

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

-----X Case No. 18-cv-06561

CARLTON FORBES, on behalf of himself  
individually and all others similarly situated,

Plaintiff,

-against-

**CLASS ACTION  
COMPLAINT**

SPECIALIZED LOAN SERVICING, LLC,

Defendant.

-----X

Plaintiff, by and through his attorneys, FAGENSON & PUGLISI, PLLC,  
upon knowledge as to himself and his own acts, and as to all other matters upon  
information and belief, brings this complaint against above-named defendant and in  
support thereof alleges the following:

**INTRODUCTION**

1. This is an action for damages brought by an individual consumer  
and on behalf of a class for defendant's violations of the Fair Debt Collection Practices  
Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.* which prohibits debt collectors from engaging  
in abusive, deceptive and unfair acts and practices.

2. Further, this is an action for damages and injunctive relief brought by  
an individual consumer against defendant pursuant to New York General Business Law  
("NYGBL") § 349 regarding defendant's deceptive acts and practices.

### JURISDICTION AND VENUE

3. This Court has federal question jurisdiction pursuant to the FDCPA, 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331 and supplemental jurisdiction exists over the NYGBL § 349 claims pursuant to 28 U.S.C. § 1367.

4. This Court has venue pursuant to 28 U.S.C. § 1391(b) in that plaintiff resides in this District and a substantial portion of the events or omissions giving rise to this action occurred in this District.

### PARTIES

5. Plaintiff is a natural person who resides in this District.

6. Plaintiff is a consumer within the meaning of 15 U.S.C. § 1692a(3) as he is a natural person who is alleged by defendant to owe a financial obligation.

7. The financial obligation which defendant sought to collect from plaintiff is a debt within the meaning of 15 U.S.C. § 1692a(5) in that the obligation which defendant sought to collect from plaintiff is an allegedly defaulted promissory note originally owned by Amtrust Funding Services, Inc. ("Amtrust") and allegedly subsequently acquired by defendant and whose balance was incurred for personal, family or household purposes.

8. Plaintiff is a reasonable consumer within the meaning of NYGBL § 349 who acted reasonably under the circumstances alleged herein.

9. At all times material herein, defendant was a debt collector within the meaning of 15 U.S.C. § 1692a(6).

10. At all times material herein, the principal purpose of defendant's business was the collection of defaulted consumer debts.

11. At all times material herein, defendant used the mails in its business the principal purpose of which was the collection of defaulted consumer debts.

12. Upon information and belief, defendant is a foreign limited liability company incorporated in Delaware.

#### FACTUAL ALLEGATIONS

13. Plaintiff re-alleges paragraphs 1-12 as if fully re-stated herein.

14. Defendant sent a collection notice to plaintiff dated July 17, 2018.

15. By the notice, defendant sought to collect a promissory note debt originally owed to Amtrust.

16. The last payment date on the note was no later than February 1, 2007.

17. Amtrust alleged that the debt under the note was in default.

18. Defendant allegedly obtained the debt.

19. Defendant allegedly obtained the debt after the date of default.

20. In the aforesaid notice, defendant stated in pertinent part:

"As required by law, we may provide information to credit bureaus about an insolvency, delinquency, late payment or default on your account and this may be included on your credit report."

21. Defendant sent to plaintiff a notice containing a substantially identical statement each month for at least the one-year period immediately preceding July 2018.

22. Defendant's said statement in its notice that defendant may provide information about plaintiff's debt to the credit bureaus caused plaintiff to suffer confusion, surprise, fright, worry, distress, agitation and irritation.

AS AND FOR A FIRST CAUSE OF ACTION

*False, deceptive and misleading statement that defendant may report plaintiff's account to credit bureaus*

15 U.S.C. §§ 1692e and 1692e(2)(A)

23. Plaintiff re-alleges paragraphs 1-22 as if fully re-stated herein.

24. Defendant's aforesaid statement in its collection notice dated July 17, 2018 that defendant may provide information about plaintiff's account to the credit bureaus is false, deceptive and misleading.

25. The statement is false because, on the date of defendant's said notice, the statute of limitations for defendant to report the debt to the credit bureaus had already expired.

26. On the date of defendant's said notice, defendant could not legally report any information about plaintiff's debt to the credit bureaus.

27. Defendant's statement in its collection notice that defendant may report plaintiff's debt to the credit bureaus is deceptive and misleading because the statement would cause and did cause plaintiff to believe that defendant could lawfully report the debt to the credit bureaus, when defendant could not.

28. Defendant's said statement would cause and did cause plaintiff to fear that his credit rating would be lowered because of defendant's negative reporting of the debt to the credit bureaus.

29. Defendant's statement in its collection notice that defendant may report the debt to the credit bureaus is deceptive and misleading because the statement would cause the least sophisticated consumer to believe that defendant could lawfully report the debt to the credit bureaus, when defendant could not.

30. Defendant's said statement would cause the least sophisticated consumer to fear that her credit rating would be lowered because of defendant's negative reporting of the debt to the credit bureaus.

31. Defendant's statement that it may report plaintiff's debt to the credit bureaus is therefore a false representation of the character and legal status of the debt, in violation of 15 U.S.C. § 1692e(2)(A).

32. Defendant's statement that it may report plaintiff's debt to the credit bureaus also constitutes a false, deceptive and misleading representation or means used to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692e.

33. Communications from debt collectors, such as those sent by defendant, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer".

AS AND FOR A SECOND CAUSE OF ACTION

NYGBL § 349

34. Plaintiff re-alleges paragraphs 1-33 as if fully re-stated herein.

35. Each of the deceptive and misleading acts and practices above-mentioned was committed by defendant in the conduct of a business, trade or commerce or the furnishing of a service in New York State and constitutes a violation of NYGBL § 349.

36. Defendant's deceptive and misleading acts and practices were consumer-oriented, in that defendant is a collector of consumer debts incurred principally or wholly by natural persons.

37. The collection notice dated July 17, 2018 which defendant sent to plaintiff is a mass-mailed form notice used by defendant.

38. The said collection notice is derived from a form of notice used by defendant.

39. The said collection notice is derived from a template used by defendant.

40. Each year defendant sends to thousands of consumers within New York State collection notices concerning debts which are beyond the credit reporting statute of limitations, in which notices defendant includes the statement that defendant may report the debts to the credit bureaus, similar to the notices defendant sent to plaintiff.

41. Defendant's said statement was consumer-oriented.

42. Defendant sends the said collection notices concerning debts which are beyond the statute of limitations to be reported to the credit bureaus.

43. Plaintiff is a reasonable consumer within the meaning of the NYGBL and acted reasonably under the circumstances of this case.

44. Defendant's said notice would cause and did cause plaintiff to believe that defendant could lawfully report the debt to the credit bureaus, when defendant could not lawfully do so.

45. Defendant's said notice would cause and did cause plaintiff to fear that his credit rating would be lowered because of defendant's negative reporting of the debt to the credit bureaus.

46. Defendant's said notice would cause the reasonable consumer to believe that defendant could lawfully report the debt to the credit bureaus, when defendant could not lawfully do so.

47. Defendant's said notices would cause the reasonable consumer to fear that her credit rating would be lowered because of defendant's negative reporting of the debt to the credit bureaus.

48. Defendant's said statement in its notice that defendant may provide information about plaintiff's debt to the credit bureaus caused plaintiff to suffer confusion, surprise, fright, worry, distress, agitation and irritation.

49. Defendant's said statement was therefore misleading and deceptive in a material way.

50. Defendant violated NYGBL § 349(a) and is liable to plaintiff under NYGBL § 349(h).

## CLASS ALLEGATIONS

51. Plaintiff re-alleges paragraphs 1-50 as if fully re-stated herein.

52. This action is brought on behalf of plaintiff and the members of a class and subclass. The class consists of all persons who defendant's records reflect were sent debt collection notices within the State of New York within the period of time commencing one year before the filing of this complaint up to and including the date of the filing of the complaint and who were sent a collection notice (a) in substantially the same form as defendant's notice dated July 17, 2018; (b) the collection notice was sent to a consumer seeking payment of a consumer debt; (c) the collection notice was not returned by the postal service as undeliverable; and (d) the collection notice concerned an account which was beyond the statute of limitations to be reported to the credit bureaus but nevertheless contained a statement that defendant may provide information about the account to credit bureaus. The class does not include defendant or persons who are officers, directors or employees of defendant.

53. The class shall be defined as follows:

*All natural persons with addresses within the State of New York to whom defendant sent a notice in an attempt to collect a consumer account which was beyond the statute of limitations to be reported to the credit bureaus, but which notice states, in sum or substance, that defendant may provide information about the account to credit bureaus, during the period from one year before the filing of the complaint to the date of the filing of the complaint inclusive, and which notice was not returned by the postal service as undeliverable.*



54. The subclass consists of all persons who defendant's records reflect were sent debt collection notices within the geographical limits of the Eastern District of New York within the period of time commencing one year before the filing of this complaint up to and including the date of the filing of the complaint and who were sent a collection notice (a) in substantially the same form as defendant's notice dated July 17, 2018; (b) the collection notice was sent to a consumer seeking payment of a consumer debt; (c) the collection notice was not returned by the postal service as undeliverable; and (d) the collection notice concerned an account which was beyond the statute of limitations to be reported to the credit bureaus but nevertheless contained a statement that defendant may report information about the account to credit bureaus. The subclass does not include defendant or persons who are officers, directors or employees of defendant.

55. The subclass shall be defined as follows:

*All natural persons with addresses within the geographical limits of the Eastern District of New York to whom defendant sent a notice in an attempt to collect a consumer account which was beyond the statute of limitations to be reported to the credit bureaus, but which notice states, in sum or substance, that defendant may provide information about the account to credit bureaus, during the period from one year before the filing of the complaint to the date of the filing of the complaint inclusive, and which notice was not returned by the postal service as undeliverable.*

56. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

- (A) Based on the fact that the collection notice that is the gravamen of this litigation is a mass-mailed form notice, the class and subclass are so numerous that joinder of all members is impracticable. Upon information and belief, thousands of persons have received similar debt collection notices from defendant which violate the various provisions of law.
- (B) There are questions of law and fact common to the class and subclass and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether defendant violated the law by including the statement that defendant may provide information about the account to credit bureaus in collection notices concerning debts which were beyond the statute of limitations to be reported to the credit bureaus.
- (C) The only individual issue is the identification of the consumers who received the notices (the class members), a matter capable of ministerial determination from the records of defendant.
- (D) The claims of plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

- (E) Plaintiff will fairly and adequately represent the class members' interests. Plaintiff has retained experienced counsel. Plaintiff's interests are consistent with those of the members of the class and subclass.

57. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA in 15 U.S.C. § 1692k. The members of the class and subclass are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the class and subclass would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

58. If the facts are discovered to be appropriate, plaintiff will seek to certify a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

59. As a result of the above violations, defendant is liable to plaintiff and the members of the class and subclass for an injunction and damages in an amount to be determined at the time of trial, plus costs and attorneys' fees.

WHEREFORE, plaintiff respectfully prays that judgment be entered against defendant as follows:

- (a) certifying a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- (b) awarding class members the maximum statutory damages pursuant to 15 U.S.C. § 1692k;
- (c) awarding plaintiff the maximum statutory damages pursuant to 15 U.S.C. § 1692k;
- (d) awarding plaintiff actual damages pursuant to 15 U.S.C. § 1692k in an amount to be determined at time of trial;
- (e) awarding reasonable attorneys' fees, costs and disbursements pursuant to 15 U.S.C. § 1692k;
- (f) enjoining defendant from committing further deceptive and misleading acts and practices, pursuant to NYGBL § 349;
- (g) awarding actual damages pursuant to NYGBL § 349 in an amount to be determined at time of trial;
- (h) awarding, in the alternative, statutory damages pursuant to NYGBL § 349 in an amount to be determined at time of trial;
- (i) awarding reasonable attorneys' fees, costs and disbursements pursuant to NYGBL § 349(h); and
- (j) for such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York  
November 16, 2018.

/s/ Novlette R. Kidd

NOVLETTE R. KIDD, ESQ. (NK 9339)

FAGENSON & PUGLISI, PLLC

Attorneys for Plaintiff

450 Seventh Avenue, Suite 704

New York, New York 10123

Telephone: (212) 268-2128

[Nkidd@fagensonpuglisi.com](mailto:Nkidd@fagensonpuglisi.com)

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

CARLTON FORBES, on behalf of himself individually and all others

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

FAGENSON & PUGLISI, PLLC, 450 Seventh Avenue, Suite 704, New York, New York 10123. Tel.: (212) 268-2128

DEFENDANTS

SPECIALIZED LOAN SERVICING, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, 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 U.S.C. section 1692 et seq.

Brief description of cause: Violations of Fair Debt Collection Practices Act, deception

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

(See instructions): JUDGE DOCKET NUMBER

DATE 11/16/18 SIGNATURE OF ATTORNEY OF RECORD s/ Novlette R. Kidd

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, Novlette R.Kidd, 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 Legal issues predominate

**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:

N/A - Plaintiff is a natural person.

**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, specify the County in which the offending communication was received: Queens County

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/ Novlette R. Kidd

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

CARLTON FORBES, on behalf of himself individually
and all others similarly situated,

Plaintiff(s)

v.

SPECIALIZED LOAN SERVICING, LLC,

Defendant(s)

Civil Action No. 18-cv-06561

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SPECIALIZED LOAN SERVICING, LLC
C/O United Agent Group, Inc.
15 North Mill Street
Nyack, New York 10960

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: FAGENSON & PUGLISI, PLLC
450 Seventh Avenue, Suite 704
New York, New York 10123

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.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk



Civil Action No. 18-cv-06561

**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: [Specialized Loan Servicing Sued Over Allegedly False Threats in Collection Notice](#)

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