

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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

Plaintiff

**CLASS ACTION
COMPLAINT**

-against-

Case No. 1:17-CV-1053 (BKS/DJS)

SOLOMON & SOLOMON, P.C. and JULIE B.
SOLOMON,

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 Solomon & Solomon, P.C. (“S&S”), is a law firm composed of lawyers and non-lawyer support staff.
6. The Defendant S&S maintains a principle place of business located at Five Columbia Circle, Albany, New York.
7. The Defendant S&S 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, telephone and internet.
8. The Defendant S&S is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).
9. The Defendant Julie B. Solomon (“J.B. Solomon”) is a natural person, a duly admitted attorney at law and the President of the Defendant S&S.
10. The Defendant J.B. Solomon personally controls the policies and practices complained of herein and is therefore personally liable to the Plaintiff and the class defined herein for the damages, attorneys fees and costs requested herein.
11. The Defendant J.B. Solomon 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, telephone and internet.
12. The Defendant J.B. Solomon is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

JURISDICTION & VENUE

13. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
14. 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

15. The Defendant S&S has been retained to represent a medical entity doing business as St. Mary's Healthcare (SMH) who provided medical services to the Plaintiff.
16. In an attempt to collect an alleged debt in the amount of \$78.40 allegedly owed by the Plaintiff to SMH, the Defendant S&S forwarded a collection letter dated 11/16/2016 to the Plaintiff. A copy of said letter is attached hereto as Exhibit "1".
17. The letter sent by the Defendant S&S is a "communication" as that term is defined in the FDCPA, 15 U.S.C. § 1692a(2).
18. The Plaintiff is a "consumer" as that term is defined in the FDCPA, 15 U.S.C. § 1692a(3).
19. The alleged monetary obligation described in paragraph 16 heretofore is a "debt" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).
20. Nowhere in the Defendant's letter is it revealed that the Defendant is an operational law firm.
21. The least sophisticated consumer reading the Defendant's collection letter would have no idea that the letter is from a law firm.
22. The failure to advise consumers that S&S is a law firm is false, deceptive and misleading

and otherwise unfair.

23. The Defendants are well aware that a consumer is less likely to respond to a communication from a law firm than to a communication from a collection agency.
24. A consumer has the right to know the full identity of a debt collector who seeks to obtain information about the consumer and who seeks to obtain money from the consumer.
25. The letter contains the 30 day date dispute verification rights accorded to consumers by the FDCPA, 15 U.S.C. § 1692g. A consumer wishing to dispute the debt who is seeking verification thereof is required to send a writing to the Defendant S&S to obtain verification of the alleged debt.
26. A consumer dispute/request for verification letter typically contains personal information about a consumer.
27. A consumer willing to disclose personal information to a collection agency may not wish to disclose personal information to a law firm.
28. Any claim by the Defendants that the failure to disclose that the Defendant S&S is a law firm is based upon the desire to not implicitly threaten legal action would be without merit.
29. If the Defendants wanted to insure that an implication of legal action was not conveyed, it could have simply advised in the letter that no legal action was authorized by SMH nor would any legal action otherwise be commenced.
30. The Defendants could have further prevented any false implication of legal action by including the disclaimer approved by the United States Court of Appeals for the Second Circuit in the matter of *Greco v. Trauner, Cohen & Thomas, L.L.P.*, 412 F.3d 360, 363 (2d Cir. 2005), “at this time, no attorney with this firm has personally reviewed the

particular circumstances of your account.”

31. As a result of the failure to fully disclose that the Defendant S&S is a law firm, the Defendants violated the FDCPA.

CLASS ALLEGATIONS

32. 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.
33. 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 Defendant S&S which is identical in content and form to the collection communication sent to the Plaintiff (“identical” does not include information specific to the Plaintiff).
34. The identities of all class members are readily ascertainable from records maintained by the Defendant S&S.
35. 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.
36. There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members.
37. The Plaintiff’s claims are typical of the class members, as all are based upon the same

facts and legal theories.

38. 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.

39. 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 utilized false, deceptive and misleading debt collection means in the attempt to collect alleged personal debts and otherwise acted unfairly by failing to disclose that the Defendant S&S is a law firm.
- (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

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

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;

The Defendants violated 15 U.S.C. § 1692f by engaging in unfair debt collection practices.

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
September 20, 2017

ROBERT L. ARLEO, ESQ. P.C.
By: /s/ Robert L. Arleo
ROBERT L. ARLEO
380 Lexington Avenue
17th Floor
New York, New York 10168
PHONE (212) 551-1115
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Email: robertarleo@gmail.com
Attorney for the Plaintiff

SOLOMON
AND
SOLOMON

[REDACTED]

Mailing Address: 100 Wall Street, New York, New York 10038
100 Wall Street, New York, New York 10038
Telephone: (212) 850-1000 Fax: (212) 850-1001
E-Mail: info@solomon.com

Se Habla Español

UNIQUE FORWARDING

[REDACTED]

NY 10038

RE: THE FIRM NO. [REDACTED]
ST. MARY'S HEALTHCARE
PO BOX 900, YORK, NEW YORK, NY 13093
ATTN: MR. [REDACTED] AMOUNT: \$0.00
[REDACTED] 078.4

Dear Mr. Madigan:

We have been notified by the state court mediator that you
of this dispute. Please make your check payment as soon
possible to the above address or take the amount in cash to
your check or money order and forward to the address above.

This is an attempt to collect a debt. Any information
obtained will be used for that purpose. Our communications
to you about this debt are randomly monitored and may
be referred to a law firm for review.

DAVIDSON & BROS

Unless you notify this office within 15 days
after receiving this notice that you dispute the validity
of the debt, or any portion thereof, the debt will be
assumed to be valid by this office. If you notify this
office in writing within the thirty (30) day period that
the debt, or any portion thereof is disputed, this office
will obtain verification of the debt. In any event,
a judgment against you and a lien against your real estate, if a
judgment will be entered against you by this office. If you
written request within the thirty (30) day period, this
office will provide you with the name and address
of the original creditor, if different from the current
creditor.

Very truly yours,

SOLOMON AND SOLOMON, P.C.

SM

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.)

I. (a) PLAINTIFFS VICTOR FONDACARO, et al.	DEBEN AND SOLOMON, P.C. and JULIE B. SOLOMON
(b) County of Residence of First Listed Plaintiff <u>MONTGOMERY</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address, and Telephone Number) ROBERT L. ARLEO, ESQ., P.C. Robert L. Arleo 380 LEXINGTON AVE 17th floor NEW YORK, NY 10168 212-551-1115	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)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or 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 and 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	PERSONAL INJURY <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <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	LABOR <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	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
			SOCIAL SECURITY <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))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		
				PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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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: 9/21/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Robert L. Arleo

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT: \$400.00 APPLYING IFP: _____ JUDGE: BKS MAG. JUDGE: DJS

0206-4140926

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Solomon & Solomon Unlawfully Hides Identity, Suit Says](#)
