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Our File No.: 114334

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

George William Lynch, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

Vital Recovery Services, Inc. and LendingClub
Corporation,

Defendants.

Docket No:

COMPLAINT

JURY TRIAL DEMANDED

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

George William Lynch, 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 Vital Recovery Services, Inc. and LendingClub Corporation (hereinafter referred to collectively as “*Defendants*”), 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, Defendants conducted business within the State of New York.

PARTIES

5. Plaintiff George William Lynch is an individual who is a citizen of the State of New York residing in Nassau County, New York.

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

7. On information and belief, Defendant Vital Recovery Services, Inc., is a Georgia Corporation with a principal place of business in Gwinnett County, Georgia.

8. On information and belief, Defendant LendingClub Corporation, is a California Corporation with a principal place of business in San Francisco, California.

9. Defendants are regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

10. Defendants are “debt collectors” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

11. Defendants allege Plaintiff owes a debt (“the Debt”).

12. The Debt was primarily for personal, family or household purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

13. Sometime after the incurrence of the Debt Plaintiff fell behind on payments owed.

14. Thereafter, at an exact time known only to Defendants, the debt was assigned or otherwise transferred to Defendants for collection.

15. In their efforts to collect the debt, Defendants contacted Plaintiff by letter (“the Letter”) dated June 16, 2017. (“**Exhibit 1.**”)

16. The letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT **Violation of 15 U.S.C. § 1692e**

17. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

18. The Debt was incurred on a credit card underwritten by WebBank.

19. The Letter sets forth a “Principal Amount Due” of \$23,410.98.

20. The Letter sets forth “Interest Due” of \$1,879.39.

21. The Letter sets forth “Misc. Fee Due” of \$52.19.

22. The Letter sets forth a “Total Balance Due” of \$25,342.56.

23. Pursuant to the terms and conditions of the credit card, WebBank charged Plaintiff interest on any balance carried on the account.

24. Pursuant to the terms and conditions of the credit card, WebBank charged Plaintiff late fees on any payments due but not timely made by Plaintiff.

25. Pursuant to the terms and conditions of the credit card, WebBank charged Plaintiff other fees on the account.

26. The right to collect from Plaintiff interest on any balance carried on the account was not waived by WebBank.

27. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by WebBank.

28. The right to collect from Plaintiff other fees on the account was not waived by WebBank.

29. The right to collect from Plaintiff interest on any balance carried on the account was not waived by any assignee or successor-in-interest.

30. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by any assignee or successor-in-interest.

31. The right to collect from Plaintiff other fees on the account was not waived by any assignee or successor-in-interest.

32. Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

33. Pursuant to the terms and conditions of the credit card, interest continued to accrue on any balance unpaid.

34. Pursuant to the terms and conditions of the credit card, late fees continued to accrue on any payments due but not timely made by Plaintiff.

35. Pursuant to the terms and conditions of the credit card, other fees continued to accrue on the account.

36. Pursuant to the terms and conditions of the credit card, WebBank and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest on any balance carried on the account.

37. Pursuant to the terms and conditions of the credit card, WebBank and any assignee or successor-in-interest had the legal right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff.

38. Pursuant to the terms and conditions of the credit card, WebBank and any assignee or successor-in-interest had the legal right to collect from Plaintiff other fees on the account.

39. Pursuant to the terms and conditions of the credit card, the legal right of WebBank and any assignee or successor-in-interest to collect from Plaintiff interest on any balance carried on the account is not waived by WebBank or any assignee or successor-in-interest as a result of a failure by either WebBank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest.

40. Pursuant to the terms and conditions of the credit card, the legal right of WebBank and any assignee or successor-in-interest to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff is not waived by WebBank or any assignee or successor-in-interest as a result of a failure by either WebBank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned late fees.

41. Pursuant to the terms and conditions of the credit card, the legal right of WebBank and any assignee or successor-in-interest to collect from Plaintiff other fees on the account is not waived by WebBank or any assignee or successor-in-interest as a result of a failure by either WebBank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned other fees.

42. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

43. The Letter failed to disclose that the balance stated may increase due to interest.

44. The Letter failed to disclose that the balance stated may increase due to late fees.

45. The Letter failed to disclose that the balance stated may increase due to other fees.

46. The Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e.

SECOND COUNT
Violation of 15 U.S.C. § 1692e

47. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

48. As previously set forth, the Letter sets forth a “Principal Amount Due” of \$23,410.98.

49. As previously set forth, the Letter sets forth “Interest Due” of \$1,879.39.

50. As previously set forth, the Letter sets forth “Misc. Fee Due” of \$52.19.

51. As previously set forth, the Letter sets forth a “Total Balance Due” of \$25,342.56.

52. As previously set forth, Plaintiff was always charged interest on any balance carried on the account.

53. As previously set forth, Plaintiff was always charged late fees on any payments due but not timely made by Plaintiff.

54. As previously set forth, Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

55. The Letter fails to disclose whether the amount stated may increase due to additional interest.

56. The Letter fails to disclose whether the amount stated may increase due to additional late fees.

57. The Letter fails to indicate whether the creditor will accept payment of the amount stated in full satisfaction of the debt if payment is made by a specified date.

58. The Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

59. The Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

60. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

61. For instance, the Letter fails to indicate the applicable interest rate.

62. For instance, the Letter fails to indicate the date of accrual of interest.

63. For instance, the Letter fails to indicate the amount of interest during any measurable period.

64. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late fees owed.

65. For instance, the Letter fails to indicate the amount of late fees.

66. For instance, the Letter fails to indicate the date such fees will be added.

67. For instance, the Letter fails to indicate the amount of late fees during any measurable period.

68. The Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

69. The Letter fails to state whether interest, late fees and/or other fees are accruing.

70. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

71. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

72. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

73. A collection letter violates 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.

74. The Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that interest was still accruing.

75. The Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that late fees were still accruing.

76. The Letter could also reasonably be read by the least sophisticated consumer to mean that interest was no longer accruing.

77. The Letter could also reasonably be read by the least sophisticated consumer to mean that late fees were no longer accruing.

78. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated.

79. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the Letter.

80. The Letter could also reasonably be read by the least sophisticated consumer to mean that the amount stated was accurate only on the date of the Letter because of the continued accumulation of interest and/or late fees.

81. Because the Letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive under 15 U.S.C. § 1692e.

82. For these reasons, Defendants violated 15 U.S.C. § 1692e.

CLASS ALLEGATIONS

83. 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 Defendants attempted to collect a consumer debt using a substantially similar form collection letter, from one year before the date of this Complaint to the present.

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

85. Defendants regularly engage in debt collection.

86. The Class consists of more than 35 persons from whom Defendants attempted to collect delinquent consumer debts using a substantially similar form collection letter.

87. 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.

88. 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. Defendants have acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

89. 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 Defendants' 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

90. 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 Defendants' actions violate the FDCPA; and
- d. Grant damages against Defendants 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: June 10, 2018

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

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

csanders@barshaysanders.com
Attorneys for Plaintiff
Our File No.: 114334

V01

PO Box 923748
 Peachtree Corners, GA 300103748



ACCOUNT INFORMATION	
New Account #	██████████8483
Total Balance Due	\$25,342.56



George Lynch
 1444 WASHINGTON AVE
 SEAFORD, NY 11783-1921



VITAL RECOVERY SERVICES, LLC
 PO BOX 923747
 PEACHTREE CORS., GA 300103747

A. Pay to A

Amount Paid:

Home Phone: _____
 Daytime Phone: _____

Please Detach And Return in The Enclosed Envelope With Your Payment

June 16, 2017

**IMPORTANT NOTICE: PLEASE RESPOND
 HELP YOURSELF AND CALL US ABOUT YOUR ACCOUNT.**

Dear George Lynch:

Your past-due account has not been paid.

If you can't pay in full today, call us anyway. We work everyday to help other people with special payment arrangements customized to fit their situations. You'll have the peace of mind of putting this obligation in the past.

ACCOUNT SUMMARY	
Original Creditor	WebBank
Current Creditor	LendingClub Corporation
New Account #	██████████8483
Original Account #	██████████2574
Last Payment Date	03/13/2017
Principal Amount Due	\$23,410.98
Interest Due	\$1,879.39
Misc. Fee Due	\$52.19
Total Balance Due	\$25,342.56

NEW YORK CITY RESIDENTS: Kyle Sutter, Operations Manager, B: 678-578-1045.

New York City Department of Consumer Affairs License Number: 2047506-DCA

NEW YORK STATE RESIDENTS: 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.

PAYMENT OPTIONS	
	To make a payment online: https://pay.vitalrecovery.com Sign on using payment id: 01805848337
	For further information or to pay by phone, please call Vital Recovery Services, LLC at (888)297-4067 .
	Mail check or money order payable to Vital Recovery Services, LLC

This letter is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. This communication is from a debt collector.



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: GEORGE WILLIAM LYNCH
(b) County of Residence of First Listed Plaintiff: NASSAU
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: VITAL RECOVERY SERVICES, INC.
County of Residence of First Listed Defendant: GWINNETT
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)
Grid with categories: U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, 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)
Grid with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, 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 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 ○ No

VIII. RELATED CASE(S) IF ANY
(See Instructions)
JUDGE
DOCKET NUMBER

DATE: June 12, 2018
SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFF 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? YES
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES
 - c) If this is a Fair Debt Collection Practice Act case, specific the County in which the offending communication was received: NASSAU

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

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

George William Lynch, individually and on behalf of
all others similarly situated _____)

Plaintiff(s))

v.)

Vital Recovery Services, Inc. and LendingClub
Corporation _____)

Defendant(s)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
LendingClub Corporation
c/o CORPORATION SERVICE COMPANY
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808

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

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

George William Lynch, individually and on behalf of
all others similarly situated

Plaintiff(s)

v.

Vital Recovery Services, Inc. and LendingClub
Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Vital Recovery Services, Inc.
3795 Data Drive , Suite 200
Peachtree Corners, Georgia 30092

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: [Lawsuit: Vital Recovery Services, LendingClub Failed to Clearly State Man's Debt Amount](#)
