

BARSHAY SANDERS, PLLC
100 Garden City Plaza, Suite 500
Garden City, New York 11530
Tel: (516) 203-7600
Fax: (516) 706-5055
Email: *ConsumerRights@BarshaySanders.com*
Attorneys for Plaintiff
Our File No.: 115283

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

Mirel Weiser, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Irving Kaplan & Associates, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Mirel Weiser, 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 Irving Kaplan & Associates, 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 Mirel Weiser is an individual who is a citizen of the State of New York residing in Orange County, New York.
6. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).
7. On information and belief, Defendant Irving Kaplan & Associates, Inc., is a New Jersey Corporation with a principal place of business in Union County, New Jersey.
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 primarily for personal, family or household purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).
12. Sometime after the incurrence of the Debt, Plaintiff fell behind on payments owed.
13. Thereafter, at an exact time known only to Defendant, the Debt was assigned or otherwise transferred to Defendant for collection.
14. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the Letter”) dated April 4, 2018. (“**Exhibit 1.**”)
15. The Letter was the initial communication Plaintiff received from Defendant.
16. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT
Violation of 15 U.S.C. §§ 1692g(b) and 1692e

17. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.
18. 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.
 19. The written notice must contain the amount of the debt.
 20. The written notice must contain the name of the creditor to whom the debt is owed.
 21. The written notice must contain a statement that unless the consumer, within thirty



days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.

22. The written notice must contain a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.

23. The written notice must contain a statement that, upon the consumer’s written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

24. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly.

25. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication.

26. 15 U.S.C. § 1692g(b) provides that collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer’s right to dispute the debt or request the name and address of the original creditor.

27. A collection activity or communication overshadows or contradicts the validation notice if it would make the “least sophisticated consumer” uncertain or confused as to her rights.

28. The Letter states, at the top in larger font than any other writing in the body of the Letter:

F D C P A W A R N I N G N O T I C E

29. There is no legal predicate for an “FDCPA WARNING.”

30. The inclusion of this “WARNING” would lead the least sophisticated consumer to feel threatened.

31. The inclusion of this “WARNING” would lead the least sophisticated consumer to feel intimidated.

32. The inclusion of this “WARNING” would lead the least sophisticated consumer to be uncertain as to her rights.

33. The inclusion of this “WARNING” would lead the least sophisticated consumer to



be confused as to her rights.

34. The inclusion of this “WARNING” would lead the least sophisticated consumer to believe some adverse action is imminent.

35. The inclusion of this “WARNING” would likely lead the least sophisticated consumer to forego her validation rights for fear of imminent adverse action.

36. The inclusion of this “WARNING” would likely lead the least sophisticated consumer to overlook her validation rights.

37. The inclusion of this “WARNING” would likely lead the least sophisticated consumer to believe that the rest of the letter is unimportant as compared to the “WARNING.”

38. The inclusion of this “WARNING” would likely lead the least sophisticated consumer to believe her Section 1692 rights are unimportant as compared to the “WARNING.”

39. The inclusion of this “WARNING” overshadows the Section 1692 rights.

40. The inclusion of this “WARNING” contradicts the Section 1692 rights.

41. The inclusion of this “WARNING” is inconsistent with the Section 1692 rights.

42. The inclusion of this “WARNING,” in the above context, when examined from the perspective of the least sophisticated consumer, overshadows the required Section 1692 rights.

43. The inclusion of this “WARNING,” in the above context, when examined from the perspective of the least sophisticated consumer, contradicts the required Section 1692 rights.

44. The inclusion of this “WARNING,” in the above context, violates 15 U.S.C. § 1692g(b).

45. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

46. While Section 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.

47. 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.

48. 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.

49. 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.

50. “We are not obligated to renew this offer,” in the above context, can be read by the

least sophisticated consumer to have two or more meanings, one of which is inaccurate.

51. The inclusion of this “WARNING,” in the above context, can be read by the least sophisticated consumer to mean that Defendant is not obligated to provide the Section 1692 rights in the Letter.

52. The inclusion of this “WARNING,” in the above context, can be read inaccurately by least sophisticated consumer.

53. The Letter, as a result of the foregoing, is deceptive.

54. The Letter, as a result of the foregoing, constitutes a deceptive means to attempt to collect the Debt.

55. The Letter, as a result of the foregoing, violates 15 U.S.C. § 1692e.

56. The Letter, as a result of the foregoing, violates 15 U.S.C. § 1692e(10).

SECOND COUNT

Violation of 15 U.S.C. §§ 1692g(a)(2) and 1692e

57. Plaintiff 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. One such requirement is that the debt collector provide “the name of the creditor to whom the debt is owed.” 15 U.S.C. § 1692g(a)(2).

60. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to convey such clearly.

61. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to state such explicitly.

62. Merely naming the creditor without specifically identifying the entity as the current creditor to whom the debt is owed is not sufficient to comply with 15 U.S.C. § 1692g(a)(2).

63. Even if a debt collector conveys the required information, the debt collector nonetheless violates the FDCPA if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty.

64. When determining whether the name of the creditor to whom the debt is owed has been conveyed clearly, an objective standard, measured by how the “least sophisticated consumer” would interpret the notice, is applied.

65. The Letter fails to identify by name and label any entity as “creditor,” “original creditor,” “current creditor,” “account owner,” or “creditor to whom the debt is owed.”

66. The Letter states, “RE: THE VALLEY HOSPITAL (1ST) OUT P.”

67. The Letter fails to indicate whether the “Re:” refers to the account owner.

68. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s creditor.

69. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s current creditor.

70. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s original creditor.

71. The Letter fails to indicate whether the “Re:” refers to the creditor to whom the debt is owed.

72. The Letter demands payment be made to Defendant.

73. “RE: THE VALLEY HOSPITAL (1ST) OUT P,” even if meant as the creditor to whom the debt is owed, is not specific to advise the least sophisticated consumer of the true name of the creditor.

74. Defendant failed to explicitly state the name of the creditor to whom the debt is owed.

75. Defendant failed to clearly state the name of the creditor to whom the debt is owed.

76. The least sophisticated consumer would likely be confused as to the name of the creditor to whom the debt is owed.

77. The least sophisticated consumer would likely be uncertain as to the name of the creditor to whom the debt is owed.

78. Defendant violated § 1692g as it failed to clearly and explicitly convey the name of the creditor to whom the debt is owed.

79. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

80. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.

81. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”

82. 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.

83. 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.



84. For purposes of 15 U.S.C. § 1692e, the failure to clearly and accurately identify the creditor to whom the debt is owed is unfair and deceptive to the least sophisticated consumer.

85. The identity of creditor to whom the debt is owed is a material piece of information to a consumer.

86. Knowing the identity of creditor to whom the debt is owed affects how a consumer responds to a debt collector's attempts to collect the debt.

87. 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 within the meaning of 15 U.S.C. § 1692e.

88. Because the Letter is reasonably susceptible to an inaccurate reading by the least sophisticated consumer, as described, it is deceptive within the meaning of 15 U.S.C. § 1692e.

89. The least sophisticated consumer would likely be deceived by the Letter.

90. The least sophisticated consumer would likely be deceived in a material way by the Letter.

91. Defendant violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

92. 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 consumer debt using a letter that provides:

F D C P A - W A R N I N G - N O T I C E

from one year before the date of this Complaint to the present.

93. 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.

94. Defendant regularly engages in debt collection.

95. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts.

96. 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.

97. 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.

98. 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

99. 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: February 6, 2019

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.: 115283



I R V I N G K A P L A N & A S S O C I A T E S
130 West Westfield Avenue - Suite A
P.O. Box 4022, Roselle Park, New Jersey 07204
Phone 908-688-4004 Fax 908-445-7788

Date: 4/ 4/2018

MIREL WEISER
12 HAMBURG WAY UNIT 011
MONROE NY 10950

F D C P A W A R N I N G N O T I C E

RE: THE VALLEY HOSPITAL (1ST)OUT P Customer No.: [REDACTED]8517
Account: MIREL STEINBERG Agency No.: [REDACTED]0588
Balance Due: 139.01 Date of Service: 10/ 1/2017

This is to inform you that the above named creditor has placed your account with this agency with the full intention of settling this debt.

You may not have intentionally neglected this obligation, but it is seriously past due

In order to resolve this matter:

1. Remit payment in full to the name and address below:
IRVING KAPLAN & ASSOCIATES
P.O. Box 542 WAYNE, NJ 07474-0542

IMPORTANT NOTIFICATION:

~~Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of the 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.~~

Yours truly,

JACKIE KIM
IRVING KAPLAN AND ASSOCIATES

This is an attempt to collect a debt and any information obtained will be used for this purpose.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Irving Kaplan & Associates Hit with FDCPA Class Action Over Allegedly Misleading Letter](#)
