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 Plaintiffs* Our File No.: 111587

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

Glen F. Schwaner and Lourdes B. Fischer, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

MRS BPO, LLC,

Defendant.

Glen F. Schwaner and Lourdes B. Fischer, individually and on behalf of all others similarly situated (hereinafter referred to collectively as "*Plaintiffs*"), by and through the undersigned counsel, complain, state and allege against MRS BPO, 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.

BARSHAY | SANDERS PLLC 100 GARDEN CITY PLAZA, SUITE 500 GARDEN CITY, NEW YORK 11530 Case 2:16-cv-06698 Document 1 Filed 12/02/16 Page 2 of 6 PageID #: 2

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

PARTIES

5. Plaintiff Glen F. Schwaner is an individual who is a citizen of the State of New York residing in Nassau County, New York.

6. Plaintiff Lourdes B. Fischer is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

7. Plaintiffs are "consumers" as defined by 15 U.S.C. § 1692a(3).

8. On information and belief, Defendant's principal place of business is located in Cherry Hill, New Jersey.

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 each of the Plaintiffs owe a debt ("the debt").

12. The debts were primarily for personal, family or household purposes and are therefore "debts" as defined by 15 U.S.C. § 1692a(5).

13. Sometime after the incurrence of the debts, Plaintiffs fell behind on payments owed.

14. The debts were originally incurred with Chase Bank, N.A.

15. The debts were incurred on credit cards.

16. The credit cards accrued interest.

17. The credit cards accrued late fees.

18. Thereafter, at an exact time known only to Defendant, the debts were assigned or otherwise transferred to Defendant for collection.

19. In its efforts to collect the debt, Defendant contacted Plaintiff Schwaner by letter dated December 7, 2015. ("<u>Exhibit 1</u>.")

20. In its efforts to collect the debt, Defendant contacted Plaintiff Fischer by letter dated December 4, 2015. ("<u>Exhibit 1</u>.")

21. The letters were the initial communication to each Plaintiff received from

2

Defendant.

22. The letters are "communications" as defined by 15 U.S.C. § 1692a(2).

23. 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.

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

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

26. The letters, at the bottom thereof, state "Based on the information provided by the above referenced client, the transactions below may or may not be reflective of the current balance."

27. Below the foregoing statement on each letter is a dollar amount.

28. The statement on the letters that the dollar amount "may or may not be reflective of the current balance" would make the least sophisticated consumer uncertain as to the amount of the debt.

29. The statement on the letters that the dollar amount "may or may not be reflective of the current balance" would make the least sophisticated consumer confused as to the amount of the debt.

30. The statement on the letters that the dollar amount "may or may not be reflective of the current balance" would render the least sophisticated consumer unable to determine the amount of his or her debt.

31. The statement on the letters that the dollar amount "may or may not be reflective of the current balance" does not comport with Defendant's obligation to clearly provide "the amount of the debt."

32. The statement on the letters that the dollar amount "may or may not be reflective of the current balance" does not comport with Defendant's obligation under 15 U.S.C. 1692g(a)(1).

33. The least sophisticated consumer would be uncertain as to the amount of the debt.

34. The least sophisticated consumer would be confused as to the amount of the debt.

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

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

37. Defendant violated 15 U.S.C. § 1692g(a)(1).

38. 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.

39. The question of whether a collection letter is deceptive is determined from the perspective of the "least sophisticated consumer."

40. 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.

41. 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.

42. 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.

43. The letters can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described.

44. The letters can reasonably be read by the least sophisticated consumer to mean that the dollar amount <u>is</u> "reflective of the current balance."

45. The letters can reasonably be read by the least sophisticated consumer to mean that the dollar amount <u>is not</u> "reflective of the current balance."

46. Defendant violated 15 U.S.C. § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

47. Plaintiffs bring 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 delinquent consumer debt using letters that included language that a dollar amount "may or may not be reflective of the current balance," from one year before the date of this Complaint to the present. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

48. Defendant regularly engages in debt collection, using the same form collection

letters they sent Plaintiffs, in their attempts to collect delinquent consumer debts from other persons.

49. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts by sending other consumers the same form collection letters it sent to Plaintiffs.

50. Plaintiffs' 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.

51. 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.

52. Plaintiffs 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, Plaintiffs have retained counsel experienced in actions brought under the FDCPA.

JURY DEMAND

53. Plaintiffs hereby demand a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

- a. Certify this action as a class action; and
- b. Appoint Plaintiffs as Class Representatives of the Class, and their

attorneys as Class Counsel; and

c. Find that Defendant's actions violate the FDCPA; and

d. Grant statutory damages against Defendants pursuant to the FDCPA, 15 U.S.C. § 1692k; and

e. Grant Plaintiffs' attorneys' fees pursuant to 15 U.S.C. § 1692k; and

f. Grant Plaintiffs' costs; together with

g. Such other relief that the Court determines is just and proper.

DATED: December 1, 2016

BARSHAY SANDERS, PLLC

By: <u>/s/Craig B. Sanders</u> 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 Plaintiffs* Our File No.: 111587 v-06698 Document 1-1 Filed 12/0216 VIPES PHESASSOCIATES

-SFMRSA11 L-001wWF P54LZ000204768 - 228808284 109536 Return Address : MRS BPO, L.L.C **1930 OLNEY AVENUE** CHERRY HILL NJ 08003

CHERRY HILL NJ 08003 800-932-5573 Office Hours : Monday - Thursday 9am - 9pm ET Friday 9am - 5pm ET

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GLEN F SCHWANER **31 CYPRESS LN** SHIRLEY NY 11967-2418

December 7, 2015

RE: CHASE BANK USA N.A. MRS ACCT#: LU4, 4076 Use only bold numbers when calling CLIENT ACCT#: xxxxxxxxxxx3041 ACCOUNT BALANCE: \$9,115.47

Dear GLEN F SCHWANER.

The above referenced client has placed your account with our office for collection. We recognize that sometimes circumstances or events can make it difficult to satisfy your financial obligations.

Resolving a long overdue debt is never easy. Often the hardest part is taking the first step. We are ready to assist you to find a solution that is both fair and reasonable. You may even qualify for a payment arrangement or a settlement that could save you a substantial amount of moneyl

Payment may be made by calling 800-932-5573, mailing to the above address or by using our online payment website at <u>https://mrspay.webview.com</u> (internet connection required). If you have any questions or wish to discuss other arrangements, you may contact us.

IMPORTANT CONSUMER INFORMATION

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 this debt or any portion thereof, 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 in writing within 30 days after receiving this notice that you dispute the validity of this debt 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.

Please see the table below which includes additional details about your account. Based on the information provided by the above referenced client, the transactions below may or may not be reflective of the current balance.

> The total amount of the debt due as of charge-off 1\$ 9,115.47

Sincerely,

MRS Associates 800-932-5573 MRS Associates is a trade name of MRS BPO, L.L.C.

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

GV-06698 Document 1-1 Filed 12/02



Return Address :

MRS BPO, L.L.C

1930 OLNEY AVENUE CHERRY HILL NJ 08003 PSend Payment/Correspondence to: 1930 OLNEY AVENUE CHERRY HILL NJ 08003

800-949-3217 Office Hours : Monday - Thursday 9am - 9pm ET Friday 9am - 5pm ET



The fight of the

December 4, 2015

RE: CHASE BANK USA N.A. MRS ACCT#: LU4. 9474 Use only bold numbers when calling CLIENT ACCT#: xxxxxxxxx6505 ACCOUNT BALANCE: \$5,128.66

Dear LOURDES B ADAMESFISCHER,

The above referenced client has placed your account with our office for collection. We recognize that sometimes circumstances or events can make it difficult to satisfy your financial obligations.

Resolving a long overdue debt is never easy. Often the hardest part is taking the first step. We are ready to assist you to find a solution that is both fair and reasonable. You may even qualify for a payment arrangement or a settlement that could save you a substantial amount of money!

Payment may be made by calling 800-949-3217, mailing to the above address or by using our online payment website at https://mrspay.webview.com (internet connection required). If you have any questions or wish to discuss other arrangements, you may contact us.

IMPORTANT CONSUMER INFORMATION

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 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.

Please see the table below which includes additional details about your account. Based on the information provided by the above referenced client, the transactions below may or may not be reflective of the current balance.

The total amount of the debt due as of charge-off \$ 5,128.66

Sincerely,

MRS Associates 800-949-3217 MRS Associates is a trade name of MRS BPO, L.L.C.

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

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NEW YORK CITY RESIDENTS:

New York City Department of Consumer Affairs, license number 1292105, 1292103, 1292102. MRS Associates contact: Terri Hart Mon - Fri 8 AM - 5 PM ET (888) 334-5677.

<u>NEW YORK STATE RESIDENTS:</u> We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice. 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 of 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. Supplementary security income, (SSI); 2. Social Security; 3. Public assistance (welfare);

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- Public assistance (weirare);
 Spousal support, maintenance (alimony) or child support;
 Unemployment benefits;
 Disability benefits;
 Workers' compensation benefits;
 Public or private pensions;
 Voterang' benefits;

- 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.

JS 44 (Rev. 07/16) Case 2:16-cv-06698 Dequirent Ov Files 12/02/16 Page 1 of 2 PageID #: 10

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.)

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I. (a) PLAINTIFFS				DEFENDANTS							
GLEN F. SCHWANER				MRS BPO, LLC							
(b) County of Residence of First Listed Plaintiff <u>NASSAU</u> (EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence of First Listed Defendant <u>CAMDEN</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.							
(c) Attorneys (Firm Name, A	ddress, and Telephone Numbe	er)		Attorneys (If Know	vn)						
BARSHAY SAND											
	laza, Ste 500, Garden Ci	ty, NY 11530									
(516) 203-7600 II. BASIS OF JURISDI	CTION (Place an "X" in (One Box Only)	III. CI	I TIZENSHIP OF	PRI	NCIPA	L PARTIES (Place an "X" in	One Box f	or Plaintiff	
O 1 U.S. Government • 3 Federal Question			(For l	Diversity Cases Only)	PTF	DEF		and One I	Box for Defe PIF	ndant) DEF	
Plaintiff	-	(U.S. Government Not a Party)		Citizen of This State O			Incorporated or Print of Business In T		0 4		
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O 130 Miller Act O 140 Negotiable Instrument	O 315 Airplane Product Liability	Product Liability O 367 Health Care/	0 690) Other	28 USC 157			O 410 Antitrust O 430 Banks and Banking			
O 150 Recovery of Overpayment & Enforcement of Judgment	O 320 Assault, Libel & Slander	Pharmaceutical Personal Injury			PROPERTY RIGHTS O 820 Copyrights		O 450 Commerce O 460 Deportation				
O 151 Medicare Act	O 330 Federal Employers'	Product Liability					O 470 Racket	eer Influe			
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O 210 Land Condemnation O 220 Foreclosure O 230 Rent Lease & Ejectment O 240 Torts to Land	O 440 Other Civil Rights O 441 Voting O 442 Employment O 443 Housing/	Habeas Corpus: O 463 Alien Detainee O 510 Motions to Vacate Sentence		Income Security Act		O 870 Taxes (U.S. Plaintiff or Defendant) O 871 IRS—Third Party 26 USC 7609		Act/Review or Appeal of Agency Decision O 950 Constitutionality of State Statutes			
O 245 Tort Product Liability O 290 All Other Real Property	Accommodations O 445 Amer. w/Disabilities - Employment O 446 Amer. w/Disabilities - Other O 448 Education	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	0	IMMIGRATION 462 Naturalization Application O 465 Other Immigration Actions							
V. ORIGIN (Place an "X" in • 1 Original O 2 Remo Proceeding Con	oved from State O 3 Rem		4 Reinsta Reop		er Dist		O 6 Multidistrict Litigation – Transfer	Ι	Aultidistri itigation Direct File	-	
	Cite the U.S. Civil Sta	atute under which you are	filing (Do not cite jurisdictional	l statut	es unless d	iversity): 15 USC §	\$1692			
VI. CAUSE OF ACTIO	N Brief description of cau	15 USC §1692 F	air Deb	t Collection Practices	Act V	iolation					
VII. REQUESTED IN COMPLAINT:• CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		D	EMAND \$		CHECK YES only if demanded in complaint: JURY DEMAND: ● Yes ○ No						
VIII RELATED CASE(S)		(See Instructions) JUDGE				DOCKET NUMBER					
DATE December 2, 2016		SIGNATURE OF ATTO	ORNEY ORNEY ORNEY ORNEY ORNEY	OF RECORD Craig B. Sanders	5						
FOR OFFICE USE ONLY											
RECEIPT # AN	IOUNT	APPLYING IFP		JUDGE	Ξ		MAG. JUI	DGE			

Case 2:16-cv-06698 Document 1-2 Filed 12/02/16 Page 2 of 2 PageID #: 11 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, <u>Craig B. Sanders</u>, counsel for <u>Plaintiff</u>, 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,
- \Box the complaint seeks injunctive relief,
- \Box 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 or 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: <u>NO</u>

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? <u>YES</u>

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.

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

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Glen F. Schwaner and Lourdes B. Fischer, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

Civil Action No.

MRS BPO, LLC

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MRS BPO, LLC 1930 Olney Avenue Cherry Hill, New Jersey 08003

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: _____

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AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

[] I personally served the summons on the individual at (*place*)

	on (date)	; or
[] I left the summo	ns at the individual's residence or usual place of abo	ode with (na	me)
	, a person of suitable age and discretion	who reside	s there,
on (date)	, and mailed a copy to the individual's last l	known addre	ess; or
[] I served the sum	mons on (name of individual)		_, who is
designated by law to	accept service of process on behalf of (name of organ	ization)	
	on (date)	; or	
[] I returned the su	mmons unexecuted because		; or

[] Other (*specify*):

My fees are \$ ______ for travel and \$ ______ for services, for a total of \$ __0.00 ___.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>MRS BPO Knocked with Class Action Over Debt Collection Practices</u>