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Our File No.: 113104

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

Joanne Pacheco, on behalf of herself and all other
similarly situated,

Plaintiff,

vs.

AFNI, Inc.,

Defendant.

Docket No:

CLASS-ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Joanne Pacheco (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against AFNI, Inc. (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.

PARTIES

5. Plaintiff is an individual who is a citizen of the State of New York.

6. Plaintiff, a “consumer” as defined by 15 U.S.C. § 1692a(3), is allegedly obligated to pay a debt.

7. On information and belief, Defendant’s principal place of business is located in Houston, Texas.

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

9. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, and is therefore a “debt collector” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

10. Plaintiff’s alleged debt was primarily for personal, family or household purposes and is therefore a “debt” for purposes of 15 U.S.C. § 1692a(5).

11. At a time known only to Defendant, Plaintiff’s alleged debt was assigned or otherwise transferred to Defendant for collection.

12. In its efforts to collect the alleged debt, Defendant contacted Plaintiff by letter dated November 17, 2016. (“Exhibit 1.”)

13. Defendant's letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

14. As set forth in the following Counts, Defendant's letter violated the FDCPA.

FIRST COUNT

Violation of 15 U.S.C. § 1692g

Validation of Debts

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

16. 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.

17. 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).

18. 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.

19. 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.

20. 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).

21. 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.

22. 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.

23. Defendant’s letter fails to explicitly identify the name of the creditor to whom the alleged debt is owed.

24. Defendant’s identifies a “creditor” of “Sprint.”

25. There is no entity named “Sprint” registered with the New York State Department of State, Division of Corporations.

26. There are more than one hundred (100) disparate entities registered in New York that begin their legal name with “Sprint.”

27. The least sophisticated consumer would likely be confused as to which of the more than one hundred (100) disparate entities registered in New York that begin their legal name with “Sprint” is the alleged creditor to whom the debt is owed.

28. The least sophisticated consumer would likely be uncertain as to which of the more than one hundred (100) disparate entities registered in New York that begin their legal name with “Sprint” is the alleged creditor to whom the debt is owed.

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

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

owed.

31. Because of these failures, the least sophisticated consumer would likely be confused as to the identity of the creditor to whom the debt is allegedly owed.

32. Because of these failures, the least sophisticated consumer would likely be uncertain as to the identity of the creditor to whom the debt is allegedly owed.

33. Defendant has 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

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

35. 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.

36. 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.

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

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

39. 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.

40. Because the collection letter in the instant case is reasonably susceptible to an inaccurate reading, as described in the First Count, it is deceptive within the meaning of 15 U.S.C. § 1692e.

41. Defendant’s designation of “Sprint” as Plaintiff’s “Creditor” is false.

42. Plaintiff does not owe “Sprint.”

43. Plaintiff does not owe any money to any entity named “Sprint.”

44. The least sophisticated consumer would likely be deceived by Defendant’s conduct.

45. The least sophisticated consumer would likely be deceived in a material way by Defendant’s conduct.

46. A statement that a consumer owes money that it does not actually owe is a materially false statement.

47. The identity of the creditor to whom a debt is allegedly owed is material piece of information.

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

THIRD COUNT
Violation of 15 U.S.C. § 1692g
Validation of Debts

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

50. 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.

51. The written notice must contain the amount of the debt.

52. The written notice must contain the name of the creditor to whom the debt is owed.

53. The written notice must contain 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.

54. The written notice must contain 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.

55. The written notice must contain 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.

56. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly.

57. Even if a debt collector conveys the required information accurately, the debt

collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication.

58. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed by other collection activities during the 30-day validation period following the communication.

59. The Letter states, “[w]e may report information about your account to credit bureaus.”

60. The least sophisticated consumer would likely interpret the language concerning credit reporting to mean that unless payment is immediately remitted, her credit will be damaged.

61. The least sophisticated consumer would likely interpret the language concerning credit reporting to mean that even if she exercises her validation rights, information concerning the debt will nevertheless be reported to credit bureaus.

62. The least sophisticated consumer, upon reading that her account information may be reported to credit bureaus, would likely be inclined to remit payment regardless of whether she believes the debt is valid.

63. The least sophisticated consumer, upon reading that her account information may be reported to credit bureaus, would likely be inclined to remit immediate payment in order to avoid damage to her credit.

64. The least sophisticated consumer, upon reading that her account information may be reported to credit bureaus, would likely be discouraged from exercising her validation rights.

65. Defendant has represented to Plaintiff that it may report Plaintiff’s account information to credit bureaus without explaining that such representation does not override the Plaintiff’s right to demand validation of the debt.

66. Defendant’s representation that it may report Plaintiff’s account information to credit bureaus would likely make the least sophisticated consumer uncertain as to her rights.

67. Defendant’s representation that it may report Plaintiff’s account information would likely make the least sophisticated consumer confused as to her rights.

68. Defendant violated § 1692g as Defendant overshadowed the information required to be provided by that Section.

CLASS ALLEGATIONS

69. 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, while stating that in may report information concerning such debt to credit bureaus, from one year before the date of this Complaint to the present.

70. 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.

71. Defendant regularly engages in debt collection.

72. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts, while stating that it may report information concerning such debts to credit bureaus.

73. 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.

74. 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.

75. 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

76. 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: November 17, 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.: 113104



Afni, Inc.
 1310 Martin Luther King Drive
 PO Box 3517
 Bloomington, IL 61702-3517
 www.afnicollections.com

COLLECTION NOTICE

This account has been placed with our agency for collection. We are requesting your assistance in resolving this matter. We may report information about your account to credit bureaus.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of the 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.

This is an attempt to collect a debt. Any information obtained will be used for the purpose. You have the right to inspect your credit. This letter is from a debt collector.

Our office can be reached toll free at (866) 857-7193 Monday through Friday 7am-9pm and Saturday 8am - 12pm CT. For proper credit on your account, please write this number 061680515-01 on your payment. To manage your account online, visit us at www.afnicollections.com.

All conversations with Afni may be recorded.

In accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., Afni is 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.

Please retain this information for your records

Afni, Inc. Account #	Balance	Creditor	Creditor Account #	Letter Date
██████████ 5-01	\$1,448.46	SPRINT	██████████ 0260	11-17-2016

Detach along perforation and return bottom portion along with payment in the enclosed envelope. For proper credit, please include your Afni account # listed below on your check

Make check payable to Afni, Inc. Credit card payment options are on the back of notice.

Please include your Afni account# listed below on your check



AFNF1-1117-800800253 2852

Make check payable to: Afni, Inc.

Afni, Inc. Account #: ██████████ 15-01
 Toll Free: (866) 857-7193
 Creditor: SPRINT
 Creditor Account #: ██████████ 0260
 Balance: \$1,448.46

Department 555
 PO BOX 4115
 CONCORD CA 94524



ADDRESS SERVICE REQUESTED

#BWNFTZF #AFN6801284516115#

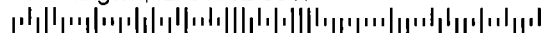


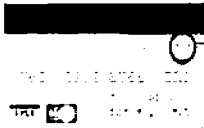
JOANNE PACHECO
 737 CHARLES POND DR
 CORAM NY 11727-3752



3010 00000144846

Afni, Inc.
 PO Box 3517
 Bloomington, IL 61702-3517







SECURITY
CODE

AFNF1-1117-800800253 2852

.....

If you wish to pay by credit card: Visa®  MasterCard® 

Credit Card Number _____ Security Code _____

Expiration Date _____ Payment Amount \$ _____

Name as it appears on Card _____

Signature of Card Holder _____

Different Credit Card Billing Address? Yes No If YES, please provide information below:

Address _____

City _____ State _____ Zip _____

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Joanne Pacheco, on behalf of herself and all others)	
similarly situated)	
_____)	
<i>Plaintiff(s)</i>)	
)	Civil Action No.
v.)	
)	
AFNI, Inc.)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

AFNI, Inc.
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

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: JOANNE PACHECO
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: AFNI, INC.
County of Residence of First Listed Defendant: MCLEAN
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Grid with categories: U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
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 (Place an "X" in One Box Only)
• 1 Original Proceeding
○ 2 Removed from State Court
○ 3 Remanded from Appellate Court
○ 4 Reinstated or Reopened
○ 5 Transferred from Another District (specify)
○ 6 Multidistrict Litigation - Transfer
○ 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: November 17, 2017
SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFF 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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Plaintiff Claims AFNI, Inc. Misidentified Creditor to Whom Debt Was Owed](#)
