

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

JAMES PINKNEY, on behalf of himself and
all others similarly situated,

Plaintiffs,

-against-

SARMA COLLECTIONS, INC.,

Defendant.

CIVIL ACTION

**CLASS ACTION COMPLAINT
AND
DEMAND FOR JURY TRIAL**

Plaintiff JAMES PINKNEY (hereinafter, “Plaintiff”), a New York resident, brings this class action complaint by and through his attorneys, Daniel Cohen, PLLC, against Defendants SARMA COLLECTIONS, INC. (hereinafter “Defendant”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re inadequate to protect consumers,” and that “the effective collection of debts” does not require “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).
2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to “insure that those debt collectors who refrain from using

abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

NATURE OF THE ACTION

5. Plaintiff brings this class action on behalf of a class of New York consumers seeking redress for Defendant’s actions of using an unfair and unconscionable means to collect a debt.
6. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”) which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.
7. Plaintiff is seeking damages, and declaratory and injunctive relief.

PARTIES

8. Plaintiff is a natural person and a resident of the State of New York, and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).
9. Defendant is a collection agency with a principal place of business located in Texas.
10. Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.
11. Defendant is a “debt collector,” as defined under the FDCPA under 15 U.S.C. § 1692a(6).

CLASS ALLEGATIONS

12. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter “FRCP”)

Rule 23, individually and on behalf of the following consumer class (the “Class”):

- 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 using the same unlawful form letter herein, from one year before the date of this Complaint to the present.
- The Class period begins one year to the filing of this Action.

13. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection Letter and/or notices from Defendant that fail to adequately advise the consumer of their right to dispute the debt in violation of the FDCPA. Plaintiff is complaining of a standard form Letter and/or notice that is sent to hundreds of persons (*See Exhibit A*, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff’s privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
 - a. Whether Defendant violated various provisions of the FDCPA;
 - b. Whether Plaintiff and the Class have been injured by Defendant’s conduct;

- c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
- d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed to proceed without

remedy they will continue to reap and retain the proceeds of their ill-gotten gains.

- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

ALLEGATIONS OF FACT PARTICULAR TO JAMES PINKNEY

14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “13” herein with the same force and effect as if the same were set forth at length herein.
15. Defendant collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and Internet.
16. Upon information and belief, within the last year Defendant commenced efforts to collect an alleged consumer “debt” as defined by 15 U.S.C. 1692a(5), when it mailed a Collection Letter to Plaintiff seeking to collect on an unpaid account originally owed to Imaging.
17. On a date known better to Defendant, a collection letter was sent to Plaintiff in an attempt to collect on an allegedly outstanding obligation owed to USAA Federal Savings Bank (the “Letter”). *See Exhibit A.*
18. The Letter was sent or caused to be sent by persons employed by Defendant, as “any person that uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts...” as defined by 15 U.S.C. §1692a(6).
19. The Letter is a “communication” as defined by 15 U.S.C. §1692a(2).
20. The Letter was an initial communication between Plaintiff and Defendant.
21. As a result of the following Counts Defendant violated the FDCPA.

First Count
15 U.S.C. §1692g(a)(3)
Overshadowing Plaintiff's Right to Request Validation

22. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “21” herein with the same force and effect as if the same were set forth at length herein.
23. 15 U.S.C. § 1692g(3) requires the notice to include 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.
24. It is a violation of the FDCPA to include or omit language in the Letter that overshadows the required 15 U.S.C. § 1692g(3) statement.
25. It is a violation of the FDCPA to include or omit language in the Letter that contradicts the required 15 U.S.C. § 1692g(3) statement.
26. It is a violation of the FDCPA to include or omit language in the Letter that, when examined from the perspective of the least sophisticated consumer, overshadows the required § 1692g(a)(3) statement.
27. It is a violation of the FDCPA to include or omit language in the Letter that, when examined from the perspective of the least sophisticated consumer, contradicts the required § 1692g(a)(3) statement.
28. It is a violation of the FDCPA to include or omit language in the Letter that, when examined from the perspective of the least sophisticated consumer, leads the least sophisticated consumer to be unsure as to when her validation request must be received by.
29. Defendant's Letter fails to state the date on which it was sent.
30. All collection letters are required to be dated.

31. Because said Letter failed to indicate the date on which it was sent, Plaintiff and the least sophisticated consumer was confused as to when the 30-day validation period began.
32. Because said Letter failed to indicate the date on which it was sent, Plaintiff and the least sophisticated consumer was confused as to when the 30-day validation period would run.
33. While collection letters are always dated to give the consumer an idea as to when a letter was sent/received, Defendant intentionally failed to include said date so that Plaintiff would fail to request validation of the debt.
34. This effectively overshadowed Plaintiff's and the Least Sophisticated Consumer's right to request validation of the debt, as Plaintiff was left unsure when the 30-day period would expire.

Second Count

Violation of 15 U.S.C. §§ 1692e, et seq.

False or Misleading Representations as to the Rights of the Consumer

35. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "34" herein with the same force and effect as if the same were set forth at length herein.
36. 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.
37. 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.
38. Collection letters are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.
39. Said Letter fails to state a date on which it was sent.
40. This is deceptive and misleading because Plaintiff and the least sophisticated consumer would not know when the statute of limitations would run and there bar their valid FDCPA claim.
41. Such deceit is contrary to the intent of congress in passing the FDCPA, where otherwise

aggrieved Plaintiff's would not be able to obtain their day in court.

42. Such an omission is materially misleading, as they impart in the unsophisticated consumer, a sense of confusion as to when they letter was sent and ultimately received.
43. 15 U.S.C. § 1692e generally prohibits "any false, deceptive, or misleading representation or means in connection with the collection of any debt."
44. 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."
45. The statement in Defendant's Letter is false and misleading, in violation of 15 U.S.C. §§ 1692e, 1692e(2), and 1692e(10).
46. Defendant could have taken the steps necessary to bring its actions within compliance of the FDCPA, but neglected to do so and failed to adequately review its actions to ensure conformance to the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and Daniel Cohen, PLLC, as Class Counsel;
- (b) Awarding Plaintiff and the Class statutory damages;
- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By: /s/ Daniel Cohen

Daniel Cohen, Esq.

Daniel Cohen, PLLC

300 Cadman Plaza W, 12th floor

Brooklyn, New York 11201

Phone: (646) 645-8482

Fax: (347) 665-1545

Email: Dan@dccohen.com

Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

/s/ Daniel Cohen

Daniel Cohen, Esq.

Dated: Brooklyn, New York
December 19, 2017

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

JAMES PINKNEY, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Kings (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DANIEL COHEN PLLC, 300 Cadman Plz W, 12 Fl., Brooklyn, NY 11201, (646) 645-8482

DEFENDANTS

SARMA COLLECTIONS, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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: Defendant violated the FDCPA

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 12/18/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel Cohen

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, DANIEL COHEN, 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 Question of law rather than questions of fact predominates

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:

NONE

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? Yes 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 No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: **KINGS COUNTY** .

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? Yes No

(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/ Daniel Cohen

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



Office Hours:

Monday-Tuesday 8:00 am - 8:00 pm CST
 Wednesday-Thursday 8:00 am - 5:00 pm CST
 Friday 8:00 am - 4:30 pm CST
 Saturday 8:00 am - 12:00 pm CST

Office Address:

555 E. Ramsey Rd.
 San Antonio, TX 78216

Toll Free: (800) 600-1496

ORIGINAL CREDITOR	SARMA ACCOUNT #	TOTAL AMOUNT DUE
USAA FEDERAL SAVINGS BANK	[REDACTED] 0072	5601.6

The original creditor shown above has placed your account with us for collection.

Unless, within thirty days after receipt of this notice, you dispute the validity of the debt or any portion thereof, we will assume the debt to be valid and will proceed in accordance with that assumption.

If, within thirty days of your receipt of this notice, you notify us in writing that the debt or any portion thereof is disputed, we will obtain a verification of the debt or, if the debt is founded upon a judgement, we will obtain a copy of the judgement and mail you a copy of such verification or judgement.

If the original creditor is different from the creditor named above, then upon written request, within thirty days of the receipt of this notice, we will provide you with the name and address of the original creditor.

Send the written request to: Administration Department, 555 East Ramsey Road, San Antonio, TX 78216.

To learn more about this letter and about our company, visit www.whatisthisletter.com today.

Total amount at charge-off: \$ 5601.6

Total amount of interest accrued since charge-off: \$0.00

Total amount of non-interest charges or fees accrued since charge - off: \$0.00

Total amount of payments made since charge - off: \$

This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose only.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Sincerely,

Sarma Collections, Inc.

Your contact person is:

<p>Mail: </p> <p>Mail check, money order or by credit card using the form at the bottom of this letter and mail to:</p> <p>SARMA COLLECTIONS, INC. 555 E. RAMSEY RD. SAN ANTONIO, TX 78216</p>	<p>Call: </p> <p>Call At:</p> <p>(800) 600-1496</p> <p>to pay with a check by phone.</p>	<p>Online: </p> <p>Pay us online at:</p> <p>PASSWORD:</p>	<p>Smart Phone: </p> <p>Scan the OR barcode with your smart phone:</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------	-------------------------------------------------------------------------------

REMIT PAYMENTS TO: SARMA COLLECTIONS, INC 555 E. RAMSEY RD., SAN ANTONIO, TX 78216

AND RETURN THIS PORTION WITH PAYMENT



DEPT 253 4567890123456
 PO BOX 4115
 CONCORD CA 94524



RETURN SERVICE REQUESTED



JAMES PINKNEY



IF PAYING BY CREDIT CARD, PLEASE CHOOSE THE CARD		
CARD NUMBER	EXP DATE	
CARD HOLDER NAME	CVV CODE	
SIGNATURE OF CARD HOLDER		
SARMA ACCOUNT #	TOTAL AMOUNT DUE	AMOUNT ENCLOSED
[REDACTED] 0072	5601.6	

REMIT TO: SARMA COLLECTIONS, INC.
 555 E RAMSEY RD.
 SAN ANTONIO, TX 78215

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Sarma Collections Omitted Date from Collection Letter](#)
