

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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VICTOR FONDACARO, on behalf of himself and all  
others similarly situation,

Plaintiff

**CLASS ACTION**  
**COMPLAINT**  
1:17-cv-964 (DNH/DJS)

-against-

OVERTON, RUSSELL, DOERR & DONOVAN,  
LLP and LINDA LEE DONOVAN,

Defendants

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**PRELIMINARY STATEMENT**

1. The Plaintiff VICTOR FONDACARO (“Plaintiff”) brings this lawsuit based upon improper and violative debt collection practices utilized and otherwise invoked by the above-named Defendants. These collection practices are expressly prohibited by the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*
2. Based upon the Defendants’ violations of the FDCPA, as set forth and alleged herein, the Plaintiff, and the class he seeks to represent, are entitled to statutory damages, attorneys fees, and costs, all pursuant to 15 U.S.C. § 1692k.

**PARTIES**

3. The Plaintiff is a natural person.
4. At all times relevant to this Complaint, the Plaintiff was a citizen of, and otherwise resided in, Montgomery County, New York.
5. The Defendant Overton, Russell, Doerr & Donovan, LLP (“ORDD”), is a partnership of lawyers and maintains a principle place of business located at 19 Executive Park Drive, Clifton Park, New York.
6. The Defendant ORDD collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail and telephone
7. The Defendant ORDD is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).
8. The Defendant Linda Lee Donovan (“Donovan”) is a natural person, a duly admitted attorney at law and a Partner in the Defendant ORDD.
9. The Defendant Donovan collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail and telephone.
10. The Defendant Donovan is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

**JURISDICTION & VENUE**

11. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
12. Venue is appropriate in this federal district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claims of the Plaintiff occurred within this federal judicial district.

### **FACTS CONCERNING THE PLAINTIFF**

13. The Defendant ORDD has been retained to represent an entity doing business as Trustco Realty Corp. (“TRC”).
14. TRC holds a mortgage upon the Plaintiff’s residential home.
15. Due to financial distress, the Plaintiff was unable to pay the real estate taxes upon his residential home.
16. As a result of Plaintiff’s inability to pay his residential real estate taxes, TRC made certain payment to the relevant tax authority.
17. The Plaintiff received a letter dated May, 2017 from the Defendants which sets forth at the top thereof “Re: Trustco Realty Corp.” A copy of said letter is attached hereto as Exhibit “1”.
18. The letter was the initial letter sent by the Defendants to the Plaintiff and includes therein the 30 day debt dispute/verification rights required by the FDCPA, 15 U.S.C. § 1692g.
19. The letter states in part:

“As a result of your failure to pay certain real estate taxes as required by the terms of your mortgage, our client has paid those taxes, or a portion thereof, on your behalf and, as a result, has elected to accelerate the entire balance due and demand payment in full thereof.”

20. Prior to the foregoing statement, the following is set forth in the letter:

“Accelerated Balance: \$86,308.44 + interest of \$10.902 per day  
Past Due Balance: \$9,786.08 + costs & interest”

21. The monetary obligation alleged to be owed by the Plaintiff is a “debt” as that term is defined in the FDCPA, 15 U.S.C. § 1692a(5).

22. The Plaintiff is a “consumer” as that term is defined in the FDCPA, 15 U.S.C. § 1692a(3).

23. The Plaintiff’s TRC debt was in default at the time it was referred to the Defendants for collection purposes.

24. Pursuant to 15 U.S.C. § 1692g(a)(1), a debt collector is required to set forth the amount of a debt in an initial collection letter.

25. A debt collector is required to set forth the amount of the debt in a clear and non-confusing manner.

26. The Defendants failed to set forth the amount of the Plaintiff’s alleged debt in a clear and non-confusing manner.

27. As stated above, the letter sets forth the total amount of the debt in two separate categories, “Accelerated Balance” and “Past Due Balance”.

28. The monetary amount set forth under “Accelerated Balance” includes an amount of “interest at \$10.902 per day” but fails to indicate the amount of alleged interest and the date said interest commenced.

29. The “Past Due Balance” includes an alleged set amount of \$9,766.08 plus “+ costs and interest” but fails to set forth the total amount of the alleged additional costs and interest.

30. The letter is further confusing as it does not set forth the amount of past due taxes which TRC allegedly paid and which it sought from the Plaintiff via the letter.

**CLASS ALLEGATIONS**

31. This action is brought as a class action. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.
32. This claim is brought on behalf of a class consisting of all persons, with addresses in the State of New York, who, within a time period commencing from one year prior to the date of the filing of this Complaint, received a collection communication from the Defendants which is identical in content and form to the collection communication sent to the Plaintiff (“identical” does not include information specific to the Plaintiff).
33. The identities of all class members are readily ascertainable from records maintained by the Defendant.
34. Excluded from the classes defined heretofore herein are the Defendants and all officers, members, partners, managers, directors, and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
35. There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members.
36. The Plaintiff’s claims are typical of the class members, as all are based upon the same facts and legal theories.
37. The Plaintiff will fairly and adequately protect the interests of the class defined in this Complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor his attorney

has any interests, which might cause them not to vigorously pursue this action.

38. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure:

- (a) **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the class defined above are each so numerous that joinder of all members of the class would be impractical.
- (b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the class and those questions predominate over any questions or issues involving only individual class members. The principal issues are whether the Defendants failed to set forth the amount of an alleged debt in a form collection letter and otherwise utilized false, deceptive and misleading debt collection means in the attempt to collect alleged personal debts.
- (c) **Typicality:** The Plaintiff's claims are typical of the claims of the class members. Plaintiff and all members of the class have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- (d) **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the members of the class insofar as Plaintiff has no interests that are adverse to the absent members of the class. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor his counsel has any interests which might cause them not to vigorously pursue the herein class action lawsuit.
- (e) **Superiority:** A class action is superior to the other available means for the fair

and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

- (f) Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the class predominate over any questions affecting any individual member of the class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

39. The Defendants violated the FDCPA. The Defendants' violations include, but are not limited to, the following:

The Defendants violated 15 U.S.C. § 1692g(a)(1) by failing to set forth the amount of a debt in an initial communication sent to the Plaintiff and members of the class defined herein;

The Defendants violated 15 U.S.C. § 1692e by using false, deceptive and misleading debt collection means during attempts to collect alleged consumer debts and same are material in that the false representations in the letter effect the decision and/or ability of a consumer to pay and/or challenge an alleged debt;

The Defendants violated 15 U.S.C. § 1692e(2)(A) by misrepresenting the character and legal status of alleged consumer debts;

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of the Plaintiff and the class as set forth below:

- (i) The maximum statutory damages for himself and the class as are allowed pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- (ii) Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(B)(3); and
- (iii) For such other and further relief as may be just and proper.

**JURY DEMAND**

Plaintiff demands that this case be tried before a Jury.

DATED: New York, New York  
August 24, 2017

ROBERT L. ARLEO, ESQ. P.C.

By: /s/ Robert L. Arleo  
ROBERT L. ARLEO  
380 Lexington Avenue  
17<sup>th</sup> Floor  
New York, New York 10168  
PHONE (212) 551-1115  
FAX: (518) 751-1801  
Email: [robertarleo@gmail.com](mailto:robertarleo@gmail.com)  
Attorney for the Plaintiff



1:17-cv-964 (DNH/DJS)

**OVERTON, RUSSELL, DOERR AND DONOVAN, LLP**

ATTORNEYS AND COUNSELLORS AT LAW  
17 EIGHTH PARK DRIVE  
CLIFTON PARK, NEW YORK 12065

TELEPHONE (518) 352-8821

May 2, 2017

Victor Fondacaro

Amsterdam, NY 12010

Re: Trustco Realty Corp.  
Accelerated Balance: \$86,308.44 + interest of \$10.902 per day  
Past Due Balance: \$9,786.08 + costs & interest

Dear Mr. Fondacaro:

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

As a result of your failure to pay certain real estate taxes as required by the terms of your mortgage, our client has paid these taxes, or a portion thereof, on your behalf and, as a result, has elected to accelerate the entire balance due and demand payment in full thereof. In addition, unless you provide proof of homeowners insurance naming Trustco as mortgagee within 30 days from your receipt of this letter, our client will purchase the insurance and add the cost to your mortgage balance.

Unless within 30 days after the receipt of this letter you dispute the validity of this debt, or any portion thereof, we will assume the debt to be valid. If you notify us in writing within the 30 day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and mail it to you. Upon written request within the 30 day period, we will provide you with the name of the original creditor, if different from the current creditor.

Despite the acceleration of this debt, our client may agree to reinstate your mortgage loan upon payment of the past due balance including all taxes advanced and any other unpaid taxes, plus interest as indicated above, along with any applicable costs and fees.

Very truly yours,

OVERTON, RUSSELL, DOERR & DONOVAN, LLP

By:



Linda L. Donovan

LLD/mys  
cc: June Ryder



JS 44 (Rev. 06/17)

**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.)

<p><b>I. (a) PLAINTIFFS</b> VICTOR FONDACARO, et al.</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>MONTGOMERY</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> ROBERT L. ARLEO, ESQ., P.C. Robert L. Arleo 380 Lexington Avenue- 17th Floor New York, NY 10168 212-551-1115</p>	<p><b>DEFENDANTS</b> OVERTON, RUSSELL, DOERR &amp; DONOVAN, LLP and LINDA LEE DONOVAN County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p style="text-align: center;"><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p style="text-align: center;"><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;"><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p style="text-align: center;"><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;"><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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 U.S.C. sec 1692 et seq.

Brief description of cause: The defendant violated the Fair Debt Collection Practices Act.

**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:  
**stat damages/costs/atty fee:**   
**JURY DEMAND:**   
 Yes   
 No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*   
JUDGE \_\_\_\_\_   
DOCKET NUMBER \_\_\_\_\_

DATE: 8/24/17   
SIGNATURE OF ATTORNEY OF RECORD: /s/ Robert L. Arleo

**FOR OFFICE USE ONLY**

RECEIPT # 0206-4119304   
AMOUNT \$400.00   
APPLYING IFP \_\_\_\_\_   
JUDGE DNH   
MAG. JUDGE DJS

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Overton, Russell, Doerr & Donovan Hit with Debt Collection Lawsuit](#)

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