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Our File No.: 113974

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

Brian Carrick, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Statewide Credit Services, Corp. d/b/a Schwartz,
Schwartz & Associates,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Brian Carrick, 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 Statewide Credit Services, Corp. d/b/a Schwartz, Schwartz & Associates (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 Brian Carrick is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

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

7. On information and belief, Defendant Statewide Credit Services, Corp. d/b/a Schwartz, Schwartz & Associates, is a New York Corporation with a principal place of business in Nassau 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 July 13, 2017. (“**Exhibit 1.**”)

15. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT **Violation of 15 U.S.C. §§ 1692e**

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

17. The Letter states, “If this creditor’s policy is to accrue interest, the balance owing the day you pay may be greater.”

18. The Letter fails to provide information that would allow Plaintiff to determine whether interest is actually accruing on the Debt.

19. The Letter fails to provide information that would allow the least sophisticated consumer to determine whether interest is actually accruing on the Debt.

20. 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 Debts at any given moment in the future.

21. The Letter fails to provide information that would allow the least sophisticated consumer to determine the amount of interest owed, if any.

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

23. The Letter fails to state that the creditor will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date.

24. 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.

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

26. The Letter, because of the aforementioned failures, and especially because the use of the word “If” in the above-quoted language, would render the least sophisticated consumer unable to determine the amount of her debt because the consumer would not know whether interest is actually accruing or whether the amount of the debt was static.

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

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

29. 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.

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

SECOND COUNT
Violation of 15 U.S.C. § 1692e

**False or Misleading Representations as to the Name of
the Creditor to Whom the Debt is Owed**

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

32. 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.

33. 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.

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

35. 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.

36. 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.

37. 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.

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

39. Knowing the identity of creditor to whom the debt.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.”

45. The Letter states, “Re:”
46. The Letter fails to indicate whether the “Re:” refers to the account owner.
47. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s creditor.
48. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s current creditor.
49. The Letter fails to indicate whether the “Re:” refers to Plaintiff’s original creditor.
50. The Letter fails to indicate whether the “Re:” refers to the creditor to whom the debt is owed.
51. The Letter fails to indicate who referred the account to Defendant.
52. The Letter fails to indicate who Defendant represents.
53. The Letter fails to indicate who is Defendant’s client.
54. The Letter directs payment be made payable to “Schwartz, Schwartz & Assoc.”
55. Defendant failed to explicitly state the name of the creditor to whom the debt is owed.
56. Defendant failed to clearly state the name of the creditor to whom the debt is owed.
57. The least sophisticated consumer would likely be confused as to the name of the creditor to whom the debt is owed.
58. The least sophisticated consumer would likely be uncertain as to the name of the creditor to whom the debt is owed.
59. 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.
60. 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.
61. The least sophisticated consumer would likely be deceived by the Letter.
62. The least sophisticated consumer would likely be deceived in a material way by the Letter.
63. Defendant violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

64. 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 substantially similar to the Letter herein, from one year before the date of this Complaint to the present.

65. 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.

66. Defendant regularly engages in debt collection.

67. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter substantially similar to the Letter herein.

68. 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.

69. 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.

70. 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

71. 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 15, 2018

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders
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Attorneys for Plaintiff
Our File No.: 113974

Schwartz, Schwartz & Associates

3280 SUNRISE HIGHWAY, #302
WANTAGH, NY 11793

(516) 867-6603

LIC. # NY1024298-DCA

July 13, 2017

Brian Carrick
39 Lincoln Road
Patchogue, NY 11772

Re: First Choice Med. PLLC (I)
/Brian Carrick
Balance Due: \$49.82
File#: [REDACTED] 2807
RE:

Dear Brian:

Our previous demand for payment has gone unanswered. You are hereby advised that unless you make arrangements with this office to satisfy your past due account, we will proceed with all collection efforts.

If this creditor's policy is to accrue interest, the balance owing the day you pay may be different. Please contact this office if you have any questions regarding your balance.

If you wish to rectify your account you are advised to send your payment to this office, payable to SCHWARTZ, SCHWARTZ & ASSOC., or contact us at (516) 867-6603 to make payment arrangements.

THIS IS AN ATTEMPT TO COLLECT A DEBT BY A DEBT COLLECTOR, ANY INFORMATION GAINED WILL BE USED FOR THIS PURPOSE.

SCHWARTZ, SCHWARTZ & ASSOCIATES

NOW PAY ON LINE

www.payssa.com

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: BRIAN CARRICK
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: STATEWIDE CREDIT SERVICES, CORP. D/B/A SCHWARTZ SCHWARTZ & ASSOCIATES
County of Residence of First Listed Defendant: NASSAU

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Grid with categories: U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
• 1 Original Proceeding
○ 2 Removed from State Court
○ 3 Remanded from Appellate Court
○ 4 Reinstated or Reopened
○ 5 Transferred from Another District (specify)
○ 6 Multidistrict Litigation - Transfer
○ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC §1692
Brief description of cause: 15 USC §1692 Fair Debt Collection Practices Act Violation

VII. REQUESTED IN COMPLAINT:
• CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: • Yes ○ No

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

DATE: May 15, 2018
SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Craig B. Sanders, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1. Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: NO
2. If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES
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

Brian Carrick, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

Statewide Credit Services, Corp. d/b/a Schwartz,
Schwartz & Associates

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Statewide Credit Services, Corp. d/b/a Schwartz, Schwartz & Associates
734 FRANKLIN AVE
STE 471
GARDEN CITY, NEW YORK, 11530

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: [FDCPA Suit Claims Statewide Credit Services Misled Consumer Regarding Debt Amount](#)
