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Our File No.: 112387

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

Todd D. Muhlstock, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

Diversified Consultants Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Todd D. Muhlstock, 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 Diversified Consultants 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”) and the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”).

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 Todd D. Muhlstock is an individual who is a citizen of the State of New York residing in Nassau County, New York.

6. Plaintiff is a natural person residing Nassau County, New York

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

8. On information and belief, Defendant Diversified Consultants Inc., is a Florida Corporation with a principal place of business in Duval County, Florida.

9. Defendant is a “person” as defined by 47 U.S.C. § 153(39).

10. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

11. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS COMMON TO ALL CLAIMS

12. Plaintiff has a cellular telephone.

13. Plaintiff’s cellular telephone number is 516-713-XXXX.

14. Plaintiff has had the same cellular telephone number for at least ten (10) years.

15. Defendant has been assigned telephone number 1-800-604-0064.

16. 1-800-604-0064 is Defendant’s telephone number.

17. Defendant calls persons from telephone number 1-800-604-0064.

18. Beginning at the end of 2016, on exact dates known only to Defendant but including November 3, 2016, November 4, 2016, November 7, 2016, November 8, 2016, November 9, 2016, November 10, 2016, November 14, 2016, November 16, 2016, November 17, 2016, November 18, 2016, November 21, 2016, and November 22, 2016, Defendant called Plaintiff’s cellular phone (collectively “the Telephone Calls”)

19. Defendant blocked the name of its business in the phone’s caller ID.

20. Defendant never left a voicemail message.

21. On November 22, 2016, Plaintiff had a telephone conversation with Defendant's employee.
22. Defendant's employee refused to identify where she was calling from.
23. Defendant's employee refused to identify her employer.
24. Defendant's telephone calls to Plaintiff are "communications" as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT
Violation of 47 U.S.C. § 227(b)(1)

25. Plaintiff repeats and realleges paragraphs 6, 9 and 12 through 18, as if fully restated herein.

26. 47 U.S.C. § 227(b)(1) provides: "It shall be unlawful for any person within the United States – (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice... (iii) to any ... cellular telephone service."

27. The Telephone Calls were made using an automatic telephone dialing system.

28. Plaintiff did not give Defendant consent to call his cellular telephone using an automatic telephone dialing system.

29. Plaintiff did not give Defendant consent to call his cellular telephone using an artificial or prerecorded voice.

30. The Telephone Calls were not for emergency purposes.

31. The Telephone Calls were unwanted by Plaintiff.

32. Defendant acted willfully.

33. Defendant acted with full knowledge that its actions were unlawful.

34. Defendant's conduct, as described herein, violated 47 U.S.C. § 227.

35. Defendant's conduct, as described herein, caused Plaintiff's voicemail to become full.

36. Defendant's conduct, as described herein, was an electronic intrusion upon Plaintiff's cellular phone.

37. Defendant's conduct, as described herein, caused Plaintiff's cellular phone's battery to become depleted, causing Plaintiff to use electricity to recharge same.

38. Defendant's conduct, as described herein, was an invasion of Plaintiff's privacy.

39. Defendant's conduct, as described herein, caused Plaintiff annoyance and aggravation.

40. Defendant's conduct, as described herein, caused Plaintiff to waste time.

41. Defendant's conduct, as described herein, caused Plaintiff to be distracted.

SECOND COUNT
Violation of 15 U.S.C. § 1692d(5)

42. Plaintiff repeats and realleges paragraphs 7, 10, 11, and 12 through 24, as if fully restated herein.

43. 15 U.S.C. § 1692d provides that a debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

44. 15 U.S.C. § 1692d(5) provides that it is a violation of 15 U.S.C. § 1692d to cause a telephone to ring repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

45. Defendant caused Plaintiff's cellular telephone to ring repeatedly.

46. Defendant intended to annoy, abuse, and harass Plaintiff.

47. Defendant's conduct violates 15 U.S.C. § 1692d.

48. Defendant's conduct violates 15 U.S.C. § 1692d(5).

THIRD COUNT
Violation of 15 U.S.C. § 1692d(6)

49. Plaintiff repeats and realleges paragraphs 7, 10, 11, and 12 through 24, 43 and 47, as if fully restated herein.

50. 15 U.S.C. § 1692d(6) provides that it is a violation of 15 U.S.C. § 1692d to place telephone calls without meaningful disclosure of the caller's identity.

51. Defendant blocks its caller ID so not to disclose its identity.

52. Defendant blocks its caller ID so that the recipient of the call will not know that a debt collector is calling.

53. Defendant's repeated calls to Plaintiff with the caller's identification blocked violate 15 U.S.C. § 1692d(6).

54. Defendant's conduct violates 15 U.S.C. § 1692d(6).

FOURTH COUNT
Violation of 15 U.S.C. § 1692b(1)

55. Plaintiff repeats and realleges paragraphs 7, 10, 11, and 12 through 24, as if fully restated herein.

56. 15 U.S.C. § 1692b(1) requires a debt collector to, if expressly requested, identify his or her employer.

57. On the November 22, 2016, telephone call, Plaintiff twice asked Defendant's employee to identify her employer.

58. Defendant's employee refused to honor Plaintiff's request.

59. Defendant's employee refused to answer Plaintiff's query.

60. Defendant's employee refused to identify her employer despite Plaintiff's demand for such information.

61. Defendant's conduct violates 15 U.S.C. § 1692b(1).

CLASS ALLEGATIONS

62. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated.

63. The class consists of, "All persons who received calls from Defendant to such person's cellular telephone, initiated by Defendant through the use of an automatic telephone dialing system and/or an artificial or prerecorded voice, without consent, within the four years prior to the filing of the Complaint."

64. The Class consists of more than 50 persons.

65. Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this 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.

66. 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.

67. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

68. 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 the TCPA, consumer protection laws and common law.

JURY DEMAND

69. 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 TCPA; and
- d. Grant statutory damages against Defendant pursuant to 47 U.S.C. § 227(b)(3)(C) and/or 47 U.S.C. § 227(b)(3)(B), for each and every violation; and
- e. Pursuant to 47 U.S.C. § 227(b)(3)(A), grant injunctive relief prohibiting such conduct in the future.
- f. Find that Defendant's actions violate the FDCPA; and
- g. Grant damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- h. Grant attorneys' fees as permitted by law; and

- i. Grant Plaintiff's costs; together with
- j. Such other relief that the Court determines is just and proper.

DATED: October 16, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

Craig B. Sanders, Esq.

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Attorneys for Plaintiff

Our File No.: 112387

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

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK

Todd D. Muhlstock, individually and on behalf of all others similarly situated)	
_____)	
<i>Plaintiff(s)</i>)	
)	Civil Action No.
v.)	
)	
Diversified Consultants Inc.)	
_____)	
<i>Defendant(s)</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Diversified Consultants Inc.
10550 Deerwood Park Blvd #309
Jacksonville, Florida 32256

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

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: TODD D. MUHLSTOCK
(b) County of Residence of First Listed Plaintiff: NASSAU
(c) Attorneys: BARSHAY SANDERS, PLLC
DEFENDANTS: DIVERSIFIED CONSULTANTS INC.
County of Residence of First Listed Defendant: DUVAL
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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: October 30, 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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Diversified Consultants' Ambiguous Phone Calls Violated Federal Laws](#)
