

**BARSHAY SANDERS, PLLC**  
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*Attorneys for Plaintiff*  
Our File No.: 113346

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

Nuria Torres, individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

Midland Credit Management, Inc.,

Defendant.

Docket No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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

Nuria Torres, 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 Midland Credit Management, 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 Nuria Torres is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

7. On information and belief, Defendant Midland Credit Management, Inc., is a California Corporation with a principal place of business in San Diego County, California.

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 incurred on an account with Verizon New York, Inc.

12. The account was for a personal cellular telephone.

13. Plaintiff’s last payment on the account was prior to 2011.

14. The statute of limitations for the Debt, pursuant to 47 U.S.C. § 415(a), is two years.

15. The statute of limitations for the Debt began to accrue prior to 2011.

16. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated May 25, 2016. (“Exhibit 1.”)

17. The Letter was sent after the statute of limitations expired.

18. The Letter demands payment.

19. The Letter offers a partial payment settlement.

20. Making any payment on a time-barred debt may result in revival of Plaintiff’s otherwise time-barred debt.

21. 22 N.Y.C.R.R. § 1.3 requires debt collectors to notify consumers that 1) the debt collector believes that the statute of limitations applicable to the debt may be expired; 2) suing on a debt for which the statute of limitations has expired is a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.; 3) if the consumer is sued on a debt for which the statute of limitations has expired, the consumer may be able to stop the lawsuit by responding to the court that the statute of limitations has expired; 4) the consumer is not required to provide the

debt collector with an admission, affirmation, or acknowledgment of the debt, a promise to pay the debt, or a waiver of the statute of limitations; and 5) if the consumer makes any payment on a debt for which the statute of limitations has expired or admits, affirms, acknowledges, or promises to pay such debt, the statute of limitations may restart.

22. Notwithstanding the expiration of the statute of limitations to sue to recover the debt prior to the time Defendant sent Plaintiff the Letter, the Letter fails to provide any indication to Plaintiff that no legal action could be undertaken to attempt to recover the debt.

23. Notwithstanding the expiration of the statute of limitations to sue to recover the debt prior to the time Defendant sent Plaintiff the Letter, the Letter fails to inform Plaintiff that any partial payment by Plaintiff may result in the revival of Plaintiff's otherwise time-barred debt.

24. Notwithstanding the expiration of the statute of limitations to sue to recover the debt prior to the time Defendant sent Plaintiff the Letter, the Letter fails to provide the notifications required by 22 N.Y.C.R.R. § 1.3.

25. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

26. 15 U.S.C. § 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

27. As a result of the omissions set forth above, the Letter would mislead the least sophisticated consumer to believe that the time-barred debt is legally enforceable; and therefore, Defendant violated 15 U.S.C. § 1692e(2)(A).

28. As a result of the omissions set forth above, the Letter would mislead the least sophisticated consumer to believe that making a partial payment would not revive the otherwise time-barred debt; and therefore, Defendant violated 15 U.S.C. § 1692e.

29. For the foregoing reasons, Defendant violated 15 U.S.C. § 1692e, 15 U.S.C. § 1692e(2)(A) and 15 U.S.C. § 1692e(10).

### **CLASS ALLEGATIONS**

30. 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 time-barred consumer debt incurred for cellular telephone services, without advising the

consumer that no legal action could be undertaken to attempt to recover the debt and/or that any partial payment by the consumer may result in the revival of the consumer's otherwise time-barred debt, from one year before the date of this Complaint to the present.

31. 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.

32. Defendant regularly engages in debt collection.

33. The Class consists of more than 35 persons from whom Defendant attempted to collect a time-barred consumer debt incurred for cellular telephone services, without advising the consumer that no legal action could be undertaken to attempt to recover the debt and/or that any partial payment by the consumer may result in the revival of the consumer's otherwise time-barred debt.

34. 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.

35. 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.

36. 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**

37. 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: May 2, 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.: 113346

**mcm** Midland Credit Management, Inc.  
 2365 Northside Drive, Suite 300, San Diego, CA 92108

05-25-2016

002 Nuria Torres  
 P39T1488 3350 Union Blvd  
 East Islip, NY 11730-1914



Original Creditor	VERIZON NEW YORK INC
Original Account Number	9888
MCM Account Number	3428
Current Balance	\$759.18
Current Owner	MIDLAND FUNDING LLC

You are pre-approved for a 60% discount!  
 Call now: (800) 282-2644

**Choose The Option That Works For You.**

RE: Verizon New York Inc.

Dear Nuria,

Congratulations! You have been **pre-approved** for a discount program designed to save you money. Act now to maximize your savings and put this debt behind you by calling (800) 282-2644. Pay online today at [www.midlandcreditonline.com](http://www.midlandcreditonline.com).

**Option 1: 60% OFF** You Pay Only  
 Payment Due Date: 06-24-2016 **\$303.67**

**Option 2: 20% OFF** 6 Monthly Payments of Only  
 First Payment Due Date: 06-24-2016 **\$101.22**

**Option 3: Monthly Payments As Low As: \$50 per month†**  
 † Call today to discuss your options and get more details.

**Benefits of Paying!**

- Save up to \$455.50
- Offer Expiration date: 06-24-2016
- After receiving your final payment, we will consider the account paid.\*

**CALL US TODAY!**  
 (800) 282-2644

Sincerely,  
*Tim Bolin*  
 Tim Bolin, Division Manager

If these options don't work for you, call one of our Account Managers to help you set up a payment plan that does.

\*If you pay your full balance, we will report your account as **Paid In Full**. If you pay less than your full balance, we will report your account as **Paid In Full for less than the full balance**.

We are not obligated to renew this offer.

Hours of Operation  
 In 5:00am - 9:00pm PST



You are pre-approved for a 80% discount!  
Call now: (800) 282-2644

**Choose The Option That Works For You**

RE: Verizon New York Inc.

Dear Nuria,

Congratulations! You have been **pre-approved** for a discount program designed to save you money. Act now to maximize your savings and put this debt behind you by calling (800) 282-2644. Pay online today at [www.midlandcreditonline.com](http://www.midlandcreditonline.com).

**Option 1: 20% OFF** **You Pay Only \$303.67**  
First Payment Due Date: 06-24-2016

**Option 2: 20% OFF** **6 Monthly Payments of Only \$101.22**  
First Payment Due Date: 06-24-2016

**Option 3: Monthly Payments As Low As: \$50 per month!**  
Call today to discuss your options and get more details.

**Benefits of Paying!**

- Save up to \$455.50
- Offer Expiration date: 06-24-2016

After receiving your final payment, we will consider the account paid.

**CALL US TODAY!**  
(800) 282-2644

Sincerely,

*Tim Bollin*

Tim Bollin, Division Manager

If these options don't work for you, call one of our Account Managers to help you set up a payment plan that does.

\*If you pay your full balance, we will report your account as Paid In Full. If you pay less than your full balance, we will report your account as Paid In Full for less than the full balance.

We are not obligated to renew this offer.

Hours of Operation:  
M - Th 5:00am - 9:00pm PST  
Fri 5:00am - 4:30pm PST  
Sat 5:00am - 4:30pm PST  
Sun 5:00am - 9:00pm PST



Call: (800) 282-2644



Click: [www.midlandcreditonline.com](http://www.midlandcreditonline.com)



Mail: Payment coupon below

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION

**PAYMENT COUPON**

MCM Account No.: [redacted] 6428  
Original Account No.: [redacted] 9989  
Current Balance: \$759.18

Payment Due Date: 06-24-2016

Amount Enclosed: \_\_\_\_\_

**Payment Options:**

- 1) Mail in this coupon with your payment
- 2) Pay by phone (800) 282-2644

Make Check Payable to:  
Midland Credit Management, Inc.



PO Box 60578  
Los Angeles, CA 90060-0578

[redacted] 9087

B471 DOE7

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: NURIA TORRES
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: MIDLAND CREDIT MANAGEMENT, INC.
County of Residence of First Listed Defendant: SAN DIEGO
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: May 8, 2017
SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP 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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Nuria Torres, individually and on behalf of all others
similarly situated

Plaintiff(s)

v.

Midland Credit Management, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Midland Credit Management, Inc.
Corporation Service Company
80 State St.
Albany, NY 12207-2543

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: Craig B. Sanders, Esq.
100 Garden City Plaza
Suite 500
Garden City, New York 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 Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons 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:

Print

Save As...

Reset

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Too Late: Suit Says Debt Collector Demands Payment of Time-Barred Debt](#)

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