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18 ***Pro Hac Vice Motion To Be Filed***

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

21 **RANISHA SLOAN, individually and**
22 **on behalf of all others similarly situated,**

23 **Plaintiff**

24 **-against-**

25 **CONTINENTAL SERVICE GROUP,**
26 **INC. d/b/a CONSERVE,**

27 **Defendants**

28 **Civil Case No.:**

CIVIL ACTION

CLASS ACTION COMPLAINT
and
JURY TRIAL DEMAND

1 Plaintiff RANISHA SLOAN (hereinafter, “Plaintiff”), a California resident,
2 brings this class action complaint by and through the undersigned attorneys, against
3 Defendant CONTINENTAL SERVICE GROUP, d/b/a CONSERVE (hereinafter
4 “Defendant”), individually and on behalf of a class of all others similarly situated,
5 pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon
6 information and belief of Plaintiff’s counsel, except for allegations specifically
7 pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.
8

9
10 **INTRODUCTION/PRELIMINARY STATEMENT**

- 11
12 1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence
13 of the use of abusive, deceptive, and unfair debt collection practices by many
14 debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned
15 that “abusive debt collection practices contribute to the number of personal
16 bankruptcies, to material instability, to the loss of jobs, and to invasions of
17 individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re
18 inadequate to protect consumers,” and that “the effective collection of debts”
19 does not require “misrepresentation or other abusive debt collection
20 practices.” 15 U.S.C. §§ 1692(b) & (c).
21
- 22 2. Congress explained that the purpose of the Act was not only to eliminate
23 abusive debt collection practices, but also to “insure that those debt
24 collectors who refrain from using abusive debt collection practices are not
25 competitively disadvantaged.” *Id.* § 1692(e). After determining that the
26 existing consumer protection laws were inadequate, *id.* § 1692(b), Congress
27 gave consumers a private cause of action against debt collectors who fail to
28 comply with the Act. *Id.* § 1692k.

- 1 3. The rights and obligations established by section 15 U.S.C. § 1692g were
2 considered by the Senate at the time of passage of the FDCPA to be a
3 “significant feature” of the Act. See *S. Rep. No. 382, 95th Cong., 1st Sess.*
4 *4, at 4, reprinted in 1977 U.S.C.C.A.N. 1695, 1696.*
5

6 **JURISDICTION AND VENUE**

- 7
8 4. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15
9 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has
10 pendent jurisdiction over the state law claims in this action pursuant to 28
11 U.S.C. § 1367(a).
12 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).
13

14 **NATURE OF THE ACTION**

- 15
16 6. Plaintiff brings this class action on behalf of a class of California
17 consumers seeking redress for Defendant’s actions of using false, deceptive
18 and misleading representation or means in connection with the collection of
19 an alleged debt.
20 7. Defendants actions violated § 1692 *et seq.* of Title 15 of the United States
21 Code, commonly referred to as the Fair Debt Collections Practices Act
22 (“FDCPA”), which prohibits debt collectors from engaging in false,
23 deceptive or misleading practices.
24 8. Plaintiff is seeking damages, and declaratory and injunctive relief.
25 9. Plaintiff is a natural person and a resident of the State of California, and is a
26 “Consumer” as defined by 15 U.S.C. §1692(a)(3).
27
28

PARTIES

1
2
3 10. Defendant ConServe is a collection agency with its registered office
4 located at 200 Crosskeys Office Park, Fairport, New York, 14450.

5 11. Upon information and belief, Defendant is a company that uses the mail,
6 telephone, or facsimile in a business the principal purpose of which is the
7 collection of debts, or that regularly collects or attempts to collect debts
8 alleged to be due another.

9 12. Defendant is a "debt collector," as defined under the FDCPA under 15
10 U.S.C. § 1692a(6).

11
12 **ALLEGATIONS OF FACT**

13
14 13. Plaintiff repeats, reiterates and incorporates the allegations contained in
15 paragraphs above herein with the same force and effect as if the same were
16 set forth at length herein.

17 14. Some time prior to April 10, 2017, an obligation was allegedly incurred to
18 CAPELLA UNIV.

19 15. The CAPELLA UNIV obligation arose out of a transaction in which money,
20 property, insurance or services, which are the subject of the transaction, are
21 primarily for personal, family or household purposes.

22 16. The alleged CAPELLA UNIV obligation is a "debt" as defined by 15
23 U.S.C. § 1692a(5).

24 17. CAPELLA UNIV is a "creditor" as defined by 15 U.S.C. § 1692a(4).

25 18. Defendant contends that the CAPELLA UNIV debt is past due.

26 19. Defendant is a company that uses mail, telephone or facsimile in a business
27 the principal purpose of which is the collection of debts, or that regularly
28 collects or attempts to collect debts incurred or alleged to have been incurred

1 for personal, family or household purposes on behalf of creditors.

2 20.CAPELLA UNIV directly or through an intermediary contracted the
3 Defendant to collect the alleged debt.

4 21.On or about April 10, 2017, the Defendant caused to be delivered to the
5 Plaintiff a collection letter in an attempt to collect the alleged CAPELLA
6 UNIV debt. *See Exhibit A.*

7 22.Upon information and belief, the April 10, 2017 letter was the first
8 communication between the Defendant and Plaintiff regarding the
9 CAPELLA UNIV debt.

10 23.The April 10, 2017 letter was sent or caused to be sent by persons employed
11 by Defendant as a “debt collector” as defined by 15 U.S.C. §1692a(6).

12 24.The April 10, 2017 letter is a “communication” as defined by 15 U.S.C.
13 §1692a(2).

14 25.The Plaintiff received and read the Letter sometime after April 10, 2017.

15 26.The Letter stated in part:

16 “Total Due: \$4,075.00

17 Date of Last Payment: None provided by Creditor

18 Rate of Interest: 0.000%”

19 27.The Letter further stated:

20 “Because this debt may require you to pay interest on the outstanding
21 portion of your balance, as well as other assessed charges, which may
22 vary from day to day, the amount required to pay this debt in full may
23 be greater than the amount stated here.”
24

25 28.Upon information and belief, the amount allegedly due would never
26 increase due to interest or other charges.

27 29.Upon information and belief, the amount due does not vary from day to
28

1 day, nor would the amount Plaintiff would be required to pay increase if he
2 was to pay in full the amount stated in the letter.

3 30.The Plaintiff, as would any least sophisticated consumer read the above
4 statement and believed that the Defendant could potentially impose
5 additional charges, even though that would never actually incur. *See*
6 *e.g., Beauchamp v. Fin. Recovery Servs., Inc.*, No. 10 CIV. 4864 SAS,
7 2011 WL 891320, at *3 (S.D.N.Y. Mar. 14, 2011) (finding that a letter
8 stating that the debt balance may increase could mislead the least
9 sophisticated debtor into believing that additional charges or interest
10 would accrue).

11
12 31.By inputting this language, the Defendant caused the Plaintiff a real risk
13 of harm. Plaintiff, as would the least sophisticated consumer, would
14 believe that they have a financial incentive to pay this debt sooner and
15 in full, or risk owing a higher amount.

16 32.Pursuant to the FDCPA, a debt collector must within five days of the
17 initial communication accurately state the amount of the debt. See 15
18 U.S.C. §1692g(a)(1).

19 33.Congress adopted the debt validation provisions of section 1692g to
20 guarantee that consumers would receive adequate notice of their rights under
21 the FDCPA. *Wilson*, 225 F.3d at 354, citing *Miller v. Payco-General Am.*
22 *Credits, Inc.*, 943 F.2d 482, 484 (4th Cir.1991).

23
24 34.The rights afforded to consumers under Section 1692g(a) are amongst the
25 most powerful protections provided by the FDCPA.

26 35. By failing to accurately state the amount of the debt, Defendant violated
27 the FDCPA and harmed the Plaintiff.

28 36.Defendants could have taken the steps necessary to bring its actions

1 within compliance with the FDCPA, but neglected to do so and
2 failed to adequately review its actions to ensure compliance with the
3 law.

4
5 **CLASS ALLEGATIONS**

6 37. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure
7 (hereinafter “FRCP”) Rule 23, individually and on behalf of the following
8 consumer class (the “Class”) consisting of: a) All consumers who have an
9 address in the state of California b) who were sent a collection letter from
10 the Defendant c) attempting to collect a consumer debt owed to Capella
11 University, d) that states “Because this debt may require you to pay interest
12 on the outstanding portion of your balance, as well as other assessed charges,
13 which may vary from day to day, the amount required to pay this debt in full
14 may be greater than the amount stated here.” (e) where no such charges were
15 accruing (f) which letter was sent on or after a date one year prior to the filing
16 of this action and on or before a date 21 days after the filing of this action.

17
18 38. The identities of all class members are readily ascertainable from the
19 records of Defendants and those companies and entities on whose behalf
20 they attempt to collect and/or have purchased debts.

21 39. Excluded from the Plaintiff Classes are the Defendants and all officers,
22 members, partners, managers, directors, and employees of the Defendants
23 and their respective immediate families, and legal counsel for all parties to
24 this action and all members of their immediate families.

25 40. There are questions of law and fact common to the Plaintiff Classes, which
26 common issues predominate over any issues involving only individual
27 class members. The principal issue is whether the Defendants’ written
28

1 communications to consumers, in the forms attached as *Exhibit A*, violate
2 15 U.S.C. § 1692e and 1692g.

3 41. The Plaintiffs' claims are typical of the class members, as all are based
4 upon the same facts and legal theories.

5 42. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff
6 Classes defined in this complaint. The Plaintiffs have retained counsel with
7 experience in handling consumer lawsuits, complex legal issues, and class
8 actions, and neither the Plaintiffs nor their attorneys have any interests,
9 which might cause them not to vigorously pursue this action.

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

14 (a) **Numerosity:** The Plaintiffs are informed and believe, and on that
15 basis allege, that the Plaintiff Classes defined above are so numerous
16 that joinder of all members would be impractical.

17 (b) **Common Questions Predominate:** Common questions of law and
18 fact exist as to all members of the Plaintiff Classes and those questions
19 predominate over any questions or issues involving only individual
20 class members. The principal issue is whether the Defendants' written
21 communications to consumers, in the forms attached as *Exhibit A*,
22 violate 15 U.S.C. § 1692e and 1692g.

23 (c) **Typicality:** The Plaintiffs' claims are typical of the claims of the class
24 members. The Plaintiffs and all members of the Plaintiff Classes have
25 claims arising out of the Defendants' common uniform course of
26 conduct complained of herein.

27 (d) **Adequacy:** The Plaintiffs will fairly and adequately protect the
28

1 interests of the class members insofar as Plaintiffs have no interests
2 that are averse to the absent class members. The Plaintiffs are
3 committed to vigorously litigating this matter. Plaintiffs have also
4 retained counsel experienced in handling consumer lawsuits, complex
5 legal issues, and class actions. Neither the Plaintiffs nor their counsel
6 have any interests which might cause them not to vigorously pursue
7 the instant class action lawsuit.

8 (e) **Superiority:** A class action is superior to the other available means
9 for the fair and efficient adjudication of this controversy because
10 individual joinder of all members would be impracticable. Class
11 action treatment will permit a large number of similarly situated
12 persons to prosecute their common claims in a single forum efficiently
13 and without unnecessary duplication of effort and expense that
14 individual actions would engender.

15
16 44. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil

17 Procedure is also appropriate in that the questions of law and fact common
18 to members of the Plaintiff Classes predominate over any questions
19 affecting an individual member, and a class action is superior to other
20 available methods for the fair and efficient adjudication of the controversy.

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

24
25 **COUNT I**

26 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

27 **15 U.S.C. §1692e et seq.**

28 46. Plaintiff repeats, reiterates and incorporates the allegations contained in

1 paragraphs above herein with the same force and effect as if the same were
2 set forth at length herein.

3 47. Defendants' debt collection efforts attempted and/or directed towards the
4 Plaintiff violated various provisions of the FDCPA, including but not
5 limited to 15 U.S.C. § 1692e.

6 48. Pursuant to 15 U.S.C. § 1692e, a debt collector may not use any false,
7 misleading and/or deceptive means to collect or attempt to collect any
8 debt or to obtain information concerning a consumer.

9 49. The Defendants violated said section in its letter to the Plaintiff by:

- 10 a. Using a false, deceptive, and misleading representations or
11 means in connection with the collection of a debt;
12 b. Falsely representing the amount of the alleged debt in violation of
13 1692e(2)(A);
14 c. Making a false representation or using deceptive means to collect
15 a debt in violation of 1692e(10).
16

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

20 **COUNT II**

21 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

22 **15 U.S.C. §1692g *et seq.***

23 51. Plaintiff, individually and on behalf of all others similarly situated, repeats,
24 reiterates and incorporates the allegations contained in paragraphs above
25 herein with the same force and effect as if the same were set forth at length
26 herein.

27 52. Defendant's debt collection efforts attempted and/or directed towards the
28

1 Plaintiff violated various provisions of the FDCPA, including but not limited
2 to 15 U.S.C. § 1692g.

3 53. Pursuant to 15 U.S.C. § 1692g, a debt collector is required in the initial
4 communication with a consumer, to identify the name of the creditor to
5 whom the debt is owed.

6 54. The Defendant violated section 1692g(a)(1) by failing to clearly state the
7 amount of the debt.

8 55. By reason thereof, Defendant is liable to Plaintiff for judgment that
9 Defendant's conduct violated Section 1692g *et seq.* of the FDCPA, actual
10 damages, statutory damages, costs and attorneys' fees.
11

12
13 **DEMAND FOR TRIAL BY JURY**

14
15 56. Pursuant to Rule 38 of the Federal Rules of Civil Procedure,
16 Plaintiff hereby request a trial by jury on all issues so triable.
17

18 **PRAYER FOR RELIEF**

19
20 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

21 (a) Declaring that this action is properly maintainable as a Class
22 Action and certifying Plaintiff as Class representative and Ari H. Marcus, Esq.
23 and Yitzchak Zelman, Esq., as Class Counsel;

24 (b) Awarding Plaintiff and the Class statutory damages;

25 (c) Awarding Plaintiff and the Class actual damages;

26 (d) Awarding Plaintiff costs of this Action, including reasonable
27 attorneys' fees and expenses;
28

1 (e) Awarding pre-judgment interest and post-judgment interest;
2 and

3 (f) Awarding Plaintiff and the Class such other and further relief
4 as this Court may deem just and proper.
5

6 Dated: December 07, 2017
7

8 /s/ Jonathan A. Stieglitz
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18 **PRO HAC VICE MOTION TO BE FILED**

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27 *Attorneys for the Plaintiff*
28

PO Box 3023
Niagara Falls, NY 14304-7321



April 10, 2017

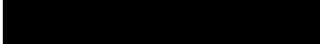
A Debt Collection Agency
200 CrossKeys Office Park
Fairport, NY 14450
866-616-6900 www.payconserve.com
585-421-1011 ConServe Mobile App



3003 1 MB *A-01-HNA-AM-13340-45



RANISHA SLOAN



Creditor: CAPELLA UNIV
For: STUDENT ACCT BALANCE
Creditor #: [REDACTED]
Acct #: [REDACTED] 9217

Principal: \$4,075.00
Creditor Assessed Interest/Fees: \$0.00
Creditor Assessed Misc Fees: \$0.00
Creditor Assessed Coll Costs: \$0.00
TOTAL DUE: \$4,075.00

Date of Last Payment: None provided by Creditor
Rate of Interest: 0.000%

Dear Ranisha Sloan:

CAPELLA UNIV has assigned your account to ConServe, a professional Collection Agency for collection.

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 this 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. Federal law prohibits unfair collection practices.

As of the date of this letter, you owe the balance shown on this letter. Because this debt may require you to pay interest on the outstanding portion of your balance, as well as other assessed charges, which may vary from day to day, the amount required to pay this debt in full may be greater than the amount stated here. We encourage you to call prior to making payment intended to pay your account in full.

Please use the information below to contact us for payment arrangements.

ConServe, P.O. Box 7, Fairport, NY 14450
Toll Free Telephone Number: 866-616-6900
Convenient 24 Hour Account Access Available Online

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

Notice: See Reverse Side for Important Information

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

Enclosed is my checking account information.

Enclosed is my VISA, MASTERCARD, or DISCOVER #:

If paying by ACH, please complete this section

I, _____ authorize ConServe to electronically debit my checking account for the total amount listed below.

Bank Routing Number		Checking Account Number	
Check Number	Date	Phone	Work Phone
Name of Bank		Bank City, State	
Authorized name on Check		Amount	
Signature			

If paying by Credit Card, please complete this section

<input type="checkbox"/> VISA	CARD NUMBER	AMOUNT	CVW # (3 or 4 Digit code on Back of Card)
<input type="checkbox"/> MASTERCARD	SIGNATURE	EXP. DATE	
<input type="checkbox"/> DISCOVER	CARDHOLDER NAME (Please Print)		<input type="checkbox"/> Check Here if cardholder address is the same as the address shown on this letter. If not, provide cardholder address on back of coupon.



Account # 11139217
Balance as of 04/10/2017: \$4,075.00
RANISHA SLOAN

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [ConServe Hit with FDCPA Suit Over 'Misleading' Collection Letter](#)
