

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Yaasmiyn Shabazz, individually and on behalf of all others  
similarly situated;

Plaintiff,

-v.-

Capital Management Services, L.P.  
John Does 1-25

Defendant.

Civil Action No: \_\_\_\_\_

**CLASS ACTION COMPLAINT**  
**DEMAND FOR JURY TRIAL**

Plaintiff Yaasmiyn Shabazz (hereinafter, “Plaintiff” or “Shabazz”), a New York resident, brings this Class Action Complaint by and through her attorneys, RC Law Group, PLLC, against Defendant Capital Management Services, L.P. (hereinafter “Defendant” or “CMS”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. §1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws...[we]re

inadequate to protect consumers,” and that ““the effective collection of debts" does not require "misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to “insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” Id. §1692(e). After determining that the existing consumer protection laws were inadequate Id. §1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. Id. § 1692k.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692 et. seq. and 28 U.S.C. § 2201. If applicable, the Court also has pendant jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

### **NATURE OF THE ACTION**

5. Plaintiff brings this class action on behalf of a class of New York consumers under § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”), and

6. Plaintiff is seeking damages and declaratory and injunctive relief.

### **PARTIES**

7. Plaintiff is a resident of the State of New York, County of New York, residing at 94 Hamilton Place, Apt. 3D, New York, NY 10031.

8. Capital Management Services, L.P. is a “debt collector” as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 698 1/2 South Ogden Street, Buffalo, NY 14206-2317.

9. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

10. Defendant is a “debt collector” as defined under the FDCPA under 15 U.S.C. § 1692a(6).

11. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

**CLASS ALLEGATIONS**

12. Plaintiff brings this claim on behalf of the following class, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

13. The Class consists of:

- a. all individuals with addresses in the State of New York;
- b. to whom Capital Management Services, L.P. sent an initial collection letter attempting to collect a consumer debt;
- c. without stating that interest, fees and costs are continuously accruing, as well as the basis for said interest, fees and costs;
- d. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

14. The identities of all class members are readily ascertainable from the records of Defendant and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

15. Excluded from the Plaintiff's Class is the Defendant, and all officers, members, partners, managers, directors and employees of the Defendant, and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

16. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the forms attached as Exhibits A, violate 15 U.S.C. §§ 1692e and 1692g.

17. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of the Class Members defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor its attorneys have any interests, which might cause them not to vigorously pursue this action.

18. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- a. **Numerosity:** The Plaintiff is informed and believes, and on that basis allege, that the Plaintiff Class defined above are so numerous that joinder of all members would be impractical.

- b. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Classes and those questions predominate over any questions or issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the forms attached as Exhibit A violate 15 U.S.C. § 1692e and §1692g.
- c. **Typicality:** The Plaintiff's claims are typical of the claims of the class members. The Plaintiff and all members of the Plaintiff Classes have claims arising out of the Defendant's common uniform course of conduct complained of herein.
- d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor its counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.
- e. **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

19. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Classes predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

20. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

### **FACTUAL ALLEGATIONS**

21. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered above herein with the same force and effect as if the same were set forth at length herein.

22. Some time prior to February 8, 2017, an obligation was allegedly incurred to Bank of America, N.A.

23. The Bank of America, N.A. obligation arose out of transactions in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.

24. The alleged Bank of America, N.A. obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

25. Bank of America, N.A. is a “creditor” as defined by 15 U.S.C. §1692a(4).

26. Bank of America, N.A. or a subsequent owner of the Bank of America, N.A. debt contracted the Defendant to collect the alleged debt.

27. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

Violation I – February 8, 2017 Collection Letter

28. On or about February 8, 2017, Defendant sent the Plaintiff an initial contact notice (the “Letter”) regarding the alleged debt owed to Bank of America, N.A. See Exhibit A.

29. When a debt collector solicits payment from a consumer, it must, within five days of an initial communication

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) 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;

(4) 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 the judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) 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. 15 U.S.C. § 1692g(a).

30. The FDCPA further provides 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 shall cease collection . . . until the debt collector obtains verification of the

debt . . . and a copy of such verification is mailed to the consumer by the debt collector.” 15

U.S.C. § 1692g(b).

31. The top of the letter states:

Amount Due at Charge-Off: \$874.68  
Interest Accrued since Charge-Off: \$ 99.00  
Non-Interest Charges or  
Fees Accrued Since Charge-Off: \$0.00  
Payments and Credits Made Since Charge-Off: \$198.00  
Current Amount Due: \$775.68

32. Defendant’s February 8, 2017 Collection Letter failed to state that the balance due is continuously increasing as time goes on.

33. Defendant is aware that during the collection of this debt the balance may vary and not stating that it may increase is a deceptive collection tactic and an omission of a required disclosure to the consumer.

34. When addressing this exact issue the Second Circuit stated “We hold that Section 1692e of the FDCPA requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees. Because plaintiffs allege that defendants failed to disclose that information here, they have stated a claim under the FDCPA.” *Avila v Riexinger & Assocs., LLC* 817 F.3d 72, 74 (2d Cir 2016).

35. Defendant’s February 8, 2017 Collection Letter fails to include this safe harbor language set out by the Second Circuit.

36. The Defendant was required to include a disclosure that interest was accruing, or in the alternative, the creditor/and or Defendant has made the decision to waive the accruing interest.

37. As a result of Defendant's deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.



**COUNT I**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692e**  
*et seq.*

38. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

39. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

40. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

41. Defendant violated §1692e :

- a. As the Letter it is open to more than one reasonable interpretation, at least one of which is inaccurate.
- b. By making a false and misleading representation by failing to include the required disclosures regarding the accrual of interest, fees and costs on the outstanding balance, in violation of §1692e(10).

42. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

**COUNT II**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692g**  
*et seq.*

43. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

44. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

45. Pursuant to 15 USC §1692g, a debt collector:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

1. The amount of the debt;
2. The name of the creditor to whom the debt is owed;
3. 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;
4. A statement that the consumer notifies the debt collector in writing within 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; and
5. 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.

46. The Defendant violated 15 U.S.C. §1692g, by failing to adequately inform the consumer as to the amount of the debt, as well as failing to include the required disclosures regarding the accrual of interest, fees and costs on the outstanding balance, both of which overshadow the "g-notice" language and coerces the consumer not to exert its rights under the FDCPA.

47. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692g et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

**DEMAND FOR TRIAL BY JURY**

48. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.





Please see additional page(s) for information regarding New York State Residents.

This collection agency is licensed by the New York City Department of Consumer Affairs, License No. 1242722. Please contact Ronnie Learman at 1-866-900-9732 with any questions or concerns.

**ADDITIONAL INFORMATION FOR NEW YORK CITY RESIDENTS**

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

You may contact Capital Management Services, LP, at 698 1/2 South Ogden Street, Buffalo, NY 14206-2317 or call 1-866-489-3642 Mon. through Fri. 8 am to 9 pm ET, Sat. 8 am to 1 pm ET. Please submit your payment and make your check or money order payable to Capital Management Services, LP, at the address listed above. You may also make payments online at: [www.cms-trans.com](http://www.cms-trans.com).

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 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 than the current creditor.

This company has been engaged by Bank of America to resolve your delinquent debt of \$775.68.

Dear Yaasmyn A Shabazz:

February 08, 2017

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

Original Creditor: Bank of America, N.A.  
Current Creditor: Bank of America, N.A.  
Account #: XXXXXXXXXXXXX4891  
Amount Due at Charge-Off: \$874.68  
Interest Accrued Since Charge-Off: \$99.00  
Non-Interest Charges or Fees Accrued Since Charge-Off: \$0.00  
Payments and Credits Made Since Charge-Off: \$198.00  
Current Amount Due: \$775.68  
Capital Management Services, LP  
698 1/2 South Ogden Street Buffalo, NY 14206-2317  
Office Hours: M-F 8 am - 9 pm ET  
Sat 8 am - 1 pm ET  
Toll Free: 1-866-489-3642, Fax: 716-512-6046

Yasmyn A Shabazz  
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Reference# [Redacted] 821



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Suit Claims Capital Management Services Left Key Information Out of Debt Collection Letter](#)

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