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Attorneys for Plaintiff
Our File No.: 113848

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

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

Plaintiff,

vs.

Simon’s Agency, Inc.,

Defendant.

Docket No: 5:17-cv-1057 (DNH/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 Simon’s Agency, 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 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 Simon’s Agency, Inc., is a New York Corporation with a principal place of business in Onondaga 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).

ALLEGATIONS

10. Defendant alleges Plaintiff owes a debt (“the Debt”).

11. The Debt was primarily for personal 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 March 31, 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).

FIRST COUNT

Violation of 15 U.S.C. § 1692f

Unlawful Fee

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

18. 15 U.S.C. § 1692f provides a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

19. 15 U.S.C. § 1692f(1) prohibits the collection of any amount, including any interest, fee, charge, or expense incidental to the debt, unless such amount is expressly

authorized by the agreement creating the debt or permitted by law.

20. Defendant maintains a website at <https://www.simonsagency.com/>.

21. Defendant's website provides a payment portal, at <https://paysimons.com/payment>, for consumers to make payments online.

22. Defendant's payment portal sets forth that Defendant charges a convenience fee of \$3.50 for payments made.

23. Such convenience fee is neither expressly authorized by the agreement creating the debt, nor permitted by law.

24. Such convenience fee is prohibited by 15 U.S.C. § 1692f(1).

25. Defendant violated 15 U.S.C. § 1692f by charging a convenience fee.

SECOND COUNT

Violation of 15 U.S.C. § 1692e

False Representation as to Unlawful Fee

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

27. 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.

28. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

29. 15 U.S.C. § 1692e(2)(B) prohibits the false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

30. Defendant violated § 1692e by making a false representation that it is entitled to receive compensation for payment via a convenience fee.

31. The least sophisticated consumer would likely be deceived by the convenience fee language into believing that Defendant was legally entitled to collect the fee.

32. The least sophisticated consumer would likely be deceived in a material way by Defendant's conduct.

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

CLASS ALLEGATIONS

34. 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 convenience fee, from one year before the date of this Complaint to the present.

35. 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.

36. Defendant regularly engages in debt collection.

37. The Class consists of more than 35 persons from whom Defendant attempted to collect a convenience fee.

38. 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.

39. 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.

40. 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

41. 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: August 8, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders
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Attorneys for Plaintiff
Our File No.: 113848

SIMON'S AGENCY INC.
4963 WINTERSWEET DRIVE
LIVERPOOL, NY 13088
info@simonsagency.com



March 31, 2017

KAREN MULDOWNEY
1510 US ROUTE 11
TULLY, NY 13159-3309

Account Summary		
Original Creditor FAMILYCARE MEDICAL GROUP		
File # 6920	Amount \$1643.25	Various Other Accts Total Balance \$1791.35

FAMILYCARE MEDICAL GROUP has referred your past due account to our office for collections.

You may not have intentionally neglected this obligation, but it is seriously past due. If you would like our cooperation then:

1. Remit payment in full to this office, or,
2. www.paysimons.com
3. Contact (315) 454-8833 in person or by telephone to arrange a payment plan.

Thank you for your cooperation in this matter.

Sincerely,

SIMON'S AGENCY INC.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. UNLESS YOU DISPUTE THE VALIDITY OF THIS DEBT, OR ANY PORTION THEREOF, WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS LETTER, WE WILL ASSUME THAT THIS DEBT IS VALID. IF YOU NOTIFY US IN WRITING WITHIN THE THIRTY (30) DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF THE JUDGMENT AGAINST YOU AND MAIL SUCH VERIFICATION OR COPY TO YOU. WE WILL ALSO PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR, UPON YOUR WRITTEN REQUEST WITHIN THE THIRTY (30) DAY PERIOD.

WE REPORT DELINQUENT ACCOUNTS TO THE CREDIT BUREAU

PAYMENT OPTIONS

Payments By Internet

www.paysimons.com
 Visa, MasterCard, Discover,
 & American Express
 Check (ACH) also available

Payments By Phone

Please Call
 (315) 454-8833 or (844) 588-8833
 Visa, MasterCard, American
 Express & Discover, Debit Card
 Check-By-Phone

Payments By Mail

Visa, MasterCard, Discover,
 & American Express
 Check
*(You can use the return envelope
 provided and the bottom portion of this
 notice for your convenience.)*

SIMONS170331152.003892.01.01.000000

***** Detach Lower Portion And Return With Payment *****

PO Box 5026
Syracuse, NY 13220-5026

March 31, 2017

KAREN MULDOWNEY
1510 US ROUTE 11
TULLY NY 13159-3309

3692

IF YOU WISH TO PAY BY CREDIT CARD, CIRCLE ONE AND FILL IN THE INFORMATION BELOW:

<input type="checkbox"/> MasterCard	<input type="checkbox"/> VISA	<input type="checkbox"/> Discover	<input type="checkbox"/>
CARD NUMBER		EXP. DATE	
CARD HOLDER NAME			
SIGNATURE		AMOUNT PAID	

Original Creditor: FAMILYCARE MEDICAL GROUP
File No: 6920
Total Balance: \$1791.35

REMIT PAYMENT TO:

Simon's Agency Inc.
PO Box 5026
Syracuse, NY 13220-5026

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 MULDOWNEY; (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: SIMON'S AGENCY, INC.; County of Residence of First Listed Defendant: ONONDAGA; 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): 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, PIF, DEF.

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: (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: September 21, 2017 SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders 0206-4140788 \$400.00 DNH DEP 5:17-cv-1057 (DNH/DEP)

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Simon's Agency Hit with Lawsuit Over Online 'Convenience Fee'](#)
