

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

GALE EREKSON, <i>on behalf of herself</i>	Case No.	3:17-2766-JFA
<i>and all others similarly situated</i>)	
)	CLASS COMPLAINT AND TRIAL BY
Plaintiff,)	JURY DEMAND
)	
vs.)	
)	
ADVANCED CALL CENTER))	
TECHNOLOGIES, LLC,)	
)	
<u>Defendant.</u>)	

NATURE OF ACTION

1. Plaintiff Gail Erekson (“Plaintiff”) brings this putative class action against Defendant Advanced Call Center Technologies, LLC (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, individually and on behalf of all others similarly situated.

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

4. “In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). Congress is “well positioned to identify intangible harms that meet minimum Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Id.* (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555, 578 (1992)).

5. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a failure to honor a consumer’s right under the FDCPA constitutes an injury in fact for Article III standing. *See id.* at *3 (holding that a consumer “has alleged a sufficiently concrete injury because he alleges that [Defendant] denied him the right to information due to him under the FDCPA”); *see also Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (holding that consumer’s § 1692g claim was sufficiently concrete to satisfy injury-in-fact requirement).

6. “The Supreme Court has held time and again that the violation of a statutory right to receive information one is entitled to receive creates a concrete

injury sufficient to confer standing on a plaintiff.” *Zia v. CitiMortgage, Inc.*, 210 F. Supp. 3d 1334, 1343 (S.D. Fla. 2016).

7. “The FDCPA does create an informational right which did not exist prior to its enactment, and that right is tied to the harm which a consumer may suffer if not provided with that information. Consequently, the deprivation of that information is, in most cases, sufficient to confer Article III standing. That was the law before *Spokeo*, and that law was not based on an erroneous understanding of Article III like the one corrected by *Spokeo*, but by application of well-settled principles of standing jurisprudence which *Spokeo* did not change (and, in fact, upon which *Spokeo* relied).” *Hagy v. Demers & Adams, LLC*, No. 2:11-CV-530, 2017 WL 1134408, at *4 (S.D. Ohio Mar. 27, 2017).

8. “[E]ven though actual monetary harm is a sufficient condition to show concrete harm, it is *not* a necessary condition.” *Lane*, 2016 WL 3671467 at *4 (emphasis in original).

THE FAIR DEBT COLLECTION PRACTICES ACT

9. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

10. In order to protect consumers and ensure compliance by debt collectors, “[t]he FDCPA is a strict liability statute that prohibits false or deceptive

representations in collecting a debt, as well as certain abusive debt collection practices.” *McLean v. Ray*, 488 F. App'x 677, 682 (4th Cir. 2012).

11. The FDCPA must be construed liberally to affect its remedial purpose. *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 393 (4th Cir. 2014).

12. “By providing prevailing plaintiffs statutory and actual damages, as well as reasonable attorney's fees, Congress plainly intended to regulate unscrupulous conduct by encouraging consumers who were the target of unlawful collection efforts to bring civil actions.” *Id.*; see also *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 780-81 (9th Cir. 1982) (Congress “clearly intended that private enforcement actions would be the primary enforcement tool of the Act.”).

13. Whether a communication violates the FDCPA “is determined from the vantage of the ‘least sophisticated consumer,’” an objective standard that considers how the hypothetical “least sophisticated consumer would interpret the allegedly offensive language.” *Russell*, 763 F.3d at 394.

14. This test “comports with basic consumer protection principles[, as] ‘[t]he basic purpose of the least sophisticated consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.’” *United States v. Nat'l Fin. Servs., Inc.*, 98 F.3d 131, 136 (4th Cir. 1996) (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993)).

PARTIES

15. Plaintiff is a natural person who at all relevant times resided in the State of South Carolina, County of Richland, and City of Columbia.

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

17. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

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

FACTUAL ALLEGATIONS

19. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed or due a creditor other than Defendant.

20. Plaintiff’s alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, a personal retail credit card account (the “Debt”).

21. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts.

22. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

23. In connection with the collection of the Debt, Defendant sent Plaintiff a letter dated October 31, 2016.

24. A true and accurate copy of Defendant's October 31, 2016 Letter is attached to this complaint as Exhibit A.

25. The Letter was Defendant's initial communication with Plaintiff with respect to the Debt.

26. The Letter states: "RE: JCPenney Credit Card Account."

27. The Letter also states that "[i]f the Amount Currently Due is paid to Synchrony Bank and your account is brought up to date, we will stop our collection activity. All payments should be made directly to Synchrony Bank using the enclosed envelope."

28. The Letter provides that Plaintiff should "DETACH AND RETURN BOTTOM PORTION [of the Letter] WITH YOUR PAYMENT."

29. The Letter's bottom portion also identifies the mailing recipient as "Synchrony Bank/JCPenney Credit Services."

30. The Letter states that "Synchrony Bank may continue to add interest and fees as provided in your agreement."

31. The Letter further states: "URL: www.jcp.com/credit."

32. Plaintiff, or the least sophisticated consumer, receiving Defendant's Letter would be unsure whether Synchrony Bank is the original creditor, or whether Synchrony Bank is the current creditor and the account was assigned to Defendant merely for collection, or whether Synchrony Bank is collecting on behalf of JCPenney Credit Services and Synchrony Bank subsequently assigned the account to Defendant for collection.

33. A least sophisticated consumer would be left to guess or make assumptions that what follows “RE:” is the identity of the current creditor.

34. The least sophisticated consumer may just as reasonably conclude that what follows “RE:” is the identity of the original creditor, given that the Letter also states that the “account has been listed with our office for collection.”

35. Thus, Plaintiff, or the least sophisticated consumer, could reasonably conclude that JCPenney Credit Services is either the original creditor or the current creditor.

36. Additionally, the Letter requires payments to be made to Synchrony Bank but also identifies both JCPenney Credit Services and Synchrony Bank as the mailing recipients.

37. Thus, Plaintiff, or the least sophisticated consumer, could reasonably conclude that Synchrony Bank is the current creditor to which the Debt is owed and JCPenney Credit Services is the original creditor, given that the Letter demands payments be sent to Synchrony Bank, states that Synchrony Bank may add interest and fees to the Debt, identifies Synchrony Bank as a mailing recipient of the payment, and has JCPenney Credit Services follow “RE:.”

38. Further, Plaintiff, or the least sophisticated consumer, could reasonably conclude that JCPenney Credit Services is the current creditor to which the Debt is owed and retained Synchrony Bank for collection, given that the Letter identifies JCPenney Credit Services as a mailing recipient, JCPenney Credit

Services follows “RE:” and the Letter provides JCPenney Credit Service’s website.

39. Consequently, a least sophisticated consumer would be left to guess or make assumptions regarding who the current creditor and who the original creditor is between Synchrony Bank and JCPenney Credit Services.

40. Additionally, Plaintiff, or the least sophisticated consumer, may reasonably think that either Synchrony Bank or JCPenney Credit Services is merely servicing the account for the other.

41. Because Defendant’s Letter simply does not meaningfully convey the identity of the current creditor to whom the Debt is owed, it violates 15 U.S.C. § 1692g.

42. Because Defendant’s Letter is unclear as to the true status of Synchrony Bank and JCPenney Credit Services, Defendant’s Letter is false, deceptive, or misleading because it is open to multiple interpretations, at least one of which is necessarily inaccurate.

CLASS ACTION ALLEGATIONS

43. Plaintiff repeats and re-alleges all factual allegations above.

44. Defendant’s October 31, 2016 letter is based on a form or template used by Defendant to send collection letters (the “Template”).

45. The Template fails to meaningfully convey the name of the current creditor to whom the alleged debt is owed, in the same manner as Defendant did with Plaintiff above.

46. Defendant has used the Template to send collection letters to over 40 individuals in the State of South Carolina within the year prior to the filing of the original complaint in this matter.

47. Plaintiff brings this action on behalf of herself and all others similarly situated. Specifically, Plaintiff seeks to represent the following class of individuals:

All persons with a South Carolina address, to whom Defendant sent a letter based upon the Template, within one year before the date of this complaint, in connection with the collection of a consumer debt.

48. The proposed class specifically excludes the United States of America, the State of South Carolina, counsel for the parties, the presiding United States District Court Judge, the Judges of the United States Court of Appeals for the Fourth Circuit, and the Justices of the United States Supreme Court, all officers and agents of Defendant, and all persons related to within the third degree of consanguinity or affection to any of the foregoing persons.

49. The class is averred to be so numerous that joinder of members is impracticable.

50. The exact number of class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery.

51. The class is ascertainable in that the names and addresses of all class members can be identified in business records maintained by Defendant.

52. There exists a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common

questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to: (a) the existence of Defendant's identical conduct particular to the matters at issue; (b) Defendant's violations of the FDCPA; (c) the availability of statutory penalties; and (d) attorneys' fees and costs.

53. Plaintiff's claims are typical of those of the class she seeks to represent.

54. The claims of Plaintiff and of the class originate from the same conduct, practice, and procedure on the part of Defendant. Thus, if brought and prosecuted individually, the claims of the members of the class would require proof of the same material and substantive facts.

55. Plaintiff possesses the same interests and has suffered the same injuries as each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of the unnamed class members.

56. Plaintiff will fairly and adequately protect the interests of the class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the class.

57. Plaintiff is willing and prepared to serve this Court and the proposed class.

58. The interests of Plaintiff are co-extensive with and not antagonistic to those of the absent class members.

59. Plaintiff has retained the services of counsel who are experienced in consumer protection claims, as well as complex class action litigation, will adequately prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent class members.

60. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B). The prosecution of separate actions by individual members of the class would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action or could substantially impair or impede their ability to protect their interests.

61. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the parties opposing the classes. Such incompatible standards of conduct and varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow the existence of inconsistent and incompatible rights within the class.

62. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that Defendant has acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

63. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the questions of law and fact that are common to members of the class predominate over any questions affecting only individual members.

64. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint in that: (a) individual claims by the class members will be impracticable as the costs of pursuit would far exceed what any one plaintiff or class member has at stake; (b) as a result, very little litigation has commenced over the controversies alleged in this Complaint and individual members are unlikely to have an interest in prosecuting and controlling separate individual actions; and (c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy.

COUNT I
VIOLATION OF 15 U.S.C. § 1692e

65. Plaintiff repeats and re-alleges each factual allegation above.

66. The FDCPA creates a broad, flexible prohibition against the use of misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. § 1692e. *See Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir. 2002) (citing legislative history reference to the FDCPA’s general prohibitions which “will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed”).

67. “[I]t is well established that ‘[a] debt collection letter is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate.’” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062

(9th Cir. 2011) (citing *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 455 (3d Cir.2006) (internal quotation omitted)).

68. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of Plaintiff's Debt.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e with respect to Plaintiff and the South Carolina class she seeks to represent;
- c) Awarding Plaintiff and the South Carolina class she seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);

- f) Awarding Plaintiff and the South Carolina class she seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the South Carolina class she seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692g(a)(2)

69. Plaintiff repeats and re-alleges each factual allegation above.

70. A key provision of the FDCPA is § 1692g, which requires a debt collector to send, within five days of its initial communication with a consumer, a written notice which provides information regarding the debt and informs the consumer of his or her right to dispute the validity of the debt, and/or request the name and address of the original creditor, within 30 days of receipt of the notice. *See* 15 U.S.C. § 1692g(a).

71. “Viewed from the perspective of the least sophisticated consumer, the Validation Notice must effectively convey the identity of the creditor.” *Youssofi v. CMRE Fin. Servs., Inc.*, No. 15CV2310 JM(WVG), 2016 WL 4098312, at *3 (S.D. Cal. Aug. 2, 2016) (finding that there was a genuine issue of material fact as to whether “Emergency Servi.” effectively conveyed the identity

of the creditor, Emergency Services Medical Corporation); *see also Swanson v. Southern Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988).

72. “Merely including the current creditor’s name in a debt collection letter, without more, is insufficient to satisfy 15 U.S.C. § 1692g(a)(2).” *McGinty v. Prof’l Claims Bureau, Inc.*, No. 15CV4356SJFARL, 2016 WL 6069180, at *4 (E.D.N.Y. Oct. 17, 2016); *see Datiz v. Int’l Recovery Assocs., Inc.*, No. 15-CV-3549, 2016 WL 4148330, at *11 (E.D.N.Y. Aug. 4, 2016) (“[A] debt collector cannot satisfy Section 1692g(a)(2) by naming an entity without explicitly or implicitly making clear in the letter that the entity is the debtor's current creditor to whom a debt is owed.”).

73. Defendant violated 15 U.S.C. § 1692g(a)(2) by failing to meaningfully convey to Plaintiff the name of the current creditor to whom the alleged debt is owed.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(a)(2) with respect to Plaintiff and the South Carolina class she seeks to represent;

- c) Awarding Plaintiff and the South Carolina class she seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the South Carolina class she seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the South Carolina class she seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

TRIAL BY JURY

74. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: October 12, 2017.

Respectfully submitted,

/s/ Holly E. Dowd
Holly E. Dowd (S.C. Bar No. 77897)
Thompson Consumer Law Group, PLLC
822 Camborne Place

Charlotte, NC 28210
Telephone: (888) 332-7252 ext. 260
Facsimile: (866) 317-2674
hdowd@consumerlawinfo.com
Attorneys for Plaintiff

Please send correspondence to the below address

Holly E. Dowd
Thompson Consumer Law Group, PLLC
5235 E. Southern Ave D106-618
Mesa, AZ 85206

Exhibit "A"

ADVANCED CALL CENTER TECHNOLOGIES, LLC

PO Box 9091
Gray, TN 37615-9091
877-597-1385
TTY#: 844-252-5490

ACCOUNT #: ENDING IN 9370
ACCOUNT BALANCE: \$1,777.00
AMOUNT CURRENTLY DUE: \$217.00

STATEMENT DATE: October 31, 2016

RE: JCPenney Credit Card Account

FIRST NOTICE

Dear Gail Erikson:

This account has been listed with our office for collection.

This notice has been sent by a collection agency. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

If the Amount Currently Due is paid to Synchrony Bank and your account is brought up to date, we will stop our collection activity. All payments should be made directly to Synchrony Bank using the enclosed envelope. Do not send payments to this office.

If circumstances are preventing you from paying the Amount Currently Due referenced above, please call our office today at 877-597-1385 so that we may assist you in resolving this matter. Our office hours are Monday – Friday 8:00 AM – 10:00 PM, Saturdays 8:00 AM – 4:00 PM and Sundays 1:00 PM – 10:00 PM, all times represented in Eastern Times Zone (EST).

Synchrony Bank may continue to add interest and fees as provided in your agreement.

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

Very truly yours,
Advanced Call Center Technologies, LLC
877-597-1385
TTY#: 844-252-5490

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

011

PO Box 9091
Gray, TN 37615-9091

STATEMENT DATE: 10/31/16
URL: www.jcp.com/credit
ACCOUNT #: ENDING IN 9370
ACCOUNT BALANCE: \$1,777.00
AMOUNT CURRENTLY DUE: \$217.00



Gail Erikson
6 Gardenhill Dr
Columbia, SC 29229-9063



Synchrony Bank/JCPenney Credit Services
PO Box 960090
Orlando, FL 32896-0090