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Yarborough Koby, Michael Koby, Mark
Taylor, and all others similarly situated

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SILVANA SERAJI, an individual;
APRIL YARBOROUGH KOBY, an
individual; MICHAEL P. KOBY, an
individual; and MARK TAYLOR; on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

CAPITAL MANAGEMENT
SERVICES, LP, a Delaware Limited
Partnership; and JOHN AND JANE
DOES NUMBERS 1 THROUGH 25,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

Plaintiffs, Silvana Seraji, April Yarborough Koby, Michael P. Koby, and
Mark Taylor, on behalf of themselves and all others similarly situated, by way of
Complaint against the Defendants, say:

I. PARTIES

1. SILVANA SERAJI is a natural person.

2. At all times relevant to this complaint, SERAJI was a citizen of the State of New Jersey, and resides in the Borough of Sayreville, Middlesex County, New Jersey.

3. MICHAEL P. KOBY (“KOBY”) is a natural person.

4. At all times relevant to this complaint, KOBY was a citizen of the State of Texas, and resides in the City of Katy, Harris County, Texas.

5. APRIL YARBOROUGH KOBY (“YARBOROUGH”) is a natural person.

6. At all times relevant to this complaint, YARBOROUGH was a citizen of the State of Texas, and resides in the City of Katy, Harris County, Texas.

7. MARK TAYLOR is a natural person.

8. At all times relevant to this complaint, TAYLOR was a citizen of the State of Missouri, and resides in the City of Maysville, Dekalb County, Missouri.

9. At all times relevant to this complaint, CAPITAL MANAGEMENT SERVICES, LP is a for-profit Limited Partnership existing pursuant to the laws of the State of Delaware. CAPITAL MANAGEMENT maintains its principal business address at 726 Exchange Street, Suite 700, City of Buffalo, Erie County, New York.

10. Defendants, JOHN AND JANE DOES NUMBERS 1 THROUGH 25, are sued under fictitious names as their true names and capacities are yet unknown to Plaintiffs. Plaintiffs will amend this complaint by inserting the true names and capacities of these DOE defendant once they are ascertained.

11. The Plaintiffs are informed and believe, and on that basis allege, that Defendants, JOHN AND JANE DOES NUMBERS 1 THROUGH 25, are natural persons and/or business entities all of whom reside or are located within the United States who personally created, instituted and, with knowledge that such practices were contrary to law, acted consistent with and oversaw policies and procedures used by the employees of CAPITAL MANAGEMENT that are the subject of this complaint. Those Defendants personally control the illegal acts, policies, and practices utilized by CAPITAL MANAGEMENT and, therefore, are personally liable for all of the wrongdoing alleged in this Complaint.

II. JURISDICTION & VENUE

12. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

13. Supplemental jurisdiction for Plaintiffs' state law claims arises under 28 U.S.C. § 1367.

14. Declaratory relief is available pursuant to 28 U.S.C. §§2201 and 2202.

15. Venue is appropriate in this federal district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claims of SERAJI occurred within this federal judicial district, and because CAPITAL MANAGEMENT is subject to personal jurisdiction in the State of New Jersey at the time this action is commenced.

16. KOBY, YARBOROUGH, and TAYLOR join their claims with SERAJI pursuant to Fed. R. Civ. P. 20(a)(1) because those claims are with respect to or arise out of the same occurrence or series of transactions or occurrences as the claims of SERAJI, and a question of law or fact is common to all Plaintiffs.

III. PRELIMINARY STATEMENT

17. Plaintiffs, on their own behalf and on behalf of the class they seek to represent, and demanding a trial by jury, bring this action for the illegal practices of the Defendants who used false, deceptive and misleading practices, and other illegal practices, in connection with their attempts to collect alleged debts from the Plaintiffs and others. The Plaintiffs allege that the Defendants' collection practices violate, *inter alia*, the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* ("FDCPA") and the Texas Debt Collection Practices Act, Tex. Fin. Code §§ 392, *et seq.* ("TDCPA").

18. Such practices include, *inter alia*:

(a) Leaving telephonic voice messages for consumers, which fail to

provide meaningful disclosure of CAPITAL MANAGEMENT's identity;

- (b) Leaving telephonic voice messages for consumers, which fail to disclose that the call is from a debt collector; and
- (c) Leaving telephonic voice messages for consumers, which fail to disclose the purpose or nature of the communication (i.e., an attempt to collect a debt).

19. The FDCPA regulates the behavior of collection agencies attempting to collect a debt on behalf of another. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to a number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. Congress enacted the FDCPA to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote uniform State action to protect consumers against debt collection abuses. 15 U.S.C. § 1692(a) - (e).

20. The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation. The Third Circuit has held that whether a debt collector's conduct violates the FDCPA should be judged from

the standpoint of the “least sophisticated consumer.” *Graziano v. Harrison*, 950 F.2d 107, 111, fn5 (3d Cir. 1991).

21. To prohibit harassment and abuses by debt collectors the FDCPA, at 15 U.S.C. § 1692d, provides that a debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt and names a non-exhaustive list of certain *per se* violations of harassing and abusive collection conduct. 15 U.S.C. § 1692d(1)-(6). Among the *per se* violations is the placement of telephone calls without meaningful disclosure of the caller’s identity, 15 U.S.C. § 1692d(6).

22. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the use of false, deceptive, and misleading collection letters and names a non-exhaustive list of certain *per se* violations of false and deceptive collection conduct. 15 U.S.C. § 1692e(1)-(16). Among these *per se* violations are: false representations that a communication is from an attorney, 15 U.S.C. § 1692e(3); and the failure by debt collectors to disclose in initial oral communications that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent oral communications with consumers that the communication is from a debt collector, 15 U.S.C. § 1692e(11).

23. The TDCPA, like the FDCPA, prohibits debt collectors from using deceptive, coercive, threatening, abusive, and other repugnant practices for the purpose of collecting a consumer debt.

24. The Plaintiffs, on behalf of themselves and all others similarly situated, seek statutory damages, attorney fees, costs, and all other relief, equitable or legal in nature, as deemed appropriate by this Court, pursuant to the FDCPA, TDCPA, and all other common law or statutory regimes. The Plaintiffs, on behalf of themselves and all others similarly situated, request that they and the class members be awarded statutory, common law, or actual damages payable by the Defendants.

25. This case involves an obligation, or an alleged obligation, primarily for personal, family, or household purposes, and arising from a transaction or alleged transaction. As such, this action arises out of “consumer debt” as that term is defined by Tex. Fin. Code § 392.001(2).

IV. FACTS REGARDING SERAJI

26. On July 15, 2008, CAPITAL MANAGEMENT sought to speak with SERAJI concerning an alleged financial obligation (“Seraji Obligation”).

27. The Seraji Obligation arose out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and not primarily for any

business purpose.

28. Defendants contend that the Seraji Obligation is in default.

29. The alleged Seraji Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

30. SERAJI is, at all times relevant to this complaint, a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

31. SERAJI is informed and believes, and on that basis alleges, that sometime prior to July 15, 2008, the creditor of the Seraji Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to CAPITAL MANAGEMENT for collection.

32. To date, SERAJI has not received any written communications from CAPITAL MANAGEMENT.

33. On at least the date of July 15, 2008, CAPITAL MANAGEMENT left SERAJI the following “live” Message on her home telephone voicemail system:

This message is meant solely for Silvana Seraji, this is Mary Martin from Capital Management. You need to contact me at 800-767-5196; my direct extension is 7343. When returning my call, use your Reference Number: 40198709.

34. At the time SERAJI received the above Message, she did not know:

- (a) the identity of caller;
- (b) that the caller was a debt collector; or
- (c) that the call concerned the collection of a debt.

35. The telephone number 800-767-5196 is answered by CAPITAL MANAGEMENT.

V. FACTS REGARDING YARBOROUGH

36. By letter dated July 2, 2008 from CAPITAL MANAGEMENT addressed to KOBY, CAPITAL MANAGEMENT alleged that YARBOROUGH incurred a financial obligation to “Chase Bank USA, N.A.” and that the alleged obligation was “delinquent” (“Yarborough Obligation”).

37. The Yarborough Obligation arose out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and not primarily for any business purpose.

38. Defendants contend that the Yarborough Obligation is in default.

39. The alleged Yarborough Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

40. The alleged Yarborough Obligation is a “consumer debt” as defined by Tex. Fin. Code § 392.001(2).

41. YARBOROUGH is, at all times relevant to this complaint, a “consumer” as that term is defined by 15 U.S.C. § 1692a(3) and Tex. Fin. Code § 392.001(1).

42. YARBOROUGH is informed and believes, and on that basis alleges, that sometime prior to August 8, 2008, the creditor of the Yarborough Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to CAPITAL MANAGEMENT for collection.

43. On at least the date of December 15, 2008, CAPITAL MANAGEMENT left YARBOROUGH the following “live” Message on her home telephone voicemail system:

Toll-free at 1-800-960-2163. This is an important business call, not a solicitation. Once again, the toll-free number is 1-800-960-2163. Thank you.

44. At the time YARBOROUGH received the above Message, she did not know:

- (a) the identity of caller;
- (b) that the caller was a debt collector; or
- (c) that the call concerned the collection of a debt.

45. The telephone number 1-800-960-2163 is answered by CAPITAL MANAGEMENT.

VI. FACTS REGARDING KOBY

46. By letter dated July 2, 2008 from CAPITAL MANAGEMENT addressed to KOBY, CAPITAL MANAGEMENT alleged that KOBY incurred a financial obligation to “Chase” and that the alleged obligation was “delinquent”

(“Koby Obligation”).

47. On information and belief, the Koby Obligation arose out of one or more transactions in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and not primarily for any business purpose.

48. Defendants contend that the Koby Obligation is in default.

49. The alleged Koby Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

50. The alleged Koby Obligation is a “consumer debt” as defined by Tex. Fin. Code § 392.001(2).

51. KOBY is, at all times relevant to this complaint, a “consumer” as that term is defined by 15 U.S.C. § 1692a(3) and Tex. Fin. Code § 392.001(1).

52. KOBY is informed and believes, and on that basis alleges, that sometime prior to July 2, 2008, the creditor of the Koby Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to CAPITAL MANAGEMENT for collection.

53. On at least July 15, 2008, July 23, 2008, July 24, 2008 and July 25, 2008, CAPITAL MANAGEMENT left KOBY a message on his home voicemail system which were substantially the same, as follows:

Hi. This message is for Michael Koby. It is Christina McRae along with Capital Management. I’m calling on behalf of Chase

Bank. Please contact me today at 1-800-504-2401. When calling, please use reference number 40794755. It is important that you return this call as soon as you receive this message today.

54. On at least the date of October 6, 2008 and October 14, 2008, CAPITAL MANAGEMENT left KOBY the following “pre-recorded” Message on his home telephone voicemail system:

Please contact Capital Management Services regarding an important business matter, at 1-800-504-2401. This call is not a solicitation. Again, that phone number is 1-800-504-2401. Thank you.

55. At the time KOBY received the above Message, he did not know:

- (a) the identity of caller;
- (b) that the caller was a debt collector; or
- (c) that the call concerned the collection of a debt.

56. The telephone number 1-800-504-2401 is answered by CAPITAL MANAGEMENT.

VII. FACTS REGARDING TAYLOR

57. By letter dated August 19, 2008 from CAPITAL MANAGEMENT addressed to TAYLOR, CAPITAL MANAGEMENT alleged that TAYLOR incurred a financial obligation to “Washington Mutual” and that the alleged obligation was “delinquent” (“Taylor-WaMu Obligation”).

58. By letter dated September 7, 2008 from CAPITAL MANAGEMENT addressed to TAYLOR, CAPITAL MANAGEMENT alleged that TAYLOR incurred a financial obligation to “Chase Bank USA, N.A.” and that the alleged obligation was “delinquent” (“Taylor-Chase Obligation”).

59. The Taylor-WaMu Obligation and the Taylor-Chase Obligation each arose out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and not primarily for any business purpose.

60. Defendants contend that both the Taylor-WaMu Obligation and the Taylor-Chase Obligation are in default.

61. The alleged Taylor-WaMu Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

62. The alleged Taylor-Chase Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

63. TAYLOR is, at all times relevant to this complaint, a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

64. TAYLOR is informed and believes, and on that basis alleges, that sometime prior to October 15, 2008, the creditors of the Taylor-WaMu Obligation and the Taylor-Chase Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to CAPITAL

MANAGEMENT for collection.

65. On at least the date of September 12, 2008, CAPITAL MANAGEMENT left TAYLOR the following “live” Message on his cellular telephone voicemail system:

Hi Mark, this Gary with Capital Management. Perhaps either you or your wife Tracy can call us back today; number is 866-201-4972. Why don't you give us a call when you get this message Mark Taylor.

66. At the time TAYLOR received the above Message, he did not know:

- (a) the identity of caller;
- (b) that the caller was a debt collector; or
- (c) that the call concerned the collection of a debt.

67. The telephone number 866-201-4972 is answered by CAPITAL MANAGEMENT.

IX. FACTS COMMON TO ALL PLAINTIFFS

68. CAPITAL MANAGEMENT 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 U.S. Mail, telephone, and Internet.

69. CAPITAL MANAGEMENT is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

70. CAPITAL MANAGEMENT is a “debt collector” as defined by Tex. Fin. Code § 392.001(6).

71. CAPITAL MANAGEMENT is also a “Third-party debt collector” as defined by Tex. Fin. Code § 392.001(7).

72. At all times relevant to this complaint, CAPITAL MANAGEMENT has engaged in action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor, which constitutes “debt collection” as that term is defined by Tex. Fin. Code § 392.001(5).

73. Within the one year immediately preceding the filing of this complaint, CAPITAL MANAGEMENT contacted each of the Plaintiffs via telephone in an attempt to collect their respective alleged debts.

74. Within the one year immediately preceding the filing of this complaint, each of the Plaintiffs received at least one “live” or “pre-reorded” telephonic voice message (“Messages”) on their home answering machine, from a third party, and/or their cellular telephone.

75. Each of the Messages was left by persons employed by CAPITAL MANAGEMENT as a “debt collector” as defined by 15 U.S.C. § 1692a(6).

76. Each of the Messages was left by persons employed by CAPITAL MANAGEMENT as a “debt collector” as defined by Tex. Fin. Code § 392.001(6).

77. Each of the Messages was left in connection with the collection of a “debt” as defined by 15 U.S.C. § 1692a(5).

78. Each of the Messages was left in connection with the collection of a “debt” as defined by Tex. Fin. Code § 392.001(5).

79. Each of the Messages is a “communication” as defined by 15 U.S.C. § 1692a(2).

80. Each of the Messages failed to provide meaningful disclosure of CAPITAL MANAGEMENT’s identity as the caller.

81. Each of the Messages failed to disclose the purpose or nature of the communication (i.e., an attempt to collect a debt).

82. Each of the Messages failed to disclose that the communication was from a debt collector.

83. Each of the Messages is false, deceptive, and misleading in that the natural consequence of these communications is to harass, oppress, or abuse the least sophisticated consumer and other persons in violation of the FDCPA and TDCPA.

84. Each of the Messages is false, deceptive, and misleading insofar as CAPITAL MANAGEMENT failed to give meaningful disclosure of its identity, disclose the purpose of its call, or disclose that CAPITAL MANAGEMENT is a debt collector, thereby circumventing Congress’s intent to permit the Plaintiffs to make an informed decision as to whether they wished to speak with a debt collector.

85. Each of the Messages is false, deceptive, and misleading insofar as CAPITAL MANAGEMENT failed to give meaningful disclosure of its identity, disclose the purpose of its call, or disclose that CAPITAL MANAGEMENT is a debt collector, thereby circumventing the intent of the Texas Legislature to permit YARBOROUGH and KOBY to make an informed decision as to whether they wished to speak with a debt collector.

X. POLICIES AND PRACTICES COMPLAINED OF

86. It is Defendants' policy and practice to leave telephonic voice messages for consumers and other persons, such as the Messages, that uniformly:

- (a) Failed to provide meaningful disclosure of CAPITAL MANAGEMENT's identity as the caller;
- (b) Failed to disclose that the communication was from a debt collector; and
- (c) Failed to disclose the purpose or nature of the communication (i.e., an attempt to collect a debt).

87. On information and belief, the Messages, as alleged in this complaint under the facts common to the Plaintiffs, number at least in the thousands, all of which uniformly:

- (a) Failed to provide meaningful disclosure of CAPITAL MANAGEMENT's identity as the caller;

- (b) Failed to disclose the purpose or nature of the communication (i.e., an attempt to collect a debt); and
- (c) Failed to disclose that the communication was from a debt collector.

XI. CLASS ALLEGATIONS

88. This action is brought as a class action. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure and seek to certify two classes.

89. The First Plaintiff Class consists of all persons with addresses in the United States of America who received from CAPITAL MANAGEMENT a telephonic voice message left after one-year immediately preceding the commencement of this civil action up through and including the date of preliminary class certification, which message failed to meaningfully identify CAPITAL MANAGEMENT as the caller, disclose that the communication was from a debt collector, or state the purpose or nature of the communication.

90. The Second Plaintiff Class consists of all persons with addresses in the State of Texas who received from CAPITAL MANAGEMENT a telephonic voice message left after one-year immediately preceding the commencement of this civil action up through and including the date of preliminary class certification, which message failed to meaningfully identify CAPITAL MANAGEMENT as the

caller, disclose that the communication was from a debt collector, or state the purpose or nature of the communication.

91. The identities of all class members are readily ascertainable from the records of CAPITAL MANAGEMENT and those companies and governmental entities on whose behalf CAPITAL MANAGEMENT attempts to collect debts.

92. Excluded from the Plaintiff Classes are the Defendants and all officers, members, partners, managers, directors, and employees of CAPITAL MANAGEMENT and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.

93. With respect to all claims under the FDCPA, the class period is one year prior to the filing of the initial complaint in this action and continues up to and including the date of preliminary class certification.

94. With respect to all claims under the TDCPA, the class period is one year prior to the filing of the initial complaint in this action and continues up to and including the date of preliminary class certification.

95. There are questions of law and fact common to the First Plaintiff Class. Those principal issues are whether the Defendants' telephonic voice messages, such as the Messages, violate 15 U.S.C. §§ 1692d(6) and 1692e(11).

96. There are questions of law and fact common to the Second Plaintiff Class. Those principal issues are whether the Defendants' telephonic voice

messages, such as the Messages, violate Tex. Fin. Code §§ 392.304(5)(A), 392.304(5)(B), and 392.304(19).

97. The Plaintiffs' claims are typical of the class members as all are based upon the same facts and legal theories.

98. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff Class defined in this complaint.

99. The Plaintiffs have retained counsel whom they seek to be appointed by the Court as class counsel.

100. Plaintiffs' counsel is experienced in handling consumer lawsuits, complex litigation, and class actions, and has knowledge of the applicable law.

101. Neither the Plaintiffs nor their attorneys have any interests which might cause them not to vigorously pursue this action.

102. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- (a) *Numerosity*: The Plaintiffs are informed and believe, and on that basis allege, that the classes defined above are so numerous that joinder of all members would be impractical.
- (b) *Commonality*: Common questions of law and fact exist as to all members of the Plaintiff Classes and those questions predominate

over any questions or issues involving only individual class members.

- (i) With respect to the First Plaintiff Class, the principal issues are whether the Defendants' telephonic voice messages, such as the Messages, violate 15 U.S.C. §§ 1692d(6) and 1692e(11).
- (ii) With respect to the Second Plaintiff Class, the principal issues are whether the Defendants' telephonic voice messages, such as the Messages, violate Tex. Fin. Code §§ 392.304(5)(A), 392.304(5)(B), and 392.304(19).
- (c) *Typicality*: The Plaintiffs' claims are typical of the claims of the class members. Plaintiffs and all members of the Plaintiff Classes have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- (d) *Adequacy*: The Plaintiffs will fairly and adequately protect the interests of the class members insofar as Plaintiffs have no interests that are adverse to the absent class members. The Plaintiffs are committed to vigorously litigating this matter. Plaintiffs have also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiffs nor

their counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.

- (e) *Superiority*: A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender. An important public interest will be served by addressing the matter as a class action, substantial expenses to the litigants and to the judicial system will be realized, and the potential inconsistent or contradictory adjudications will be avoided as contemplated by Rule 23(b)(1) of the Federal Rules of Civil Procedure.

103. Certification of a class under Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure is appropriate because adjudications with respect to individual members create a risk of inconsistent or varying adjudications which could establish incompatible standards of conduct for Defendants, which, on information and belief, collect debts throughout the United States of America.

104. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that a determination that Messages violate 15 U.S.C. §1692d(6) and/or §1692e(11) is tantamount to declaratory relief and any monetary relief under the FDCPA would be merely incidental to that determination.

105. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that a determination that Messages violate Tex. Fin. Code §§ 392.304(5)(A), 392.304(5)(B), and 392.304(19) would permit YARBOROUGH, KOBY, and the Second Plaintiff Class to obtain injunctive relief pursuant to Tex Fin. Code § 392.403(a)(1).

106. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Classes predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

XII. FIRST CAUSE OF ACTION
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
(AGAINST ALL DEFENDANTS)

107. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs of this Complaint.

108. Defendants violated the FDCPA. Defendants' violations with respect to the Messages include, but are not limited to, the following:

- (a) Placing telephone calls without providing meaningful disclosure of CAPITAL MANAGEMENT's identity as the caller in violation of 15 U.S.C. § 1692d(6);
- (b) Failing to state the nature or purpose of the call in violation of 15 U.S.C. § 1692d(6);
- (c) Failing to disclose in its initial communication with the consumer, when that communication is oral, that CAPITAL MANAGEMENT is attempting to collect a debt and that any information obtained will be used for that purpose, which constitutes a violation of 15 U.S.C. § 1692e(11); and
- (d) Failing to disclose in all oral communications that CAPITAL MANAGEMENT is a debt collector in violation of 15 U.S.C. § 1692e(11).

XIII. SECOND CAUSE OF ACTION
VIOLATIONS OF THE TEXAS DEBT COLLECTION PRACTICES ACT
(BY YARBOROUGH & KOBY AGAINST ALL DEFENDANTS)

109. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs of this Complaint.

110. Defendants violated the TDCPA. Defendants' violations with respect to the Messages include, but are not limited to, the following:

- (a) The failure to disclose in CAPITAL MANAGEMENT's initial communication with the consumer, when the communication is oral, that CAPITAL MANAGEMENT is attempting to collect a debt and that any information obtained will be used for that purpose, which constitutes a violation of Tex. Fin. Code § 392.304(5)(A); and
- (b) Failing to disclose in subsequent oral communications that CAPITAL MANAGEMENT is a debt collector in violation of Tex. Fin. Code § 392.304(5)(B).

111. Leaving telephonic voice messages in an attempt to collect a debt, wherein CAPITAL MANAGEMENT violated 15 U.S.C. §§ 1692e, 1692d, and subsections thereof, as set forth above in Plaintiffs' First Cause of Action, which is, therefore, also a violation of Tex. Fin. Code § 392.304(19).

XIV. PRAYER FOR RELIEF

112. WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and in favor of the putative classes as follows:

A. For the FIRST CAUSE OF ACTION:

- (i) An order certifying that the First Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure

and appointing Plaintiffs and the undersigned counsel to represent the First Plaintiff Class as previously set forth and defined above.

- (ii) An award of the maximum statutory damages for Plaintiffs and the First Plaintiff Class pursuant to 15 U.S.C. § 1692k(a)(2)(B);
- (iii) Declaratory relief adjudicating that the Defendants' telephone messages violate the FDCPA pursuant to 28 U.S.C. §§ 2201, 2202;
- (iv) Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(B)(3); and
- (v) For such other and further relief as may be just and proper.

B. For the SECOND CAUSE OF ACTION:

- (i) An order certifying that the Second Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and Tex Fin. Code § 392.403(a), and appointing YARBOROUGH, KOBAY, and the undersigned counsel to represent the Second Plaintiff Class;
- (ii) For injunctive relief for YARBOROUGH, KOBAY, and the Second Plaintiff Class, pursuant to Tex Fin. Code § 392.403(a)(1), including enjoining the Defendants from engaging in further violations of Chapter 392 of the Texas Finance Code as complained of herein;
- (iii) Attorney's fees, litigation expenses, and costs pursuant to Tex Fin.

Code § 392.403(b); and

(iv) For such other and further relief as may be just and proper.

WACKS & HARTMANN, LLC

Dated: July 14, 2009

/s/ Philip D. Stern

PHILIP D. STERN

Attorneys for Plaintiffs, Silvana Seraji, April
YARBOROUGH, Michael Koby, Mark Taylor,
and all others similarly situated

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(Please an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice 610 Agriculture 422 Appeal 28 USC 158 400 State Reapportionment
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability 620 Other Food & Drug 423 Withdrawal 28 USC 157 410 Antitrust
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability 625 Drug Related Seizure of Property 21 USC 881 430 Banks and Banking
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud 630 Liquor Laws 820 Copyrights 450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending 640 R.R. & Truck 830 Patent 460 Deportation
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage 650 Airline Regs. 840 Trademark 470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability 660 Occupational Safety/Health 861 HIA (1395ff) 480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle Product Liability 690 Other 862 Black Lung (923) 490 Cable/Sat TV
160 Stockholders' Suits 360 Other Personal Injury 710 Fair Labor Standards Act 863 DIWC/DIWW (405(g)) 810 Selective Service
190 Other Contract 441 Voting 720 Labor/Mgmt. Relations 864 SSID Title XVI 850 Securities/Commodities/Exchange
195 Contract Product Liability 442 Employment 730 Labor/Mgmt. Reporting & Disclosure Act 865 RSI (405(g)) 875 Customer Challenge 12 USC 3410
196 Franchise 443 Housing/Accommodations 740 Railway Labor Act 866 RSI (405(g)) 890 Other Statutory Actions
210 Land Condemnation 444 Welfare 790 Other Labor Litigation 870 Taxes (U.S. Plaintiff or Defendant) 891 Agricultural Acts
220 Foreclosure 445 Amer. w/Disabilities - Employment 791 Empl. Ret. Inc. Security Act 871 IRS—Third Party 26 USC 7609 892 Economic Stabilization Act
230 Rent Lease & Ejectment 446 Amer. w/Disabilities - Other 900 Appeal of Fee Determination Under Equal Access to Justice
240 Torts to Land 440 Other Civil Rights 462 Naturalization Application 463 Habeas Corpus - Alien Detainee 465 Other Immigration Actions 893 Environmental Matters
245 Tort Product Liability 510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 894 Energy Allocation Act
290 All Other Real Property 895 Freedom of Information Act 950 Constitutionality of State 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 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

Explanation:
DATE SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SILVANA SERAJI, ET AL.,

V.

SUMMONS IN A CIVIL CASE

**CAPITAL MANAGEMENT SERVICES, LP, ET
AL.,**

CASE NUMBER: 3:09-CV-03465-MLC-DEA

TO: *(Name and address of Defendant):*

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY
(Name and address)

an answer to the complaint which is served on you with this summons, within **20** days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

WILLIAM T. WALSH

CLERK

BETH JONIAK

(By) DEPUTY CLERK



ISSUED ON 2009-07-15 16:19:03.0, Clerk
USDC NJD

