

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

-----X Case No. 16-cv-09896

MAGALIS OTERO, on behalf of herself
individually and all others similarly situated,

Plaintiff,

**CLASS ACTION
COMPLAINT**

-against-

NORTH SHORE AGENCY, LLC,

Defendant.

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Plaintiff, by and through her attorneys, FAGENSON & PUGLISI, upon knowledge as to herself and her own acts, and as to all other matters upon information and belief, brings this complaint against above-named defendant and in support thereof alleges the following:

INTRODUCTION

1. This is an action for damages brought by an individual consumer and on behalf of a class for defendant’s violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.* which prohibits debt collectors from engaging in abusive, deceptive and unfair acts and practices.

2. This is an action for damages and injunctive relief brought by an individual consumer against defendant pursuant to New York General Business Law (“NYGBL”) § 349 regarding defendant’s deceptive acts and practices.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction pursuant to the FDCPA, 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331 and supplemental jurisdiction exists over the NYGBL § 349 claims pursuant to 28 U.S.C. § 1367.

4. This Court has venue pursuant to 28 U.S.C. § 1391(b) in that plaintiff resides in this District and a substantial portion of the events or omissions giving rise to this action occurred in this District.

PARTIES

5. Plaintiff is a natural person who resides in this District.

6. Plaintiff is a consumer within the meaning of 15 U.S.C. §1692a(3) as she is a natural person who is alleged by defendant to owe a financial obligation.

7. The financial obligation which defendant sought to collect from plaintiff is a debt within the meaning of 15 U.S.C. § 1692a(5) in that the obligation which defendant sought to collect from plaintiff is an allegedly defaulted debt owed to “Verizon” for telecommunications services originally incurred, if at all, for a personal, family and household purpose.

8. Plaintiff is a reasonable consumer within the meaning of NYGBL § 349 who acted reasonably under the circumstances alleged herein.

9. Defendant is a debt collector within the meaning of 15 U.S.C. § 1692a(6).

10. Defendant uses the mail and other means to collect defaulted consumer debts owed or due or alleged to be owed or due to others.

11. The principal purpose of defendant's business is the collection of defaulted consumer debts owed or due or alleged to be owed or due to others.

12. Defendant regularly collects or attempts to collect defaulted consumer debts owed or due or alleged to be owed or due to others.

13. Upon information and belief, defendant is a domestic limited liability company.

FACTUAL ALLEGATIONS

14. Plaintiff re-alleges paragraphs 1-13 as if fully re-stated herein.

15. On or about June 16, 2016 plaintiff received a collection letter from defendant.

16. Defendant's collection letter is dated June 3, 2016.

17. Defendant sent to plaintiff a collection letter dated June 3, 2016.

18. In the letter, defendant informed plaintiff that it was trying to collect a debt on behalf of "Verizon".

19. In the letter, defendant informed plaintiff that her outstanding balance of \$601.30 remained unpaid.

20. Defendant informed plaintiff that her Verizon account was in default.

21. Defendant also stated in the letter, in relevant part:

“Verizon furnishes bill payment information for customers to the major credit reporting agencies in accordance with the provisions of the Fair Credit Reporting Act (FCRA). Verizon may have already reported or may in the future report this account to the major credit reporting agencies. *If your account has been reported by Verizon, your credit report will be updated by them after you pay the total outstanding balance.*”

(Emphasis added).

22. Upon review of defendant’s letter plaintiff believed, erroneously, that she had to pay the entire claimed balance of \$601.30 in order for Verizon to inform the credit reporting agencies that she had made a payment.

23. Upon review of defendant’s letter plaintiff believed, erroneously, that if she made a partial payment on the account, Verizon would not update her credit report with the partial payment but would continue to inform the credit reporting agencies that she owed \$601.30.

AS AND FOR A FIRST CAUSE OF ACTION

False, deceptive and misleading statement regarding credit reporting

15 U.S.C. §§ 1692e

24. Plaintiff re-alleges paragraphs 1-23 as if fully re-stated herein.

25. Defendant’s statement that:

“If your account has been reported by Verizon, your credit report will be updated by them after you pay the total outstanding balance.”

is false, deceptive and misleading.

26. Defendant's statement is false in that, if Verizon furnishes bill payment information to the credit reporting agencies, Verizon has an obligation to update the consumer's information upon receipt of partial payment amounts.

27. Verizon cannot wait until after it receives payment of the total outstanding balance to update a consumer's credit report.

28. Verizon cannot receive partial payments while at the same time furnishing information to the credit reporting agencies that the consumer still owes the original outstanding balance.

29. Verizon has in the past accepted partial payments from plaintiff.

30. Defendant's said statement would mislead the least sophisticated consumer into believing that it is pointless to make partial payments because her credit report will not be updated with the partial payments.

31. Defendant's said statement would mislead the least sophisticated consumer into thinking that only after payment of the total outstanding balance would Verizon update her credit report with payment information.

32. Defendant included the statement in its collection letters in order to intimidate, scare and deceive consumers into quickly paying the total claimed balance of their debts.

33. Defendant's said statement constitutes a false, deceptive and misleading representation or means used by defendant in connection with the collection of a debt and is in violation of 15 U.S.C. § 1692e.

AS AND FOR A SECOND CAUSE OF ACTION

NYGBL § 349

34. Plaintiff re-alleges paragraphs 1-33 as if fully re-stated herein.

35. Each of the deceptive acts and practices above-mentioned was committed by defendant in the conduct of a business, trade or commerce or the furnishing of a service in New York State and constitutes a violation of NYGBL § 349.

36. Defendant's deceptive acts and practices were consumer-oriented, in that the aforesaid letter which defendant sent to plaintiff is identical in all material respects to the letters which defendant sent on behalf of Verizon to other consumers within New York State at all times relevant to this case.

37. Defendant is a collector of consumer debts incurred principally or wholly by natural persons.

38. Defendant contacts thousands of consumers within New York State each year by mail on behalf of Verizon.

39. Defendant owed a duty to plaintiff to effect its collection of her alleged debt with reasonable care.

40. Defendant breached its duty to collect plaintiff's debt with reasonable care.

41. In the exercise of reasonable care defendant ought to have ensured that it does not misrepresent Verizon's credit reporting obligations to consumers.

42. Instead, defendant included in its collection letters the false, misleading and deceptive statement that:

“If your account has been reported by Verizon, your credit report will be updated by them after you pay the total outstanding balance.”

43. Defendant’s aforesaid letter to plaintiff is typical of the letters defendant mailed to consumers within New York State on behalf of Verizon during all times relevant to this case.

44. Defendant’s letter is derived from a letter form used by defendant.

45. Defendant’s letter is derived from a letter template used by defendant.

46. At all times relevant to this case defendant had a pattern of mailing to consumers within New York State collection letters on behalf of Verizon which contained the false, deceptive and misleading statement misrepresenting Verizon’s credit reporting obligations.

47. Defendant’s inclusion of the said statement in its collection letters is a deceptive act and practice.

48. Defendant’s said statement is deceptive and misleading in a material way.

49. Plaintiff is a reasonable consumer within the meaning of the NYGBL.

50. Upon review of defendant's letter plaintiff believed, erroneously, that she had to pay the entire claimed balance of \$601.30 in order for Verizon to inform the credit reporting agencies that she had made a payment.

51. Upon review of defendant's letter plaintiff believed, erroneously, that if she made a partial payment on the account, Verizon would not update her credit report with the partial payment but would continue to inform the credit reporting agencies that she owed \$601.30.

52. Defendant's false statement deceived and misled plaintiff regarding her credit file and her credit record.

53. Defendant violated NYGBL § 349(a) and is liable to plaintiff under NYGBL § 349(h).

CLASS ALLEGATIONS

54. Plaintiff re-alleges paragraphs 1-53 as if fully re-stated herein.

55. This action is brought on behalf of plaintiff and the members of a class. The class consists of all natural persons who defendant's records reflect were sent debt collection letters within New York State within the period of time commencing one year before the filing of this complaint up to and including the date of the filing of the complaint and who were sent a collection letter (a) in substantially the same form as the aforesaid letter which defendant sent to plaintiff; (b) the collection letter was sent to a consumer seeking payment of a consumer debt owed to Verizon; (c) the collection letter was not returned by the postal service as undeliverable; and (d) the collection letter states, in sum or substance:

“If your account has been reported by Verizon, your credit report will be updated by them after you pay the total outstanding balance.”

56. The class does not include defendant or persons who are officers, directors, or employees of defendant.

57. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

(A) Based on the fact that the collection letter that is the gravamen of this litigation is a mass-mailed form letter, the class is so numerous that joinder of all members is impracticable. Upon information and belief, thousands of persons have received similar debt collection letters from defendant which violate the various provisions of the FDCPA.

- (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether defendant violated the FDCPA including but not limited to § 1692e by misrepresenting Verizon's credit reporting obligations to consumers.
- (C) The only individual issue is the identification of the consumers who received the letters (the class members), a matter capable of ministerial determination from the records of defendant.
- (D) The claims of plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) Plaintiff will fairly and adequately represent the class members' interests. Plaintiff has retained experienced counsel. Plaintiff's interests are consistent with those of the members of the class.

58. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA in 15 U.S.C. § 1692k. The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

59. If the facts are discovered to be appropriate, plaintiff will seek to certify a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

60. Communications from debt collectors, such as those sent by defendant, are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer”.

61. As a result of the above violations, defendant is liable to plaintiff and the members of the class for damages in an amount to be determined at the time of trial, plus costs and attorneys’ fees.

WHEREFORE, plaintiff respectfully prays that judgment be entered against defendant as follows:

- (a) certifying a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- (b) declaring that defendant violated the FDCPA and the NYGBL;
- (c) awarding class members the maximum statutory damages pursuant to 15 U.S.C. § 1692k;
- (d) awarding maximum individual statutory damages pursuant to 15 U.S.C. § 1692k;
- (e) awarding actual damages pursuant to 15 U.S.C. § 1692k in an amount to be determined at time of trial;
- (f) awarding reasonable attorneys’ fees, costs and disbursements pursuant to 15 U.S.C. § 1692k;

- (g) enjoining defendant from committing further deceptive acts and practices with respect to plaintiff, pursuant to NYGBL § 349;
- (h) awarding actual damages to plaintiff pursuant to NYGBL § 349 in an amount to be determined at time of trial;
- (i) in the alternative, awarding statutory damages to plaintiff pursuant to NYGBL § 349 in an amount to be determined at time of trial;
- (j) awarding reasonable attorneys' fees, costs and disbursements pursuant to NYGBL § 349; and
- (k) for such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York
December 22, 2016.

/s/ Novlette R. Kidd
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [North Shore Agency Facing Suit Over Debt Collection Practices](#)
