

BARSHAY SANDERS, PLLC
100 Garden City Plaza, Suite 500
Garden City, New York 11530
Tel: (516) 203-7600
Fax: (516) 706-5055
Email: *ConsumerRights@BarshaySanders.com*
Attorneys for Plaintiff
Our File No.: 113962

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

James Ford, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Enhanced Recovery Company, LLC,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

James Ford, 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 Enhanced Recovery Company, LLC (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 James Ford is an individual who is a citizen of the State of New York residing in Kings County, New York.

6. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

7. On information and belief, Defendant Enhanced Recovery Company, LLC, is a Florida Limited Liability Company with a principal place of business in Duval County, Florida.

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 August 8, 2017. (“**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).

17. 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.

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

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

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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.

26. The letter threatens that Defendant may report the account to the credit bureaus.

27. The letter also states that, "Payment of the offered settlement amount will stop collection activity on this matter."

28. This statement overshadows Plaintiff's absolute right to dispute the debt.

29. This statement overshadows Plaintiff's absolute right to seek validation of the debt.

30. This statement overshadows Plaintiff's absolute right to request the name of the original creditor.

31. Pursuant to 15 U.S.C. § 1692g(b), if Plaintiff exercises the foregoing rights, Defendant must stop its collection efforts as a matter of law until Defendant satisfies Plaintiff's validation requests.

32. Such duty to stop collection efforts is not contingent upon Plaintiff making any payment to Defendant.

33. Defendant's letter would likely make the unsophisticated consumer uncertain as

to her rights.

34. Defendant's letter would likely lead the unsophisticated consumer to believe that the only way to make Defendant stop its collection efforts and reporting of the debt to the credit bureaus is to make payment in full, contrary to law.

35. Defendant has therefore violated 15 U.S.C. § 1692g.

36. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

37. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on non-enumerated practice.

38. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.

39. The question of whether a collection letter is deceptive is determined from the perspective of the "unsophisticated consumer."

40. Defendant's letter would likely lead the unsophisticated consumer to believe that the only way to make Defendant stop its collection efforts is to make payment in full, which is false.

41. Because the collection letter in the instant case was reasonably susceptible to an inaccurate reading, as described above, it is also deceptive within the meaning of the FDCPA.

42. The unsophisticated consumer would likely be deceived by Defendant's conduct.

43. The unsophisticated consumer would likely be deceived in a material way by Defendant's conduct.

44. Defendant has violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

45. 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 a letter containing the same language cited herein, from one year before the date of this Complaint to the present.

46. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

47. Defendant regularly engages in debt collection.

48. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a letter containing the same language cited herein.

49. 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.

50. 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.

51. 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 consumer protection laws.

JURY DEMAND

52. 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 Representative of the Class, and Plaintiff's 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: October 11, 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 Plaintiff

Our File No.: 113962



Creditor: Sprint
 Original Creditor: Sprint
 Account Number: XXXXX9561
 Amount of Debt: \$962.14
 Reference Number: 2057

August 08, 2017
 Original Balance: \$962.14
 Interest Accrued: N/A
 Non-interest Charges & Fees: N/A
 Payments: \$0.00

You Have Options

JAMES FORD

Our records indicate that your balance with Sprint remains unpaid; therefore your account has been placed with ERC for collection efforts. We are willing to reduce your outstanding balance by offering discounted options.

- Option 1: Pay the settlement of \$432.96, please remit by September 12, 2017.
- Option 2: Pay the settlement of \$481.08, payable in 2 monthly payments of \$240.54.
- Option 3: Pay the settlement of \$529.17, payable in 3 monthly payments of \$176.39.

We are not obligated to renew this offer.

This letter serves as notification that your delinquent account may be reported to the national credit bureaus.

Payment of the offered settlement amount will stop collection activity on this matter. We will inform Sprint once the payment(s) is/are posted. Payment of the settlement amount will not restore your service with Sprint. If you wish to re-establish service with Sprint at a future date, Sprint may require partial or full payment of your remaining balance at that time, according to Sprint's credit policy.

Unless you dispute the validity of the debt, or any portion thereof, within thirty (30) days after your receipt of this notice, the debt will be assumed to be valid by us.

If you notify our office below in writing within (30) days of your receipt of this notice that the debt, or any portion thereof is disputed, we will obtain verification of the debt or a copy of any judgment that may be of record against you. We will mail the verification or copy of the judgment to you.

Upon your written request to this office within thirty (30) days of your receipt of this notice, we will provide you with the name and address of the original creditor, if different from the current creditor listed in the above section of this notice.



For self-service options, please visit our website at www.ercbpo.com/help.



Telephone: (800) 459-0815 Toll Free. All calls are recorded and may be monitored for training purposes.



Send correspondence to: ERC, P.O. Box 57610, Jacksonville, FL 32241



Office Hours (Eastern Time): Mon - Thur, 8:00 am - 11:00 pm; Fri: 8:00 am - 10:00 pm; Sat: 8:00 am - 8:00 pm

PAP-1685-B-0

This is an attempt to collect a debt. Any information obtained will be used for that purpose.



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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

James Ford, individually and on behalf of all others similarly situated)	
_____)	
<i>Plaintiff(s)</i>)	
)	Civil Action No.
v.)	
)	
Enhanced Recovery Company, LLC)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Enhanced Recovery Company, LLC
C T CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

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 PLAZA, SUITE 500
GARDEN CITY, NY 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 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: JAMES FORD
(b) County of Residence of First Listed Plaintiff: KINGS
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: ENHANCED RECOVERY COMPANY, LLC
County of Residence of First Listed Defendant: DUVAL
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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)
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: O 110 Insurance, O 120 Marine, O 130 Miller Act, O 140 Negotiable Instrument, O 150 Recovery of Overpayment & Enforcement of Judgment, O 151 Medicare Act, O 152 Recovery of Defaulted Student Loans (Excludes Veterans), O 153 Recovery of Overpayment of Veteran's Benefits, O 160 Stockholders' Suits, O 190 Other Contract, O 195 Contract Product Liability, O 196 Franchise
REAL PROPERTY: O 210 Land Condemnation, O 220 Foreclosure, O 230 Rent Lease & Ejectment, O 240 Torts to Land, O 245 Tort Product Liability, O 290 All Other Real Property
TORTS: PERSONAL INJURY: O 310 Airplane, O 315 Airplane Product Liability, O 320 Assault, Libel & Slander, O 330 Federal Employers' Liability, O 340 Marine, O 345 Marine Product Liability, O 350 Motor Vehicle, O 355 Motor Vehicle Product Liability, O 360 Other Personal Injury, O 362 Personal Injury - Medical Malpractice
PRISONER PETITIONS: Habeas Corpus: O 463 Alien Detainee, O 510 Motions to Vacate Sentence, O 530 General, O 535 Death Penalty
Other: O 540 Mandamus & Other, O 550 Civil Rights, O 555 Prison Condition, O 560 Civil Detainee Conditions of Confinement
FORFEITURE/PENALTY: O 625 Drug Related Seizure of Property 21 USC 881, O 690 Other
LABOR: O 710 Fair Labor Standards Act, O 720 Labor/Management Relations, O 740 Railway Labor Act, O 751 Family and Medical Leave Act, O 790 Other Labor Litigation, O 791 Employee Retirement Income Security Act
IMMIGRATION: O 462 Naturalization Application, O 465 Other Immigration Actions
BANKRUPTCY: O 422 Appeal 28 USC 158, O 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: O 820 Copyrights, O 830 Patent, O 840 Trademark
SOCIAL SECURITY: O 861 HIA (1395ff), O 862 Black Lung (923), O 863 DIWC/DIWW (405(g)), O 864 SSID Title XVI, O 865 RSI (405(g))
FEDERAL TAX SUITS: O 870 Taxes (U.S. Plaintiff or Defendant), O 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: O 375 False Claims Act, O 400 State Reapportionment, O 410 Antitrust, O 430 Banks and Banking, O 450 Commerce, O 460 Deportation, O 470 Racketeer Influenced and Corrupt Organizations, O 480 Consumer Credit, O 490 Cable/Sat TV, O 850 Securities/Commodities/Exchange, O 890 Other Statutory Actions, O 891 Agricultural Acts, O 893 Environmental Matters, O 895 Freedom of Information Act, O 896 Arbitration, O 899 Administrative Procedure Act/Review or Appeal of Agency Decision, O 950 Constitutionality of State 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: November 8, 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? 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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Enhanced Recovery Company 'Overshadowed' Consumer's Right to Dispute Debt](#)
