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Our File No.: 111512

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

Christopher Shaw, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

RGS Financial, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Christopher Shaw, 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 RGS Financial, 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.

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PARTIES

5. Plaintiff Christopher Shaw 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 RGS Financial, Inc., is a Texas with a principal place of business in Dallas County, Texas.

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, 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. The debt was incurred on a credit card issued by Comenity Bank.

14. At all relevant times herein, Plaintiff’s debt accrued, and was subject to, interest.

15. At all relevant times herein, Plaintiff’s debt accrued, and was subject to, late fees.

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

17. In its efforts to collect the debt, Defendant contacted Plaintiff by letter (“the letter”) dated May 2, 2016. (“**Exhibit 1.**”)

18. The letter was the initial communication Plaintiff received from Defendant.

19. The letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

FIRST COUNT

Violation of 15 U.S.C. § 1692g

Failure to Adequately Convey the Amount of the Debt

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

21. 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.

22. One such requirement is that the debt collector provide “the amount of the debt.” 15 U.S.C. § 1692g(a)(1).

23. A debt collector has the obligation not just to convey the amount of the debt, but to convey such clearly.

24. The letter sets forth an “Amount Owed.”

25. The letter also offers a settlement.

26. The letter fails to disclose whether the “Amount Owed” may increase due to additional interest.

27. The letter fails to disclose whether the “Amount Owed” may increase due to additional late fees.

28. The letter fails to disclose whether the “Amount Owed” may increase due to additional interest if the settlement is not accepted.

29. The letter fails to disclose whether the “Amount Owed” may increase due to additional late fees if the settlement is not accepted.

30. The letter fails to include any “safe harbor” language concerning the accrual of interest and/or fees. *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

31. The letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

32. The letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt because the consumer would not know whether interest and fees would continue to accrue, or whether the amount of the debt was static.

33. The letter, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the true value of the settlement offer as the consumer would not know whether interest and fees would continue to accrue if the settlement was not accepted, or whether the amount of the debt was static.

34. The least sophisticated consumer could reasonably believe that the debt could be satisfied by remitting the “Amount Owed” at any time after receipt of the letter.

35. The least sophisticated consumer could also reasonably believe that the “Amount

Owed” was accurate only on the date of the letter because of the continued accumulation of interest and/or late fees.

36. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the letter fails to indicate the applicable interest rate, or date of accrual.

37. If late fees are continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the letter fails to indicate the amount of applicable and/or possible late fees.

38. For these reasons, Defendant failed to clearly state the amount of the debt.

39. For these reasons, Defendant failed to unambiguously state the amount of the debt.

40. For these reasons, the letter would likely make the least sophisticated consumer uncertain as to the amount of the debt.

41. For these reasons, the letter would likely make the least sophisticated consumer confused as to the amount of the debt.

42. Defendant violated § 1692g as it failed to clearly, explicitly and unambiguously convey the amount of the debt.

SECOND COUNT

Violation of 15 U.S.C. § 1692e
False or Misleading Representations

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

44. 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.

45. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”

46. 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.

47. A collection letter is deceptive under 15 U.S.C. § 1692e if it can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate.

48. 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.

49. 15 U.S.C. § 1692e requires debt collectors, when they notify consumers of their account balance, to disclose whether the balance may increase due to interest and fees. *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

50. As previously alleged, the least sophisticated consumer could reasonably read the letter to mean that the “Amount Owed” was static.

51. As previously alleged, the least sophisticated consumer could also reasonably read the letter to mean that the “Amount Owed” was dynamic due to the continued accumulation of interest and/or late fees.

52. Because the letter is susceptible to an inaccurate reading by the least sophisticated consumer, it is deceptive under 15 U.S.C. § 1692e.

53. Because the letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive under 15 U.S.C. § 1692e.

54. Defendant violated 15 U.S.C. § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

THIRD COUNT
Violation of 15 U.S.C. § 1692g
Validation of Debts

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

56. 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.

57. The written notice must contain 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.

58. The written notice must contain 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.

59. The written notice must contain 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.

60. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly.

61. Even if a debt collector conveys the required information accurately, the collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication, or by other collection activities during the 30-day validation period following the communication.

62. A collection activity or communication overshadows or contradicts the validation notice if it would make the "least sophisticated consumer" uncertain or confused as to her rights.

63. The letter states, "We're here to help you, but we need you to act. Please decide what works best for you."

64. The letter then provides three options: 1) Go to Defendant's website to pay; or 2) Make an immediate payment in full in either one, two or three payments; or 3) Call Defendant to make alternate arrangements.

65. Conspicuously absent from the provided options is the Plaintiff's right not to make payment, but to dispute the debt or demand validation of the debt as provided by 15 U.S.C. § 1692g.

66. At the bottom of the letter, under the closing of the letter, is a notice "See reverse side for important information."

67. On the reverse side of the letter is the rights required by 15 U.S.C. § 1692g.

68. The letter contains no transitional language explaining that the "options" on the front of the letter do not override Plaintiff's rights to dispute the debt or seek validation of the alleged debts.

69. The “options” provided on the front of the letter contradict the required disclosures provided on the reverse side of the letter.

70. The “options” provided on the front of the letter overshadow the required disclosures on the reverse side of the letter.

71. The “options” provided on the front of the letter would make the “least sophisticated consumer” uncertain or confused as to her rights.

72. Because of the foregoing, Defendant has violated § 1692g.

FOURTH COUNT
Violation of 15 U.S.C. § 1692e
False or Misleading Representations

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

74. 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.

75. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on non-enumerated practice.

76. Collection notices are deceptive if they can be reasonably read to have two or more different meanings, one of which is inaccurate.

77. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”

78. The least sophisticated consumer would likely be deceived by Defendant’s conduct.

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

80. The least sophisticated consumer would likely be deceived by Defendant’s conduct into believing that the “options” provided on the front of the letter override the consumer’s right to dispute the debt or demand validation of the debt.

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

CLASS ALLEGATIONS

82. 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.

83. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

84. Defendant regularly engages in debt collection, using the same unlawful letter described herein, in its attempts to collect delinquent consumer debts from other persons.

85. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using the same unlawful letter described herein.

86. 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.

87. 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.

88. 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 FDCPA.

JURY DEMAND

89. 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 Representatives of the Class, and his 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: April 3, 2017

BARSHAY SANDERS, PLLC

By: /s/ Craig B. Sanders
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csanders@barshaysanders.com
Attorneys for Plaintiff
Our File No.: 111512

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GARDEN CITY, NEW YORK 11530



RGS

1700 Jay Ell Dr Ste 200 • Richardson TX 75084
Phone Number: 855-227-9292
PAY ONLINE: www.myrgs.com

CREDITOR:	COMENITY CAPITAL BANK, RE:PAYPAL CREDIT I ██████████ 3196
ACCOUNT NO.:	██████████ 1459
AMOUNT OWED:	\$2,000.29
LAST PAID DATE:	09/10/15

MAY 2, 2016

ACCOUNT INFORMATION

Dear CHRISTOPHER SHAW

*PAY
PAL
CREDIT*

RGS Financial, Inc. has been assigned to provide a resolution on the above stated account. Associates are available to assist you. We're here to help you, but we need you to act. Please decide what works for you.

- You can resolve your account, without talking to an associate, by visiting our secure, private website at <https://www.myrgs.com> to negotiate and pay anytime, day or night.
- You can pay \$2,000.29 in full or make two payments of \$1,000.14, or three payments of \$666.76
- Call 855-227-9292 or visit us online to make alternate arrangements.

We're here to help, and we'd like your feedback. Please feel free to reach out to us with compliments, complaints or suggestions at president@rgsfinancial.com.

Sincerely,
PP1 - RESOLUTION DEPARTMENT
RGS Financial, Inc.
Toll Free 855-227-9292



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.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

PLEASE DETACH LOWER PORTION AND RETURN WITH PAYMENT IN THE ENCLOSED ENVELOPE

66CORGSF01AG4



CORGSF01
PO Box 1022
Wixom MI 48393-1022

ADDRESS SERVICE REQUESTED

For your convenience, we accept:
VISA or MasterCard



PAY ONLINE
www.myrgs.com

PLEASE SEND ALL CORRESPONDENCE TO:

MAY 2, 2016

AG4 119318796



CHRISTOPHER SHAW
27 Beechwood Dr
Shirley NY 11967-3905

RGS FINANCIAL, INC.
PO BOX 852039
RICHARDSON TX 75085-2039



CREDITOR: COMENITY CAPITAL BANK, RE:PAYPAL CREDIT I

██████████ 3196

ACCOUNT NO #: ██████████ 1459

AMOUNT OWED: \$2,000.29

Check here if there is new contact information and complete section 2 on reverse side.

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: CHRISTOPHER SHAW
DEFENDANTS: RGS FINANCIAL, INC.
(b) County of Residence of First Listed Plaintiff: SUFFOLK
(c) Attorneys: BARSHAY SANDERS, PLLC

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
Grid with categories: 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, etc.

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 \$
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See Instructions) JUDGE DOCKET NUMBER

DATE: May 1, 2017
SIGNATURE OF ATTORNEY OF RECORD: /s Craig B. Sanders

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFF 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

Christopher Shaw, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

RGS Financial, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) RGS Financial, Inc. NATIONAL CORPORATE RESEARCH, LTD. 10 EAST 40TH STREET 10TH FLOOR NEW YORK, NEW YORK, 10016

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: Craig B. Sanders, Esq. 100 Garden City Plaza Suite 500 Garden City, New York 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 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:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [RGS Financial Hit with Lawsuit Over Alleged FDICPA Violations](#)
