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Attorneys for Plaintiff

Our File No.: 115379

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

Erwin Roth, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Carson Smithfield, LLC,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Erwin Roth, 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 Carson Smithfield, 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.

PARTIES

5. Plaintiff Erwin Roth is an individual who is a citizen of the State of New York residing in Orange County, New York.

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

7. On information and belief, Defendant Carson Smithfield, LLC, is a New York Limited Liability Company with a principal place of business in New York 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

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 August 18 Letter”) dated August 18, 2017. (“**Exhibit 1.**”)

15. The August 18 Letter was the initial communication Plaintiff received from Defendant.

16. The August 18 Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

17. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the August 24 Letter”) dated August 24, 2017. (“**Exhibit 2.**”)

18. The August 24 Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

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

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

22. 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.

23. 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.

24. 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.

25. 15 U.S.C. § 1692g(b) provides any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

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

27. 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 or subsequent communications.

28. 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.

29. A collection activity or communication overshadows or contradicts the validation notice if it would make the "least sophisticated consumer" uncertain or confused as to her rights.

30. The August 24 Letter was sent by Defendant within the 30-day validation period.

31. The August 24 Letter was sent a mere 6 days after the August 18 Letter.

32. The August 24 Letter demands payment.

33. The August 24 Letter demands Plaintiff contact Defendant.

34. The August 24 Letter makes no mention of the consumer's validation rights.

35. The August 24 Letter demands payment without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt.

36. The August 24 Letter demands payment without providing any transitional language explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt is a violation of the FDCPA.

37. The August 24 Letter demands Plaintiff contact Defendant without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt.

38. The August 24 Letter demands Plaintiff contact Defendant without providing any transitional language explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt is a violation of the FDCPA.

39. The August 24 Letter states that Plaintiff's account is in "default."

40. The August 24 Letter provides no explanation of "default."

41. Defendant's demand for payment without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt would likely make the least sophisticated consumer uncertain as to her rights.

42. Defendant's demand for payment without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt would likely make the least sophisticated consumer confused as to her rights.

43. Defendant's demand that Plaintiff contact Defendant without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt would likely make the least sophisticated consumer uncertain as to her rights.

44. Defendant's demand that Plaintiff contact Defendant without explaining that such demand does not override the consumer's right to dispute the debt or demand validation of the debt would likely make the least sophisticated consumer confused as to her rights.

45. The August 24 Letter overshadows the consumer's right to dispute the debt or request the name and address of the original creditor.

46. The August 24 Letter is inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

47. The August 24 Letter overshadows the August 18 Letter.

48. The August 24 Letter is inconsistent with the August 18 Letter.

49. For the aforementioned reasons, the August 24 Letter violates 15 U.S.C. § 1692g(b).

CLASS ALLEGATIONS

50. 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 by sending a second collection letter within 30-days of the initial written communication to the consumer, where the second letter demands payment and does not provide any reference to the consumer's validation rights, from one year before the date of this Complaint to the present.

51. 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.

52. Defendant regularly engages in debt collection.

53. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts by sending a second collection letter within 30-days of the initial written communication to the consumer, where the second letter demands payment and does not provide any reference to the consumer's validation rights.

54. 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.

55. 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.

56. 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

57. 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: August 20, 2018

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

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Attorneys for Plaintiff
Our File No.: 115379



CARSON SMITHFIELD, LLC
P.O. BOX 9216
OLD BETHPAGE, NY 11804

August 18, 2017



ERWIN ROTH
4 GETZIL BERGER BLVD UNIT 302
MONROE, NY 10950-6310

D * P8* S128

Our File Number: [REDACTED] 6776
Balance Due: \$5,028.30
Current Creditor: Merrick Bank Corporation
Original Creditor: United National Bank
Original Account Number: [REDACTED] 6529
Charge Off Balance: \$5,028.30
Interest Post Charge Off: \$0.00
Non Interest Charges Post Charge Off: \$0.00
Total Payments Made Since Charge Off: \$0.00

Dear Erwin Roth,

Merrick Bank Corporation has hired Carson Smithfield, LLC, to collect the balance due on your account referenced above. We are authorized to offer you two settlement options to allow you to settle your account for less than the current balance. You may accept either settlement offer by first contacting us as outlined below on or before September 30, 2017 and then make payments according to the offer you select.

You have three convenient options to accept this offer:

- Visit us at www.solveyourdebt.com and enter your response code ([REDACTED] 3876); or
- Call us at 1-877-394-5975 and make your payment over the phone free of charge; or
- Mail your payment with the voucher below and check the settlement option you are selecting

Choose your settlement offer below:

Lump Sum (single payment)

Merrick Bank Corporation will consider your account settled if you make a one-time payment of \$3,016.98 (which equals 60.0% of the outstanding balance of \$5,028.30) on or before September 30, 2017.

Extended Offer (pay over time)

Merrick Bank Corporation will consider your account settled if you make payments as follows:

- Remit your first payment in the amount of \$146.66 within 35 days from the date of this letter and
- Then, continue to make monthly payments in the amount of \$146.66 each, by the first of each month, for the next consecutive 23 months. (24 payments total)
- Accepting the Extended Payment Offer will result in payment of an amount that is greater than what you would pay under the Lump Sum Offer.

---Carson Smithfield is not obligated to renew any of the offers listed above---

You are under no obligation to accept either of these offers. If you do not accept one of these settlement offers, we will attempt to contact you to collect the balance on your account, less any payments you may have made.

If you have any questions, please contact our office at 1-877-394-5975. The hours of operation are Monday-Friday 8:00 AM to 9:00 PM EST & Saturday 8:00 AM - 4:30 PM EST.

If you are disputing your debt and wish to request substantiation you may write to the following address:

Carson Smithfield, P.O. Box 9201, Old Bethpage, NY 11804

Or you may contact us at 1-877-394-5975

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector.

Sincerely,
Carson Smithfield, LLC
225 W. Station Square Dr.
Pittsburgh, PA 15219

---The opportunities listed above do not alter or amend your validation rights described below---

IMPORTANT NOTIFICATION REQUIRED BY FEDERAL LAW - FEDERAL NOTICE:

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 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 of 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.

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: a) the use or threat of violence; b) the use of obscene or profane language; and c) 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;
11. Ninety percent of your wages or salary earned in the last sixty days.

Please detach and return with payment in envelope provided



CARSON SMITHFIELD
P.O. BOX 9216
OLD BETHPAGE, NY 11804

August 24, 2017

Account number: [REDACTED] 6776

Balance Due: \$5,028.30

Current Creditor: Merrick Bank Corporation

Original Creditor: United National Bank

Original Loan Number: [REDACTED] 6529



ERWIN ROTH
4 GETZIL BERGER BLVD UNIT 302
MONROE, NY 10950-6310

Dear Erwin Roth:

Please be advised that your above referenced account is in default and is being handled by this office.

To make payment arrangements on your account, please contact our office, toll free, at 1-877-394-5975. The hours of operation are Monday-Friday 8:00am to 9:00pm EST & Saturday 8:00am to 4:30pm EST.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector.

Sincerely,
Carson Smithfield, LLC
225 W. Station Square Dr.
Pittsburgh, PA 15219

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; 11. Ninety percent of your wages or salary earned in the last sixty days.

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Please detach and return with payment in envelope provided

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Carson Smithfield Overshadowed Consumer's Rights in Collection Letter, Lawsuit Claims](#)
