

**BARSHAY SANDERS, PLLC**  
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*Attorneys for Plaintiff*  
Our File No.: 113172

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

Ian Otten, individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

Firstsource Advantage, LLC,

Defendant.

Docket No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Ian Otten, 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 Firstsource Advantage, LLC (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. At all relevant times, Defendant conducted business within the State of New York.

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100 GARDEN CITY PLAZA, SUITE 500  
GARDEN CITY, NEW YORK 11530

**PARTIES**

5. Plaintiff Ian Otten is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

7. On information and belief, Defendant Firstsource Advantage, LLC, is a New York Limited Liability Company with a principal place of business in Erie County, New York.

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

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

**ALLEGATIONS COMMON TO ALL CLAIMS**

10. Defendant alleges Plaintiff owes a debt (“the Debt”).

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

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

13. Thereafter, at an exact time known only to Defendant, the Debt was assigned or otherwise transferred to Defendant for collection.

14. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated October 18, 2016. (“**Exhibit 1.**”)

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

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

17. 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.

18. One such requirement is that the debt collector provide “the amount of the debt.” 15 U.S.C. § 1692g(a)(1).

19. A debt collector has the obligation not just to convey the amount of the debt, but also to convey such clearly.

20. The Letter states that, “The Amount Due above reflects the total balance due as of

the date of this letter. The itemization reflects post charge-off activity we received from American Express and as such is subject to timing and system limitations.”

21. The least sophisticated consumer is left to guess what the “timing and system limitations” are.

22. The least sophisticated consumer is left to guess what effect “timing and system limitations” have on the stated amount due.

23. The least sophisticated consumer is left to guess what the current balance is.

24. The least sophisticated consumer could assume that the balance may be different on the date the letter is received versus the date of the letter.

25. The least sophisticated consumer would not know if the balance as of the date of the letter is different at the time the letter is received.

26. The least sophisticated consumer would not know if the balance as of the date of the letter is different at the time payment is to be made.

27. Based upon the foregoing, the least sophisticated consumer would be confused as to how she could satisfy the debt.

28. Based upon the foregoing, the least sophisticated consumer would be uncertain as to how she could satisfy the debt.

29. Defendant failed to clearly state the amount of the debt.

30. Defendant failed to unambiguously state the amount of the debt.

31. Because of this failure, the least sophisticated consumer would likely be confused as to the amount of the debt.

32. Because of this failure, the least sophisticated consumer would likely be uncertain as to the amount of the debt.

33. Defendant violated § 1692g as it failed to clearly, explicitly and unambiguously convey the amount of the debt.

34. 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.

35. 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.

36. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.

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

38. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose whether the balance may increase due to interest and fees.

39. For the above stated reasons, Defendant also violated § 1692e.

### **CLASS ALLEGATIONS**

40. 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 including the same “timing and system limitations” language used in the Letter herein, from one year before the date of this Complaint to the present.

41. 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.

42. Defendant regularly engages in debt collection.

43. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a letter including the same “timing and system limitations” language used in the Letter herein.

44. 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.

45. 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.

46. 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**

47. 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: October 16, 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.: 113172

Statement Date: 10-18-16  
Creditor: AMERICAN EXPRESS  
Our Reference #: [REDACTED] 2247  
Creditor Account #: XXXXXXXXXXXX1006  
Account Balance: \$653.34



Firstsource Advantage, LLC  
205 Bryant Woods South, Amherst, NY 14228 • 1-877-426-5514

Dear Ian Otten:

This account has been placed with our office for collection in order to resolve your delinquent debt. Please enclose your payment of \$653.34 in the envelope provided and make your check or money order payable to Firstsource Advantage, LLC.

Should you wish to speak to a representative concerning your account you may contact this office toll free at 1-877-426-5514. Please refer to the account number indicated above.

This is a communication 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 after 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.

In accordance with NY State regulatory requirements, please be advised of the following:

- Total due as of charge-off: \$653.34
- Total interest accrued since charge-off: \$0.00
- Total non-interest charges or fees accrued since charge-off: \$0.00
- Total payments made since charge-off: \$0.00

The Amount Due above reflects the total balance due as of the date of this letter. The itemization reflects the post charge-off activity we received from American Express and as such is subject to timing and system limitations.

Sincerely,

Firstsource Advantage, LLC  
A Professional Debt Recovery Agency

**Please see reverse side of this letter for important notices concerning your rights.**

**Customer Service and Payment Information**

- Telephone: Toll free: 1-877-426-5514 TTY / TDD Users: 1-800-662-1220
- Office Hours (Eastern Time): Monday and Tuesday 8am-9pm, Wednesday-Friday 8am-8pm, Saturday 8am-12pm
- Send correspondence to: Firstsource Advantage, LLC, 205 Bryant Woods South, Amherst, NY 14228
- For account information and payment options, you may access our website at [www.fsapay.com](http://www.fsapay.com)

\*\*\*Please Detach Lower Portion and Return with Your Payment\*\*\* 705CZFRST02\_N: \_250827037

Do not send correspondence to this address.

CZFRST02  
PO Box 1022  
Wixom MI 48393-1022  
CHANGE SERVICE REQUESTED

10-18-16

IF PAYING BY CREDIT CARD, FILL OUT BELOW.		
<input type="checkbox"/> VISA <input type="checkbox"/> MasterCard		
CARD NUMBER	EXPIRATION DATE	
SIGNATURE		PAYMENT DATE
ACCOUNT #	BALANCE DUE	AMOUNT PAID
[REDACTED] 2247	\$653.34	\$

IAN OTTEN  
50 PROBST DR  
SHIRLEY NY 11967-3317

**Make Payment To:**  
FIRSTSOURCE ADVANTAGE, LLC  
PO BOX 628  
BUFFALO NY 14240-0628

**IMPORTANT: To receive proper credit, be sure to enclose this portion with your payment**

**CALIFORNIA:** The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).

**COLORADO:** 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 action authorized by law to collect the debt.

Our Colorado address is located at BUILDING B 80 Garden Center STE 3, Broomfield, CO 80020. The phone number is (303) 920-4763.

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.COAG.GOV/CAR](http://WWW.COAG.GOV/CAR).

**MASSACHUSETTS: NOTICE OF IMPORTANT RIGHTS**

You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten (10) days unless you provide written confirmation of the request postmarked or delivered within seven (7) days of such request. You may terminate this request by writing to the debt collector.

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

**NEW YORK CITY:** New York City Department of Consumer Affairs License #1262554.

**NEW YORK STATE:** 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:

- i) the use or threat of violence;
- ii) the use of obscene or profane language; and
- iii) 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.

**NORTH CAROLINA:** NORTH CAROLINA DEPARTMENT OF INSURANCE PERMIT NUMBER 4012

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

**WISCONSIN:** This collection agency is licensed by the Division of Banking in the Wisconsin Department of Financial Institutions, [www.wdfi.org](http://www.wdfi.org).

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: IAN OTTEN
DEFENDANTS: FIRSTSOURCE ADVANTAGE, LLC
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC

II. BASIS OF JURISDICTION
III. CITIZENSHIP OF PRINCIPAL PARTIES
O 1 U.S. Government Plaintiff
O 2 U.S. Government Defendant
O 3 Federal Question
O 4 Diversity
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT
CONTRACT: O 110 Insurance, O 120 Marine, O 130 Miller Act, O 140 Negotiable Instrument, O 150 Recovery of Overpayment & Enforcement of Judgment, O 151 Medicare Act, O 152 Recovery of Defaulted Student Loans, O 153 Recovery of Overpayment of Veteran's Benefits, O 160 Stockholders' Suits, O 190 Other Contract, O 195 Contract Product Liability, O 196 Franchise
REAL PROPERTY: O 210 Land Condemnation, O 220 Foreclosure, O 230 Rent Lease & Ejectment, O 240 Torts to Land, O 245 Tort Product Liability, O 290 All Other Real Property
TORTS: PERSONAL INJURY: O 310 Airplane, O 315 Airplane Product Liability, O 320 Assault, Libel & Slander, O 330 Federal Employers' Liability, O 340 Marine, O 345 Marine Product Liability, O 350 Motor Vehicle, O 355 Motor Vehicle Product Liability, O 360 Other Personal Injury, O 362 Personal Injury - Medical Malpractice
PRISONER PETITIONS: Habeas Corpus: O 463 Alien Detainee, O 510 Motions to Vacate Sentence, O 530 General, O 535 Death Penalty
Other: O 540 Mandamus & Other, O 550 Civil Rights, O 555 Prison Condition, O 560 Civil Detainee Conditions of Confinement
FORFEITURE/PENALTY: O 625 Drug Related Seizure of Property 21 USC 881, O 690 Other
LABOR: O 710 Fair Labor Standards Act, O 720 Labor/Management Relations, O 740 Railway Labor Act, O 751 Family and Medical Leave Act, O 790 Other Labor Litigation, O 791 Employee Retirement Income Security Act
IMMIGRATION: O 462 Naturalization Application, O 465 Other Immigration Actions
BANKRUPTCY: O 422 Appeal 28 USC 158, O 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: O 820 Copyrights, O 830 Patent, O 840 Trademark
SOCIAL SECURITY: O 861 HIA (1395ff), O 862 Black Lung (923), O 863 DIWC/DIWW (405(g)), O 864 SSID Title XVI, O 865 RSI (405(g))
FEDERAL TAX SUITS: O 870 Taxes (U.S. Plaintiff or Defendant), O 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: O 375 False Claims Act, O 400 State Reapportionment, O 410 Antitrust, O 430 Banks and Banking, O 450 Commerce, O 460 Deportation, O 470 Racketeer Influenced and Corrupt Organizations, O 480 Consumer Credit, O 490 Cable/Sat TV, O 850 Securities/Commodities/Exchange, O 890 Other Statutory Actions, O 891 Agricultural Acts, O 893 Environmental Matters, O 895 Freedom of Information Act, O 896 Arbitration, O 899 Administrative Procedure Act/Review or Appeal of Agency Decision, O 950 Constitutionality of State Statutes

V. ORIGIN
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 No

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

DATE: October 17, 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

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**

Ian Otten, individually and on behalf of all others similarly situated	)	
_____	)	
<i>Plaintiff(s)</i>	)	
	)	Civil Action No.
v.	)	
	)	
Firstsource Advantage, LLC	)	
_____	)	
<i>Defendant(s)</i>	)	

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*  
Firstsource Advantage, LLC  
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*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Firstsource Advantage Fails to Specify NY Man's Account Balance](#)

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