

FILED

7/2/18

Date _____ Time _____
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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Attorneys for Plaintiff
Our File No.: 113880

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

Natalie Droke, individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

Merchants Association Collection Division, Inc.,

Defendant.

Docket No: 6:18-cv-1050-ORL-
CLASS ACTION COMPLAINT 41-GJK

JURY TRIAL DEMANDED

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

Natalie Droke, 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 Merchants Association Collection Division, Inc. (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 Florida.

PARTIES

5. Plaintiff Natalie Droke is an individual who is a citizen of the State of Florida residing in Orange County, Florida.

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

7. On information and belief, Defendant Merchants Association Collection Division, Inc., is a Florida Corporation with a principal place of business in Hillsborough County, Florida.

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 2, 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 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.

18. 15 U.S.C. § 1692g(a)(3) requires the notice to include a statement that unless the consumer, within thirty days of receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector.

19. There is no requirement that the consumer dispute the debt in writing.

20. It is a violation of the FDCPA to require disputes be made in writing.

21. It is a violation of the FDCPA to include language in the letter that overshadows the required 15 U.S.C. § 1692g(a)(3) statement.

22. It is a violation of the FDCPA to include language in the letter that contradicts the required 15 U.S.C. § 1692g(a)(3) statement.

23. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, overshadows the required § 1692g(a)(3) statement.

24. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.

25. It is a violation of the FDCPA to include language in the letter that, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be made in writing.

26. The Letter states, "Please send payment and correspondence to: [Defendant's address]."

27. Disputes need not be in writing.

28. Disputes may be made orally.

29. The language concerning correspondence with Defendant overshadows the required 15 U.S.C. § 1692g(a)(3) statement.

30. The language concerning correspondence with Defendant contradicts the required 15 U.S.C. § 1692g(a)(3) statement.

31. The language concerning correspondence with Defendant, when examined from the perspective of the least sophisticated consumer, overshadows the required § 1692g(a)(3) statement.

32. The language concerning correspondence with Defendant, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.

33. The language concerning correspondence with Defendant, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to believe that her dispute must be in writing.

34. Defendant has violated § 1692g, as the above-referenced language overshadows the information required to be provided by that Section.

35. 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.

36. 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.

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

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

39. The Letter could be reasonably interpreted by the least sophisticated consumer as incorrectly representing that a dispute must be communicated in writing.

40. Because the Letter is reasonably susceptible to an inaccurate reading, as described above, they are deceptive within the meaning of the FDCPA.

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

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

43. The misrepresentation is material because it could impede the least sophisticated consumer’s ability to respond to the letter or dispute the debt.

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

CLASS ALLEGATIONS

45. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of Florida from whom Defendant attempted to collect a consumer debt using a letter containing the same language complained of herein, from one year before the date of this Complaint to the present.

46. 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.

47. Defendant regularly engages in debt collection.

48. The Class consists of more than 35 persons from whom Defendant attempted to

collect delinquent consumer debts using a letter containing the same language complained of herein.

49. 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.

50. 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.

51. 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

52. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

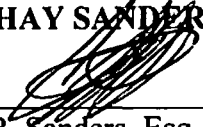
WHEREFORE, Plaintiff respectfully requests judgment as follows:

- 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: June 29, 2018

BARSHAY SANDERS, PLLC

By: 
Craig B. Sanders, Esq.
100 Garden City Plaza, Suite 500
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Our File No.: 113880

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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.)

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">NATALIE DROKE</p> <p>(b) County of Residence of First Listed Plaintiff <u>ORANGE</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> BARSHAY SANDERS, PLLC 100 Garden City Plaza, Ste 500, Garden City, NY 11530 (516) 203-7600</p>	<p>DEFENDANTS</p> <p style="text-align: center;">MERCHANTS ASSOCIATION COLLECTION DIVISION, INC</p> <p>County of Residence of First Listed Defendant <u>HILLSBOROUGH</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="radio"/> 01 U.S. Government Plaintiff</p> <p><input type="radio"/> 02 U.S. Government Defendant</p> <p><input type="radio"/> 03 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="radio"/> 04 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 33%;"></td> <td style="width: 10%; text-align: center;">PIF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </table>		PTF	DEF		PIF	DEF	Citizen of This State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business In This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business In Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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<p>CONTRACT</p> <p><input type="radio"/> 110 Insurance</p> <p><input type="radio"/> 120 Marine</p> <p><input type="radio"/> 130 Miller Act</p> <p><input type="radio"/> 140 Negotiable Instrument</p> <p><input type="radio"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="radio"/> 151 Medicare Act</p> <p><input type="radio"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="radio"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="radio"/> 160 Stockholders' Suits</p> <p><input type="radio"/> 190 Other Contract</p> <p><input type="radio"/> 195 Contract Product Liability</p> <p><input type="radio"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="radio"/> 310 Airplane</p> <p><input type="radio"/> 315 Airplane Product Liability</p> <p><input type="radio"/> 320 Assault, Libel & Slander</p> <p><input type="radio"/> 330 Federal Employers' Liability</p> <p><input type="radio"/> 340 Marine</p> <p><input type="radio"/> 345 Marine Product Liability</p> <p><input type="radio"/> 350 Motor Vehicle</p> <p><input type="radio"/> 355 Motor Vehicle Product Liability</p> <p><input type="radio"/> 360 Other Personal Injury</p> <p><input type="radio"/> 362 Personal Injury - Medical Malpractice</p>	<p>PERSONAL INJURY</p> <p><input type="radio"/> 365 Personal Injury - Product Liability</p> <p><input type="radio"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="radio"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="radio"/> 370 Other Fraud</p> <p><input type="radio"/> 371 Truth in Lending</p> <p><input type="radio"/> 380 Other Personal Property Damage</p> <p><input type="radio"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="radio"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="radio"/> 690 Other</p>	<p>BANKRUPTCY</p> <p><input type="radio"/> 422 Appeal 28 USC 158</p> <p><input type="radio"/> 423 Withdrawal 28 USC 157</p>	<p>OTHER STATUTES</p> <p><input type="radio"/> 375 False Claims Act</p> <p><input type="radio"/> 400 State Reapportionment</p> <p><input type="radio"/> 410 Antitrust</p> <p><input type="radio"/> 430 Banks and Banking</p> <p><input type="radio"/> 450 Commerce</p> <p><input type="radio"/> 460 Deportation</p> <p><input type="radio"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="radio"/> 480 Consumer Credit</p> <p><input type="radio"/> 490 Cable/Sat TV</p> <p><input type="radio"/> 850 Securities/Commodities/Exchange</p> <p><input type="radio"/> 890 Other Statutory Actions</p> <p><input type="radio"/> 891 Agricultural Acts</p> <p><input type="radio"/> 893 Environmental Matters</p> <p><input type="radio"/> 895 Freedom of Information Act</p> <p><input type="radio"/> 896 Arbitration</p> <p><input type="radio"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="radio"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="radio"/> 210 Land Condemnation</p> <p><input type="radio"/> 220 Foreclosure</p> <p><input type="radio"/> 230 Rent Lease & Ejectment</p> <p><input type="radio"/> 240 Torts to Land</p> <p><input type="radio"/> 245 Tort Product Liability</p> <p><input type="radio"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="radio"/> 440 Other Civil Rights</p> <p><input type="radio"/> 441 Voting</p> <p><input type="radio"/> 442 Employment</p> <p><input type="radio"/> 443 Housing/Accommodations</p> <p><input type="radio"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="radio"/> 446 Amer. w/Disabilities - Other</p> <p><input type="radio"/> 448 Education</p>	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <p><input type="radio"/> 463 Alien Detainee</p> <p><input type="radio"/> 510 Motions to Vacate Sentence</p> <p><input type="radio"/> 530 General</p> <p><input type="radio"/> 535 Death Penalty</p> <p>Other:</p> <p><input type="radio"/> 540 Mandamus & Other</p> <p><input type="radio"/> 550 Civil Rights</p> <p><input type="radio"/> 555 Prison Condition</p> <p><input type="radio"/> 560 Civil Detainee Conditions of Confinement</p>	<p>LABOR</p> <p><input type="radio"/> 710 Fair Labor Standards Act</p> <p><input type="radio"/> 720 Labor/Management Relations</p> <p><input type="radio"/> 740 Railway Labor Act</p> <p><input type="radio"/> 751 Family and Medical Leave Act</p> <p><input type="radio"/> 790 Other Labor Litigation</p> <p><input type="radio"/> 791 Employee Retirement Income Security Act</p>	<p>PROPERTY RIGHTS</p> <p><input type="radio"/> 820 Copyrights</p> <p><input type="radio"/> 830 Patent</p> <p><input type="radio"/> 840 Trademark</p>	<p>SOCIAL SECURITY</p> <p><input type="radio"/> 861 HIA (1395ff)</p> <p><input type="radio"/> 862 Black Lung (923)</p> <p><input type="radio"/> 863 DIWC/DIWW (405(g))</p> <p><input type="radio"/> 864 SSID Title XVI</p> <p><input type="radio"/> 865 RSI (405(g))</p>
<p>FEDERAL TAX SUITS</p> <p><input type="radio"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="radio"/> 871 IRS—Third Party 26 USC 7609</p>					
<p>IMMIGRATION</p> <p><input type="radio"/> 462 Naturalization Application</p> <p><input type="radio"/> 465 Other Immigration Actions</p>					

V. ORIGIN *(Place an "X" in One Box Only)*

<input type="radio"/> 1 Original Proceeding	<input type="radio"/> 2 Removed from State Court	<input type="radio"/> 3 Remanded from Appellate Court	<input type="radio"/> 4 Reinstated or Reopened	<input type="radio"/> 5 Transferred from Another District <i>(specify)</i>	<input type="radio"/> 6 Multidistrict Litigation - Transfer	<input type="radio"/> 8 Multidistrict Litigation - Direct File
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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 June 29, 2018 SIGNATURE OF ATTORNEY OF RECORD

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Merchants Association Collection Division Sued Over Alleged Demand for Written Debt Disputes](#)
