## **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 Plaintiffs Our File No.: 113752

## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

George Dematteis and Lilyan Dematteis, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Docket No:

## CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Merchants & Medical Credit Corporation,

Defendant.

George Dematteis and Lilyan Dematteis, individually and on behalf of all others similarly situated (hereinafter referred to collectively as "*Plaintiffs*"), by and through the undersigned counsel, complains, states and alleges against Merchants & Medical Credit Corporation (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.

Case 2:17-cv-04566 Document 1 Filed 08/03/17 Page 2 of 7 PageID #: 2

4. At all relevant times, Defendant conducted business within the State of New York.

#### PARTIES

5. Plaintiff George Dematteis is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff Lilyan Dematteis 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 Merchants & Medical Credit Corporation, is a Michigan Corporation with a principal place of business in Genesee County, Michigan.

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 Plaintiffs owe a debt ("the Debt").

12. The Debt was primarily for personal, family or household purposes and is therefore a "debt" as defined by 15 U.S.C. § 1692a(5).

13. Sometime after the incurrence of the Debt, Plaintiffs fell behind on payments owed.

14. Thereafter, at an exact time known only to Defendant, the Debt was assigned or otherwise transferred to Defendant for collection.

15. In its efforts to collect the debt, Defendant contacted Plaintiffs by letter ("the Letter") dated August 16, 2016. ("<u>Exhibit 1</u>.")

16. The Letter was the initial communication Plaintiffs received from Defendant.

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

#### FIRST COUNT Violation of 15 U.S.C. § 1692g Validation of Debts

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

BARSHAY | SANDERS PLLC 100 GARDEN CITY PLAZA, SUITE 500 GARDEN CITY, NEW YORK 11530 19. 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.

20. 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).

21. 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.

22. 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.

23. 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).

24. 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.

25. 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.

26. 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."

27. The Letter states, "Re: CTCA EASTERN."

28. The Letter states, "This account has been placed with our office for collection and calls for payment in full."

29. The Letter fails to indicate whether the "Re:" refers to the account owner.

30. The Letter fails to indicate whether the "Re:" refers to Plaintiffs' creditor.

31. The Letter fails to indicate whether the "Re:" refers to Plaintiffs' current creditor.

32. The Letter fails to indicate whether the "Re:" refers to Plaintiffs' original creditor.

33. The Letter fails to indicate whether the "Re:" refers to the creditor to whom the debt is owed.

34. The Letter fails to indicate who referred the account to Defendant.

35. The Letter fails to indicate who Defendant represents.

36. The Letter fails to indicate who is Defendant's client.

37. The Letter fails to indicate the name of any entity to which Plaintiffs should make her check payable to.

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

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

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

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

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

#### <u>SECOND COUNT</u> Violation of 15 U.S.C. § 1692e False or Misleading Representations as to the Name of the <u>Creditor to Whom the Debt is Owed</u>

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

44. 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.

45. 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.

46. The question of whether a collection letter is deceptive is determined from the perspective of the "least sophisticated consumer."

47. 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.

48. 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.

49. For purposes of 15 U.S.C. § 1692e, the failure to clearly and accurately identify

#### Case 2:17-cv-04566 Document 1 Filed 08/03/17 Page 5 of 7 PageID #: 5

the creditor to whom the debt is owed is unfair and deceptive to the least sophisticated consumer.

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

51. 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.

52. 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.

53. 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.

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

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

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

#### **CLASS ALLEGATIONS**

57. 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 debt using a collection letter substantially the same as the one used herein, from one year before the date of this Complaint to the present.

58. 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.

59. Defendant regularly engages in debt collection.

60. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using a collection letter substantially the same as the one used herein.

61. 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.

62. 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.

63. 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

64. 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 Representative 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.

Case 2:17-cv-04566 Document 1 Filed 08/03/17 Page 7 of 7 PageID #: 7

DATED: August 3, 2017

## **BARSHAY SANDERS, PLLC**

By: <u>/s/ Craig B. Sanders</u> 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.: 113752

Case 2:17-cv-04566 Document 1-1	Filed 08/03/17 Page 1 of 2 Page D #: 8 NOTICE OF AMOUNT DUE
& Medical	STATEMENT DATE: August 16 2016 ACCOUNT NUMBER: 5594
credit corporation	AMOUNT DUE: \$43,292.04
6324 Taylor Drive, Flint, Michigan 48507-4685 Local (810) 244-4256 Toll-Free (877) 766-3798 Hours: 8:15 a.m 9:00 p.m. M-TH 8:15 a.m 5:30 p.m. FRI 8:15 a.m 12:30 p.m. SAT Eastern Standard Time	RE: CTCA EASTERN 92.04

#### **Dear GEORGE & LILYANN DEMATTEIS**

This account has been placed with our office for collection and calls for payment in full. Please contact us so we may assist you in this matter.

If you wish to pay by Visa or MasterCard, complete the credit card information on the reverse side of this letter, tear off and return in the enclosed envelope. If you carry any insurance that may cover this obligation, fill out the information on the reverse side and return the entire form in the enclosed envelope.

To pay your account online, go to www.mermed.net and create a new account. Your access code is 8.461

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 the debt is valid. If the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency 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 or collection agency. 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.

You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency.

Nick Pendleton, Ext. 433

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

New York City Department of Consumer Affairs License Number: 0981507 \*\* Please see next page for important information \*\*

\*\*\* Detach Lower Portion And Return With Payment \*\*\*



Linden MI 48451-0505 ADDRESS SERVICE REQUESTED

Account #: 5594 Amount Due: \$43,292.04

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301 - 573 GEORGE & LILYANN DEMATTEIS 8 Sugarbush Ln Coram NY 11727-2056



 Inside Michigan
 (810) 244-4256

 Outside Michigan
 (877) 766-3798

 Business Hours - Eastern Standard Time

 Mon - Thu
 8:15 A.M. - 9:00 P.M.

 Friday
 8:15 A.M. - 5:30 P.M.

 Saturday
 8:15 A.M. - 12:30 P.M.

573-ONMERC01-301-06/30/16

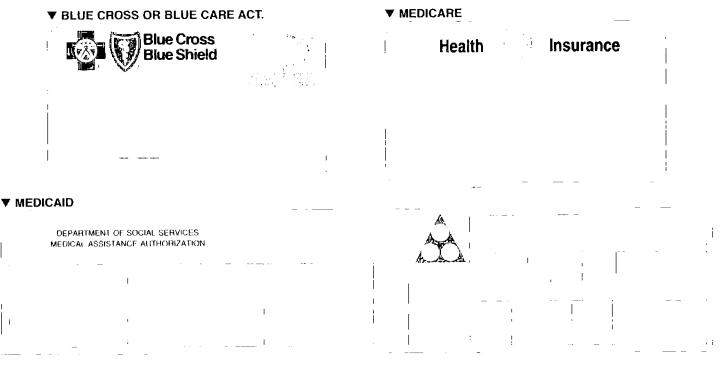
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Case 2:17-cv-04566 Document 1-1 Filed 08/03/17 Page 2 of 2 PageID #: 9 COMPLETE SECTION BELOW IF YOU CARRY ANY INSURANCE

CLAIM MAILING ADDRESS

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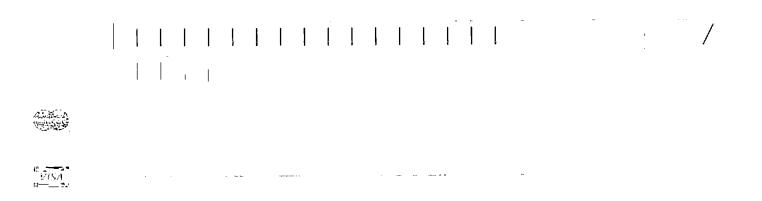




▼ FOR CREDIT CARD PAYMENTS, COMPLETE AND RETURN PORTION BELOW ▼

## PAYMENT IN FULL BEQUESTED MASTERCARD AND VISA ACCEPTED

If you wish to make your payment via credit card, please complete the information below and return in the enclosed envelope.



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# JS 44 (Rev. 07/16) Case 2:17-cv-04566 Dequire 1: 10 Eites 19/03/17 Page 1 of 2 PageID #: 10

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.)

purpose of initiating the ervir at	Select Sheet. (SEE his) he c	inons on ment inde	01 111							
I. (a) PLAINTIFFS				DEFENDANTS						
GEORGE DEMATTEIS				MERCHANTS & MEDICAL CREDIT CORPORATION						
(b) County of Residence of First Listed Plaintiff <u>SUFFOLK</u> (EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence of First Listed Defendant <u>GENESEE</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.						
(c) Attorneys (Firm Name, A	ddress, and Telephone Numbe	er)		Attorneys (If Known)						
BARSHAY SAND				1 11101110 90 (19 1110 (11)						
100 Garden City P	laza, Ste 500, Garden C	ity, NY 11530								
(516) 203-7600	CTION					I DADTIES				
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<ul> <li>O 153 Recovery of Overpayment of Veteran's Benefits</li> <li>O 160 Stockholders' Suits</li> <li>O 190 Other Contract</li> <li>O 195 Contract Product Liability</li> <li>O 196 Franchise</li> </ul>	3 Recovery of Overpayment of Veteran's Benefits     Liability     PERSONAL PROPERT'       0 Stockholders' Suits     0 350 Motor Vehicle     0 370 Other Fraud       0 Other Contract     0 355 Motor Vehicle     0 371 Truth in Lending       5 Contract Product Liability     0 360 Other Personal     Property Damage		O 720 O 740 O 751	<ul> <li>) Fair Labor Standards Act</li> <li>) Labor/Management Relations</li> <li>) Railway Labor Act</li> <li>I Family and Medical Leave Act</li> <li>) Other Labor Litigation</li> </ul>	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))		<ul> <li>O 850 Securities/Commodities/ Exchange</li> <li>O 890 Other Statutory Actions</li> <li>O 891 Agricultural Acts</li> <li>O 893 Environmental Matters</li> <li>O 895 Freedom of Information Act</li> <li>O 896 Arbitration</li> </ul>			
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<ul> <li>0 210 Land Condemnation</li> <li>0 220 Foreclosure</li> <li>0 230 Rent Lease &amp; Ejectment</li> <li>0 240 Torts to Land</li> <li>0 245 Tort Product Liability</li> <li>0 290 All Other Real Property</li> </ul>	O 440 Other Civil Rights O 441 Voting O 442 Employment O 443 Housing/ Accommodations O 445 Amer. w/Disabilities - Employment O 446 Amer. w/Disabilities - Other	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	0	Income Security Act IMMIGRATION 2 Naturalization Application 465 Other Immigration ctions	or Defendant) A O 871 IRS—Third Party O 950 Co 26 USC 7609 St		Agend O 950 Constit	t/Review or Appeal of ency Decision istitutionality of te Statutes		
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V. ORIGIN (Place an "X" in • 1 Original O 2 Remu Proceeding Con	oved from State O 3 Ren		4 Reinsta Reop	ated or pened O 5 Transferr Another (specify)	District	O 6 Multidistrict Litigation – Transfer	Ι	Aultidistrict Litigation – Direct File		
	Cite the U.S. Civil St	atute under which you are	filing (	Do not cite jurisdictional st	tatutes unless d	liversity): 15 USC §	\$1692			
VI. CAUSE OF ACTIO	N Brief description of car	use: 15 USC §1692 F	air Deb	t Collection Practices Ad	ct Violation					
VII. REQUESTED IN COMPLAINT: • CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.			D	EMAND \$	JU	CHECK YES only if demanded in complaint: JURY DEMAND: ● Yes ○ No				
VIII. RELATED CASE(S) (See Instructions) IF ANY JUDGE					DOC	KET NUMBER				
DATE		SIGNATURE OF ATTO			-					
August 3, 2017		/s Cra	ig B.	Sanders						
FOR OFFICE USE ONLY										
RECEIPT # AN	IOUNT	APPLYING IFP		JUDGE		MAG. JUE	IGE			

#### Case 2:17-cv-04566 Document 1-2 Filed 08/03/17 Page 2 of 2 PageID #: 11 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, <u>Craig B. Sanders</u>, counsel for <u>Plaintiff</u>, 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,
- $\Box$  the complaint seeks injunctive relief,
- $\Box$  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 or 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: <u>NO</u>

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? <u>YES</u>

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

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?

(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.

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

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)

Civil Action No.

George Dematteis and Lilyan Dematteis, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

Merchants & Medical Credit Corporation

Defendant(s)

## SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Merchants & Medical Credit Corporation 6324 Taylor Drive Flint, Michigan 48507

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: <u>Merchants and Medical Credit Corp. Hit with FDCPA Class Action</u>