

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

BARBARA J. MARTIN, *on behalf of herself  
and all others similarly situated,*

Plaintiff,

v.

GC SERVICES LIMITED PARTNERSHIP,  
*a Delaware Limited Partnership,*

Defendant.

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**CLASS ACTION COMPLAINT**

1. Plaintiff alleges violations of the *Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq.* (“*FDCPA*”).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under the *Fair Debt Collection Practices Act*, pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1692k.

3. Venue in this District is proper because Plaintiff resides here and Defendant conducts business in this District.

**PARTIES**

4. Plaintiff, Barbara J. Martin (“Plaintiff”), is a natural person, and citizen of the State of Florida, residing in St. Lucie County, Florida.

5. Defendant, GC Services Limited Partnership (“Defendant”), is a Delaware Limited Partnership engaged in the business of collecting consumer debts, which operates from offices located at 6330 Gulfton, Houston, Texas 77081.

6. Defendant regularly uses the United States Postal Service and telephone in the collection of consumer debts.

7. Defendant regularly collects or attempts to collect consumer debts for other parties. Defendant is a “debt collector” as defined by the *FDCPA*.

8. At all times material to the allegations of this Complaint, Defendant was acting as a debt collector with respect to the collection of Plaintiff’s alleged debt.

**FACTUAL ALLEGATIONS**

9. Defendant sought to collect a consumer debt from Plaintiff arising from a consumer credit card account with Citibank, N.A. The debt was incurred primarily for personal, household or family use.

10. On or about January 9, 2017, Defendant mailed Plaintiff a letter seeking payment of the alleged debt. (The “Demand Letter” is attached hereto as “Exhibit 1”).

11. The Demand Letter stated in part:

New Balance:           \$4,319.64

XXXX

*\* As of the date of this letter, you owe \$4,319.64. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.*

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

Emphasis in original.

12. The Demand Letter then sought to provide the disclosures required by *15 U.S.C. §1692g(a)*.

13. The Demand Letter was signed by “Douglas Kemp” “Account Representative” for Defendant.

14. The Demand Letter was Defendant’s initial communication with Plaintiff with respect to the debt alleged therein.

15. On or about February 8, 2017, Defendant mailed, or caused to be mailed, a letter to Plaintiff that stated, in part:

New Balance: \$4,319.64

XXXX

*\* As of the date of this letter, you owe \$4,319.64. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.*

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

Emphasis in original. Attached hereto as “Exhibit 2.”

16. On or about March 10, 2017, Defendant mailed, or caused to be mailed, a letter to Plaintiff that stated, in part:

New Balance: \$4,319.64

XXXX

*\* As of the date of this letter, you owe \$4,319.64. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.*

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

Emphasis in original. Attached hereto as “Exhibit 3.”

17. *15 U.S.C. §1692g(a)* states:

Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, 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.

Emphasis added.

### **CLASS ACTION ALLEGATIONS**

18. This action is brought on behalf of a Class consisting of (i) all persons with addresses in the Florida Counties that comprise the geographical boundaries of the United States

District Court for the Southern District of Florida, namely Miami-Dade, Monroe, Broward, Palm Beach, Martin, Saint Lucie, Indian River, Okeechobee, and Highlands Counties (ii) to whom letters were mailed, or caused to be mailed, by the Defendant (iii) that stated: “As of the date of this letter, you owe \$[amount of debt stated in letter]. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.” (iv) by the Defendant (v) that were not returned undeliverable by the U.S. Post Office (vi) attempting to collect a debt owned by Citibank, N.A. that had been charged off and was not accruing interest (vii) in an attempt to collect a debt incurred for personal, family, or household purposes (viii) during the one year period prior to the filing of the original Complaint in this action through the date of certification.<sup>1</sup>

19. Plaintiff alleges on information and belief that Defendant’s practice of sending initial communication letters improperly stating “As of the date of this letter, you owe \$[amount of debt stated in letter]. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.” in the initial communication letters mailed, or caused to be mailed upon the Class is so numerous that joinder of all members of the Class is impractical.

20. There are questions of law or fact common to the Class. The common issues predominate over any issues involving only individual Class members. The common legal and factual issue to each Class member is that each was mailed, or caused to be mailed, an initial communication letter by Defendant that violated *15 U.S.C. §1692e* because the letter improperly

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<sup>1</sup> Excluded from the proposed class is Lyman A. Martin

stated: “As of the date of this letter, you owe \$[amount of debt stated in letter]. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.” when interest was not accruing on the account.

21. Plaintiff’s claim is typical of those of the Class members. All are based on the same facts and legal theories.

22. Plaintiff will fairly and adequately protect the interests of the Class. She has retained counsel experienced in handling actions involving unlawful practices under the *FDCPA* and Class actions. Neither Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this action.

23. Certification of the Class under *Rule 23(b)(3)* of the *Federal Rules of Civil Procedure* is also appropriate in that: (1) the questions of law or fact common to the members of the class predominate over any questions affecting an individual member; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

24. Plaintiff requests certification of a Class under *Rule 23(b)(3)* of the *Federal Rules of Civil Procedure*, for monetary damages; her appointment as Class Representative; and that her attorney Leo W. Desmond be appointed Class Counsel.

**COUNT I**  
**CLASS CLAIM AGAINST DEFENDANT**  
**VIOLATION OF 15 U.S.C. §1692e(10)**

25. Plaintiff re-alleges and incorporates Paragraphs 1 through 17.

26. Pursuant to *15 U.S.C. §1692g(a)(1)* the Defendant must provide the Plaintiff with:  
Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing-

xxxx

(1) the amount of the debt;

27. *15 U.S.C. §1692e(10)* states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

xxxx

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

28. Defendant sent, or caused to be sent the Demand Letter to Plaintiff that purported to state the amount of Plaintiff's debt. However, Defendant stated that the amount of Plaintiff's balance could increase due to accrued interest, therefore not accurately portraying that the debt amount as stated was a static amount.

29. The Demand Letter was an initial communication used in the collection of a debt between Defendant and Plaintiff.

30. Defendant's Demand Letter misleadingly indicates that the balance may increase "[b]ecause of interest, late charges, and other charges that may vary from day to day, the amount may be greater."

31. Defendant's Demand Letter would be deceptive to the least sophisticated consumer with regard to his/her legal rights as they would believe that other amounts may be due and owing in addition to the stated balance.

32. As a result of Defendant's conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. §1692k*.

33. As a result of Defendant's conduct, Plaintiff and the Class are entitled to an award of costs and attorney's fees pursuant to *15 U.S.C. §1692k*.

**COUNT II**  
**CLASS CLAIM AGAINST DEFENDANT**  
**VIOLATION OF 15 U.S.C. §1692e(2)(A)**

34. Plaintiff re-alleges and incorporates Paragraphs 1 through 17, and 26 through 31.

35. The Demand Letter was an initial communication used in the collection of a debt between Defendant and Plaintiff.

36. *15 U.S.C. § 1692e(2)(A)* states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

xxxx

(2) The false representation of—

(A) the character, amount, or legal status of any debt;

37. Defendant's Demand Letter falsely represented the amount of the alleged debt in violation of *15 U.S.C. §1692e(2)(A)* as the Demand Letter stated that the debt could increase due to accruing interest and other charges when, in fact, no interest was accruing.

38. As a result of Defendant's conduct, Plaintiff and the Class are entitled to an award of statutory damages pursuant to *15 U.S.C. §1692k*.



39. As a result of Defendant's conduct, Plaintiff and the Class are entitled to an award of costs and attorney's fees pursuant to *15 U.S.C. §1692k*.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff prays for the following relief:

- a. An Order certifying the *FDCPA* matter as a Class Action and appointment of Plaintiff as the Class Representative;
- b. An Order appointing Leo W. Desmond as Class Counsel;
- c. An award of statutory damages for Plaintiff and the Class pursuant to *15 U.S.C. §1692k* for all Class claims;
- d. An award of attorney's fees, litigation expenses and costs of the instant suit;  
and
- e. Such other and further relief as the Court deems proper.

Dated: May 24, 2017.

Respectfully submitted,

/s/ Leo W. Desmond  
Leo W. Desmond, Esquire  
Florida Bar Number 0041920  
DESMOND LAW FIRM, P.C.  
5070 Highway A1A, Suite D  
Vero Beach, Florida 32963  
Telephone: 772.231.9600  
Facsimile: 772.231.0300  
lwd@desmondlawfirm.com  
*Attorney for Plaintiff*

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Barbara J. Martin DEFENDANTS GC Services Limited Partnership

(b) County of Residence of First Listed Plaintiff St. Lucie (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Leo W. Desmond, Desmond Law Firm, P.C. 5070 Highway A1A, Suite D, Vero Beach, FL 32963 772-231-9600

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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)

Form with checkboxes for jurisdiction and citizenship. Includes categories like U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This/Another State, and Foreign Nation.

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

Large grid of checkboxes for nature of suit. Categories include CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 15 USC 1692 et seq. Violation of the Fair Debt Collection Practices Act. LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 500,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE May 24, 2017 SIGNATURE OF ATTORNEY OF RECORD Leo W. Desmond FL Bar 0041920

**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.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

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.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. 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

**VIII. 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.

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



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:



IMPORTANT: BE CERTAIN YOUR ACCOUNT IS CORRECT.

HOME PHONE : \_\_\_\_\_

NEW ADDRESS : \_\_\_\_\_

GC Services Limited Partnership

CONSUMER INFORMATION:

Unless you, within thirty (30) days after your receipt of this letter, dispute the validity of the debt, or any portion thereof, we will assume the debt to be valid. If you notify us in writing within the above described thirty (30) day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you and a copy of such verification or judgment will be mailed to you. Additionally, upon your written request within the above described thirty (30) day period, we will provide you with the name and address of the original creditor, if it is different than the current creditor.

The request for you to pay the balance owed in this letter does not reduce your rights to dispute this debt, or any portion thereof, and/or to request verification within the thirty (30) day period as set forth above.





CDGCSV70 057  
PO Box 930824  
Wixom MI 48393-0824  
RETURN SERVICE REQUESTED



**GC Services Limited Partnership**



Please call: 866-806-5193  
Calls may be monitored or recorded

March 10, 2017



CORRESPONDENCE AND PAYMENT MAILING ADDRESS:

██████████4964  
██████████  
Barbara J Martin  
11 S Granada Ln  
Port Saint Lucie FL 34952-8540

**PO BOX 3855  
HOUSTON TX 77253**

YOU OWE: Citibank, N.A. CLIENT ACCOUNT NUMBER: <b>ENDING 3173</b>	GC NUMBER: ██████████ <b>0104</b> MINIMUM PAYMENT DUE: <b>\$4,319.64</b>
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\*\*\*PLEASE DETACH AND RETURN UPPER PORTION OF STATEMENT WITH PAYMENT\*\*\*

March 10, 2017

File Number: ██████████ **3140**  
Client Account Number: **ENDING 3173**  
New Balance: \$4,319.64

RE: CITI MASTERCARD

Dear BARBARA J MARTIN,

Have you received your tax refund yet? If so, we believe that this is an excellent time to pay the minimum payment due on your account with Citibank, N.A. using funds received from your tax refund.

We encourage you to contact us at 866-806-5193 to discuss payment options.

If you are making a payment, please send it along with the top portion of this notice to the post office box listed above, and, if paying by check, make your check payable to "Citibank, N.A.".

Sincerely,

Jason Swaney  
Account Representative

If you would prefer, you can make a payment on your account using a debit card by going to our website at [iwant2.solvemydebt.com](http://iwant2.solvemydebt.com) or calling us at 844-694-2082. Use the following number to identify yourself when prompted: ██████████0104

*\* As of the date of this letter, you owe \$4,319.64. Because of interest, late charges, and other charges that may vary from day to day, the amount owed on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you.*

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

# ClassAction.org

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

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