

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.: 113439

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

Aida Markistic, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

National Enterprise Systems, Inc. and Main Street
Acquisition Corp.,

Defendants.

Docket No:

COMPLAINT

JURY TRIAL DEMANDED

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

Aida Markistic, 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 National Enterprise Systems, Inc. and Main Street Acquisition Corp.(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 Aida Markistic is an individual who is a citizen of the State of New York residing in Queens County, New York.

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

7. On information and belief, Defendant National Enterprise Systems, Inc., is an Ohio Corporation with a principal place of business in Cuyahoga County, Ohio.

8. On information and belief, Defendant Main Street Acquisition Corp., is a Nevada Corporation with a principal place of business in New York County, New York.

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 COMMON TO ALL CLAIMS

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. Plaintiff’s last payment on the Debt was prior to 2008.

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

16. In their efforts to collect the debt, Defendants contacted Plaintiff by letter (“the Letter”) dated May 5, 2017. (“**Exhibit 1.**”)

17. The Letter was the initial communication Plaintiff received from Defendants.

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

19. The statute of limitations for the Debt began to accrue prior to 2008.

20. The Letter was sent after the statute of limitations expired.

21. The Letter demands payment.

22. Making any payment on a time-barred debt may result in revival of Plaintiff’s

otherwise time-barred debt.

23. 22 N.Y.C.R.R. § 1.3 requires debt collectors to notify consumers that 1) the debt collector believes that the statute of limitations applicable to the debt may be expired; 2) suing on a debt for which the statute of limitations has expired is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.; 3) if the consumer is sued on a debt for which the statute of limitations has expired, the consumer may be able to stop the lawsuit by responding to the court that the statute of limitations has expired; 4) the consumer is not required to provide the debt collector with an admission, affirmation, or acknowledgment of the debt, a promise to pay the debt, or a waiver of the statute of limitations; and 5) if the consumer makes any payment on a debt for which the statute of limitations has expired or admits, affirms, acknowledges, or promises to pay such debt, the statute of limitations may restart.

24. Notwithstanding the expiration of the statute of limitations to sue to recover the debt prior to the time Defendant sent Plaintiff the Letter, the Letter fails to provide any indication to Plaintiff that no legal action could be undertaken to attempt to recover the debt.

25. Notwithstanding the expiration of the statute of limitations to sue to recover the debt prior to the time Defendant sent Plaintiff the Letter, the Letter fails to inform Plaintiff that any partial payment by Plaintiff may result in the revival of Plaintiff's otherwise time-barred debt.

26. Notwithstanding the expiration of the statute of limitations to sue to recover the debt prior to the time Defendant sent Plaintiff the Letter, the Letter fails to provide the notifications required by 22 N.Y.C.R.R. § 1.3.

27. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

28. 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.

29. As a result of the omissions set forth above, the Letter would mislead the least sophisticated consumer to believe that the time-barred debt is legally enforceable; and therefore, Defendant violated 15 U.S.C. § 1692e(2)(A).

30. As a result of the omissions set forth above, the Letter would mislead the least sophisticated consumer to believe that making a partial payment would not revive the otherwise time-barred debt; and therefore, Defendant violated 15 U.S.C. § 1692e.

31. For the foregoing reasons, Defendant violated 15 U.S.C. § 1692e, 15 U.S.C. § 1692e(2)(A) and 15 U.S.C. § 1692e(10).

CLASS ALLEGATIONS

32. 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 time-barred consumer debt, without advising the consumer that no legal action could be undertaken to attempt to recover the debt and/or that any partial payment by the consumer may result in the revival of the consumer's otherwise time-barred debt, from one year before the date of this Complaint to the present.

33. 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.

34. Defendant regularly engages in debt collection.

35. The Class consists of more than 35 persons from whom Defendant attempted to collect a time-barred consumer debt, without advising the consumer that no legal action could be undertaken to attempt to recover the debt and/or that any partial payment by the consumer may result in the revival of the consumer's otherwise time-barred debt.

36. 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.

37. 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.\

38. 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

39. 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: 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.: 113439

2479 Edison Blvd., Unit A ♦ Twinsburg, OH 44087-2340

Current Creditor: Main Street Acquisition C
Original Creditor: HSBC BANK NEVADA NA
Original Account Number: XXXXXXXXXXXXX7978
NES Account Number: [REDACTED] 7815 [REDACTED]
Date of Referral: 05/05/2017
Date of Service: 09/29/2006
Please contact: Steve Kozar at (800) 899-5582 ext. 2061
Current Balance: \$3,078.96

May 5, 2017

Aisa Markisic
2436 43rd St
Astoria NY 11103-2562

This account has been listed with our office for collection.

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

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 that you dispute the validity of this debt or any portion thereof, 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.

You can now pay by automated phone system at (800) 238-0868 or on the internet at <https://paymynesbill.webview.com>. Just enter your account number 24537815. You are not required to use the automated phone system or the internet to make payment on this account. If you make payment on this account by check, the face amount of the check may be presented to your bank by paper draft or electronically as permitted by law.

159ONNESI02001MAIN 419538253

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

PLEASE COMPLETE AND RETURN THE FORM BELOW WITH YOUR PAYMENT.

ONNESI02
PO Box 1022
Wixom MI 48393-1022
ADDRESS SERVICE REQUESTED

Daytime Phone: (____) _____ - _____
Evening Phone: (____) _____ - _____

103

Please forward all payments and correspondence to:
NATIONAL ENTERPRISE SYSTEMS, INC.
2479 Edison Blvd., Unit A
Twinsburg OH 44087-2340


Aisa Markisic
2436 43rd St
Astoria NY 11103-2562



May 5, 2017 [REDACTED] 7815 BENY
Orig. Acct #: XXXXXXXXXXXXX7978
Current Balance: \$3,078.96

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
AIDA MARKISTIC
(b) County of Residence of First Listed Plaintiff QUEENS
(c) Attorneys (Firm Name, Address, and Telephone Number)
BARSHAY SANDERS, PLLC
100 Garden City Plaza, Ste 500, Garden City, NY 11530
(516) 203-7600

DEFENDANTS
NATIONAL ENTERPRISE SYSTEMS, INC.
County of Residence of First Listed Defendant CUYAHOGA
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)
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)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
O 1 O 1
O 2 O 2
O 3 O 3
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)
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
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)
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

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Aida Markistic, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

National Enterprise Systems, Inc. and Main Street
Acquisition Corp.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Main Street Acquisition Corp.
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

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Aida Markistic, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

National Enterprise Systems, Inc. and Main Street
Acquisition Corp.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
National Enterprise Systems, Inc.
29125 Solon Road
Solon, Ohio 44139

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: [Debt Collectors Accused of Misleading Consumers Regarding Time-Barred Debts](#)
