

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

MARY ANNE CAPRIO, on behalf of  
herself and all others similarly situated,

Plaintiffs,

-against-

APEX ASSET MANAGEMENT, LLC,  
and JOHN DOES 1-25,

Defendants.

Civil Case Number: \_\_\_\_\_

**CIVIL ACTION**

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

Plaintiff, MARY ANNE CAPRIO, on behalf of himself and all others similarly situated (hereinafter "Plaintiff") residing at 54 Wendee Way, Sewell, New Jersey 08080, by and through her undersigned attorney, alleges against the above-named Defendant, APEX ASSET MANAGEMENT, LLC, with its principal executive office located at 2501 Oregon Pike, Suite 102, Lancaster, Pennsylvania 17601, (hereinafter "APEX"), its employees, agents, and successor alleges the following:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from the Defendant's violation of 15 U.S.C. §1692 *et seq.*, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331. This is an action for violations of 15 U.S.C. §1692 *et seq.*

3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because the acts and transactions that give rise to this action occurred, in substantial part, in this district.

**DEFINITIONS**

4. As used in reference to the FDCPA, the terms “creditor,” “consumer,” “debt,” and “debt collector” are defined in §803 of the FDCPA and 15 U.S.C. §1692(a).

**PARTIES**

5. The FDCPA, 15 U.S.C. §1692 *et seq.*, which prohibits certain debt collection practices provides for the initiation of court proceedings to enjoin violations of the FDCPA and to secure such equitable relief as may be appropriate in each case.

6. Plaintiff is a natural person and a resident of the State of New Jersey, County of Gloucester and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).

7. Defendant APEX is a foreign limited liability company with its principal executive office located at 2501 Oregon Pike, Suite 102, Lancaster, Pennsylvania 17601.

8. Upon information and belief, Defendant APEX is a limited liability company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

9. Defendant APEX is a “Debt Collector” as that term is defined by 15 U.S.C. §1692(a)(6).

**CLASS ACTION ALLEGATIONS**

10. Plaintiff brings this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter “FRCP”), on behalf of himself and all New Jersey consumers and their successors in interest (the “Class”), who have received debt collection letters and/or notices from the Defendant which are in violation of the FDCPA, as described in this Complaint.

11. This Action is properly maintained as a statewide class action. The Class consists of:

- All New Jersey consumers who were sent collection letters and/or notices from the Defendant attempting to collect an obligation owed or allegedly owed to Virtua Express/Virtua Immediate Care, that contained at least one of the alleged violations arising from the Defendant's violation of 15 U.S.C. § 1692 *et seq.*
- The Class period begins one year to the filing of this Action.

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

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from the Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons (*See **Exhibit A***, except that

the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);

- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
  - a. Whether Defendant violated various provisions of the FDCPA;
  - b. Whether Plaintiff and the Class have been injured by Defendant's conduct;
  - c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
  - d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.
- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.

- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.
- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

**STATEMENT OF FACTS**

13. Plaintiff is at all times to this lawsuit, a "consumer" as that term is defined by 15 U.S.C. §1692a(3).

14. Sometime prior to August 20, 2013 Plaintiff allegedly incurred a financial obligation to Virtua Express/Virtua Immediate Care ("Virtua") in the amount of \$36.25. *See Exhibit A.*

15. The Virtua obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes

16. The alleged Virtua obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).

17. Virtua is a "creditor" as defined by 15 U.S.C. § 1692a(4).

18. On or about August 12, 2013, Plaintiff made payment in full to Virtua in the amount of \$36.25. *See Exhibit B.*

19. APEX contends that the Virtua debt is past due.

20. APEX collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and Internet.

21. At some time prior to August 20, 2013 Virtua contracted APEX to collect the Virtua debt.

22. Prior to August 20, 2013, Virtua had notice that Plaintiff paid the alleged debt. *See Exhibit B.*

23. On or about August 20, 2013 APEX had notice that Plaintiff paid the alleged debt. *See Exhibit B.*

24. On or about August 20, 2013, Defendant APEX, caused to be delivered to Plaintiff an initial collection letter in an attempt to collect the alleged Virtua debt. *See Exhibit A.*

25. Said letter was sent or caused to be sent by persons employed by APEX as a “debt collector” as defined by 15 U.S.C. §1692a(6).

26. Said letter was sent to Plaintiff in connection with the collection of a “debt” as defined by 15 U.S.C. §1692a(5).

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

28. Upon receipt of APEX's letter dated August 20, 2013, Plaintiff read said letter.

29. The August 20, 2013 letter stated in part:

You are asked to pay or dispute this account with this office. Please provide the above number and balance when writing or calling about your account.

Telephone 717-519-1770 or 888-592-2144

30. A dispute of a debt, to be effective, in the Third Circuit, must be in writing. Graziano v. Harrison, 950 F.2d 107, 112 (3d Cir. 1991).

31. APEX harassed or abused Plaintiff pursuant to 15 U.S.C. §1692d by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid.

32. APEX falsely represented the character, amount or legal status of the alleged debt by 15 U.S.C. §1692e(2)(A) by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid.

33. APEX used false, deceptive or misleading representation or means to threatened to take an action that cannot legally be taken or that is not intended to be taken pursuant to 15 U.S.C. §1692e(5) by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid.

34. APEX used false representations or deceptive means to collect or attempt to collect any debt pursuant to 15 U.S.C. §1692e(10) by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid.

35. APEX used unfair or unconscionable means to collect or attempt to collect any pursuant to 15 U.S.C. §1692f by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid.

**POLICIES AND PRACTICES COMPLAINED OF**

36. It is Defendants' policy and practice to send initial written collection communications, in the form annexed hereto as **Exhibit A**, which violate the FDCPA, by inter alia:

- (a) Providing language that misrepresents to the least sophisticated consumer that she can call either call the Apex *or* write to Apex at the address on the letter, to dispute the alleged debt, when in fact she must dispute the alleged debt in writing for the dispute to be effective.
- (b) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt;
- (c) Falsely representing the character, amount or legal status of any debt;

- (d) Threatening to take any action that cannot legally be taken or that is not intended to be taken; and
- (e) Using false representations or deceptive means to collect or attempt to collect any debt.

37. On information and belief, Defendants sent a written communication, in the form annexed hereto as **Exhibit A** to at least 50 natural persons in the State of New Jersey within one year of the date of this Complaint.

### COUNT I

#### **FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 VIOLATION OF 15 U.S.C. § 1692g(a)(5)**

38. Plaintiff repeats the allegations contained in paragraphs 1 through 37 as if the same were here set forth at length.

39. Collection letters and/or notices such as those sent by Defendants are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

40. Section 1692g of the FDCPA requires the debt collector to give what is commonly referred to as a thirty-day (30) notice within five (5) days of its communication with the consumer.

41. Section 1692g(a)(3),(4),(5) of the FDCPA requires the debt collector:

Within five days after the initial communication with a consumer in connection with the collection of any debt... send the consumer a written notice containing --- 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 --- 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; and --- 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.

42. APEX's letter to Plaintiff, dated August 20, 2013 contained the required validation notice in the font and font size as the body of the letter.

43. The APEX's letter to Plaintiff, dated August 20, 2013, states in part;

You are asked to pay or dispute this account with this office. Please provide the above number and balance when writing or calling about your account.

Telephone 717-519-1770 or 888-592-2144

44. The least sophisticated consumer upon reading the letter from APEX, will be confused as to method required to effectively dispute the alleged debt.

45. Upon reading paragraph **three** of the notice from APEX, the least sophisticated consumer would believe that he should choose either of the instructions as set forth in the second paragraph of the notice and either call APEX at one of the two telephone numbers provided *or* write to APEX at the address on the letter, to dispute the alleged debt.

46. A dispute of a debt, to be effective, in the Third Circuit, must be in writing. Graziano v. Harrison, 950 F.2d 107, 112 (3d Cir. 1991).

47. APEX violated Section 1692g et seq. of the FDCPA by providing instructional language, which is confusing and makes the least sophisticated consumer uncertain as to what he must do to effectively dispute the alleged debt.

48. By reason thereof, Defendants are liable to Plaintiff for judgment that Defendants' conduct violated Section 1692g et seq., of the FDCPA, statutory damages, costs and attorneys' fees.

**COUNT II**

**FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692  
VIOLATION OF 15 U.S.C. § 1692e(10)**

49. Plaintiff repeats the allegations contained in paragraphs 1 through 48 as if the same were here set forth at length.

50. Section 1692e(10) of the FDCPA prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.

51. Defendants violated Section 1692e(10) of the FDCPA providing language that misrepresents to the least sophisticated consumer that he can call either call Apex at one of the two telephones numbers provided *or* write to APEX at the address on the letter, to dispute the alleged debt, when in fact he must dispute the alleged debt in writing for the dispute to be effective.

52. By reason thereof, Defendants are liable to Plaintiff for declaratory judgment that Defendants' conduct violated Section 1692e(10) of the FDCPA, statutory damages, costs and attorneys' fees.

**COUNT III**

**FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692  
VIOLATION OF 15 U.S.C. §1692d et seq.**

53. Plaintiff repeats the allegations contained in paragraphs 1 through 52 as if the same were set forth at length.

54. 15 U.S.C. §1692d makes it a violation to "...harass, oppress or abuse any person in connection with the collection of a debt."

55. APEX violated 15 U.S.C. §1692d by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid. *See Exhibit A; Exhibit B.*

#### COUNT IV

##### **FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692 VIOLATION OF 15 U.S.C. §1692e et seq**

56. Plaintiff repeats the allegations contained in paragraphs 1 through 55 as if the same were set forth at length.

57. 15 U.S.C. §1692e(2)(A) makes it a violation to falsely represent "...the character, amount or legal status of any debt...".

58. 15 U.S.C. §1692e(5) makes it a violation to threaten to take any action that cannot legally be taken or that is not intended to be taken.

59. 15 U.S.C. §1692e(10) makes it a violation to use false representations or deceptive means to collect or attempt to collect any debt.

60. APEX violated 15 U.S.C. §§1692e(2)(A); 1692e(5); and 1692e(10) by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid. *See Exhibit A; Exhibit B.*

#### COUNT V

##### **FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692 VIOLATION OF 15 U.S.C. §1692f et seq**

61. Plaintiff repeats the allegations contained in paragraphs 1 through 60 as if the same were set forth at length.

62. 15 U.S.C §1692f makes it a violation to use unfair or unconscionable means to collect or attempt to collect any debt

63. APEX violated 15 U.S.C §1692f by causing a collection letter to be sent to Plaintiff for an alleged debt that had been previously paid. *See Exhibit A; Exhibit B.*

**WHEREFORE**, Plaintiff demands judgment against the Defendant on each count as follows:

(a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and the attorney, Joseph K. Jones, Esq., as Class Counsel;

(b) Issuing a preliminary and/or permanent injunction restraining Defendants, their employees, agents and successors from, *inter alia*, engaging in conduct and practices that are in violation of the FDCPA;

(c) Issuing a declaratory Order requiring Defendants to make corrective disclosures;

(d) Awarding Plaintiff and the Class statutory damages;

(e) Awarding Plaintiff and the Class actual damages;

(f) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses; and

(g) Awarding Plaintiff and the Class such other and further relief as the Court may deem just and proper.

Dated: Fairfield, New Jersey  
August 29, 2013

/s/ Joseph K. Jones  
Joseph K. Jones (JJ-5509)  
Law Offices of Joseph K. Jones, LLC  
375 Passaic Avenue, Suite 100  
Fairfield, New Jersey 07004  
(973) 227-5900 telephone  
(973) 244-0019 facsimile  
jkj@legaljones.com

**DEMAND FOR TRIAL BY JURY**

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

/s/ Joseph K. Jones  
Joseph K. Jones

**CERTIFICATION PURSUANT TO LOCAL RULE 11.2**

I, Joseph K. Jones, the undersigned attorney of record for Plaintiff do hereby certify to my own knowledge and based upon information available to me at my office, that the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: August 29, 2013

/s/ Joseph K. Jones  
Joseph K. Jones

# Exhibit

A



2501 OREGON PIKE STE 102  
 LANCASTER PA 17601-4890  
 717-519-1770 or 888-592-2144

|                   |                                        |
|-------------------|----------------------------------------|
| Date:             | 08/20/13                               |
| Account For:      | VIRTUA EXPRESS / VIRTUA IMMEDIATE CARE |
| Client Reference: | [REDACTED]                             |
| Balance Due:      | \$36.25                                |
| Service Date:     | 02/12/13                               |

08/20/13

Dear MARYANNE CAPRIO:

Your account(s) with VIRTUA EXPRESS / VIRTUA IMMEDIATE CARE has been placed for collection.

Account Listing

| Name            | Client Reference | Client Name                | Service Date | Balance Due |
|-----------------|------------------|----------------------------|--------------|-------------|
| CAPRIO MARYANNE | [REDACTED]       | VIRTUA EXPRESS / VIRTUA IM | 02/12/13     | 36.25       |

You are asked to pay or dispute this account directly with this office. Please provide the above account number and balance when writing or calling about your account.

Telephone: 717-519-1770 or 888-592-2144

This is an attempt to collect a debt. Any information obtained will be used for that purpose. 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 after receiving this notice, this office will obtain verification of the debt and mail you a copy of such verification. If you request from this office in writing within 30 days after receiving this notice, we will provide you with the name and address of the original creditor if different from current creditor.

**This communication is from a debt collector.**

|                                     |                                                                                |                                                           |
|-------------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------------------|
| To Pay Online<br>No Convenience Fee | <a href="http://apex.statementmanagement.com">apex.statementmanagement.com</a> | Acct : [REDACTED]<br>Last Name: CAPRIO<br>DOB: [REDACTED] |
|-------------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------------------|

Please tear off and return lower portion with payment.

PO BOX 5407  
 LANCASTER PA 17606-5407



00851

If you wish to pay by credit card, please enter the information in the spaces provided.

|                                     |                               |                                           |                                   |
|-------------------------------------|-------------------------------|-------------------------------------------|-----------------------------------|
| <input type="checkbox"/> MasterCard | <input type="checkbox"/> VISA | <input type="checkbox"/> American Express | <input type="checkbox"/> Discover |
| Card #                              | Security Code                 | Expiration                                |                                   |
| Billing Address                     |                               |                                           |                                   |
| Signature                           |                               | Amount Authorized                         | \$                                |



VEX001 30216727 1240 JER H1  
 MARYANNE CAPRIO

44204-19A  
 3

APEX Asset Management, LLC  
 PO BOX 5407  
 LANCASTER PA 17606-5407



|                  |            |
|------------------|------------|
| Account Number:  | [REDACTED] |
| Pay this amount: | \$36.25    |
| Date:            | 08/20/13   |

# Exhibit

# B

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |

[Skip to content](#) <div>Javascript must be enabled for the correct page display</div>

**Wayne Caprio**

- ALERTS & MESSAGES
- PROFILE
- HELP
- LOG OUT



August 23, 2013 August 23, 2013 **HEALTH CARE PAY MY PROVIDER CLAIM**  
[BACK](#)

## Details

### PAY MY PROVIDER DETAILS

|                            |                                                                                                                              |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Claim Type:                | Online HEALTH CARE Pay My Provider (via Pick & Process)                                                                      |
| Claim Status:              | Claim Approved                                                                                                               |
| Line Amount:               | <b>\$36.25</b>                                                                                                               |
| Description:               | <b>Health plan claim from medical plan provider (total not covered by that plan)</b>                                         |
| Service Date:              | <b>2/12/13</b>                                                                                                               |
| Patient:                   | <b>Mary Anne Caprio (Spouse)</b>                                                                                             |
| Eligible for Payment From: | (1) Health Care [REDACTED]<br><i>Not to be paid from any other eligible program per selection made in Pick &amp; Process</i> |
| Payment Status:            | <b>Paid in Full</b>                                                                                                          |
| Pay From Account:          | [REDACTED]<br><i>Do not pay from any other eligible program</i>                                                              |

### TRACKING

|                 |            |
|-----------------|------------|
| Entered Online: | 8/8/13     |
| Received:       | 8/8/13     |
| Processed:      | 8/8/13     |
| Claim Form:     | [REDACTED] |
| Claim Line:     | [REDACTED] |

Plan Claim: Aetna

**PAYMENT DETAILS**

Payment Date: As soon as possible  
 Provider: Virtua Immediate Care  
 Address: Po Box 6028  
 Bellmawr, NJ 08099  
 Invoice: [REDACTED]  
 Account: Mary Anne Caprio

**PAY MY PROVIDER PAYMENT**

The following payment was made toward this claim.

| Type                        | Total Payment | Payment Date | Payment Method | Payment Made/Sent To             | Payment Number |
|-----------------------------|---------------|--------------|----------------|----------------------------------|----------------|
| HEALTH CARE Pay My Provider | \$36.25       | 8/12/13      | CHECK          | Po Box 6028 , Bellmawr, NJ 08099 | [REDACTED] 5   |

**PAYMENT ACCOUNTING**

| Payment for This Claim | Paid from Plan       |
|------------------------|----------------------|
| \$36.25                | Health Care FSA 2013 |

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