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Our File No.: 113808

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

Karen Muldowney, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

Kozeny, McCubbin & Katz LLP and Trinity Financial
Services, LLC

Defendants.

Docket No: 5:17-cv-1046 (GLS/DEP)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

Karen Muldowney, 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 Kozeny, McCubbin & Katz LLP and Trinity Financial Services, LLC (hereinafter referred to collectively as “*Defendants*”), 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, Defendants conducted business within the State of New York.

PARTIES

5. Plaintiff Karen Muldowney is an individual who is a citizen of the State of New York residing in Onondaga County, New York.

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

7. On information and belief, Defendant Kozeny, McCubbin & Katz LLP, (“Kozeny”) is a New York Limited Liability Partnership with a principal place of business in Suffolk County, New York.

8. On information and belief, Defendant Trinity Financial Services, LLC (“Trinity”) is a Florida Limited Liability Company with a principal place of business in Orange County, Florida.

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

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

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

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

ALLEGATIONS

13. Defendants allege Plaintiff owes a debt on a mortgage (“the Debt”).

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

15. Sometime after the incurrence of the Debt, Plaintiff fell behind on payments owed.

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

17. Thereafter, at an exact time known only to Defendants, Trinity became the servicer of the Debt.

18. Thereafter, at an exact time known only to Defendants, Kozeny was retained to collect the Debt.

19. In its efforts to collect the Debt, Trinity contacted Plaintiff by letter (“the Trinity Letter”) dated November 22, 2016. (“Exhibit 1.”)

20. In its efforts to collect the Debt, Kozeny contacted Plaintiff by letter (“the Kozeny Letter”) dated November 22, 2016. (“Exhibit 2.”)

21. The Kozeny Letter was the initial communication Plaintiff received from Kozeny.

22. The Trinity Letter was the initial communication Plaintiff received from Trinity.

23.

24. The Letters are “communications” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT
Violation of 15 U.S.C. § 1692g(a)(3)
AS TO TRINITY

25. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

26. 15 U.S.C. § 1692g(a)(3) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.”

27. The Trinity Letter fails to contain the required 15 U.S.C. § 1692g(a)(3) disclosure.

28. Trinity violated 15 U.S.C. § 1692g(a)(3) by its failure to provide the information required by that Section.

SECOND COUNT
Violation of 15 U.S.C. § 1692g(a)(4)
AS TO TRINITY

29. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

30. 15 U.S.C. § 1692g(a)(4) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion

thereof, is disputed, the debt collector 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.

31. The Trinity Letter fails to contain the required 15 U.S.C. § 1692g(a)(4) disclosure.

32. Trinity violated 15 U.S.C. § 1692g(a)(4) by its failure to provide the information required by that Section.

THIRD COUNT
Violation of 15 U.S.C. § 1692g(a)(5)
AS TO TRINITY

33. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

34. 15 U.S.C. § 1692g(a)(5) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

35. The Trinity Letter fails to contain the required 15 U.S.C. § 1692g(a)(5) disclosure.

36. Trinity violated 15 U.S.C. § 1692g(a)(5) by its failure to provide the information required by that Section.

FOURTH COUNT
Violation of 15 U.S.C. § 1692g(a)(3)
AS TO KOZENY

37. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

38. 15 U.S.C. § 1692g(a)(3) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.”

39. The Kozeny Letter fails to contain the required 15 U.S.C. § 1692g(a)(3) disclosure.

40. Kozeny violated 15 U.S.C. § 1692g(a)(3) by its failure to provide the information required by that Section.

FIFTH COUNT
Violation of 15 U.S.C. § 1692g(a)(4)
AS TO KOZENY

41. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

42. 15 U.S.C. § 1692g(a)(4) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector 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.

43. The Kozeny Letter fails to contain the required 15 U.S.C. § 1692g(a)(4) disclosure.

44. Kozeny violated 15 U.S.C. § 1692g(a)(4) by its failure to provide the information required by that Section.

SIXTH COUNT
Violation of 15 U.S.C. § 1692g(a)(5)
AS TO KOZENY

45. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

46. 15 U.S.C. § 1692g(a)(5) requires 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 following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current

creditor.

47. The Kozeny Letter fails to contain the required 15 U.S.C. § 1692g(a)(5) disclosure.

48. Kozeny violated 15 U.S.C. § 1692g(a)(5) by its failure to provide the information required by that Section.

SEVENTH COUNT
Violation of 15 U.S.C. § 1692g
Validation of Debts
AS TO TRINITY

49. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

50. 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.

51. 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).

52. The Trinity Letter fails to set forth the name of the creditor to whom the debt is owed.

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

EIGHTH COUNT
Violation of 15 U.S.C. § 1692g
Validation of Debts
AS TO KOZENY

54. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

55. 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.

56. 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).

57. The Kozeny Letter fails to set forth the name of the creditor to whom the debt is owed.

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

CLASS ALLEGATIONS

59. 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 Defendants attempted to collect a consumer debt using substantially the same collection letters used here, from one year before the date of this Complaint to the present.

60. This action seeks a finding that Defendants’ conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

61. Defendants regularly engage in debt collection.

62. The Class consists of more than 35 persons from whom Defendants attempted to collect delinquent consumer debts using substantially the same collection letters used here.

63. 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.

64. 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. Defendants have acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

65. 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 Defendants' 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

66. 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 Defendants' actions violate the FDCPA; and
- d. Grant damages against Defendants 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: August 8, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders

Craig B. Sanders, Esq.
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Attorneys for Plaintiff
Our File No.: 113808



**Kozeny, McCubbin
& Katz, LLP**

Attorneys at Law

**40 Marcus Drive, Suite 200
Melville, NY 11747
681-454-8059 phone
681-454-8169 fax**

11/22/2016

**KAREN E MULDOWNNEY
MARTIN MULDOWNNEY
1510 US ROUTE 11
TRULLY, NY 13159**

NOTICE OF DEFAULT AND INTENT TO ACCELERATE

**RE: Deed of Trust/Mortgage Dated: 10/19/2005
Loan #: [REDACTED] 1183
Property: 1510 US ROUTE 11
TRULLY, NY 13159**

Dear Mortgagor(s):

Please be advised the Law Offices of Kozeny, McCubbin & Katz, LLP represents TRINITY FINANCIAL SERVICES, servicer for the owner and holder of your mortgage loan, and in accordance with the referenced Deed of Trust/Mortgage and applicable state laws, provides you with formal notice of the following:

The mortgage loan associated with the referenced Deed of Trust/Mortgage is in default for failure to pay amounts due.

To cure this default, you must pay all amounts due under the terms of your Note and Deed of Trust/Mortgage. As of 12/31/2016, the total amount necessary to bring your loan current is \$22,604.00. Additional amounts may become due and payable under your Note and Deed of Trust/Mortgage after 12/31/2016. For the exact amount you must pay to bring your loan current, please contact TRINITY FINANCIAL SERVICES at 855-818-6806.

TRINITY FINANCIAL SERVICES, IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT YOUR DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

IF YOU ARE NOT OBLIGATED ON THE DEBT OR IF THE DEBT HAS BEEN DISCHARGED IN A BANKRUPTCY PROCEEDING, THIS IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO ASSESS OR COLLECT THE DEBT FROM YOU PERSONALLY.

If you have not cured the default within thirty (30) days of this notice, TRINITY FINANCIAL SERVICES, will accelerate the maturity date of the Note and declare all outstanding amounts under the Note immediately due and payable. Your property that is collateral for the Note may then be scheduled for foreclosure in accordance with the terms of the Deed of Trust/Mortgage and applicable state laws.

This firm is a debt collector and any information we obtain from you will be used for that purpose.

• Page 2

11/22/2016

You have the right to reinstate your loan after acceleration and the right to bring a court action to claim that your loan is not in default or any other defense to acceleration and sale that you may have. This notice remains in effect until the default is cured.

Upon acceleration of your Note, TRINITY FINANCIAL SERVICES will refer the property for foreclosure. In accordance with the terms of your Note and Deed of Trust/Mortgage and applicable state laws, if TRINITY FINANCIAL SERVICES prevails in its foreclosure action, you may incur costs of foreclosure, such as title documentation, filing fees for the complaint, and reasonable attorney fees.

For your benefit and assistance, there are government-approved homeownership counseling agencies designed to help homeowners avoid losing their homes. To obtain a list of approved counseling agencies, please call (800) 569-4287.

This matter is very important. Please give it your immediate attention.

Should you have any questions, please contact TRINITY FINANCIAL SERVICES at 855-818-6806.

Sincerely,


Ashley Pulito, Esq.

This firm is a debt collector and any information we obtain from you will be used for that purpose.



TRINITY
FINANCIAL SERVICES, LLC

November 22, 2016

**KAREN E MULDOWNNEY
MARTIN MULDOWNNEY
1510 US ROUTE 11
TRULLY, NY 13159**

Loan Number: [REDACTED] 1183

Property: 1510 US ROUTE 11
TRULLY, NY 13159

Dear Mortgagor(s),

YOU COULD LOSE YOUR HOME.
PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

As of November 22, 2016, your home loan is 2153 days in default. Under New York State law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of \$22,604.00 by December 31, 2016.*

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area that provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty.

TRINITY FINANCIAL SERVICES IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT YOUR DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

IF YOU ARE NOT OBLIGATED ON THE DEBT OR IF THE DEBT HAS BEEN DISCHARGED IN A BANKRUPTCY PROCEEDING, THIS IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO ASSESS OR COLLECT THE DEBT FROM YOU PERSONALLY.



TRINITY
FINANCIAL SERVICES, LLC

Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at (855) 818-6806 and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence). If you need further information, please call the New York State Department of Financial Services toll-free helpline at (800) 269-0990 or visit the department's website at www.dfs.ny.gov.

Sincerely,

Trinity Financial Services
2618 San Miguel Dr., Suite 303
Newport Beach, CA 92660
(855) 818-6806

Enclosure: Agency list

TRINITY FINANCIAL SERVICES is not affiliated with, nor endorses, the attached list of approved counseling agencies. Additional New York State Banking Department approved counseling agencies may be found at http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm.

*Additional amounts may become due under your Note and Deed of Trust/Mortgage after the date of this notice. For the exact amount you must pay to bring your loan current, please contact our office at (855) 818-6806.

THIS FIRM IS A DEBT COLLECTOR AND ANY INFORMATION WE OBTAIN FROM YOU WILL BE USED FOR THAT PURPOSE.

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: KAREN MULDOWNNEY; (b) County of Residence of First Listed Plaintiff: ONONDAGA; (c) Attorneys: BARSHAY SANDERS, PLLC, 100 Garden City Plaza, Ste 500, Garden City, NY 11530, (516) 203-7600. DEFENDANTS: KOZENY, MCCUBBIN & KATZ LLP; County of Residence of First Listed Defendant: SUFFOLK.

II. BASIS OF JURISDICTION: U.S. Government Plaintiff; Federal Question; Diversity. III. CITIZENSHIP OF PRINCIPAL PARTIES: Citizen of This State; PTF DEF; O 1 O 1; O 2 O 2; O 3 O 3.

IV. NATURE OF SUIT: 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; 6 Multidistrict Litigation - Transfer; 8 Multidistrict Litigation - Direct File.

VI. CAUSE OF ACTION: 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.)

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: September 19, 2017 SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

Receipt #0206-4140780 Amount \$400.00 JUDGE: GLS MG. JUDGE: DEP

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Debt Collectors' Letters Missing Required Information](#)
