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BARSHAY SANDERS, PLLC

100 Garden City Plaza, Suite 500 Garden City, New York 11530 Tel: (516) 203-7600 Fax: (516) 706-5055 Email: *ConsumerRights@BarshaySanders.com Attorneys for Plaintiffs* Our File No.: 111756

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

Geraldine Pisk and Carole Balke, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Docket No:

COMPLAINT-CLASS ACTION

JURY TRIAL DEMANDED

Genpact Services LLC,

Defendant.

Geraldine Pisk and Carole Balke, on behalf of themselves and all others similarly situated (hereinafter referred to collectively as "*Plaintiffs*"), by and through the undersigned counsel, complain, state and allege against Genpact Services LLC (hereinafter referred to as "*Defendant*"), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, ("FDCPA").

JURISDICTION AND VENUE

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

3. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

BARSHAY | SANDERS PLIC 100 GARDEN CITY PLAZA, SUITE 500 GARDEN CITY, NEW YORK 11530 Case 2:16-cv-05809 Document 1 Filed 10/18/16 Page 2 of 7 PageID #: 2

4. At all relevant times, Defendant conducted business within the State of New York.

PARTIES

5. Plaintiff Geraldine Pisk is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff Carole Balke is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

7. Plaintiffs are "consumers" as defined by 15 U.S.C. § 1692a(3).

8. On information and belief, Defendant's principal place of business is located in New York, New York.

9. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

10. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

ALLEGATIONS

11. Defendant alleges each of the Plaintiffs owe a debt ("the debt").

12. The debts were primarily for personal, family or household purposes and are therefore "debts" as defined by 15 U.S.C. § 1692a(5).

13. Sometime after the incurrence of the debts, Plaintiffs fell behind on payments owed.

14. Plaintiff Pisk's debt was incurred on a credit card issued by Synchrony Bank through Lowe's.

15. Plaintiff Balke's debt was incurred on a credit card issued by Synchrony Bank through Lowe's

16. Thereafter, at an exact time known only to Defendant, the debts were assigned or otherwise transferred to Defendant for collection.

17. In its efforts to collect the debt, Defendant contacted Plaintiff Pisk by letter datedJuly 2, 2016. ("<u>Exhibit 1</u>.")

18. In its efforts to collect the debt, Defendant contacted Plaintiff Balke by letter dated October 28, 2015. ("<u>Exhibit 1</u>.")

19. The letters were the initial communication to each Plaintiff received from

Defendant.

20. The letters are identical in all material respects.

21. The letters are "communications" as defined by 15 U.S.C. § 1692a(2).

22. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

23. One such requirement is that the debt collector provide "the amount of the debt."15 U.S.C. § 1692g(a)(1).

24. A debt collector has the obligation not just to convey the amount of the debt, but to convey such clearly.

25. The letters both set forth a "Balance Due."

26. The letters fail to include any "safe harbor" language concerning the accrual of interest and/or fees. *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72, 76 (2d Cir. 2016).

27. The letters fail to include the "safe harbor" language concerning the accrual of interest and/or fees as set forth in *Jones v. Midland Funding, LLC*, 755 F. Supp. 2d 393, 398 (D. Conn. 2010), *adhered to on reconsideration*, No. 3:08-CV-802 RNC, 2012 WL 1204716 (D. Conn. Apr. 11, 2012).

28. The letters state, "The total account balance as of the date of this letter is shown above. Your account balance may increase because of interest or other charges, if so provided in your agreement with your creditor."

29. The letters fail to advise Plaintiffs that if Plaintiffs pay the balance "as of the date of the letters," an adjustment may be necessary after Defendant receives payment.

30. The letters fail to advise Plaintiffs that Defendant will inform Plaintiffs of the balance difference before depositing payment.

31. The letters fail to advise Plaintiffs what portion of the balance "as of the date of this letter" is principal.

32. The letters fail to advise Plaintiffs what portion of the balance "as of the date of this letter" is interest.

33. The letters fail to advise Plaintiffs what portion of the balance "as of the date of this letter" is late fees.

34. The letters fail to advise Plaintiffs of the interest rate.

35. The letters fail to advise Plaintiffs of the amount of potential late fees.

36. The letters fail to advise Plaintiffs the amount of money the balance "as of the date of this letter" will increase per day.

37. The letters fail to advise Plaintiffs the amount of money the balance "as of the date of this letter" will increase per week.

38. The letters fail to advise Plaintiffs the amount of money the balance "as of the date of this letter" will increase per month.

39. The letters fail to advise Plaintiffs the amount of money the balance "as of the date of this letter" will increase in any measurable period.

40. The letters, because of the aforementioned failures, would render the least sophisticated consumer unable to determine the amount of his or her debt.

41. Because Defendant stated the balance "as of the date of this letter" "may" increase, the least sophisticated consumer could reasonably believe that the debt could be satisfied by remitting the balance at any time after receipt of the letter.

42. Because Defendant stated the balance "as of the date of this letter" "may" increase, the least sophisticated consumer could also reasonably believe that the balance was accurate only on the date of the letter because of the continued accumulation of interest and/or late fees.

43. If interest is continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the letter fails to indicate the applicable interest rate, or date of accrual.

44. If late fees are continuing to accrue, the least sophisticated consumer would not know how to satisfy the debt because the letter fails to indicate the amount of applicable and/or possible late fees.

45. For these reasons, Defendant failed to clearly state the amount of the debts.

46. For these reasons, Defendant failed to unambiguously state the amount of the debts.

47. For these reasons, the letters would likely make the least sophisticated consumer uncertain as to the amount of the debt.

48. For these reasons, the letters would likely make the least sophisticated consumer

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confused as to the amount of the debt.

49. Defendant violated § 1692g as it failed to clearly, explicitly and unambiguously convey the amount of the debt.

50. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

51. The question of whether a collection letter is deceptive is determined from the perspective of the "least sophisticated consumer."

52. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.

53. A collection letter is deceptive under 15 U.S.C. § 1692e if it can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate.

54. A collection letter is also deceptive under 15 U.S.C. § 1692e if it is reasonably susceptible to an inaccurate reading by the least sophisticated consumer.

55. As previously alleged, the least sophisticated consumer could reasonably read the letters to mean that the balance "as of the date of the letter" was static.

56. As previously alleged, the least sophisticated consumer could also reasonably read the letters to mean that the balance "as of the date of the letter" was dynamic due to the continued accumulation of interest.

57. As previously alleged, the least sophisticated consumer could also reasonably read the letters to mean that the balance "as of the date of the letter" was dynamic due to the continued accumulation of late fees.

58. Because the letters are susceptible to an inaccurate reading by the least sophisticated consumer, they are deceptive under 15 U.S.C. § 1692e.

59. Because the letters can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, they are deceptive under 15 U.S.C. § 1692e.

60. Defendant violated 15 U.S.C. § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

CLASS ALLEGATIONS

61. Plaintiffs bring this action individually and as a class action on behalf of all persons similarly situated in the state of New York from whom Defendant attempted to collect a consumer debt using the same unlawful conduct described herein, from one year before the date of this Complaint to the present.

62. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

63. Defendant regularly engages in debt collection, using the same unlawful conduct described herein, in its attempts to collect delinquent consumer debts from other persons.

64. The Class consists of more than 35 persons from whom Defendant attempted to collect delinquent consumer debts using the same unlawful conduct described herein.

65. Plaintiffs' claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

66. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

67. Plaintiffs will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiffs have retained counsel experienced in actions brought under the FDCPA.

JURY DEMAND

68. Plaintiffs hereby demand a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

a. Certify this action as a class action; and

b. Appoint Plaintiffs as Class Representative of the Class, and their attorneys as Class Counsel; and

c. Find that Defendant's actions violate the FDCPA; and

d. Grant statutory damages against Defendant pursuant to 15 U.S.C. § 1692k; and

e. Grant Plaintiffs' attorneys' fees pursuant to 15 U.S.C. § 1692k; and

f. Grant Plaintiffs' costs; together with

g. Such other relief that the Court determines is just and proper.

DATED: October 17, 2016

BARSHAY SANDERS, PLLC

By: <u>/s/ Craig B. Sanders</u>

Craig B. Sanders, Esq. 100 Garden City Plaza, Suite 500 Garden City, New York 11530 Tel: (516) 203-7600 Fax: (516) 706-5055 csanders@barshaysanders.com *Attorneys for Plaintiffs* Our File No.: 111756

July 02, 2016

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Geraldine L Pisk 294 Rose Ln Smithtown, NY 11787 Account Information Creditor: Synchrony Bank Reference: Lowe's® Consumer Credit Card Account Account: XXXXXXXXXXXXXXXX7326 Reference: 0189 Balance Due: \$1,007.00

Dear Geraldine L Pisk.

Your account has been referred to our office for collections by Synchrony Bank.

Please mail the balance in full to the payment address listed below. If you are experiencing financial difficulties, please call our office and a representative will assist you in negotiating a suitable payment arrangement.

The total account balance as of the date of this letter is shown above. Your account balance may increase because of interest or other charges, if so provided in your agreement with your creditor.

> Telephone: 1-877-239-7495 08:00 AM ET to 12:00 AM ET Monday - Friday 08:00 AM ET to 05:00 PM ET Saturday - Sunday

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion of this debt, this office will assume that this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute this debt or any portion of this debt, this office will obtain verification of this debt or obtain a copy of a judgment and will 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.

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

NOTICE OF IMPORTANT RIGHTS

The State of New York requires that this office advise you that:

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seg., are prohibited from engaging in abusive. deceptive, and unfair debt collection efforts, including but not limited to:

1. the use or threat of violence;

2. the use of obscene or profane language; and

3. repeated phone calls made with the intent to annoy, abuse, or harass.

The State of New York requires that this office advise you that:

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);

2. Social security;

3. Public assistance (welfare);

- 4. Spousal support, maintenance (alimony) or child support;
- 5. Unemployment benefits;
- 6. Disability

Tel Work Cell Phone

7. Workers' compensation benefits;

8. Public or private benefits;

9. Veterans' benefits;

10. Federal student loans, federal student grants, and federal work study funds; and

11. Ninety percent of your wages or salary earned in the last sixty days.

New York City Department of Consumer Affairs License Number: #1193653

DETACH PAYMENT COUPON AND MAIL IN RETURN ENVELOPE PROVIDED TO ENSURE PROPER CREDIT TO YOUR ACCOUNT Please select form of payment: Personal Check Cashier's Check Money Order Account Information Balance Due: \$1,007.00 Creditor: Synchrony Bank Reference: Lowe's® Consumer Credit Card Account Amount Paid: \$ Account: XXXXXXXXXXXX7326 You can also pay online at: www.lowes.com/credit Reference: D189 Check here if your address or phone number has changed Make Payment To: & provide the new information below \Box Address _ 1911[19]+111-111-1111[1111]1111[11-1]11]+[1]+1[1111-1]1[1111-1]1[11]+ City State Zip ____ Synchrony Bank/Lowe's PO Box 530914 Tel Home Atlanta, GA 30353-0914

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PO BOX 1969 SOUTHGATE, MI 48195-0969

Genpact Services LLC

October 28, 2015

Carole M Balke 44 Neptune Ave East Patchogue, NY 11772 Account Information Creditor: Synchrony Bank Reference: Lowe's® Consumer Credit Card Account Account: XXXXXXXXXX2538 Reference: 2000 0960 Balance Due: \$141.00

Dear Carole M Balke,

Your account has been referred to our office for collections by Synchrony Bank.

Please mail the balance in full to the payment address listed below. If you are experiencing financial difficulties, please call our office and a representative will assist you in negotiating a suitable payment arrangement.

The total account balance as of the date of this letter is shown above. Your account balance may increase because of interest or other charges, if so provided in your agreement with your creditor.

Telephone: 1-877-239-7495 08:00 AM ET to 12:00 AM ET Monday - Friday 08:00 AM ET to 05:00 PM ET Saturday - Sunday

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2. the use of obscene or profane language; and

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1. Supplemental security income, (SSI);

2. Social security;

Public assistance (welfare);

4. Spousal support, maintenance (alimony) or child support;

5. Unemployment benefits;

6. Disability benefits;

7. Workers' compensation benefits;

8. Public or private pensions;

9. Veterans' benefits;

Tel Work _____ Cell Phone

10. Federal student loans, federal student grants, and federal work study funds; and

11. Ninety percent of your wages or salary earned in the last sixty days.

New York City Department of Consumer Affairs License Number: #1193653

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| DETACH PAYMENT COUPON AND MAIL IN RETURN EN | IVELOPE PROVIDED TO ENSURE PROPER CREDIT TO YOUR ACCOUNT |
| Please select form of payment: | GEN001_NY |
| □ Personal Check □ Cashier's Check □ Money Order Balance Due: \$141.00 | Account Information Creditor: Synchrony Bank |
| Amount Paid: \$ | Reference: Lowe's® Consumer Credit Card Account Account: XXXXXXXXXXX2538 |
| You can also pay online at: <u>www.lowes.com/credit</u> | Reference: 0960 |
| Check here if your address or phone number has changed & provide the new information below | Make Payment To: |
| City | ուվեհեկինը հերհիրին իրդունինը հերունը էլ հերհիրինին հերհիրինը հե |
| State Zip | Synchrony Bank/Lowe's |
| Tel Home | PO Box 530914 |

Atlanta, GA 30353-0914

JS 44 (Rev. 07/16) Case 2:16-cv-05809 Dequirent Ov Files 10(18/16 Page 1 of 2 PageID #: 10

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.)

| FF | | | | | | | | | | |
|---|--|---|------------------|--|-----------------|---------------------------|--|---|-----------------------------|--------------|
| I. (a) PLAINTIFFS | | | | DEFENDANT | ſS | | | | | |
| GERALDINE PISK | | | | GENPACT SERVICES LLC | | | | | | |
| (b) County of Residence of First Listed Plaintiff | | SUFFOLK | | County of Residence of First Listed Defendant NEW YORK | | | | | | |
| | CEPT IN U.S. PLAINTIFF C | ASES) | | (IN U.S. PLAINTIFF CASES ONLY) | | | | | | |
| | | | | NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. | | | | | | |
| (c) Attorneys (Firm Name, A | - | er) | | Attorneys (If Know | wn) | | | | | |
| BARSHAY SAND 100 Garden City P | laza, Ste 500, Garden Ci | ity. NY 11530 | | | | | | | | |
| (516) 203-7600 | , |) , | | | | | | | | |
| II. BASIS OF JURISDI | CTION (Place an "X" in (| One Box Only) | | ZENSHIP OF | F PR | INCIPA | L PARTIES (| | | |
| O 1 U.S. Government • 3 Federal Question | | | (For Dive | ersity Cases Only) | PTF | DEF | | and One I | Box for Defeni PIF | dant) DEF |
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| | | | | or Subject of a gn Country | 03 | O 3 | Foreign Nation | | 06 | O 6 |
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| | | atute under which you are | filing (Do | not cite jurisdictiona | l statu | tes unless a | liversity): 15 USC | §1692 | | |
| VI. CAUSE OF ACTIO | N Brief description of car | use: 15 USC §1692 Fa | air Debt C | ollection Practices | Act V | Violation | | | | |
| VII. REQUESTED IN COMPLAINT: | | | DEN | MAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: • Yes ○ No | | | int: | | | |
| VIII. RELATED CASE IF ANY | k(S) | (See Instructions) JUDGE | | | | DOC | KET NUMBER | | | |
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Case 2:16-cv-05809 Document 1-2 Filed 10/18/16 Page 2 of 2 PageID #: 11 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, <u>Craig B. Sanders</u>, counsel for <u>Plaintiff</u>, 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,
- \Box the complaint seeks injunctive relief,
- \Box the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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: <u>NO</u>

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? <u>YES</u>

b) Did the events or 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.

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 Craig B. Sanders | |
|------------|---------------------|--|
| | | |

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

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF NEW YORK

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Civil Action No.

Geraldine Pisk and Carole Balke, on behalf of themselves and all others similarly situated *Plaintiff(s)*

v.

Genpact Services LLC

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Genpact Services LLC c/o National Corporate Research Ltd , 10 E. 40th Street, 10th Floor New York, New York 10016

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:

BARSHAY SANDERS PLLC 100 GARDEN CITY PLAZA, SUITE 500 GARDEN CITY, NY 11530

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

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Civil Action No.

PROOF OF SERVICE

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

[] I personally served the summons on the individual at (*place*)

| | on (a | late) | ; or |
|-----------------------|--|-----------------|-----------|
| [] I left the summo | ns at the individual's residence or usual place of | abode with (nat | me) |
| | , a person of suitable age and discret | ion who reside | s there, |
| on (date) | , and mailed a copy to the individual's la | st known addre | ess; or |
| [] I served the sum | mons on (name of individual) | | _, who is |
| designated by law to | accept service of process on behalf of (name of or | rganization) | |
| | on (<i>date</i>) | ; or | |
| [] I returned the sur | nmons 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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Genpact Services Facing FDCPA Class Action</u>