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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.

Merchants & Medical Credit Corporation,

Defendant.

Docket No:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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.

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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. (“**Exhibit 1.**”)

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.

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.

### **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**

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

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.

DATED: August 3, 2017

**BARSHAY SANDERS, PLLC**

By: /s/ Craig B. Sanders

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CLAIM MAILING ADDRESS

CERTIFICATION AUTHORIZATION NO. IF REQUIRED

▼ BLUE CROSS OR BLUE CARE ACT.



▼ MEDICARE

Health Insurance

▼ MEDICAID

DEPARTMENT OF SOCIAL SERVICES  
MEDICAL ASSISTANCE AUTHORIZATION



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

**PAYMENT IN FULL REQUESTED**  
**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.

\_\_\_\_\_ /  
\_\_\_\_\_  
\_\_\_\_\_



Phone number to call for verification of information ( )

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: GEORGE DEMATTEIS; (b) County of Residence of First Listed Plaintiff: SUFFOLK; (c) Attorneys: BARSHAY SANDERS, PLLC, 100 Garden City Plaza, Ste 500, Garden City, NY 11530, (516) 203-7600. DEFENDANTS: MERCHANTS & MEDICAL CREDIT CORPORATION; County of Residence of First Listed Defendant: GENESEE; 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): 01 U.S. Government Plaintiff, 03 Federal Question (U.S. Government Not a Party), 04 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, 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): 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): 01 Original Proceeding, 02 Removed from State Court, 03 Remanded from Appellate Court, 04 Reinstated or Reopened, 05 Transferred from Another District (specify), 06 Multidistrict Litigation - Transfer, 08 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: August 3, 2017; SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders.

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, APPLYING IFF, 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

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.  
 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



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Merchants and Medical Credit Corp. Hit with FDCPA Class Action](#)

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