resolve the debt in the future.

96. The failure to include the foregoing information could lead the least sophisticated consumer to read the Letter to have two or more meanings, one of which is inaccurate.

97. For these reasons, Defendant violated 15 U.S.C. § 1692e.

#### **CLASS ALLEGATIONS**

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

99. 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.

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

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

102. 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.

103. 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.

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

### **JURY DEMAND**

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

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiff as Class Representatives of the Class, and her 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: June 8, 2017

**BARSHAY SANDERS, PLLC**

By: /s/ Craig B. Sanders

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June 10, 2016

**FLOR MARIE MARCELIN**  
2257 Hoffman Avenue  
Elmont, NY 11003

re: **Fulton Jamaica Corp.**  
vs.  
**Flor Marie Marcelin**

Balance: \$1,1160.80 plus interest

Dear Ms. Marcelin:

We have been retained to take whatever appropriate action is necessary to liquidate the past due debt owed to our client in the above amount.

Before any action is necessary, we are giving you a final opportunity to fulfill your obligation. Failure to respond may result in a lawsuit against you for the balance due, by this office. In the event we are forced to commence legal proceedings against you, you may be liable in addition to the above amount, for interest, costs and disbursements, and possibly attorneys' fees as allowed by the court and your contract.

We urge you to avoid the possibility of any action being taken by remitting the balance due, or telephoning us concerning your payment.

Unless you notify this office within 30 days after receipt of 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, this office will obtain the verification of the debt or obtain a copy of the judgment and mail you a copy of such verification or Judgment. If you request this in writing 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 IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THIS PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.**

Very truly yours,

  
Michael M. Laufer Esq.

MML/pm  
FILE No: ML 2175

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Laufer and Associates Hit with NY Woman's FDCPA Suit](#)

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