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Our File No.: 112746

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

Joseph Traina and Jean M. Schwizer, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

Oliphant Financial, LLC,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Joseph Traina and Jean M. Schwizer, 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 Oliphant Financial, 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 Joseph Traina is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff Jean M. Schwizer 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 Oliphant Financial, LLC, is a Florida Limited Liability Company with a principal place of business in SARASOTA County, Florida.

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 Debts”).

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

15. In its efforts to collect the debt alleged owed by Plaintiff Joseph Traina, Defendant contacted Plaintiff Joseph Traina by letter (“the Letter”) dated December 22, 2016. (“**Exhibit 1.**”)

16. In its efforts to collect the debt alleged owed by Plaintiff Jean M. Schwizer, Defendant contacted Plaintiff Jean M. Schwizer by letter (“the Letter”) dated December 22, 2016. (“**Exhibit 1.**”)

17. The Letter was the initial communication Plaintiff Joseph Traina received from Defendant.

18. The Letter was the initial communication Plaintiff Jean M. Schwizer received

from Defendant.

19. The Letters are “communications” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF TRAINA

20. Plaintiff Traina repeats and realleges the foregoing paragraphs as if fully restated herein.

21. The Debt was incurred on a credit card underwritten by Mid America Bank and Trust (“Mid America”).

22. The Letter sets forth a “Balance” of \$882.25.

23. Pursuant to the terms and conditions of the credit card, Mid America charged Plaintiff interest on any balance carried on the account.

24. Pursuant to the terms and conditions of the credit card, Mid America charged Plaintiff late fees on any payments due but not timely made by Plaintiff.

25. Pursuant to the terms and conditions of the credit card, Mid America charged Plaintiff other fees on the account.

26. The right to collect from Plaintiff interest on any balance carried on the account was not waived by Mid America.

27. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by Mid America.

28. The right to collect from Plaintiff other fees on the account was not waived by Mid America.

29. The right to collect from Plaintiff interest on any balance carried on the account was not waived by any assignee or successor-in-interest.

30. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by any assignee or successor-in-interest.

31. The right to collect from Plaintiff other fees on the account was not waived by any assignee or successor-in-interest.

32. Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

33. Pursuant to the terms and conditions of the credit card, interest continued to

accrue on any balance unpaid.

34. Pursuant to the terms and conditions of the credit card, late fees continued to accrue on any payments due but not timely made by Plaintiff.

35. Pursuant to the terms and conditions of the credit card, other fees continued to accrue on the account.

36. Pursuant to the terms and conditions of the credit card, Mid America and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest on any balance carried on the account.

37. Pursuant to the terms and conditions of the credit card, Mid America and any assignee or successor-in-interest had the legal right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff.

38. Pursuant to the terms and conditions of the credit card, Mid America and any assignee or successor-in-interest had the legal right to collect from Plaintiff other fees on the account.

39. Pursuant to the terms and conditions of the credit card, the legal right of Mid America and any assignee or successor-in-interest to collect from Plaintiff interest on any balance carried on the account is not waived by Mid America or any assignee or successor-in-interest as a result of a failure by either Mid America or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest.

40. Pursuant to the terms and conditions of the credit card, the legal right of Mid America and any assignee or successor-in-interest to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff is not waived by Mid America or any assignee or successor-in-interest as a result of a failure by either Mid America or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned late fees.

41. Pursuant to the terms and conditions of the credit card, the legal right of Mid America and any assignee or successor-in-interest to collect from Plaintiff other fees on the account is not waived by Mid America or any assignee or successor-in-interest as a result of a failure by either Mid America or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned other fees.

42. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

43. The Letter failed to disclose that the balance stated may increase due to interest.
44. The Letter failed to disclose that the balance stated may increase due to late fees.
45. The Letter failed to disclose that the balance stated may increase due to other fees.
46. The Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e.

SECOND COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF TRAINA

47. Plaintiff Traina repeats and realleges the foregoing paragraphs as if fully restated herein.

48. Alternatively, even if Plaintiff's account was not subject to continued interest pursuant to the terms and conditions of the credit card – which it was – the account was subject to interest by operation of law.

49. Plaintiff's debt was incurred pursuant to a contract between Plaintiff and Mid America.

50. N.Y.C.P.L.R. § 5001(a) provides that interest shall be recovered upon a sum awarded because of a breach a contract.

51. An award of interest under § 5001 is mandatory.

52. N.Y.C.P.L.R. § 5001(b) provides that interest shall be computed from the earliest ascertainable date the cause of action existed.

53. Mid America and any assignee or successor-in-interest possessed a guaranteed right to interest on the Debt from, at the latest, December 22, 2016.

54. As such, the amount stated in the Letter was subject to the accrual of interest.

55. The Letter failed to disclose that the amount stated may increase due to interest.

56. The Letter, because of the aforementioned failure, violates 15 U.S.C. § 1692e.

THIRD COUNT
Violation of 15 U.S.C. § 1692g
AS TO PLAINTIFF TRAINA

57. Plaintiff Traina repeats and realleges the foregoing paragraphs as if fully restated herein.

58. 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.

59. 15 U.S.C. § 1692g(a)(1) requires the written notice provide “the amount of the debt.”

60. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly from the perspective of the least sophisticated consumer.

61. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

62. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

63. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.

64. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.

65. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

66. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.

67. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).

68. The Letter fails to indicate the minimum amount Plaintiff owed at the time of the Letter.

69. The Letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the Letter.

70. The Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

71. The Letter fails to provide information that would allow the least sophisticated

consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

72. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

73. For instance, the Letter fails to indicate the applicable interest rate.

74. For instance, the Letter fails to indicate the date of accrual of interest.

75. For instance, the Letter fails to indicate the amount of interest during any measurable period.

76. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late fees owed.

77. For instance, the Letter fails to indicate the amount of late fees.

78. For instance, the Letter fails to indicate the date such fees will be added.

79. For instance, the Letter fails to indicate the amount of late fees during any measurable period.

80. The Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

81. The Letter fails to state whether interest, late fees and/or other fees are accruing.

82. The Letter fails to state what part of the amount stated is attributable to principal.

83. The Letter fails to state what part of the amount stated is attributable to interest.

84. The Letter fails to state what part of the amount stated is attributable to late fees.

85. The Letter fails to state what part of the amount stated is attributable to other fees.

86. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Letter.

87. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

88. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

89. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt

was static.

90. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

91. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

92. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

93. The Letter, because of the aforementioned failures, renders the statement of the amount of the debt, even if otherwise accurate, violative of 15 U.S.C. § 1692g(a)(1).

94. The Letter, because of the aforementioned failures, did not adequately set forth “the amount of the debt” as required by 15 U.S.C. § 1692g.

95. The Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692g.

FOURTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF TRAINA

96. Plaintiff Traina repeats and realleges the foregoing paragraphs as if fully restated herein.

97. As previously set forth, the Letter sets forth a “Balance” of \$822.25.

98. As previously set forth, Plaintiff was always charged interest on any balance carried on the account.

99. As previously set forth, Plaintiff was always charged late fees on any payments due but not timely made by Plaintiff.

100. As previously set forth, Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

101. The Letter fails to disclose whether the amount stated may increase due to additional interest.

102. The Letter fails to disclose whether the amount stated may increase due to additional late fees.

103. The Letter fails to indicate whether the creditor will accept payment of the amount stated in full satisfaction of the debt if payment is made by a specified date.

104. A collection letter violates 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.

105. The Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that interest was still accruing.

106. The Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that late fees were still accruing.

107. The Letter could also reasonably be read by the least sophisticated consumer to mean that interest was no longer accruing.

108. The Letter could also reasonably be read by the least sophisticated consumer to mean that late fees were no longer accruing.

109. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated.

110. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the Letter.

111. The Letter could also reasonably be read by the least sophisticated consumer to mean that the amount stated was accurate only on the date of the Letter because of the continued accumulation of interest and/or late fees.

112. Because the Letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive under 15 U.S.C. § 1692e.

113. For these reasons, Defendant violated 15 U.S.C. § 1692e.

FIFTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF SCHWIZER

114. Plaintiff Schwizer repeats and realleges the foregoing paragraphs as if fully restated herein.

115. The Debt was incurred on a credit card underwritten by Celtic Bank.

116. The Letter sets forth a “Balance” of \$885.48.

117. Pursuant to the terms and conditions of the credit card, Celtic Bank charged Plaintiff interest on any balance carried on the account.

118. Pursuant to the terms and conditions of the credit card, Celtic Bank charged Plaintiff late fees on any payments due but not timely made by Plaintiff.

119. Pursuant to the terms and conditions of the credit card, Celtic Bank charged Plaintiff other fees on the account.

120. The right to collect from Plaintiff interest on any balance carried on the account was not waived by Celtic Bank.

121. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by Celtic Bank.

122. The right to collect from Plaintiff other fees on the account was not waived by Celtic Bank.

123. The right to collect from Plaintiff interest on any balance carried on the account was not waived by any assignee or successor-in-interest.

124. The right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff was not waived by any assignee or successor-in-interest.

125. The right to collect from Plaintiff other fees on the account was not waived by any assignee or successor-in-interest.

126. Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

127. Pursuant to the terms and conditions of the credit card, interest continued to accrue on any balance unpaid.

128. Pursuant to the terms and conditions of the credit card, late fees continued to accrue on any payments due but not timely made by Plaintiff.

129. Pursuant to the terms and conditions of the credit card, other fees continued to accrue on the account.

130. Pursuant to the terms and conditions of the credit card, Celtic Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest on any balance carried on the account.

131. Pursuant to the terms and conditions of the credit card, Celtic Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff.

132. Pursuant to the terms and conditions of the credit card, Celtic Bank and any assignee or successor-in-interest had the legal right to collect from Plaintiff other fees on the account.

133. Pursuant to the terms and conditions of the credit card, the legal right of Celtic Bank and any assignee or successor-in-interest to collect from Plaintiff interest on any balance carried on the account is not waived by Celtic Bank or any assignee or successor-in-interest as a result of a failure by either Celtic Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest.

134. Pursuant to the terms and conditions of the credit card, the legal right of Celtic Bank and any assignee or successor-in-interest to collect from Plaintiff late fees on any payments due but not timely made by Plaintiff is not waived by Celtic Bank or any assignee or successor-in-interest as a result of a failure by either Celtic Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned late fees.

135. Pursuant to the terms and conditions of the credit card, the legal right of Celtic Bank and any assignee or successor-in-interest to collect from Plaintiff other fees on the account is not waived by Celtic Bank or any assignee or successor-in-interest as a result of a failure by either Celtic Bank or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned other fees.

136. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

137. The Letter failed to disclose that the balance stated may increase due to interest.

138. The Letter failed to disclose that the balance stated may increase due to late fees.

139. The Letter failed to disclose that the balance stated may increase due to other fees.

140. The Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692e.

SIXTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF SCHWIZER

141. Plaintiff Schwizer repeats and realleges the foregoing paragraphs as if fully restated herein.

142. Alternatively, even if Plaintiff's account was not subject to continued interest pursuant to the terms and conditions of the credit card – which it was – the account was subject to interest by operation of law.

143. Plaintiff's debt was incurred pursuant to a contract between Plaintiff and Celtic Bank.

144. N.Y.C.P.L.R. § 5001(a) provides that interest shall be recovered upon a sum awarded because of a breach a contract.

145. An award of interest under § 5001 is mandatory.

146. N.Y.C.P.L.R. § 5001(b) provides that interest shall be computed from the earliest ascertainable date the cause of action existed.

147. Celtic Bank and any assignee or successor-in-interest possessed a guaranteed right to interest on the Debt from, at the latest, December 22, 2016.

148. As such, the amount stated in the Letter was subject to the accrual of interest.

149. The Letter failed to disclose that the amount stated may increase due to interest.

150. The Letter, because of the aforementioned failure, violates 15 U.S.C. § 1692e.

SEVENTH COUNT
Violation of 15 U.S.C. § 1692g
AS TO PLAINTIFF SCHWIZER

151. Plaintiff Schwizer repeats and realleges the foregoing paragraphs as if fully restated herein.

152. 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.

153. 15 U.S.C. § 1692g(a)(1) requires the written notice provide “the amount of the debt.”

154. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt clearly from the perspective of the least sophisticated consumer.

155. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt accurately from the perspective of the least sophisticated consumer.

156. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must convey the amount of the debt without ambiguity from the perspective of the least sophisticated consumer.

157. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must state whether interest, late fees and/or other fees are accruing.

158. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the notice.

159. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

160. The written notice, to comply with 15 U.S.C. § 1692g(a)(1), must contain an explanation, understandable by the least sophisticated consumer, of any fees or interest that may cause the balance to increase at any time in the future.

161. The failure to include the foregoing information renders an otherwise accurate statement of the “amount of the debt” violative of 15 U.S.C. § 1692g(a)(1).

162. The Letter fails to indicate the minimum amount Plaintiff owed at the time of the Letter.

163. The Letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the Letter.

164. The Letter fails to provide information that would allow Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.

165. The Letter fails to provide information that would allow the least sophisticated consumer to determine what he or she will need to pay to resolve the debt at any given moment in the future.

166. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed.

167. For instance, the Letter fails to indicate the applicable interest rate.

168. For instance, the Letter fails to indicate the date of accrual of interest.

169. For instance, the Letter fails to indicate the amount of interest during any measurable period.

170. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of late fees owed.

171. For instance, the Letter fails to indicate the amount of late fees.

172. For instance, the Letter fails to indicate the date such fees will be added.

173. For instance, the Letter fails to indicate the amount of late fees during any measurable period.

174. The Letter fails to contain an explanation, understandable by the least sophisticated consumer, of any fees and interest that may cause the amount stated to increase.

175. The Letter fails to state whether interest, late fees and/or other fees are accruing.

176. The Letter fails to state what part of the amount stated is attributable to principal.

177. The Letter fails to state what part of the amount stated is attributable to interest.

178. The Letter fails to state what part of the amount stated is attributable to late fees.

179. The Letter fails to state what part of the amount stated is attributable to other fees.

180. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the minimum amount owed at the time of the Letter.

181. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine what she will need to pay to resolve the debt at any given moment in the future.

182. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

183. The Letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

184. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” clearly from the perspective of the least sophisticated consumer.

185. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” accurately from the perspective of the least sophisticated consumer.

186. The Letter, because of the aforementioned failures, did not convey “the amount of the debt” without ambiguity from the perspective of the least sophisticated consumer.

187. The Letter, because of the aforementioned failures, renders the statement of the amount of the debt, even if otherwise accurate, violative of 15 U.S.C. § 1692g(a)(1).

188. The Letter, because of the aforementioned failures, did not adequately set forth “the amount of the debt” as required by 15 U.S.C. § 1692g.

189. The Letter, because of the aforementioned failures, violates 15 U.S.C. § 1692g.

EIGHTH COUNT
Violation of 15 U.S.C. § 1692e
AS TO PLAINTIFF SCHWIZER

190. Plaintiff Schwizer repeats and realleges the foregoing paragraphs as if fully restated herein.

191. As previously set forth, the Letter sets forth a “Balance” of \$885.48.

192. As previously set forth, Plaintiff was always charged interest on any balance carried on the account.

193. As previously set forth, Plaintiff was always charged late fees on any payments due but not timely made by Plaintiff.

194. As previously set forth, Plaintiff was never informed by anyone that the terms and conditions of the credit card were changed.

195. The Letter fails to disclose whether the amount stated may increase due to additional interest.

196. The Letter fails to disclose whether the amount stated may increase due to additional late fees.

197. The Letter fails to indicate whether the creditor will accept payment of the amount stated in full satisfaction of the debt if payment is made by a specified date.

198. A collection letter violates 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.

199. The Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that interest was still accruing.

200. The Letter, because of the aforementioned failures, and because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied, can reasonably be read by the least sophisticated consumer to mean that late fees were still accruing.

201. The Letter could also reasonably be read by the least sophisticated consumer to mean that interest was no longer accruing.

202. The Letter could also reasonably be read by the least sophisticated consumer to mean that late fees were no longer accruing.

203. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated.

204. The Letter could reasonably be read by the least sophisticated consumer to mean that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the Letter.

205. The Letter could also reasonably be read by the least sophisticated consumer to mean that the amount stated was accurate only on the date of the Letter because of the continued accumulation of interest and/or late fees.

206. Because the Letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive under 15 U.S.C. § 1692e.

207. For these reasons, Defendant violated 15 U.S.C. § 1692e.

NINTH COUNT
Violation of 15 U.S.C. § 1692e and § 1692f
False or Misleading Representations
AS TO BOTH PLAINTIFFS

208. Plaintiffs repeat and reallege the foregoing paragraphs as if fully restated herein.

209. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt.

210. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

211. § 1692e(2)(B) prohibits the false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

212. 15 U.S.C. § 1692e(5) specifically prohibits threatening “to take any action that cannot legally be taken or that is not intended to be taken.”

213. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

214. 15 U.S.C. § 1692f provides a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

215. §1692f(1) limits prohibits the collection of any amount, including any interest, fee, charge, or expense incidental to the debt, unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

216. The Letters state “Charges or Fees.”

217. The “Charges or Fees” are listed as “\$0.00.”

218. 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.

219. 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.

220. Although the “Charges or Fees” are listed as “\$0.00,” the Letters could reasonably be read by the least sophisticated consumer to mean that there could be “Charges or Fees” added to the debts in the future.

221. The Letter could reasonably be read by the least sophisticated consumer to imply that there could be “Charges or Fees” added to the debts in the future.

222. The Letter falsely implies that Defendant has the right to add “Charges or Fees” to the debts.

223. Defendant has no legal basis to add “Charges or Fees” to the debts.

224. The Letters could reasonably be read by the least sophisticated consumer to threaten to collect a fee.

225. The Letters falsely implicate that Defendant has the right to add fees to the debts.

226. Defendant has no legal basis to add fees to the debts.

227. Defendant's conduct, as described, violates § 1692e and § 1692f.

CLASS ALLEGATIONS

228. 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 consumer credit card debt using the same form collection letter, which fails to include the necessary interest-related disclosures, from one year before the date of this Complaint to the present.

229. 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.

230. Defendant regularly engages in debt collection.

231. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer credit card debts using the same form collection letter, which fails to include the necessary interest-related disclosures.

232. 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.

233. 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.

234. 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 consumer protection laws.

JURY DEMAND

235. 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 Plaintiffs' 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 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 22, 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 Plaintiffs
Our File No.: 112746

2601 Cattlemen Rd., Ste. 300
Sarasota, FL 34232



Date	12/22/2016
Balance	\$882.25
Current Creditor	Oliphant Financial Group, LLC
Oliphant Account#	3333
Original Creditor	Mid America Bank and Trust
Original Creditor Acct#	1634



65947-22B*3 *****AUTO**MIXED AADC 350
JOSEPH TRAINA JR
13 Federal Ln
Coram, NY 11727-1614

00385

Online Payments: www.OliphantFinancial.com
Standard Payments: Box 864934
Orlando, FL 32886



Overnight Payments: 2601 Cattlemen Rd., Ste. 300
Sarasota, FL 34232

OFG-P-NY-D1-ENV-2



3333-12/22/2016

Dear Joseph Traina Jr,

The ownership of your Mid America Bank and Trust Verve account has transferred from Mid America Bank and Trust to Continental Finance Company, LLC, and then subsequently sold to Oliphant Financial Group, LLC, has the ability and desire to present you with a variety of options to pay the outstanding balance due.

Purchase/Charge-off Balance:	\$882.25
Post Charge-off Interest:	\$0.00
Charges or Fees:	\$0.00
Less Payments/Credits:	\$0.00
Total Balance:	\$882.25

Unless you notify this office within thirty (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 thirty (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 thirty (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.

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

You can reach a professional agent by calling 1-800-262-1999 Monday through Thursday from 8:15am to 7:00pm, and Friday from 8:15am to 5:00pm, Eastern Time.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Pursuant to the rules of the New York State Department of Financial Services (“NYSDFS”) adopted under 23 NYCRR1 we are required to notify you of the following disclosures:

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

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 or 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.

The City of New York requires that we disclose the following for New York City Residents: Contact Mark Jones at Oliphant Financial, LLC at 800-262-1999. This collection agency is licensed by the Department of Consumer Affairs of the City of New York; License # 1244305.

2601 Cattlemen Rd., Ste. 300
Sarasota, FL 34232



Date	12/22/2016
Balance	\$885.48
Current Creditor	Oliphant Financial Group, LLC
Oliphant Account#	1009
Original Creditor	Celtic Bank
Original Creditor Acct#	4421



65947-22B*3 *****AUTO**MIXED AADC 350
JEAN M. SCHWIZER
304 Cedar Ct
Copiague, NY 11726-4822

00382

Online Payments: www.OliphantFinancial.com
Standard Payments: Box 864934
Orlando, FL 32886



Overnight Payments: 2601 Cattlemen Rd., Ste. 300
Sarasota, FL 34232

OFG P-NY-D1 ENV-2



1009-12/22/2016

Dear Jean M. Schwizer,

The ownership of your Celtic Bank Surge account has transferred from Celtic Bank to Continental Finance Company, LLC, and then subsequently sold to Oliphant Financial Group, LLC, has the ability and desire to present you with a variety of options to pay the outstanding balance due.

Purchase/Charge-off Balance:	\$885.48
Post Charge-off Interest:	\$0.00
Charges or Fees:	\$0.00
Less Payments/Credits:	\$0.00
Total Balance:	\$885.48

Unless you notify this office within thirty (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 thirty (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 thirty (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.

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

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 or 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.

The City of New York requires that we disclose the following for New York City Residents: Contact Mark Jones at Oliphant Financial, LLC at 800-262-1999. This collection agency is licensed by the Department of Consumer Affairs of the City of New York; License # 1244305.

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: JOSEPH TRAINA
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: OLIPHANT FINANCIAL, LLC
County of Residence of First Listed Defendant: SARASOTA
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)
O 1 U.S. Government Plaintiff
O 2 U.S. Government Defendant
O 3 Federal Question (U.S. Government Not a Party)
O 4 Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: O 110 Insurance, O 120 Marine, O 130 Miller Act, O 140 Negotiable Instrument, O 150 Recovery of Overpayment & Enforcement of Judgment, O 151 Medicare Act, O 152 Recovery of Defaulted Student Loans (Excludes Veterans), O 153 Recovery of Overpayment of Veteran's Benefits, O 160 Stockholders' Suits, O 190 Other Contract, O 195 Contract Product Liability, O 196 Franchise
REAL PROPERTY: O 210 Land Condemnation, O 220 Foreclosure, O 230 Rent Lease & Ejectment, O 240 Torts to Land, O 245 Tort Product Liability, O 290 All Other Real Property
TORTS: PERSONAL INJURY: O 310 Airplane, O 315 Airplane Product Liability, O 320 Assault, Libel & Slander, O 330 Federal Employers' Liability, O 340 Marine, O 345 Marine Product Liability, O 350 Motor Vehicle, O 355 Motor Vehicle Product Liability, O 360 Other Personal Injury, O 362 Personal Injury - Medical Malpractice
PRISONER PETITIONS: Habeas Corpus: O 463 Alien Detainee, O 510 Motions to Vacate Sentence, 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
FORFEITURE/PENALTY: O 625 Drug Related Seizure of Property 21 USC 881, O 690 Other
LABOR: O 710 Fair Labor Standards Act, O 720 Labor/Management Relations, O 740 Railway Labor Act, O 751 Family and Medical Leave Act, O 790 Other Labor Litigation, O 791 Employee Retirement Income Security Act
IMMIGRATION: O 462 Naturalization Application, O 465 Other Immigration Actions
BANKRUPTCY: O 422 Appeal 28 USC 158, O 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: O 820 Copyrights, O 830 Patent, O 840 Trademark
SOCIAL SECURITY: O 861 HIA (1395ff), O 862 Black Lung (923), O 863 DIWC/DIWW (405(g)), O 864 SSID Title XVI, O 865 RSI (405(g))
FEDERAL TAX SUITS: O 870 Taxes (U.S. Plaintiff or Defendant), O 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: O 375 False Claims Act, O 400 State Reapportionment, O 410 Antitrust, O 430 Banks and Banking, O 450 Commerce, O 460 Deportation, O 470 Racketeer Influenced and Corrupt Organizations, O 480 Consumer Credit, O 490 Cable/Sat TV, O 850 Securities/Commodities/Exchange, O 890 Other Statutory Actions, O 891 Agricultural Acts, O 893 Environmental Matters, O 895 Freedom of Information Act, O 896 Arbitration, O 899 Administrative Procedure Act/Review or Appeal of Agency Decision, O 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
O 1 Original Proceeding
O 2 Removed from State Court
O 3 Remanded from Appellate Court
O 4 Reinstated or Reopened
O 5 Transferred from Another District (specify)
O 6 Multidistrict Litigation - Transfer
O 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:
O CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$1000.00
CHECK YES only if demanded in complaint: JURY DEMAND: Yes O No

VIII. RELATED CASE(S) IF ANY
(See Instructions)
JUDGE
DOCKET NUMBER

DATE: December 22, 2017
SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFF 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
c) If this is a Fair Debt Collection Practice Act case, specific the County in which the offending communication was received: SUFFOLK

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? Yes No

(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

Joseph Traina and Jean M. Schwizer, individually and on behalf of all others similarly situated)	
<i>Plaintiff(s)</i>)	
v.)	Civil Action No.
Oliphant Financial, LLC)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Oliphant Financial, LLC
2601 Cattlemen Road , Suite 300
Sarasota, Florida 34232

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: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Two NY Consumers Claim Oliphant Financial Violated Debt Collection Laws](#)
