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Our File No.: 115434

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

Sean Wheeler, individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

Rothman Evans, P.C.,

Defendant.

Docket No: 5:18-CV-0587 (GLS/ATB)

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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

Sean Wheeler, 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 Rothman Evans, P.C. (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 Sean Wheeler is an individual who is a citizen of the State of New York residing in Madison County, New York.

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

7. On information and belief, Defendant Rothman Evans, P.C., is a New York Professional Corporation with a principal place of business in Onondaga County, New York.

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 September 14, 2017. (“**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).

17. 15 U.S.C. § 1692g(a)(4) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing 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.

18. A collection letter must be crafted in such a way that the least sophisticated

consumer would understand that (1) she could raise a dispute in many ways, but (2) she could get verification of the debt and the name and address of the original creditor only if she disputed it in writing. *See Diaz v. Residential Credit Sols., Inc.*, 965 F. Supp. 2d 249, 258 (E.D.N.Y. 2013).

19. Section 1692g(a)(4) explicitly requires that a debt be disputed in writing. *In re Risk Mgmt. Alternatives, Inc., Fair Debt Collection Practices Litig.*, 208 F.R.D. 493, 502 (S.D.N.Y. 2002); *Goldberg v. Winston & Morrone, P.C.*, No. 95 CIV. 9282 (LAK), 1997 WL 139526, at \*6 (S.D.N.Y. Mar. 26, 1997).

20. The Letter states, “IF YOU NOTIFY US WITHIN THE 30 (THIRTY) DAY PERIOD THAT THE DEBT OR ANY PORTION HEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU AND MAIL SUCH VERIFICATION OR COPY TO YOU.” (All caps in original.)

21. The Letter fails to provide the required Section 1692g(a)(4) disclosure.

22. The Letter fails to provide the statement required by Section 1692g(a)(4).

23. The Letter fails to track the language required by Section 1692g(a)(4).

24. The Letter fails to mention the writing requirement of Section 1692g(a)(4).

25. The Letter fails to provide that Defendant’s obligation to obtain verification and mail it to Plaintiff is only triggered if the Plaintiff disputes the debt in writing.

26. Defendant violated 15 U.S.C. § 1692g(a)(4) by its failure to provide the information required by that Section.

27. 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.

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

29. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.

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

31. Defendant’s letter would likely make the least sophisticated consumer uncertain as to how she must notify Defendant to trigger Defendant’s obligation to obtain and provide verification.

32. The Letter, for the reasons set forth, violates Section 1692e.

**CLASS ALLEGATIONS**

33. 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 collection letter that states, ““IF YOU NOTIFY US WITHIN THE 30 (THIRTY) DAY PERIOD THAT THE DEBT OR ANY PORTION HEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU AND MAIL SUCH VERIFICATION OR COPY TO YOU,” from one year before the date of this Complaint to the present.

34. 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.

35. Defendant regularly engages in debt collection.

36. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter that states, ““IF YOU NOTIFY US WITHIN THE 30 (THIRTY) DAY PERIOD THAT THE DEBT OR ANY PORTION HEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU AND MAIL SUCH VERIFICATION OR COPY TO YOU.”

37. 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.

38. 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.

39. 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**

40. 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 16, 2018

**BARSHAY SANDERS, PLLC**

By: /s/ Craig B. Sanders  
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DURING MAY THRU SEPTEMBER, OFFICE  
WILL CLOSE AT 12:00 NOON ON FRIDAY

www.rothman-evans.com

September 14, 2017

Sean A Wheeler  
3707 Eaton Brook Rd  
Erieville, New York 13061

██████████ 5891 ██████████

READ CAREFULLY BOTH SIDES  
IMPORTANT INFORMATION ON  
BACK OF THIS LETTER

RE: ONEIDA HEALTHCARE CENTER

Dear Mr. Wheeler:

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.

This creditor wants me to give you an opportunity to work out an arrangement based on your current finances. The balance due on this account to this date after crediting all payments received is \$630.24. In addition there will be interest added to the time this account has been paid in full.

Be sure to consult the back of this letter for your rights, and fill out completely, sign, date and return the attached memo to me in the enclosed envelope. If I receive the completed memo, I will advise you if the arrangement you suggest is satisfactory. Be assured, anything fair and reasonable will be accepted.

Unless we hear from you, this file will be reviewed for possible further action in accordance with my client's instructions.

Sincerely yours,  
ROTHMAN EVANS, P.C.

JFE:MRT

██████████ 5891 ██████████

RE: ONEIDA HEALTHCARE CENTER BALANCE \$630.24 17-05891-0  
FULL NAME \_\_\_\_\_ SPOUSE'S NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ COUNTY \_\_\_\_\_

DATE OF BIRTH \_\_\_\_\_ SPOUSE'S DATE OF BIRTH \_\_\_\_\_ TELEPHONE \_\_\_\_\_ RENT \_\_\_\_\_ (OWN) \_\_\_\_\_

EMPLOYER AND ADDRESS \_\_\_\_\_

YEARS AT THIS EMPLOYMENT \_\_\_\_\_ WEEKLY PAY \$ \_\_\_\_\_ FULL TIME \_\_\_\_\_ PART TIME \_\_\_\_\_ SSA \_\_\_\_\_

SPOUSE'S EMPLOYER AND ADDRESS \_\_\_\_\_

YEARS AT THIS EMPLOYMENT \_\_\_\_\_ WEEKLY PAY \$ \_\_\_\_\_ FULL TIME \_\_\_\_\_ PART TIME \_\_\_\_\_ SPOUSE SSA \_\_\_\_\_

NAME AND ADDRESS OF BANK \_\_\_\_\_

NUMBER OF DEPENDANTS \_\_\_\_\_ AMOUNT I CAN PAY MONTHLY \$ \_\_\_\_\_ The commissioner is to verify any information in this memo.  
ROTHMAN EVANS, P.C. is to verify any information in this memo.

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

NOTICE PURSUANT TO 15 U.S.C. 1692 g and 1692 e(11)

YOU ARE HEREBY ADVISED THAT:

1. UNLESS YOU, WITHIN 30 (THIRTY) DAYS AFTER RECEIPT OF THIS NOTICE, DISPUTE THE VALIDITY OF THIS DEBT, OR ANY PORTION THEREOF, THIS DEBT WILL BE ASSUME TO BE VALID BY US.
2. IF YOU NOTIFY US WITHIN THE 30 (THIRTY) DAY PERIOD THAT THE DEBT OR ANY PORTION THEREOF IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU AND MAIL SUCH VERIFICATION OR COPY TO YOU.
3. UPON YOUR WRITTEN REQUEST WITHIN THE 30 (THIRTY) DAY PERIOD WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.
4. THIS IS AN ACTION TO ATTEMPT TO COLLECT A DEBT.
5. ANY INFORMATION PROVIDED BY YOU WILL BE USED FOR THAT PURPOSE.

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 SEAN WHEELER (b) County of Residence of First Listed Plaintiff MADISON (c) Attorneys (Firm Name, Address, and Telephone Number) BARSHAY SANDERS, PLLC 100 Garden City Plaza, Ste 500, Garden City, NY 11530 (516) 203-7600 DEFENDANTS ROTHMAN EVANS, P.C. County of Residence of First Listed Defendant ONONDAGA (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 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) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PTF DEF O 1 O 1 O 2 O 2 O 3 O 3 Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation PIF DEF O 4 O 4 O 5 O 5 O 6 O 6

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 PERSONAL INJURY O 365 Personal Injury - Product Liability O 367 Health Care/ Pharmaceutical Personal Injury Product Liability O 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY O 370 Other Fraud O 371 Truth in Lending O 380 Other Personal Property Damage O 385 Property Damage Product Liability 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 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: (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.) 15 USC §1692 – Fair Debt Collection Practices VII. Previous Bankruptcy Matters: ((For nature of suite 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.

VIII. 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

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

X. This Case (check one box) Is not a refiling of a previously dismissed action Is a refiling of case number previously dismissed by Judge

DATE May 16, 2018 SIGNATURE OF ATTORNEY OF RECORD /s Craig B. Sanders



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Rothman Evans Sued Over Alleged Failure to Communicate Debt Dispute Rights](#)

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