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Attorneys for Plaintiff

Our File No.: BRL21143

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION**

Teresa Colamarino, individually and on behalf of all others
similarly situated,

Plaintiff,

v.

Balanced Healthcare Receivables, LLC,

Defendant.

Case No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Teresa Colamarino, individually and on behalf of all others similarly situated, by and through the undersigned counsel, complains, states, and alleges against defendant Balanced Healthcare Receivables, LLC as follows:

INTRODUCTION

1. This is an action to recover damages for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the “FDCPA”).

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1337 and 15 U.S.C. § 1692k(d). The Court has supplemental jurisdiction of any state law claims pursuant to 28 U.S.C. §1367.



3. This court has jurisdiction over defendant Balanced Healthcare Receivables, LLC because it regularly conducts and transacts business in this state, and the conduct complained of herein occurred in this Judicial District.

4. Venue is proper in this Judicial District under 28 U.S.C. § 1391(b) because a substantial part of the conduct complained of herein occurred in this Judicial District.

PARTIES

5. Plaintiff Teresa Colamarino (“Plaintiff”) is a natural person who is a citizen of the State of New York residing in Nassau County, New York.

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

7. Defendant Balanced Healthcare Receivables, LLC (“Defendant”) is a company existing under the laws of the State of New Hampshire, with its principal place of business in Nashua, New Hampshire.

8. Defendant has transacted business within this state as is more fully set forth hereinafter in this Complaint.

9. Defendant regularly collects or attempts to collect debts asserted to be owed to others.

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

11. The principal purpose of Defendant’s businesses is the collection of such debts.

12. Defendant uses instrumentalities of interstate commerce, including telephones and the mails, in furtherance of its debt collection business.

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

14. The acts of Defendant as described in this Complaint were performed by Defendant or on Defendant’s behalf by its owners, officers, agents, and/or employees acting within the scope

of their actual or apparent authority. As such, all references to “Defendant” in this Complaint shall mean Defendant or its owners, officers, agents, and/or employees.

FACTUAL ALLEGATIONS

15. On or about November 9, 2020, Plaintiff received medical services from Lenox Hill Radiology & Med Imaging Assoc, PC.

16. The medical services were covered by Plaintiff’s health insurance.

17. Plaintiff’s health insurance paid for the medical services in full and Plaintiff paid her co-payment directly to Lenox Hill Radiology & Med Imaging Assoc, PC at the time of the service.

18. As such, Plaintiff did not owe Lenox Hill Radiology & Med Imaging Assoc, PC any money as a result of the medical services provided.

19. Despite this, at an exact time known only to Defendant, Lenox Hill Radiology & Med Imaging Assoc, PC retained Defendant to attempt to collect \$50.00 (the “Claimed Amount”) from Plaintiff (“the alleged Debt”).

20. At the time the alleged Debt was assigned or otherwise transferred to Defendant for collection, the alleged Debt was in default.

21. The alleged Debt is a “debt” as that term is defined by 15 U.S.C. § 1692a(5).

22. At the time the alleged Debt was assigned or otherwise transferred to Defendant for collection, the alleged Debt was in default.

23. In its efforts to collect the alleged Debt, Defendant decided to contact Plaintiff by written correspondence.

24. Rather than preparing and mailing such written correspondence to Plaintiff on its own, Defendant decided to utilize a third-party vendor to perform such activities on its behalf.



25. As part of its utilization of the third-party vendor, Defendant conveyed information regarding the alleged Debt to the third-party vendor.

26. The information conveyed by Defendant to the third-party vendor included Plaintiff's status as a debtor, the precise amount of the alleged Debt, the entity to which Plaintiff allegedly owed the debt, and the fact that the alleged Debt concerned Plaintiff's medical treatment, among other things.

27. Defendant's conveyance of the information regarding the alleged Debt to the third-party vendor is a "communication" as that term is defined by 15 U.S.C. § 1692a(2).

28. The third-party vendor then populated some or all this information into a prewritten template, printed, and mailed the letter to Plaintiff at Defendant's direction.

29. That letter, dated April 7, 2021, was received and read by Plaintiff. (A true and accurate copy of that collection letter (the "Letter") is annexed hereto as "Exhibit 1.")

30. The Letter, which conveyed information about the alleged Debt, is a "communication" as that term is defined by 15 U.S.C. § 1692a(2).

31. The Letter was the initial written communication Plaintiff received from Defendant concerning the alleged Debt.

FIRST COUNT
Violation of 15 U.S.C. § 1692c(b) and § 1692f

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

33. 15 U.S.C. § 1692c(b) provides that, subject to several exceptions not applicable here, "a debt collector may not communicate, in connection with the collection of any debt," with anyone other than the consumer "without the prior consent of the consumer given directly to the debt collector."

34. The third-party vendor does not fall within any of the exceptions provided for in 15 U.S.C. § 1692c(b).

35. Plaintiff never consented to Defendant's communication with the third-party vendor concerning the alleged Debt.

36. Plaintiff never consented to Defendant's communication with the third-party vendor concerning Plaintiff's personal and/or confidential information.

37. Plaintiff never consented to Defendant's communication with anyone concerning the alleged Debt, or concerning Plaintiff's personal and/or confidential information.

38. Upon information and belief, Defendant has utilized a third-party vendor for these purposes thousands of times.

39. Defendant utilizes a third-party vendor in this regard for the sole purpose of maximizing its profits.

40. Defendant utilizes a third-party vendor without regard to the propriety and privacy of the information which it discloses to such third-party.

41. Defendant utilizes a third-party vendor with reckless disregard for the harm to Plaintiff and other consumers that could result from Defendant's unauthorized disclosure of such private and sensitive information.

42. Defendant violated 15 U.S.C. § 1692c(b) when it disclosed information about Plaintiff's alleged Debt to the third-party vendor.

43. 15 U.S.C. § 1692f provides that a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

44. The unauthorized disclosure of a consumer's private and sensitive information is both unfair and unconscionable.

45. Defendant disclosed Plaintiff's private and sensitive information to the third-party vendor.

46. Defendant violated 15 U.S.C. § 1692c(b) when it disclosed information about Plaintiff's alleged Debt to the third-party vendor.

47. For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692c(b) and 1692f and is liable to Plaintiff therefor.

SECOND COUNT

Violation of 15 U.S.C. §§ 1692g, 1692g(a)(1), 1692g(a)(2)

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

49. 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.

50. As relevant here, 15 U.S.C. § 1692g(a)(1) requires the written notice provide a statement of the amount of the debt.

51. To comply with 15 U.S.C. § 1692g(a)(1), the statement of the amount of the debt must accurately set forth the actual amount of the debt.

52. A statement of the amount of the debt, when the debt is not owed at all by the consumer, violates 15 U.S.C. § 1692g(a)(1).

53. As set forth in paragraphs 15 through 19 of this Complaint, Plaintiff did not owe the Claimed Amount.

54. As such, Defendant did not accurately set forth the actual amount of the debt as required by 15 U.S.C. § 1692g(a)(1).

55. In sum, Defendant's statement of the amount of the alleged Debt, when Plaintiff

did not owe that amount, violates 15 U.S.C. § 1692g(a)(1).

56. As also relevant here, 15 U.S.C. § 1692g(a)(2) requires the written notice provide a statement of the name of the creditor to whom the debt is owed.

57. To comply with 15 U.S.C. § 1692g(a)(2), the statement of the name of the creditor to whom the debt is owed must accurately set forth the name of the entity that actually owns the debt.

58. A statement of the name of the creditor to whom the debt is owed, when the consumer does not owe money to the stated entity, violates 15 U.S.C. § 1692g(a)(2).

59. As set forth in paragraphs 15 through 19 of this Complaint, Plaintiff did not owe money to Lenox Hill Radiology & Med Imaging Assoc, PC.

60. As such, Defendant did not accurately set forth the name of the entity that actually owns the debt as required by 15 U.S.C. § 1692g(a)(2).

61. In sum, Defendant's statement that Lenox Hill Radiology & Med Imaging Assoc, PC was the name of the creditor to whom the alleged debt was owed, when Plaintiff did not owe any money to Lenox Hill Radiology & Med Imaging Assoc, PC, violates 15 U.S.C. § 1692g(a)(2).

62. For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692g, 1692g(a)(1) and 1692g(a)(2) and is liable to Plaintiff therefor.

THIRD COUNT

Violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10)

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

64. 15 U.S.C. § 1692e provides, generally, that a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

65. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.



66. 15 U.S.C. § 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.

67. An allegation by a debt collector that a consumer owes a debt to a certain entity when the consumer does not owe a debt to that entity is a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10).

68. An allegation by a debt collector that a consumer owes a certain amount of money when the consumer does not that amount is a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10).

69. As set forth in paragraphs 15 through 19 of this Complaint, Plaintiff did not owe the Claimed Amount.

70. As set forth in paragraphs 15 through 19 of this Complaint, Plaintiff did not owe money to Lenox Hill Radiology & Med Imaging Assoc, PC.

71. As such, Defendant's allegation that Plaintiff owed the Claimed Amount is a false, deceptive, and/or misleading representation made in connection with the collection of the alleged Debt in violation of 15 U.S.C. § 1692e.

72. Defendant's allegation that Plaintiff owed money to Lenox Hill Radiology & Med Imaging Assoc, PC is a false, deceptive, and/or misleading representation made in connection with the collection of the alleged Debt in violation of 15 U.S.C. § 1692e.

73. Defendant's allegation that Plaintiff owed the Claimed Amount is a false representation of the character, amount, and/or legal status of the alleged Debt in violation of 15 U.S.C. § 1692e(2)(A).



74. Defendant's allegation that Plaintiff owed money to Lenox Hill Radiology & Med Imaging Assoc, PC is a false representation of the character, amount, and/or legal status of the alleged Debt in violation of 15 U.S.C. § 1692e(2)(A).

75. Defendant's allegation that Plaintiff owed the Claimed Amount is a false representation made in an attempt to collect the alleged Debt in violation of 15 U.S.C. § 1692e(10).

76. Defendant's allegation that Plaintiff owed money to Lenox Hill Radiology & Med Imaging Assoc, PC is a false representation made in an attempt to collect the alleged Debt in violation of 15 U.S.C. § 1692e(10).

For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10) and is liable to Plaintiff therefor.

CLASS ALLEGATIONS

77. Plaintiff brings this action individually and as a class action on behalf of all consumers similarly situated in the State of New York.

78. Plaintiff seeks to certify a class of:

- i. All consumers where Defendant sent information concerning the consumer's debt to a third-party vendor without obtaining the prior consent of the consumer, which disclosure was made on or after a date one year prior to the filing of this action to the present.

79. 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.

80. The Class consists of more than thirty-five persons.

81. Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this action 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. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

82. 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.

83. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class is not extraordinarily difficult, and the factual and legal issues raised by this action 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

84. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment be entered as follows:

- a. Certifying this action as a class action; and
- b. Appointing Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel; and
- c. Finding Defendant's actions violate the FDCA; and
- d. Awarding damages to Plaintiff and the Class pursuant to 15 U.S.C. § 1692k; and
- e. Awarding Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k, calculated on a "lodestar" basis; and
- f. Awarding the costs of this action to Plaintiff; and

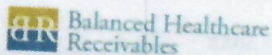
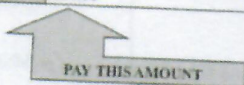
- g. Awarding pre-judgment interest and post-judgment interest to Plaintiff; all together with
- h. Such other and further relief that the Court determines is just and proper.

DATED: April 21, 2021

BARSHAY, RIZZO & LOPEZ, PLLC

By: s/ David M. Barshay
David M. Barshay, Esquire
445 Broadhollow Road | Suite CL18
Melville, New York 11747
Tel: (631) 210-7272
Fax: (516) 706-5055
Our File No.: BRL21143
Attorneys for Plaintiff

Account #: [REDACTED] 673
Account Balance: \$50.00



164 Burke Street, Suite 201
Nashua, NH 03060

Toll Free: 1-866-460-2471

Monday-Thursday 8:00AM - 11:00PM

Friday 8:00AM - 6:30PM

Saturday 8:00AM - 12:00PM



April 7, 2021

Dear Teresa Colamarino:

LENOX HILL RADIOLOGY & MED IMAGING ASSOC PC P has placed these account(s) with our office for collection. Please remit the balance to Balance Healthcare Receivables LLC (BHR) or call us at 1-866-460-2471.

Please detach and return the bottom portion of this letter with your remittance or correspondence and mail it to the below address.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Please call Karen Dubois at 1-866-460-2471.

Creditor(s):	Reference:	Date of Service:	Amount Due:
LENOX HILL RADIOLOGY & MED IMAGING ASSOC PC P	[REDACTED] 1633	11/09/2020	\$50.00
Total Due:			\$50.00

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.

• Please Detach And Return in The Enclosed Envelope With Your Payment •



For on-line payment, visit us at:
[HTTPS://BHRLLC.REPAY.IO](https://bhrllc.repay.io)

Find 'BHR LLC' in the App Store and on Google Play



Call 866-460-2471 to use our automated pay by phone system.

P.O. BOX 905
NASHUA, NH 03061-0905

Personal & Confidential

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Teresa Colamarino
1107 PARK BLVD
MASSAPEQUA PARK NY 11762-2224

BALANCED HEALTHCARE RECEIVABLES
P.O. BOX 9577
MANCHESTER, NH 03108-9577

022460673000240000005000

NEW YORK CITY

New York City Department of Consumer Affairs License Number: 1309368

NEW YORK

(1) Debt collectors, in accordance With the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 e.t seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

(i) The use or threat of violence; (ii) the use of obscene or profane language; and (iii) repeated phone calls made with the intent to annoy, abuse or harass.

(2) "If a creditor or debt collector receives a money judgement against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

- | | |
|---|--|
| 1. Supplemental security Income, (SSI); | 7. Workers' compensation benefits; |
| 2. Social security; | 8. Public or private pensions; |
| 3. Public assistance (welfare); | 9. Veterans' benefits; |
| 4. Spousal support, maintenance (alimony) or child support; | 10. Federal student loans, federal student grants, and federal work study funds; and |
| 5. Unemployment benefits; | 11. Ninety percent of your wages or salary earned in the last sixty days. |
| 6. Disability benefits; | |

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: TERESA COLAMARINO
(b) County of Residence of First Listed Plaintiff: NASSAU
(c) Attorneys: BARSHAY, RIZZO & LOPEZ, PLLC
DEFENDANTS: BALANCED HEALTHCARE RECEIVABLES, LLC
County of Residence of First Listed Defendant: HILLSBOROUGH

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
O 1 U.S. Government Plaintiff
O 2 U.S. Government Defendant
O 3 Federal Question
O 4 Diversity

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

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)
O 1 Original Proceeding
O 2 Removed from State Court
O 3 Remanded from Appellate Court
O 4 Reinstated or Reopened
O 5 Transferred from Another District
O 6 Multidistrict Litigation

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 \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes O No

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

DATE: April 21, 2021
SIGNATURE OF ATTORNEY OF RECORD: /s David Barshay

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.

Case is Eligible for Arbitration

I, _____, counsel for _____, 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: 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, specific the County in which the offending communication was received: NASSAU

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 David Barshay

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: