

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

-----X Case No. 18-cv-06018
ERROL WRIGHT, on behalf of himself
individually and all others similarly situated,

Plaintiff,

**CLASS ACTION
COMPLAINT**

-against-

TRI-STATE ADJUSTMENTS, INC.,

Defendant.

-----X

Plaintiff, by and through his attorneys, FAGENSON & PUGLISI, PLLC, upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against above-named defendant and in support thereof alleges the following:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for defendant’s violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.* which prohibits debt collectors from engaging in abusive, deceptive and unfair acts and practices.

2. This action is also brought by an individual consumer and on behalf of a class pursuant to New York General Business Law (“NYGBL”) § 349 for an injunction and damages regarding defendant’s deceptive acts and practices.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) (FDCPA) and 28 U.S.C. § 1331 and supplemental jurisdiction exists over the NYGBL § 349 claims pursuant to 28 U.S.C. § 1367.

4. This Court has venue pursuant to 28 U.S.C. § 1391(b) in that plaintiff resides in this District and a substantial portion of the events or omissions giving rise to this action occurred in this District.

PARTIES

5. Plaintiff is a natural person who resides in this District.

6. Plaintiff is a consumer within the meaning of 15 U.S.C. § 1692a(3) as he is a natural person who is alleged by defendant to owe a financial obligation.

7. The financial obligation which defendant sought to collect from plaintiff is a debt within the meaning of 15 U.S.C. § 1692a(5) in that the obligation which defendant sought to collect from plaintiff is an allegedly defaulted debt originally incurred, if at all, for personal, family or household purposes.

8. Plaintiff is a reasonable consumer within the meaning of NYGBL § 349 who acted reasonably under the circumstances alleged herein.

9. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6).

10. The principal purpose of defendant's business is the collection of defaulted consumer debts.

11. Defendant uses the mails and the telephone in its business the principal purpose of which is the collection of defaulted consumer debts.

12. Defendant regularly collects or attempts to collect defaulted consumer debts owed or due or alleged to be owed or due to others.

13. Upon information and belief, defendant is a foreign business corporation incorporated in Wisconsin.

FACTUAL ALLEGATIONS

14. Plaintiff re-alleges paragraphs 1-13 as if fully re-stated herein.

15. Defendant sent to plaintiff a collection letter dated November 28, 2017.

16. Defendant stated near the top of the letter in pertinent part:

“Client Name
GINNY’S”.

17. Near the top of the letter, defendant also displayed two sets of characters denoted “ONLINE USER NAME” and “PASSWORD”.

18. Defendant thereafter stated in the body of the letter:

“This account has been listed with our office for collection.”

19. Defendant further stated in the body of the letter:

“If paid in full to this office all collection activity will be stopped.”

20. In the letter, defendant stated that if plaintiff wished to pay by credit card, he should fill in the detachable slip at the top of the letter and return the slip to defendant.

21. The detachable slip at the top of the letter is pre-addressed to defendant.

22. In the letter, defendant further stated that if plaintiff wished to pay through defendant's website, he should access www.paytsa.com using the user name and password displayed near the top of the letter.

23. The letter was defendant's first communication with plaintiff in connection with the collection of the debt.

24. The letter was defendant's first written communication with plaintiff in connection with the collection of the debt.

25. Defendant sent no letter to plaintiff within five days after the date on which defendant sent the letter dated November 28, 2017.

26. In the letter, defendant fails to identify the current creditor to whom the debt is owed.

27. Upon receipt of defendant's letter, plaintiff did not know who the current creditor of his debt was, whether defendant, Ginny's or some other unnamed entity, and was confused and perplexed by defendant's letter.

AS AND FOR A FIRST CAUSE OF ACTION

Failure to identify the current creditor clearly and effectively

15 U.S.C. §§ 1692g(a)(2) and 1692e

28. Plaintiff re-alleges paragraphs 1-27 as if fully re-stated herein.

29. In its letter, defendant fails to identify clearly and effectively the current creditor to whom the debt is owed.

30. Defendant does not state in the caption of the letter whether the entity it describes as “Ginny’s” is the current creditor of the debt defendant sought to collect from plaintiff.

31. Nowhere in the letter does defendant state who the current creditor of the debt is.

32. The word “creditor” does not appear in defendant’s letter to plaintiff.

33. Defendant included no language in the letter to indicate who the current creditor of the debt is.

34. Defendant included no language in the letter to indicate who currently owns plaintiff’s debt.

35. Nowhere in the letter does defendant state what, if any, is the relationship between Ginny’s and the debt.

36. In the letter, defendant told plaintiff that if he paid defendant in full all collection activity would be stopped.

37. In the letter, defendant invited plaintiff to send credit card payment to defendant.

38. In the letter, defendant invited plaintiff to pay defendant through defendant's website.

39. Defendant's said instructions regarding payment further confused plaintiff as to the identity of the current creditor of the debt.

40. Plaintiff did not know whether the current creditor of his debt was defendant, Ginny's or some other unnamed entity.

41. Upon receipt of defendant's letter, plaintiff did not know who currently owned his debt.

42. Upon receipt of defendant's letter, the least sophisticated consumer would not know who currently owned her debt.

43. Defendant's failure to identify clearly and effectively the current creditor of the debt contravenes the FDCPA, § 1692g(a)(2).

44. Defendant is further in violation of the FDCPA, § 1692e in that its failure to identify clearly and effectively the current creditor of the debt constitutes a deceptive and misleading means used in an attempt to collect the debt.

45. Under the FDCPA, communications from debt collectors, such as the letter which defendant sent to plaintiff, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer".

AS AND FOR A SECOND CAUSE OF ACTION

NYGBL § 349

46. Plaintiff re-alleges paragraphs 1-45 as if fully re-stated herein.

47. Defendant owed a duty to plaintiff to effect its collection of his debt with reasonable care.

48. Defendant breached its duty to collect plaintiff's debt with reasonable care.

49. In the exercise of reasonable care defendant ought to have ensured that in its collection letters it identified, in a clear and effective manner, the creditor of the debt it sought to collect.

50. At all times relevant herein, defendant's letters confused consumers as to the identity of the entity which defendant was claiming they owed.

51. On information and belief, at all times relevant herein, defendant sent collection letters to hundreds of consumers within the State of New York each month.

52. Defendant's letter to plaintiff is derived from a letter form.

53. Defendant's letter to plaintiff is derived from a letter template.

54. Defendant's failure, in its collection letters, to identify in a clear and effective manner the creditors of the debts it sought to collect is a deceptive act and practice.

55. Said deceptive act and practice was committed by defendant in the conduct of a business, trade or commerce or the furnishing of a service in the State of New York and constitutes a violation of NYGBL § 349.

56. Defendant's deceptive act and practice was consumer-oriented in that defendant's failure to identify in a clear and effective manner the creditors of the debts it sought to collect was not an act limited to plaintiff's account, but extended to the accounts of other consumers which defendant sought to collect at all times relevant herein.

57. Defendant's said failure has a broader impact on consumers at large whose accounts are placed with defendant for collection, because at all times relevant herein defendant sent substantially the same letter to all consumers, all of which failed to identify the creditors to whom the debts were alleged to be currently owed.

58. Because at all times relevant herein defendant's letters failed to inform consumers as to the identity of their creditors, while at the same time demanding the payment of money from consumers, defendant's said failure was deceptive in a material way.

59. At all times relevant herein, by its collection letters defendant demanded the payment of money for debts without informing consumers who the current creditors of their debts were.

60. At all times relevant herein, by its collection letters defendant demanded the payment of money for debts while confusing consumers as to whether defendant, Gilley's or some other unnamed entity was the current creditor of their debts.

61. Plaintiff is a reasonable consumer within the meaning of the NYGBL and acted reasonably under the circumstances of this case.

62. Upon receipt of defendant's letter, plaintiff did not know who defendant was claiming was the current creditor of his debt.

63. Upon receipt of defendant's letter, the reasonable consumer would not know who defendant was claiming was the current creditor of her debt.

64. Defendant violated NYGBL § 349(a) by its letter and is liable to Plaintiff and the reasonable consumer under NYGBL § 349(h).

65. Plaintiff is entitled to injunctive relief and defendant is liable in an amount to be determined at the time of trial, plus costs and attorneys' fees.

CLASS ALLEGATIONS

66. Plaintiff re-alleges paragraphs 1-65 as if fully re-stated herein.

67. This action is brought on behalf of plaintiff and the members of a class. The class consists of all persons who defendant's records reflect were sent debt collection letters within the State of New York within the period of time commencing three years before the filing of this complaint up to and including the date of the filing of the complaint and who were sent a collection letter (a) in substantially the same form as the letter dated November 28, 2017 which defendant sent to plaintiff; (b) the collection letter was sent to a consumer seeking payment of a consumer debt; (c) the collection letter was not returned by the postal service as undeliverable; and (d) the letter contained violations of NYGBL § 349(a) as aforesaid. The class does not include defendant or persons who are officers, directors, employees or representatives of defendant.

68. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

- (A) Based on the fact that the collection letter that is the gravamen of this litigation is a mass-mailed form letter, the class is so numerous that joinder of all members is impracticable. Upon information and belief, thousands of persons have received similar debt collection letters from defendant which violate the various provisions of the NYGBL.
- (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether defendant's collection letters violate NYGBL § 349(a).
- (C) The only individual issue is the identification of the consumers who received the letters (the class members), a matter capable of ministerial determination from the records of defendant.
- (D) The claims of plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) Plaintiff will fairly and adequately represent the class members' interests. Plaintiff has retained experienced counsel. Plaintiff's interests are consistent with those of the members of the class.

69. A class action is superior for the fair and efficient adjudication of the class members' claims. The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

70. If the facts are discovered to be appropriate, plaintiff will seek to certify a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

71. As a result of the above violations, defendant is liable to plaintiff and the members of the class for an injunction and damages in an amount to be determined at the time of trial, plus costs and attorneys' fees.

WHEREFORE, plaintiff respectfully prays that judgment be entered against defendant as follows:

- (a) certifying a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- (b) awarding actual damages to the class pursuant to NYGBL § 349(h) in an amount to be determined at the time of trial;
- (c) in the alternative, awarding statutory damages to the class pursuant to NYGBL § 349(h) in an amount to be determined at the time of trial;
- (d) awarding maximum statutory damages to plaintiff pursuant to 15 U.S.C. § 1692k;

- (e) awarding actual damages to plaintiff pursuant to 15 U.S.C. § 1692k in an amount to be determined at the time of trial;
- (f) awarding reasonable attorneys' fees, costs and disbursements pursuant to 15 U.S.C. § 1692k;
- (g) enjoining defendant from committing further deceptive acts and practices pursuant to NYGBL § 349;
- (h) awarding actual damages to plaintiff pursuant to NYGBL § 349(h) in an amount to be determined at the time of trial;
- (i) in the alternative, awarding statutory damages to plaintiff pursuant to NYGBL § 349(h);
- (j) awarding reasonable attorneys' fees, costs and disbursements pursuant to NYGBL § 349; and
- (k) for such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York
October 27, 2018.

/s/ Novlette R. Kidd
NOVLETTE R. KIDD, ESQ. (NK 9339)
FAGENSON & PUGLISI, PLLC
Attorneys for Plaintiff
450 Seventh Avenue, Suite 704
New York, New York 10123
Telephone: (212) 268-2128
Nkidd@fagensonpuglisi.com

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

ERROL WRIGHT, on behalf of himself individually
and all others similarly situated,

Plaintiff(s)

v.

TRI-STATE ADJUSTMENTS, INC.,

Defendant(s)

Civil Action No. 18-cv-06018

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TRI-STATE ADJUSTMENTS, INC., 3439 East Avenue S, La Crosse, Wisconsin 54601

C/O Secretary of State, Department of State of the State of New York, Albany, New York

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: FAGENSON & PUGLISI, PLLC 450 Seventh Avenue, Suite 704 New York, New York 10123

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.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-06018

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

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

ERROL WRIGHT, on behalf of himself individually and all others similarly situated

(b) County of Residence of First Listed Plaintiff Nassau (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

FAGENSON & PUGLISI, PLLC, 450 Seventh Avenue, Suite 704, New York, New York 10123. Tel.: (212) 268-2128

DEFENDANTS

TRI-STATE ADJUSTMENTS, INC.

County of Residence of First Listed Defendant (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)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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 U.S.C. section 1692 et seq. Brief description of cause: Violations of Fair Debt Collection Practices Act, deception

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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/27/18 SIGNATURE OF ATTORNEY OF RECORD s/ Novlette R. Kidd

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, Novlette R.Kidd, 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 Legal issues predominate

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:

N/A - Plaintiff is a natural person.

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? Yes 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 No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: Nassau County

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/ Novlette R. Kidd

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [New York Consumer Claims Tri-State Adjustments Failed to Identify Creditor in Letter](#)
