

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
ELLA SHARON  
on behalf of herself and  
all other similarly situated consumers

Plaintiff,

-against-

GC SERVICES LIMITED PARTNERSHIP

Defendant.

-----  
**CLASS ACTION COMPLAINT**

***Introduction***

1. Plaintiff Ella Sharon seeks redress for the illegal practices of GC Services Limited Partnership, concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).

***Parties***

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that Defendant sought to collect from Plaintiff a consumer debt.
4. Upon information and belief, Defendant’s principal place of business is located in Houston, Texas.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

*Jurisdiction and Venue*

7. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

*Allegations Particular to Ella Sharon*

9. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.
10. On or about March 28, 2016, Defendant sent the Plaintiff a collection letter seeking to collect a balance allegedly incurred for personal purposes.
11. Upon information and belief, the said letter was the Defendant's initial communication with the Plaintiff.
12. Said letter stated in pertinent part as follows: "If you dispute this balance or the validity of this debt, **please let us know in writing**. If you do not dispute this debt **in writing** within 30 days after you receive this letter, we will assume this debt is valid. However, if you do dispute all or any portion of this debt **in writing** within 30 days of receiving this letter, we will obtain verification of the debt from our client and send it to you. Or, if within 30 days of receiving this letter you request **in writing** the name and address of the original creditor, we will provide it to you in the event it differs from our client, Synchrony Bank." (emphasis added)
13. Said letter misrepresented Plaintiff's right to dispute the debt, in violation of 15 U.S.C. §§ 1692e and 1692e(10).
14. Section 1692g(a) of the FDCPA provides:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless [\*3] the following information is contained in the initial communication . . . , send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) 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;
- (4) 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
- (5) 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.

15. Defendant's language would lead the least sophisticated consumer to assume that his option to dispute the debt, could only be in writing.
16. Defendant's said letter incorrectly states that the Plaintiff must dispute the validity of the debt in writing before Defendant may assume the validity of the debt, when § 1692g(a)(3) does not contain a writing requirement.
17. The least sophisticated consumer would assume from the above mentioned language, that he has no option to make an oral dispute.<sup>1</sup>
18. Said language can be reasonably read to have two or more different meanings, one of

---

<sup>1</sup> Hooks v. Forman, Holt, Eliades & Ravin, LLC, 717 F.3d 282, 2013 U.S. App. LEXIS 10754, 2013 WL 2321409 (2d Cir. N.Y. 2013). (Requiring a consumer to dispute a debt in writing violates the FDCPA.). Zengerle v. Dynia & Assocs., 2013 U.S. Dist. LEXIS 130873 (6<sup>th</sup> Cir. M.I. 2013). (Defendant points out that the letter does not expressly state that the consumer must provide a written statement to dispute the debt, but only that the consumer must "provide us with a statement." Viewing the language from the perspective of the least sophisticated consumer, however, "provide us with a statement" suggests that a writing is necessary and that the consumer may not orally dispute the debt.). Alderman v. GC Services Limited Partnership, No. 2: 16-CV-14508-ROSENBERG/LYNCH (S.D. Fla. Mar. 13, 2017). ("[T]his Court agrees with the Second, Fourth, and Ninth Circuits, and with its fellow courts in the Southern District of Florida, that § 1692g(a)(3) does not require a consumer to dispute the validity of the debt in writing before the debt collector may assume the debt is valid. The Court adopts the reasoning set forth in such cases as Camacho, Hooks, Clark, and Baez, and therefore concludes that Plaintiff has not failed to state a plausible claim to relief.")

which is false.<sup>2</sup>

19. Defendant's letter violated 15 U.S.C. §§ 1692e, 1692e(10), and 1692g(a)(3), for failing to comply with the validation notice requirements, and in particular, for misrepresenting Plaintiff's right to dispute the debt.
20. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.
21. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
22. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.
23. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
24. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
25. Defendant's communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to Defendant's collection efforts.
26. The FDCPA ensures that consumers are fully and truthfully apprised of the facts and of their rights, the act enables them to understand, make informed decisions about, and participate fully and meaningfully in the debt collection process. The purpose of the FDCPA is to provide information that helps consumers to choose intelligently. The Defendant's false representations misled the Plaintiff in a manner that deprived him of his right to enjoy these benefits, these materially misleading statements trigger liability

---

<sup>2</sup> *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 25 (2d Cir. 1989). (Because the collection notice was reasonably susceptible to an inaccurate reading, it was deceptive within the meaning of the Act.), *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993). (Collection notices are deceptive if they are open to more than one reasonable interpretation, at least one of which is inaccurate.), *Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. N.Y. 1996). (A collection notice is deceptive when it can be reasonably read to have two or more different meanings, one of which is inaccurate. The fact that the notice's terminology was vague or uncertain will not prevent it from being held deceptive under § 1692e(10) of the Act.)

under section 1692e of the Act.

27. These deceptive communications additionally violated the FDCPA since they frustrate the consumer's ability to intelligently choose his or her response.
28. As an actual and proximate result of the acts and omissions of the Defendant, Plaintiff has suffered including but not limited to, fear, stress, mental anguish, emotional stress and acute embarrassment for which he should be compensated in an amount to be established by a jury at trial.

**AS AND FOR A FIRST CAUSE OF ACTION**

***Violations of the Fair Debt Collection Practices Act brought by Plaintiff on behalf of himself and the members of a class, as against the Defendant.***

29. Plaintiff re-states, re-alleges, and incorporates herein by reference, paragraphs one (1) through twenty eight (28) as if set forth fully in this cause of action.
30. This cause of action is brought on behalf of Plaintiff and the members of a class.
31. The class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter, (a) bearing the Defendant's letterhead in substantially the same form as the letters sent to the Plaintiff on or about March 28, 2016; (b) the collection letter was sent to a consumer seeking payment of a personal debt purportedly owed to Synchrony Bank; and (c) the collection letter was not returned by the postal service as undelivered; and (d) the Defendant violated 15 U.S.C. §§ 1692e, 1692e(5), 1692e(10), and 1692g(a)(3), for failing to comply with the validation notice requirements, and in particular, for misrepresenting Plaintiff's right to dispute the debt, in addition to threatening to take action against Plaintiff even though Defendant has not and does not intend to take such action, and for false and deceptive acts.

32. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:
- A. Based on the fact that a form collection letter is at the heart of this litigation, the class is so numerous that joinder of all members is impracticable.
  - B. There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.
  - C. The only individual issue is the identification of the consumers who received such collection letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of the Defendant.
  - D. The claims of the Plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
  - E. The Plaintiff will fairly and adequately represent the class members' interests. The Plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The Plaintiff's interests are consistent with those of the members of the class.
33. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. § 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of

inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

34. If the facts are discovered to be appropriate, the Plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.
35. Collection attempts, such as those made by the Defendant are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

***Violations of the Fair Debt Collection Practices Act***

36. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
37. Because the Defendant violated the Fair Debt Collection Practices Act, the Plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests preliminary and permanent injunctive relief, and that this Court enter judgment in his favor and against the Defendant and award damages as follows:

- (a) Statutory and actual damages provided under the FDCPA, 15 U.S.C. § 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Woodmere, New York  
March 24, 2017

/s/ Adam J. Fishbein

Adam J. Fishbein, P.C. (AF-9508)

Attorney At Law

**Attorney for the Plaintiff**

735 Central Avenue

Woodmere, New York 11598

Telephone: (516) 668-6945

Email: fishbeinadamj@gmail.com

Plaintiff requests trial by jury on all issues so triable.

Adam J. Fishbein (AF-9508)



PO Box 1389  
Copperas Cove TX 76522-5389  
RETURN SERVICE REQUESTED



SEND PAYMENT TO:

March 28, 2016

Synchrony Bank/QCARD  
PO Box 530905  
Atlanta GA 30353-0905

92789519



Ella Sharon  
184 Mcveigh Ave  
Staten Island NY 10314-6137

Acct. #: \*\*\*\*\*3019  
Balance Due: \$1,426.00

\*\*\*PLEASE DETACH AND RETURN THE UPPER PORTION OF THE STATEMENT WITH YOUR PAYMENT\*\*\*

RE: QCARD Account

Balance Due: \$1,426.00  
Account #: \*\*\*\*\*3019

Dear Ella Sharon,

Your QCARD Account, which was issued by and owed to Synchrony Bank, has been referred to us by our client for collection. We wanted to take this opportunity to introduce ourselves and inform you of your rights under the Fair Debt Collection Practices Act. As of the date of this letter, our records show you owe a balance of \$1,426.00 to Synchrony Bank. If you dispute this balance or the validity of this debt, please let us know in writing. If you do not dispute this debt in writing within 30 days after you receive this letter, we will assume this debt is valid. However, if you do dispute all or any portion of this debt in writing within 30 days of receiving this letter, we will obtain verification of the debt from our client and send it to you. Or, if within 30 days of receiving this letter you request in writing the name and address of the original creditor, we will provide it to you in the event it differs from our client, Synchrony Bank. We look forward to working with you in resolving this account.

Sincerely,  
Cindy Kreidler, Collection Manager

[www.QVC.com](http://www.QVC.com)

**Notice for New York Residents:** As a debt collector, GC Services is prohibited under the Fair Debt Collection Practices Act, 15 U.S.C §1692 et seq., 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 with the intent to annoy, abuse or harass while attempting to collect a debt. If a creditor or debt collector receives a money judgment 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;                                    |  |

**NYC Residents: NYC Department of Consumer Affairs' specific license # varies as to city/state location of sender:** Elgin – 2032602; Columbus - 2032587; Copperas Cove - 2032601; Houston - 2032594; Huntington - 2032616; Irwindale - 2032591; Jacksonville - 2032579; Knoxville - 2032597; Oklahoma - 2032603; Phoenix - 2032606; San Antonio - 2032610; San Diego - 2032615; St. Louis - 2032598; Tucson - 2032592

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

ELA SHARON

Plaintiff(s)

v.

GC SERVICES LIMITED PARTNERSHIP

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) GC SERVICES LIMITED PARTNERSHIP
CT CORPORATION
111 EIGHTH AVENUE 13TH FL
NEW YORK, NEW YORK, 10011

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Adam J. Fishbein, P.C.
735 Central Avenue
Woodmere NY 11598

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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

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

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

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

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

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

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

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

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

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

ELA SHARON

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Adam J. Fishbein 735 Central Avenue Woodmere NY 11598 516 668 6945 fishbeinadamj@gmail.com

DEFENDANTS

GC SERVICES LIMITED PARTNERSHIP

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1692 FAIR DEBT COLLECTION PRACTICES ACT. Brief description of cause: Improper validation language and inaccurate amount of debt

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/27/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Adam J. Fishbein

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Adam J. Fishbein, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason Class Action

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? 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? No
b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ Adam J. Fishbein

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [GC Services Limited Partnership Hit with Debt Collection Lawsuit](#)

---