

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.: 114197

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

Wilson Maymi, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Forster & Garbus, LLP,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Wilson Maymi, 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 Forster & Garbus, LLP (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. Venue is also proper under 28 U.S.C. § 1391(b) because a Defendant maintains its principal place of business in this Judicial District.

5. At all relevant times, Defendant conducted business within the State of New York.

PARTIES

6. Plaintiff Wilson Maymi is an individual who is a citizen of the State of New York residing in Kings County, New York.

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

8. On information and belief, Defendant Forster & Garbus, LLP, is a New York Limited Liability Partnership with a principal place of business in Suffolk County, New York.

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

10. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

11. Defendant alleges 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 Defendant, the Debt was assigned or otherwise transferred to Defendant for collection.

15. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated September 28, 2017. (“**Exhibit 1.**”)

16. The Letter was the initial communication Plaintiff received from Defendant.

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

FIRST COUNT

Violation of 15 U.S.C. § 1692g Validation of Debts Creditor to Whom the Debt is Owed

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

19. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the

information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

20. One such requirement is that the debt collector provide “the name of the creditor to whom the debt is owed.” 15 U.S.C. § 1692g(a)(2).

21. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to convey such clearly.

22. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to state such explicitly.

23. Merely naming the creditor without specifically identifying the entity as the current creditor to whom the debt is owed is not sufficient to comply with 15 U.S.C. § 1692g(a)(2).

24. Even if a debt collector conveys the required information, the debt collector nonetheless violates the FDCPA if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty.

25. When determining whether the name of the creditor to whom the debt is owed has been conveyed clearly, an objective standard, measured by how the “least sophisticated consumer” would interpret the notice, is applied.

26. The Letter fails to identify by name and label any entity as “creditor,” “original creditor,” “current creditor,” “account owner,” or “creditor to whom the debt is owed.”

27. The Letter states, “Re: Barclays Bank Delaware.”

28. The Letter states, “Your account has been placed with this office for collections.”

29. The Letter fails to indicate whether the “Re:” refers to the account owner.

30. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s creditor.

31. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s current creditor.

32. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s original creditor.

33. The Letter fails to indicate whether the “Re:” refers to the creditor to whom the debt is owed.

34. The Letter fails to indicate who “placed” the account with Defendant.

35. The Letter fails to indicate who Defendant represents.

36. The Letter fails to indicate who is Defendant’s client.

37. The Letter demands payment be made to Defendant.

38. The Letter indicates that if a payment is made by credit card, the credit card statement will reflect a charge from Defendant only.

39. Defendant failed to explicitly state the name of the creditor to whom the debt is owed.

40. Defendant failed to clearly state the name of the creditor to whom the debt is owed.

41. The least sophisticated consumer would likely be confused as to the name of the creditor to whom the debt is owed.

42. The least sophisticated consumer would likely be uncertain as to the name of the creditor to whom the debt is owed.

43. Defendant violated § 1692g as it failed to clearly and explicitly convey the name of the creditor to whom the debt is owed.

SECOND COUNT

Violation of 15 U.S.C. § 1692e False or Misleading Representations as to the Name of the Creditor to Whom the Debt is Owed

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

45. 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.

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

47. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”

48. 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.

49. 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.

50. For purposes of 15 U.S.C. § 1692e, the failure to clearly and accurately identify the creditor to whom the debt is owed is unfair and deceptive to the least sophisticated consumer.

51. The identity of creditor to whom the debt is owed is a material piece of

information to a consumer.

52. Knowing the identity of creditor to whom the debt is owed affects how a consumer responds to a debt collector's attempts to collect the debt.

53. 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 within the meaning of 15 U.S.C. § 1692e.

54. 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.

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

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

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

CLASS ALLEGATIONS

58. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York from whom Defendant attempted to collect a consumer debt using a letter that fails to identify by name and label any entity as “creditor,” “original creditor,” “current creditor,” “account owner,” or “creditor to whom the debt is owed,” but only provides “Re: [name of entity],” from one year before the date of this Complaint to the present.

59. 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.

60. Defendant regularly engages in debt collection.

61. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a letter that fails to identify by name and label any entity as “creditor,” “original creditor,” “current creditor,” “account owner,” or “creditor to whom the debt is owed,” but only provides “Re: [name of entity].”

62. 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.

63. 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.

64. 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

65. 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: December 26, 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.: 114197

1725 0120

RECEIVED & CONFIDENTIAL

September 28, 2017

WILSON MANN
79 NOXFIELD WALK APT 9F
BROOKLYN NY 11203-3341

ROBERT & GARRUS LLP
NEW YORK, NY 10017

From: Robert & Garrus LLP
To: Wilson Mann
Subject: [REDACTED]

From: Robert & Garrus LLP
To: Wilson Mann
Subject: [REDACTED]

Dear Wilson Mann,

Your request has been placed with this office for collection. In the absence of any direction, you will be held responsible for the amount due. We are not acting as your attorney in this matter. If you wish to pay this debt, please contact the creditor directly. If you wish to dispute this debt, you must do so within 30 days of the date of this notice. If you do not do so, we will assume the debt is valid. If you do not pay this debt within 30 days, we will take legal action to collect it. We will provide you with the name and address of the original creditor if it differs from the current creditor.

Unless you notify this office within 30 days of the date of this notice, you agree that the validity of this debt is not in dispute. If you do not pay this debt within 30 days, we will assume the debt is valid. If you do not pay this debt within 30 days, we will take legal action to collect it. We will provide you with the name and address of the original creditor if it differs from the current creditor.

The debt may be due to a third party. Therefore, the amount due on the day you pay may be different.

Please note that we are not acting as your attorney. We are only acting as a collection agent for the creditor. We are not responsible for the debt.

Your payment should be made to the address listed below:

Total Amount of the debt due as of check-off	\$ 105.00
Total amount of interest accrued since check-off	58.00
Total amount of principal due as of check-off	40.00
Total amount of payment made and interest due since check-off	163.00

If you wish to pay this debt, please contact the creditor directly. If you wish to dispute this debt, you must do so within 30 days of the date of this notice. If you do not do so, we will assume the debt is valid. If you do not pay this debt within 30 days, we will take legal action to collect it.

SEE IMPORTANT NOTICE ENCLOSED

Robert & Garrus LLP
100 West Broadway, 30th Floor
New York, NY 10017-0120

ROBERT & GARRUS LLP
100 WEST BROADWAY, 30TH FLOOR
NEW YORK, NY 10017-0120

WILSON MANN
79 NOXFIELD WALK APT 9F
BROOKLYN NY 11203-3341

BALANCE DUE as of September 28, 2017
ROBERT & GARRUS LLP
100 WEST BROADWAY, 30TH FLOOR
NEW YORK, NY 10017-0120

REP. GARRUS
DATE: September 28, 2017

Best Time to Call

ROBERT & GARRUS LLP

100 West Broadway
New York, NY 10017-0120

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: WILSON MAYMI
(b) County of Residence of First Listed Plaintiff: KINGS
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: FORSTER & GARBUS, LLP
County of Residence of First Listed Defendant: SUFFOLK

II. BASIS OF JURISDICTION
III. CITIZENSHIP OF PRINCIPAL PARTIES
Grid with categories: U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, etc.

IV. NATURE OF SUIT
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
Grid with categories: 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, etc.

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 No

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

DATE: December 27, 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? 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: KINGS

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Debt Collector Forster & Garbus Pinged in Class Action Case](#)
