

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

SERGIO MAXIMILIANO, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

SIMM ASSOCIATES, INC.,
a Delaware Corporation,

Defendant.

CLASS ACTION COMPLAINT AND JURY DEMAND

1. On behalf of himself and the putative class, Plaintiff alleges violations of the *Fair Debt Collection Practices Act*, 15 U.S.C. §1692 *et seq.* (“FDCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under the *Fair Debt Collection Practices Act*, pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1692k.

3. Venue in this District is proper because Plaintiff resides here and Defendant conducts business in this District.

PARTIES

4. Plaintiff, Sergio Maximiliano (“Plaintiff”), is a natural person, and a resident of the State of Florida, residing in Palm Beach County, Florida.

5. Defendant, SIMM Associates, Inc. (“Defendant”), is a Delaware Corporation engaged in the business of collecting consumer debts, which operates from offices located at 800

Pencader Drive, Newark, Delaware, 19702. Defendant is licensed in Florida as a consumer collection agency, license number CCA0900771.

6. Defendant regularly uses the United States Postal Service and telephone in the collection of consumer debts.

7. Defendant regularly collects or attempts to collect consumer debts for other parties. Defendant is a “debt collector” as defined in the *FDCPA*.

8. At all times material to the allegations of this Complaint, Defendant was acting as a debt collector with respect to the collection of Plaintiff’s alleged debt.

FACTUAL ALLEGATIONS

9. Defendant sought to collect a consumer debt from Plaintiff arising from an alleged delinquency on a Comenity Capital Bank (“Comenity”) account. The account was not used for any commercial purpose. The debt was incurred primarily for personal, household or family use.

10. On or about September 12, 2016, Defendant mailed, or caused to be mailed, a letter to Plaintiff seeking payment of an alleged debt. (The “Demand Letter” is attached hereto as “Exhibit 1”).

11. The Demand Letter states, in pertinent part:

Your account has been forwarded to this office for collections. This is a formal demand upon you for your payment of this debt; however our client, PAYPAL CREDIT, has authorized us to accept a discounted payoff of your current outstanding balance to settle the account in full.

12. The Demand Letter was Defendant’s initial communication with Plaintiff with respect to the debt alleged therein.

13. *15 U.S.C. §1692g(a)* states:

Validation of debts.

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing-

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) 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;

(4) 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; and

(5) 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.

(emphasis added).

14. The Demand Letter identifies "PAYPAL CREDIT" as the "CLIENT" for whom Defendant was seeking to collect the debt alleged to be owed by Plaintiff.

15. The Demand Letter identifies Comenity Capital Bank as the "ORIGINAL CREDITOR."

16. The Demand Letter does not list any other current creditor to whom the debt is owed other than "PAYPAL CREDIT" who is identified by Defendant as the "CLIENT" seeking payment of the debt.

17. “PAYPAL CREDIT” is the branding of an account issued by Comenity Capital Bank.

18. Either Defendant falsely and misleadingly identified “PAYPAL CREDIT” as the creditor to whom the debt is owed, or does not identify any entity as the current creditor.

19. Comenity Capital Bank is the actual creditor to whom the alleged debt is owed.

20. Any potential *bona fide* error defense which relies upon Defendant’s mistaken interpretation of the legal duties imposed upon it by the *FDCPA* would fail as a matter of law.

21. The Demand Letter was Defendant’s initial communication with Plaintiff.

CLASS ACTION ALLEGATIONS

22. This action is brought on behalf of a Class consisting of (i) all persons with addresses in Florida (ii) to whom initial communication letters were mailed, or caused to be mailed, that identified “PAYPAL CREDIT” as the client to whom a debt was owed and did not identify the current creditor as Comenity Capital Bank (iii) by Defendant (iv) which were not returned undelivered by the U.S. Post Office (v) in an attempt to collect a debt incurred for personal, family, or household purposes (vi) during the one year period prior to the filing of the original Complaint in this action through the date of certification.

23. Defendant’s use of demand letters sent to consumers that misleadingly identified “PAYPAL CREDIT” as the creditor (“client”) to whom a debt was owed and did not identify the current creditor as Comenity Capital Bank is so numerous that joinder of all members of the Class is impractical.

24. There are questions of law or fact common to the Class, which common issues predominate over any issues involving only individual Class members. The common factual issue common to each Class member is that each was mailed, or caused to be mailed, an initial

communication letter by Defendant that misleadingly identified the creditor (“client”) as “PAYPAL CREDIT” when the actual current creditor was Comenity Capital Bank, who was not identified as the current creditor. The principal legal issue is whether Defendant’s misleading identification of the current creditor with regard to the collection of a consumer debt violates the *FDCPA*.

25. Plaintiff’s claims are typical of those of the Class members. All are based on the same facts and legal theories.

26. Plaintiff will fairly and adequately protect the interests of the Class. He has retained counsel experienced in handling actions involving unlawful practices under the *FDCPA* and Class actions. Neither Plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this action.

27. Certification of the Class under *Rule 23(b)(3)* of the *Federal Rules of Civil Procedure* is also appropriate in that:

(1) The questions of law or fact common to the members of the class predominate over any questions affecting an individual member.

(2) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

28. Plaintiff requests certification of a Class under *Rule 23(b)(3)* of the *Federal Rules of Civil Procedure* for monetary damages; his appointment as Class Representative; and that his attorney Leo W. Desmond be appointed Class Counsel.

COUNT I
VIOLATION OF 15 U.S.C. § 1692g(a)

29. Plaintiff re-alleges Paragraphs 1 through 21.

30. After an initial communication with Plaintiff, pursuant to *15 U.S.C §1692g(a)*, the Defendant must provide the Plaintiff with:

(a) Notice of debt; contents.

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing-

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) 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;

(4) 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; and

(5) 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.

(emphasis added).

31. Defendant mailed, or caused to be mailed, a Demand Letter to Plaintiff that Defendant stated to be on behalf of its client "PAYPAL CREDIT" in an attempt to collect a consumer debt, namely to collect a past due balance on an account, in which the actual current creditor was Comenity Capital Bank.

32. Pursuant to the *FDCPA*, the Demand Letter was an initial communication between Defendant and Plaintiff.

33. Defendant either identified “PAYPAL CREDIT” as the name of the current creditor to whom the debt was owed, or did not identify the current creditor as Comenity Capital Bank, who was the actual current creditor to whom the debt is owed.

34. As a result of Defendant’s conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. §1692k*.

35. As a result of Defendant’s conduct, Plaintiff and the Class are entitled to an award of costs and attorney’s fees pursuant to *15 U.S.C. §1692k*.

COUNT II
VIOLATION OF 15 U.S.C. §1692e

36. Plaintiff re-alleges Paragraphs 1 through 21 and Paragraphs 28 through 34.

37. Pursuant to *15 U.S.C. §1692g(a)(2)* the Defendant must provide the Plaintiff with:

(a) Notice of debt; contents.

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing-

xxxx

(2) the name of the creditor to whom the debt is owed;

38. *15 U.S.C. § 1692e(10)* states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

xxxx

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

39. Defendant's Demand Letter mailed to Plaintiff stated to be on behalf of "PAYPAL CREDIT" in an attempt to collect a consumer debt, namely to collect the balance owed on a charge account.

40. The Demand Letter was a communication used in the collection of a debt between Defendant and Plaintiff.

41. By claiming "PAYPAL CREDIT" was the creditor ("client") to whom the debt was owed, Defendant has attempted to mislead Plaintiff and the Class into believing that the Demand Letter correctly identified the name of the current creditor to whom the debt was owed.

42. Defendant's Demand Letter is misleading and false as it identified "PAYPAL CREDIT" as the creditor ("client") when in actuality "PAYPAL CREDIT" is the branding of an account offered through Comenity Capital Bank, who was the actual current creditor to whom the debt was owed.

43. Defendant's Demand Letter would be deceptive to the least sophisticated consumer with regard to his/her legal rights.

44. As a result of Defendant's conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. § 1692k*.

45. As a result of Defendant's conduct, Plaintiff and the Class are entitled to an award of costs and attorney's fees pursuant to *15 U.S.C. § 1692k*.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

- a. An Order certifying this matter as a Class Action and appointment of Plaintiff as Class Representative;
- b. An Order appointing Leo W. Desmond as Class Counsel;

- c. An award of statutory damages for Plaintiff and the Class pursuant to *15 U.S.C. § 1692k* for all Class claims;
- d. An award of attorney's fees, litigation expenses and costs of the instant suit; and
- e. Such other or further relief as the Court deems proper.

Dated: March 15, 2017

Respectfully submitted,

By: /s/ Leo W. Desmond
Leo W. Desmond, Esq.
DESMOND LAW FIRM, P.C.
Florida Bar No. 0041920
5070 Highway A1A
Suite D
Vero Beach, Florida 32963
Telephone: 772.231.9600
Facsimile: 772.231.0300
lwd@desmondlawfirm.com
Attorney for Plaintiff

CIVIL COVER SHEET

JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS Sergio Maximiliano

DEFENDANTS SIMM Associates, Inc.

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

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

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

Leo W. Desmond, Desmond Law Firm, P.C.
5070 Highway A1A, Suite D, Vero Beach, FL 32963 772-231-9600

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | |
|---|---|--|--|---|
| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | | PROPERTY RIGHTS | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | LABOR | | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 710 Fair Labor Standards Act | SOCIAL SECURITY | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 363 Personal Injury - Product Liability | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 196 Franchise | <input type="checkbox"/> 364 Alien Detainee | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 864 SSID Title XVI | <input checked="" type="checkbox"/> 890 Other Statutory Actions |
| | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 891 Agricultural Acts |
| | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | | | <input type="checkbox"/> 893 Environmental Matters |
| | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | PRISONER PETITIONS | FEDERAL TAX SUITS | <input type="checkbox"/> 895 Freedom of Information Act |
| REAL PROPERTY | <input type="checkbox"/> 370 Other Fraud | Habeas Corpus: | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 510 Motions to Vacate Sentence | | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 385 Property Damage Product Liability | Other: | | |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 530 General | | |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 535 Death Penalty | IMMIGRATION | |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 462 Naturalization Application | |
| | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 465 Other Immigration Actions | |
| | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 555 Prison Condition | | |
| | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | |
| | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | | | |
| | <input type="checkbox"/> 448 Education | | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed (See VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation Transfer
- 7 Appeal to District Judge from Magistrate Judgment
- 8 Multidistrict Litigation - Direct File
- 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE: **DOCKET NUMBER:**

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq. Violation of the Fair Debt Collection Practices Act.
LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 500,000.00 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE SIGNATURE OF ATTORNEY OF RECORD

3/15/17

Leo W. Desmond
FLA BAR# 41920

FOR OFFICE USE ONLY
RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Sergio Maximiliano

Plaintiff(s)

v.

SIMM Associates, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

SIMM Associates, Inc.
c/o C T Corporation System (Registered Agent)
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:

Leo W. Desmond, Esq.
Desmond Law Firm, P.C.
5070 Highway A1A
Suite D
Vero Beach, FL 32963

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 Action No. _____

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:

Debit # 1710823
PO Box 1259
Oaks PA 19456



SIMM ASSOCIATES, INC.

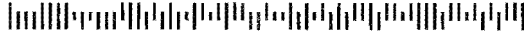
800 PENCADER DRIVE
NEWARK DE 19702
(302) 283-2800/866-572-8797



PAY ONLINE

www.simmassociates.com/Payments-on-your-account/

SIMM Account No: 9798871	Balance: \$3,986.07
Client: PAYPAL CREDIT	



126898 - 39



000258

SERGIO MAXIMILIANO
6659 ALISO AVE
WEST PALM BEACH FL 33413-1035

SIMM ASSOCIATES, INC.
P.O. BOX 7526
NEWARK DE 19714-7526



Detach Upper Portion And Return With Payment

September 12 2016

CLIENT: PAYPAL CREDIT
BALANCE: \$3,986.07
ACCOUNT #: 5049906062247010
SIMM #: 9798871

ORIGINAL CREDITOR: Comenity Capital Bank
ORIGINATION DATE: 09/17/2013
CHARGED OFF: 10/23/2015

Dear SERGIO MAXIMILIANO,

Your account has been forwarded to this office for collections. This is a formal demand upon you for your payment of this debt; however our client, PAYPAL CREDIT, has authorized us to accept a discounted payoff of your current outstanding balance to settle the account in full.

We are presenting you with three options that will enable you to avoid further collection activity:

Option 1: Pay ONE PAYMENT of \$2,311.93 that must be received in this office on 10/19/2016.

Option 2: Pay TWO PAYMENTS of \$1,195.83 each that must be received in this office. Please contact our office at 866-572-8797 or via email at CustomerService.PayPal@simmassociates.com to select due dates or if you need more details specific to this offer.

Option 3: A monthly payment plan suited for your unique financial situation is available upon request.

We have no obligation to renew this offer.

By resolving this matter, you will make continued collection efforts unnecessary. Our demand for payment does not affect your right to dispute this debt.

This is an attempt to collect a debt by a debt collector. 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 the 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.

Sincerely,
Jeffrey S. Simendinger
SIMM Associates
866-572-8797

PLEASE: To ensure proper credit remit payment directly to our office only.
Remit to: SIMM Associates, Inc.
P.O. Box 7526 Newark, DE 19714-7526
Payments can be made via credit card or bankdraft at:
www.simmassociates.com/payments-on-your-account/

****PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION****
Opt-Out Notice (see back for details)



Money gram: Receive Code: 2800 City: Newark, DE	Overnight Mail: 800 Pencader Drive Newark DE 19702	Western Union Quick Collect: Code City: SIMM State: DE
Pay-by-Internet www.simmassociates.com/Payments-on-your-account/	Pay-by-Phone: TOLL FREE 866-572-8797	

Opt-out Notice Description: Checks received in our office may be electronically processed as an ACH transaction. This is a more secure process for our customers in that the check information cannot be seen by anyone after the payment is electronically converted. You may elect to not have your check processed electronically by checking the box provided on the front of this stub.

COLORADO RESIDENTS:

A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COAG.GOV/CAR

Local Office: 1776 S Jackson St., #900
Denver, Colorado 80210
(720) 287-8654

MINNESOTA RESIDENTS:

This collection agency is licensed by the Minnesota Department of Commerce.

NEW YORK CITY RESIDENTS:

New York City Department of Consumer Affairs, license number 1135923.

MASSACHUSETTS RESIDENTS:

Notice of important rights

You have the right to make a written or oral request that telephone calls regarding your debt not to be made to you at your place of employment. Any such oral request will be valid for only ten days unless you provide written confirmation of the request postmarked and delivered within seven days of such request. You may terminate this request by writing to the collection agency.

If you wish to discuss this matter, please call us direct, between the hours of 8:00 am and 5 pm EST, at the telephone number listed on the front of this notice. Local address: 49 Winter Street, Weymouth MA 02188. Office hours are: M-TH 9am-6pm EST.

TENNESSEE:

This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance.

MAINE Hours of operation:

Mon-Thurs: 8am - 10pm, Fri: 8am - 4pm, Sat: 8am - 12 pm EST.

NORTH CAROLINA:

North Carolina Department of Insurance, permit number 3947.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Simm Associates Failed to Identify True Creditor, Class Action Alleges](#)
