

BARSHAY SANDERS, PLLC
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Attorneys for Plaintiff
Our File No.: 112511

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

Jonathan Guerrero, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

Miller & Milone, P.C.,

Defendant.

Docket No:

CLASS-ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Jonathan Guerrero (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against Miller & Milone, P.C. (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 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 Miller & Milone, P.C., is a New York Professional 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).

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 November 16, 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. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt.

18. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

19. A collection letter is deceptive under 15 U.S.C. § 1692e if it purports to be from a law firm without disclosing to the consumer information concerning “meaningful attorney involvement” in connection with the collection of the debt.

20. 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.

21. A collection letter purporting to be from a law firm is not deceptive so long as it contains a disclaimer such as the following: “At this time, no attorney with this firm has

personally reviewed the particular circumstances of your account.”

22. The Letter identifies Defendant as “Miller & Milone P.C., Attorneys at Law.”

23. The Letter contains no disclaimer, such as that set forth in Paragraph 21 above, concerning “meaningful attorney involvement” in connection with the collection of the debt.

24. Whether an attorney is personally involved in the collection of a debt is a material piece of information.

25. The least sophisticated consumer would likely reasonably, but inaccurately, interpret the Letter to mean that an attorney has personally reviewed the particular circumstances of Plaintiff’s account.

26. The least sophisticated consumer would likely reasonably, but inaccurately, interpret the Letter to mean that an attorney is personally involved in the attempted collection of Plaintiff’s debt.

27. The least sophisticated consumer, because of the aforementioned failures, would likely be deceived by the Letter.

28. The least sophisticated consumer, because of the aforementioned failures, would likely be deceived by the Letter in a material way.

29. Defendant’s conduct, as described above, violates 15 U.S.C. § 1692e.

30. Defendant’s conduct, as described above, violates 15 U.S.C. § 1692e(10).

CLASS ALLEGATIONS

31. 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 in a deceptive manner, as described above, from one year before the date of this Complaint to the present.

32. 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.

33. Defendant regularly engages in debt collection.

34. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts in a deceptive manner, as described above.

35. 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.

36. 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.

37. 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

38. 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: November 16, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

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 Plaintiff

Our File No.: 112511

MILLER & MILONE, P.C.
ATTORNEYS AT LAW
100 Quentin Roosevelt Blvd. Suite 205
Garden City, New York 11530
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CHRISTINA MILONE
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GUY R. MILONE, JR.
OF COUNSEL
GEORGE T. MILLER
1936-2010

November 16, 2016

JONATHAN GUERRERO
2 WHITMORE LANE PH
CORAM, NY 11727

RE: THE NEW YORK AND PRESBYTERIAN HOSPITAL
[REDACTED] 8346

Dear Sir / Madam:

This office represents THE NEW YORK AND PRESBYTERIAN HOSPITAL in connection with your outstanding bill. Please provide us with any insurance or other payment information that may assist us in resolving this matter.

Please indicate if you would like this hospital service to be considered for one of the Hospital's Financial Assistance Programs or Charity Care Programs.

Very truly yours,

Miller & Milone, P.C.
Account Representative:
Antonio Servellon
Ext: 307

Account Information:

Patient: JONATHAN GUERRERO
Hospital Account: [REDACTED] 9284
Account: [REDACTED] 8346
Date of Service: 03/25/2016
Balance Due: \$200.00

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS CORRESPONDENCE IS FROM A DEBT COLLECTOR. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment and we will mail a copy of such verification or judgment to you. 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.

NETWORK RECOVERY SERVICES, INC.

P.O. Box 28898
New York, NY 10087-8898

ACCOUNT IDENTIFICATION

Client Name: NewYork-Presbyterian/Columbia University Medical Center
Patient Name: JONATHAN GUERRERO
Account #: [REDACTED] 8990
Hospital #: [REDACTED] 9768
Date(s) Of Service: 06/27/16
Balance Due: \$30.00

DEMAND FOR PAYMENT

The above referenced client has assigned your past due account to our agency for collection. Your account is listed as delinquent with a balance due in the amount of \$30.00. It is important that you make payment in full.

If your account has already been paid, please provide us with proof of payment. Please send a copy of your cancelled check, money order receipt, payment receipt or copy of the explanation of benefits provided by your insurance carrier.

If your account has not been paid you may send your check or money order or pay by using one of the Credit Cards indicated below. If you have (had) valid insurance for the dates of service that you believe covers these charges, please complete the insurance information section on the reverse side of the return portion of this notice. Please detach the bottom portion of this notice and forward it with your payment or correspondence in the envelope provided.

Although we have requested that you make payment, or provide proof of payment if payment has been made, you still have a right to dispute this debt, either orally or in writing, and to obtain more information about the debt. **YOUR RIGHTS ARE DESCRIBED ON THE REVERSE SIDE OF THIS NOTICE.**

IF YOU ARE EXPERIENCING FINANCIAL HARDSHIP AND ARE UNABLE TO PAY THIS BILL, CHARITY CARE MAY BE AVAILABLE IF YOU QUALIFY. PLEASE CONTACT US TO OBTAIN INFORMATION ABOUT CHARITY CARE AND HOW TO APPLY FOR IT.

Sincerely,

JULIETTE MCGHEE
Account Representative
516-240-6602

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

IONNREC01500

Detach and Return with Payment or Correspondence



ONNREC01
PO Box 1022
Wixom MI 48393-1022
ADDRESS SERVICE REQUESTED

Client Name: NewYork-Presbyterian/Columbia University Medical Center
Patient Name: JONATHAN GUERRERO
Account #: [REDACTED] 8990
Hospital #: [REDACTED] 9768
Date(s) Of Service: 06/27/16
Balance Due: \$30.00

November 15, 2016

500 272845180



JONATHAN GUERRERO
2 Whitmore Ln PH
Coram NY 11727-1028

MAIL ALL CORRESPONDENCE TO:
NETWORK RECOVERY SERVICES INC
P.O. Box 28898
New York, NY 10087-8898



<input type="checkbox"/>		IF PAYING BY CREDIT CARD, FILL OUT BELOW	
<input type="checkbox"/>		CARD NUMBER	
<input type="checkbox"/>		CARD HOLDER NAME	EXP. DATE
<input type="checkbox"/>		SIGNATURE	AMOUNT AUTHORIZED

Circle K

If you do not dispute the validity of the debt, or any portion thereof, either orally or in writing, within thirty days after you receive this notice we will assume this to be a valid debt owed by you.

If you notify us in writing within thirty days after you receive this notice that the debt, or any portion thereof, is disputed, we will obtain verification of this debt or a copy of a judgment and mail a copy of such verification or judgment to you.

In the event the name and address of the current creditor is different from the original creditor, and you, within thirty days after you receive this notice, request in writing the name and address of the original creditor, we will supply this information to you.

INSURANCE INFORMATION

PATIENT'S NAME		DATE OF BIRTH	SOCIAL SECURITY NUMBER	
BLUE CROSS/BLUE SHIELD ID NO.		SUFFIX	YOUR TELEPHONE NUMBER	
INSURANCE COMPANY NAME & ADDRESS (INCLUDE SIGNED CLAIM FORM)				
POLICY NUMBER	POLICYHOLDER'S NAME	RELATION TO PATIENT	POLICYHOLDER'S DATE OF BIRTH	
NAME, ADDRESS AND TELEPHONE NUMBER OF INSURED'S EMPLOYER				
MEDICAID ID NUMBER	MEDICARE ID NUMBER		SUFFIX	

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: JONATHAN GUERRERO
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: MILLER & MILONE, P.C.
County of Residence of First Listed Defendant: NASSAU

II. BASIS OF JURISDICTION
III. CITIZENSHIP OF PRINCIPAL PARTIES
Grid with categories: U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, etc.

IV. NATURE OF SUIT
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
• 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: 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: November 17, 2017
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

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

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Jonathan Guerrero, on behalf of himself and all
others similarly situated,

Plaintiff(s)

v.

Miller & Milone, P.C.

Defendant(s)

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

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

Miller & Milone, P.C.
100 Quentin Roosevelt Blvd , Suite 205
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: [Miller & Milone Sued Over Sending Allegedly Misleading Collection Letter](#)
