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Attorneys for Plaintiff
Our File No.: 114272

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

Donna Giannetti, individually and on behalf of all those
similarly situated,

Plaintiff,

vs.

Biehl & Biehl, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Donna Giannetti, individually and on behalf of all those similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Biehl & Biehl, Inc. (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.

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GARDEN CITY, NEW YORK 11530

PARTIES

5. Plaintiff Donna Giannetti is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

7. On information and belief, Defendant Biehl & Biehl, Inc., is an Illinois Corporation with a principal place of business in Dupage County, Illinois.

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 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 September 14, 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. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

18. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

19. 15 U.S.C. § 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

20. The reverse side of the Letter states:

“We are required by regulation of the New York State Department

of Financial Services to notify you of the following information. This information is NOT legal advice.

Your creditor or debt collector believes the legal time limit (statute of limitations) for suing you to collect this debt may have expired. It is a violation of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 et seq., to sue on a debt for which the statute of limitations has expired. However, if the creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgment against you. To do so, you must tell the court that the statute of limitations has expired.

Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you may a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again.”

21. Plaintiff’s Debt was incurred with Newsday.

22. The terms and conditions of Plaintiff’s account with Newsday are governed by a contractual agreement between Plaintiff and Newsday.

23. New York’s six-year statute of limitations for collection of a contractual debt applies herein. *See* N.Y.C.P.L.R. § 213 (“The following actions must be commenced within six years: . . . an action upon a contractual obligation or liability[.]”).

24. On information and belief, Plaintiff’s debt was not time-barred at the time of Defendant’s Letter to Plaintiff.

25. The Letter’s statement that “the legal time limit (statute of limitations) for suing you to collect this debt may have expired” is false.

26. The Letter’s statement that Plaintiff, if sued, “may be able to prevent the creditor from obtaining judgment against you” by way of informing that Court that the statute of limitations has expired, is false.

27. Whether the creditor may legally sue a consumer in connection with the collection of a debt is a material piece of information to a consumer.

28. Whether the creditor may legally sue a consumer in connection with the collection of a debt affects how a consumer responds to a debt collector’s attempts to collect the debt.

29. The least sophisticated consumer, upon being presented with the above-described statements, would likely be misled into believing she is not at risk of being sued in connection with collection of the subject Debt.

30. The least sophisticated consumer, holding the mistaken belief that she cannot legally be sued in connection with collection of the subject Debt, would likely opt to pay another debt that she believes the statute of limitations has not expired on.

31. The least sophisticated consumer, holding the mistaken belief that she cannot legally be sued in connection with collection of the subject Debt, and upon reading that “if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again,” would be strongly disinclined from taking any action whatsoever in response to Defendant’s Letter.

32. The least sophisticated consumer would likely believe that such inaction is in her best interest when, in fact, such inaction would only increase her risk of being sued in connection with collection of the subject Debt.

33. If sued in connection with collection of the subject Debt, Plaintiff’s credit score would likely be negatively and severely affected.

34. If sued in connection with collection of the subject Debt, and if a judgment is obtained, Plaintiff would be subject to the collection of post-judgment interest on the Debt. *See* N.Y.C.P.L.R. § 5001(a) (“providing that interest shall be recovered upon a sum of awarded because of a breach of contract”).

35. A collection letter is deceptive under 15 U.S.C. § 1692e if it can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate.

36. A collection letter is also deceptive under 15 U.S.C. § 1692e if it is reasonably susceptible to an inaccurate reading by the least sophisticated consumer.

37. Because the Letter is reasonably susceptible to an inaccurate reading by the least sophisticated consumer, as described, it is deceptive within the meaning of 15 U.S.C. § 1692e.

38. The least sophisticated consumer would likely be deceived by the Letter.

39. The least sophisticated consumer would likely be deceived in a material way by the Letter.

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

41. Defendant violated § 1692e(2)(A) by falsely representing the legal status of Plaintiff's debt.

42. Defendant violated § 1692e(10) by using a false representation in its attempt to collect Plaintiff's debt.

CLASS ALLEGATIONS

43. 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 non-time-barred consumer debt using a collection letter that sets forth the same language complained of herein concerning the statute of limitations, from one year before the date of this Complaint to the present.

44. 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.

45. Defendant regularly engages in debt collection.

46. The Class consists of more than 35 persons from whom Defendant attempted to collect a non-time-barred consumer debts using a collection letter that sets forth the same language complained of herein concerning the statute of limitations.

47. 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.

48. 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.

49. 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

50. 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: September 11, 2018

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders
Craig B. Sanders, Esq.
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Tel: (516) 203-7600
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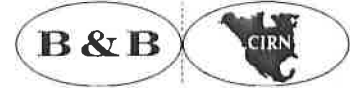
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csanders@barshaysanders.com
Attorneys for Plaintiff
Our File No.: 114272

BIEHL & BIEHL, INC.

P. O. BOX 87410
CAROL STREAM, IL 60188-7410

BIEHL & BIEHL, INC.



325 E. Fullerton Ave., Carol Stream, IL 60188
Toll Free: 800-837-2434 Fax: 630-682-0545

DEBT INFORMATION

Creditor: Newsday Circulation

Account #: [REDACTED] 3239

Date: September 14, 2017

Account
Balance: \$14.17



Donna Giannetti
36 Tyburn Ln
South Setauket, NY 11720-1426

The above creditor has retained us to collect the amount you owe them. Kindly return the stub part at the bottom of this letter with your payment.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is a communication from a debt collector.
This is an attempt to collect a debt. All information obtained will be used for this purpose.

New York Residents: See Reverse Side for Important Information.



---- DETACH HERE AND PLACE IN RETURN ENVELOPE WITH YOUR PAYMENT ----

PLEASE RETURN THIS STUB WITH YOUR PAYMENT

MAKE CHECK OR MONEY ORDER
PAYABLE TO CREDITOR LISTED
IN DEBT INFORMATION

Creditor: Newsday Circulation
Account #: [REDACTED] 3239
Date: September 14, 2017
Account Balance: \$14.17



BIEHL & BIEHL
P.O. BOX 87410
CAROL STREAM, IL 60188-7410

[REDACTED] 7219
Donna Giannetti
36 Tyburn Ln
South Setauket, NY 11720-1426

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to: (a) the use or threat of violence; (b) the use of obscene or profane language; and (c) repeated phone calls made with the intent to annoy, abuse, or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI); 2. Social security; 3. Public assistance (welfare), 4. Spousal support, maintenance (alimony) or child support; 5. Unemployment benefits; 6. Disability benefits; 7. Workers' compensation benefits; 8. Public or private pensions; 9. Veterans' benefits; 10. Federal student loans, federal student grants, and federal work study funds; and 11. Ninety percent of your wages or salary earned in the last sixty days.

We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice.

Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. It is a violation of the Fair Debt Collection Practices Act, 5 U.S.C. § 1692 et seq., to sue to collect on a debt for which the statute of limitations has expired. However, if the creditor sues you to collect on this debt, you may be able to prevent the creditor from obtaining a judgement against you. To do so, you must tell the court that the statute of limitations has expired.

Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay back the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again. If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization.

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: DONNA GIANNETTI
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: BIEHL & BIEHL, INC.
County of Residence of First Listed Defendant: DUPAGE

II. BASIS OF JURISDICTION
III. CITIZENSHIP OF PRINCIPAL PARTIES
O 1 U.S. Government Plaintiff
O 2 U.S. Government Defendant
O 3 Federal Question
O 4 Diversity
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN
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
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: 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
JUDGE
DOCKET NUMBER

DATE: September 13, 2018
SIGNATURE OF ATTORNEY OF RECORD: /s Craig 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.

Case is Eligible for Arbitration

I, _____, counsel for _____, 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: 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, specific the County in which the offending communication was received: SUFFOLK

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 Craig B. Sanders

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF NEW YORK

Donna Giannetti, individually and on behalf of all those similarly situated, Plaintiff(s) v. Biehl & Biehl, Inc., Defendant(s) Civil Action No.

SUMMONS IN A CIVIL ACTION

To:(Defendant's name and address)

Biehl & Biehl, Inc. C/O C T CORPORATION SYSTEM 111 EIGHTH AVENUE NEW YORK, NEW YORK, 10011

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Biehl & Biehl Accused of Misrepresenting Woman's Debt as Time-Barred](#)
