

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

Plaintiff,

-against-

ENHANCED RECOVERY COMPANY, LLC

Defendant.

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**CLASS ACTION COMPLAINT**

***Introduction***

1. Plaintiff Ella Sharon seeks redress for the illegal practices of Enhanced Recovery Company, LLC 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 is a consumer debt.
4. Upon information and belief, Defendant's principal place of business is located in Jacksonville, Florida.
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 April 10, 2017, Defendant sent the Plaintiff a collection letter seeking to collect a balance allegedly incurred for personal purposes.
11. The said collection letter was confusing to the Plaintiff and is likely to be misconstrued by the “least sophisticated consumer” since it is open to more than one reasonable interpretation, at least one of which is inaccurate.
12. The Second Circuit stated in Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 74 (2d Cir. 2016)

“The question presented is whether a collection notice that states a consumer's "current balance," but does not disclose that the balance may increase due to interest and fees, complies with this provision. We hold that Section 1692e requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees.

13. The holding of the Second Circuit is that Section 1692e of the FDCPA requires every debt collector in every collection letter “to disclose that the balance may increase due to interest and fees”.
14. However if the “Original Balance” will never increase and the holder of the debt will always accept payment of the amount set forth in full satisfaction of the debt then the

Second Circuit alternatively stated:

“We hold that a debt collector will not be subject to liability under Section 1692e for failing to disclose that the consumer's balance may increase due to interest and fees if the collection notice *either* accurately informs the consumer that the amount of the debt stated in the letter will increase over time, *or* clearly states that the holder of the debt will accept payment of the amount set forth in full satisfaction of the debt.” *Id.* at 817.

15. The Second Circuit in *Avila* did not “hold that a debt collector must use any particular disclaimer” *Id.*
16. However the Second Circuit did address all the possible scenarios: 1) If the “current balance” could increase over time, then the collection notice must disclose that the “balance might increase due to interest and fees”. *Id.* 2) If the “current balance” is currently increasing, then the collection notice must disclose that the amount of the debt stated, “in the letter will increase over time”. *Id.* 3) If the “current balance” will never increase and the debt collector is always willing to accept this “specified amount” in “full satisfaction” of the debt, then the debt collector must state so clearly. However, if a debt collector is willing to accept a “specified amount” in full satisfaction of the debt only if payment is made by a specific date, then the debt collector must simplify the consumer's understanding by so stating, while advising that the amount due could increase by the accrual of additional interest or fees if payment is not received by that date.
17. In this case, the “Original Balance” was increasing due to interest per the creditor’s contract. Nevertheless, the collection notice did not disclose that the amount of the debt stated in the letter “could” or “will” increase over time.
18. The Plaintiff, as well as the “least sophisticated consumer” was unsure as to whether or

not the said account was accruing interest.

19. The “Original Balance” in this case was for an amount that included original principal, fees, and contractual interest.
20. The Plaintiff was left uncertain as to whether the “Original Balance” was accruing interest as there was no disclosure that indicated otherwise.
21. The FDCPA requires debt collectors, when notifying consumers of their account balance, to disclose that the balance may increase due to interest and fees; failure to include such disclosures would harm consumers such as the Plaintiff who may hold the reasonable but mistaken belief, that timely payment will satisfy their debts and it would abrogate the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e.
22. The amount of the contractual interest automatically increases each day that the defaulted debt remains unpaid due to the automatically accrued interest.
23. Collection notices that state only the “Original Balance,” but do not disclose that the balance might increase due to interest and fees, are “misleading” within the meaning of Section 1692e.
24. The Synchrony Bank account was being collected by GC Services Limited Partnership, prior to Defendant Enhanced Recovery Company, LLC’s taking over of the said account.
25. GC Services Limited Partnership had sent a letter to the Plaintiff, on March 28, 2016 regarding the Synchrony Bank account.
26. The balance stated in the said March 28, 2016 letter from GC Services was \$1,426.00, and in addition to that balance, interest was accruing daily as apparent from the

Defendant's April 10, 2017 letter, which reflected an increase in the balance to an amount of \$1,632.87.

27. A reasonable consumer could be misled into believing that he could pay his debt in full by paying the amount as listed in the April 10, 2017 notice.
28. In fact, however, since as shown by the difference in the amount between the March 28, 2016 letter and the new increased amount in the April 10, 2017 letter, which reflects that interest was accruing daily, a consumer who pays the "Account Balance" as stated in the letter be left unaware as to whether or not the debt has been paid in full.
29. The debt collector could still seek the interest and fees that had accumulated after the notice was sent, but before the balance was paid, or sell the consumer's debt to a third party, who itself could seek the post charge-off interest and fees from the consumer.<sup>1</sup>
30. Where a debt collector mails a debtor various different letters which show that interest is accruing daily, yet the debt collector "is willing to accept a specified amount in full satisfaction of the debt if payment is made by a specific date [it must] simplify the consumer's understanding by so stating, while advising that the amount due would increase by the accrual of additional interest or fees if payment is not received by that date."<sup>2</sup> However, if the debt collector intended on waiving the interest accruing it must clearly state that the interest is being waived.
31. The said collection letters at issue were increasing daily due to interest, but the April 10, 2017 notice specifically, failed to disclose that the balance would continue to increase due to interest and fees, or in the alternative, the April 10, 2017 letter failed to disclose that the balance was actually not increasing due to the interest being waived.

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<sup>1</sup> See Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)

<sup>2</sup> *id.*

32. In any case, the Defendant's said April 10, 2017 collection letter was "misleading" and "confusing" within the meaning of Section 1692e of the FDCPA.

Absent a disclosure by the holder of the debt that the interest accruing since the previous letter is waived, even if the debtor pays the "Amount of Debt" the Defendant and or the creditor could still seek the interest accruing since the previous letter, or sell the consumer's debt to a third party, which itself could seek the accrued interest from the consumer.<sup>3</sup>

33. Waiver of interest even when it has been made explicitly has not prevented debt-collectors from continuing to illegally charge the waived interest.

34. At the bare minimum, a debt collector must make clear even to the unsophisticated consumer that it intends to waive the accruing post charge-off interest.

35. A debt-collector must disclose, that the balance due may change over time.

36. To the extent that the Creditor or Defendant intended to waive the automatically accrued and accruing interest, it was required to disclose that in the most conspicuous of terms.

37. If the "Original Balance," will never increase and the debt collector is always willing to accept this "specified amount" in "full satisfaction" of the debt, then the debt collector must clearly state that the holder of the debt will always accept payment of the amount set forth in "full satisfaction" of the debt.

38. Defendant was required to include a disclosure that the automatically accrued interest was accruing, or in the alternative, the Defendant was required to disclose that the creditor has made an intentional decision to waive the automatically accruing interest and will always accept this "specified amount" in "full satisfaction" of the debt

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<sup>3</sup> Avila, at \*10-11.

nonetheless it did not make any of those disclosures in violation of 1692e.

39. If interest was waived, the letter would need to contain that disclosure and clearly state that no interest is accruing on this account in order to provide full and fair disclosure to consumers of the actual balance as is embodied in Section 1692e.
40. The Second Circuit adopted a safe harbor disclaimer stating "that requiring such disclosure best achieves the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e. It also protects consumers such as the Plaintiff, who may hold the reasonable but mistaken belief that timely payment will satisfy their debts."<sup>4</sup>
41. Because the statement of the "Original Balance" that included original principal, fees, and contractual interest, without notice that the accruing interest was expressly waived can mislead the least sophisticated consumer into believing that payment of the amount stated will clear her account, the FDCPA requires debt collectors, when they notify consumers of their account balance, to expressly disclose that the amount of the debt stated in the letter will increase over time, *or* clearly state that the holder of the debt will always accept payment of the amount set forth in full satisfaction of the debt. *Id.* at 817.
42. Requiring such disclosure best achieves the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e. It also protects consumers such as the Plaintiff, who may hold the reasonable, but mistaken belief that timely payment will satisfy their debts and it protects them from other debt collectors seeking further interest on this debt in the future.
43. According to the Second Circuit's finding that the "Original Balance" must contain a

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<sup>4</sup> *Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72, 76 (2d Cir. 2016)

full and fair disclosure, if a credit card account was being charged interest, pursuant to a contract and the interest was intended to be waived, disclosure of such a waiver is necessary or the consumer would not know what the balance is. “[i]n fact, however, if interest is accruing daily, [or was not expressly waived] a consumer who pays the ‘current balance’ stated on the notice will not know whether the debt has been paid in full. The debt collector could still seek the [accruing or unwaived] interest and fees that accumulated after the notice was sent but before the balance was paid, or sell the consumer's debt to a third party, which itself could seek the interest and fees from the consumer.”<sup>5</sup>

44. The 8th Circuit in Haney v. Portfolio Recovery Assocs., No. 15-1932, 2016 U.S. App. LEXIS 17287 (8th Cir. Sep. 21, 2016) clearly explains that merely not including interest in post charge off statements is not express waiver of interest, and the debt collector or creditor can seek the interest in the future.
45. In fact, in this case the Plaintiff is still not sure whether there was any intent to waive the interest. There was definitely no express waiver and disclosure of waiver is mandatory if interest was originally accruing per the contract. The consumer could not know what the real balance is.
46. The intent to waive a contractual right must be unmistakably manifested and may not be inferred from doubtful or equivocal acts.<sup>6</sup> A waiver of a contract right does not occur by negligence, oversight or thoughtlessness and cannot be inferred from mere silence.<sup>7</sup>
47. Failure to disclose such a waiver of the automatically accruing interest is in of itself

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<sup>5</sup> Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 76 (2d Cir. 2016)

<sup>6</sup> Navillus Tile, Inc. v. Turner Const. Co., 2 A.D.3d 209, 770 N.Y.S.2d 3 (1st Dep’t 2003)

<sup>7</sup> Acumen Re Management Corp. v. General Sec. Nat. Ins. Co., 2012 WL 3890128, at \*6 (S.D. N.Y. 2012), reconsideration denied, motion to certify appeal granted, 2012 WL 6053936 (S.D. N.Y. 2012).



deceptive and “misleading” within the meaning of Section 1692e. The Defendant knew that the balance would increase due to interest, fees and/or disbursements.

48. According to the Second Circuit in *Avila*, any debt that was accruing interest and fees would need full and complete disclosure which would either clearly state that the balance “may” or “will” increase over time or clearly state that the debt is “static” and holder of the debt will always accept payment of the amount set forth in “full satisfaction” of the debt.
49. The “Original Balance” is for an amount that includes original principal, fees, and contractual interest.
50. Since interest was accruing on this debt, the collection notice must inform the consumer that the amount of the debt stated in the letter may increase over time.
51. Collection letters failing to reference the accrual of interest or waiver of interest are subject to two different interpretations as to the accumulation of interest, rendering them deceptive under § 1692e(10). See Sperber v. Central Credit Services LLC No. CV 16-cv-05222 (ARR) (RLM), 2017 U.S. Dist. (E.D.N.Y. May. 1, 2017). (“This matter presents the question of whether failing to disclose [] interest, or failing to explicitly waive the right to collect it, constitutes a “false, deceptive, or misleading” practice under § 1692e... Plaintiff contends that the collection notice he received, which neither stated that [] interest was accruing nor waived the creditor’s right to collect it, is deceptive or misleading under *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72 (2d Cir. 2016)... Having alleged that interest was accruing on his debt and that CCS failed to either disclose this interest or otherwise disclaim its right to collect it, *Sperber* has stated a plausible claim that the collection notices he received from CCS were misleading under

Section 1692e of the FDCPA. *See Avila*, 817 F.3d at 76.")

52. "None of the letters provided further detail regarding when or how the balance had been calculated, whether it included interest, or whether interest continued to accrue. The court finds that the "least sophisticated consumer" could have read these letters in at least two different ways. *On one hand*, an unsophisticated consumer could reasonably conclude that the balance was a fixed amount that would not be subject to further interest, late fees, or other charges. *On the other*, an unsophisticated consumer could just as reasonably determine that the balance would continue to grow over time as interest accrued. *One of those meanings would necessarily be inaccurate*. Therefore, the court finds that Defendants' letters were deceptive as a matter of law. Courts in other districts have reached the same conclusion on similar facts. The court grants Ms. Snyder's motion for summary judgment on this issue." Snyder v. Gordon, No. C11-1379 RAJ, 2012 U.S. Dist. LEXIS 120659, at \*8-9 (W.D. Wash. Aug. 24, 2012), Avila v. Riexinger & Assocs., LLC, 817 F.3d 72, 75 (2d Cir. 2016). ("[I]n considering whether a collection notice violates Section 1692e, we apply the "least sophisticated consumer" standard...**Under this standard, a collection notice is misleading if it is "open to more than one reasonable interpretation, at least one of which is inaccurate."**")
53. "The Court therefore finds that [the debt collectors] letters to [the debtor] are subject to two different interpretations as to the accumulation of interest, rendering them deceptive under § 1692e(10) ... The logic [applies] to stated outstanding debt and the need for consumers to be aware that this debt may be dynamic or static. They are concerned with a consumer's inability to discern whether an amount owed may grow with time, regardless of whether offers to settle are on the table or not. As [plaintiff] states, this

information is relevant in a consumer's payment calculus, especially when some debts must be paid at the expense of others. And, of course, the existence of settlement offers would be entirely irrelevant to these considerations for the many consumers who are unable to take advantage of them...Plaintiff's claim is not that the stated balance was not itemized, but that it was unclear whether it was subject to future interest." Michalek v. ARS Nat'l Sys., No. 3:11-CV-1374, 2011 U.S. Dist. LEXIS 142976, at \*16-17 (M.D. Pa. Dec. 13, 2011).

54. Plaintiff and the least sophisticated consumer could conclude from the collection letter, that the "Original Balance" is static and that his or her payment of the amount due would satisfy the debt irrespective of when payment was remitted. However, absent a disclosure by the holder of the debt that clearly stated that the holder of the debt would accept payment of the amount set forth in "full satisfaction" of the debt then even if the debtor pays the "Original Balance" the Defendant and or the creditor could still seek the automatic interest that accumulated after the breach of contract, or sell the consumer's debt to a third party, which itself could seek the automatic interest and from the consumer. (Avila, at \*10-11.)
55. The said letter was deceptive and misleading as it merely identified the "Original Balance," yet failed to disclose that the balance may increase due to interest and fees.
56. The Plaintiff was left uncertain as to whether the "Original Balance" was accruing interest as there was no disclosure that indicated otherwise.
57. A reasonable consumer could read the notice and be misled into believing that he or she could always pay his or her debt in full by paying the amount listed on the notice.
58. In fact, however, since interest is accruing daily, or since there are undisclosed late fees,

a consumer who pays the “Original Balance” stated on the notice will not know whether the debt has been paid in full.

59. The debt collector could still seek the interest and fees that accumulated after the notice was sent but before the balance was paid, or sell the consumer’s debt to a third party, which itself could seek the interest and fees from the consumer.
60. The statement of an “Original Balance” without notice that the amount is already increasing due to accruing interest or other charges, would mislead the least sophisticated consumer into believing that payment of the amount stated will clear his or her account.
61. The FDCPA requires debt collectors, when notifying consumers of their account balance, to disclose that the balance may increase due to interest and fees; failure to include such disclosures would harm consumers such as Plaintiff who may hold the reasonable but mistaken belief, that timely payment will satisfy their debts and it would abrogate the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e.
62. Collection notices that state only the “Original Balance,” but do not disclose that the balance might increase due to interest and fees, are “misleading” within the meaning of Section 1692e.
63. The Plaintiff and the least sophisticated consumer would be led to believe that the “Original Balance” is static and that his or her payment of the amount due would satisfy the debt irrespective of when payment was remitted.
64. A consumer who pays the “Original Balance” stated on the collection letter will be left unsure as to whether or not the debt has been paid in full, as the Defendant could still

attempt to collect on any interest and fees that accumulated after the letter was sent but before the balance was paid.

65. As per the terms and conditions of the credit card agreement, Synchrony Bank/QCARD charged the Plaintiff interest on balances carried on the alleged account.
66. As per the terms and conditions of the credit card agreement, Synchrony Bank/QCARD charged the Plaintiff late fees on any and all payments due, but which were not timely made by the Plaintiff.
67. As per the terms and conditions of the credit card agreement, Synchrony Bank/QCARD charged Plaintiff other fees on the account.
68. At no point did Synchrony Bank/QCARD waive its right to collect from the Plaintiff, interest, late fees or other charges on any balance carried on the account.
69. At no point did the assignee or successor-in-interest waive its right to collect from the Plaintiff, interest, fees or other charges on any balance carried on the account.
70. At no point was the Plaintiff ever informed by Synchrony Bank/QCARD or the Defendant, that the terms and conditions of the credit card agreement had been changed.
71. As per the terms and conditions of the credit card agreement, interest, late fees and other charges continued to accrue on any unpaid balance.
72. As per the terms and conditions of the credit card agreement, Synchrony Bank/QCARD and any assignee or successor-in-interest had the legal right to collect from Plaintiff interest, late fees, and other charges on any balance carried on the account.
73. As per the terms and conditions of the credit card agreement, the legal right of Synchrony Bank/QCARD and any assignee or successor-in-interest to collect from the Plaintiff interest on any balance carried on the account is not waived by Synchrony

Bank/QCARD or any assignee or successor-in-interest as a result of a failure by either Synchrony Bank/QCARD or any assignee or successor-in-interest at any point in time to attempt to collect from Plaintiff the aforementioned interest, late fees or other charges.

74. The letter fails to inform Plaintiff whether the amount listed is the actual amount of the debt due.
75. The letter fails to inform Plaintiff whether the amount listed already includes accrued interest, late fees or other charges.
76. The letter fails to advise Plaintiff what portion of the amount listed is principal.
77. The letter fails to inform Plaintiff that the amount listed will increase.
78. The letter fails to inform Plaintiff if there is accrued interest, what the amount of the accrued interest will be.
79. The letter fails to inform Plaintiff if there is accrued interest, when such interest will be applied.
80. The letter fails to inform Plaintiff if there is accrued interest, what the interest rate is.
81. The letter fails to inform Plaintiff if there is accrued interest, the amount of money the amount listed will increase per any measurable period.
82. The letter fails to indicate the minimum amount the Plaintiff owed at the time of the letter
83. The letter fails to provide information that would allow the least sophisticated consumer to determine the minimum amount he or she owes at the time of the letter.
84. The letter fails to provide information that would allow the Plaintiff to determine what Plaintiff will need to pay to resolve the debt at any given moment in the future.
85. The letter, because of the aforementioned failures, would render the least sophisticated

consumer unable to determine the amount of his or her debt.

86. The least sophisticated consumer could reasonably believe that the amount listed was accurate only on the date of the letter.
87. The Defendant's failures are purposeful.
88. In order to induce payments from consumers that would not otherwise be made if the consumer knew the true amount due, Defendant does not inform the consumer whether the amount listed will increase.
89. Defendant's conduct constitutes a false, deceptive and misleading means and representation in connection with the collection of the debt, in violation of 15 U.S.C. § 1692e.
90. The letter can reasonably be read by the least sophisticated consumer to have two or more meanings concerning the actual balance due, one of which must be inaccurate, in violation of 15 U.S.C. § 1692e.
91. The Defendant further violated 15 U.S.C. § 1692e(2)(A) for misrepresenting the amount of the debt owed by the Plaintiff.
92. A debt collector, when notifying a consumer of his or her account balance, must disclose that the balance may increase due to interest and fees.
93. 15 U.S.C. § 1692e provides:

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:

  - (2) The false representation of --
    - (A) the character, amount, or legal status of any debt; or
    - (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.

94. Defendant's April 10, 2017 letter is in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10) of the FDCPA for the use of any false representation or deceptive means to collect or attempt to collect any debt and for misrepresenting the amount of the debt owed by the Plaintiff.
95. Plaintiff suffered injury in fact by being subjected to unfair and abusive practices of the Defendant.
96. Plaintiff suffered actual harm by being the target of the Defendant's misleading debt collection communications.
97. Defendant violated the Plaintiff's right not to be the target of misleading debt collection communications.
98. Defendant violated the Plaintiff's right to a truthful and fair debt collection process.
99. Defendant used materially false, deceptive, misleading representations and means in its attempted collection of Plaintiff's alleged debt.
100. Defendant's communications were designed to cause the debtor to suffer a harmful disadvantage in charting a course of action in response to the Defendant's collection efforts.
101. 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 her of her right to enjoy these benefits, these materially misleading statements trigger liability



under section 1692e of the Act.

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

**AS AND FOR A CAUSE OF ACTION**

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

104. Plaintiff re-states, re-alleges, and incorporates herein by reference, paragraphs one (1) through one hundred and three (103) as if set forth fully in this cause of action.
105. This cause of action is brought on behalf of Plaintiff and the members of a class.
106. 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 in substantially the same form letter as the letter sent to the Plaintiff on or about April 10, 2017; and (a) the collection letter was to a consumer seeking payment of a personal debt purportedly owed to Synchrony Bank/QCARD; and (b) the collection letter was not returned by the postal service as undelivered; (c) and the Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10) of the FDCPA for the use of any false representation or deceptive means to collect or attempt to collect any debt and for misrepresenting the amount of the debt owed by the Plaintiff.
107. 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 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.

108. 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.

109. 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.
110. 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***

111. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
112. 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 her favor and against the Defendant and award damages as follows:

- A. Statutory 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  
April 10, 2018

/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.

/s/ Adam J. Fishbein  
Adam J. Fishbein (AF-9508)

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



GC Services Limited Partnership  
Collection Agency Division

(877) 431-3767

SEND PAYMENT TO:

March 28, 2016

92789519



Ella Sharon

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

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.**





Creditor: Synchrony Bank/QCARD  
Original Creditor:  
Account Number: XXXXXXXXXXXXX3019  
Amount of Debt: \$1,632.87  
Reference Number: [redacted] 58

April 10, 2017  
Original Balance: \$1,632.87  
Interest Accrued: \$0.00  
Non-interest Charges & Fees: \$0.00  
Payments: -\$0.00

COLLECTION NOTICE

ELLA SHARON

Our records indicate that your balance with Synchrony Bank remains unpaid; therefore your account has been placed with ERC for collection efforts.

Upon receipt and clearance of \$1,632.87, your account will be closed and collection efforts will cease.

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C./1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to: a) the use or threat of violence; b) the use of obscene or profane language; and c) repeated phone calls made with the intent to annoy, abuse, or harass.

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: Supplemental security income, (SSI); Social security; Public assistance (welfare); Spousal support, maintenance (alimony) or child support; Unemployment benefits; Disability benefits; Workers' compensation benefits; Public or private pensions; Veterans' benefits; Federal student loans, federal student grants, and federal work study funds; and Ninety percent of your wages or salary earned in the last sixty days.



View statements, pay your balance, and manage your account online at [www.payerc.com](http://www.payerc.com).



Telephone: (800) 383-5914 Toll Free. All calls are recorded and may be monitored for training purposes.



Send correspondence to: ERC, P.O. Box 57610, Jacksonville, FL 32241



Office Hours (Eastern Time): Mon-Thurs: 8:00 am-11:00pm, Fri: 8:00 am-10:00 pm, Sat: 8:00 am-8:00 pm

This is an attempt to collect a debt. Any information obtained will be used for that purpose.

NOTICE - SEE REVERSE SIDE FOR IMPORTANT NOTICES AND CONSUMER RIGHTS

Please do not send correspondence to this address.

P.O. BOX 1259, Dept 98696  
Oaks, PA 19456



April 10, 2017

Reference Number  
[redacted] 58

Amount of Debt  
\$1,632.87



ELLA SHARON



120720 - 8

ERC  
P.O. Box 23870  
Jacksonville, FL 32241-3870



0-B-6891-474



120720-30001-SD1-GEIM-M-8

NEW YORK, NY

for the

ELLA SHARON

Plaintiff(s)

V.

Civil Action No.

Defendant(s)

To: *(Defendant's name and address)*

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:

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.

DOUGLAS C. PALMER  
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**



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**  
  
ELLA SHARON

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)

**DEFENDANTS**  
  
County of Residence of First Listed Defendant \_\_\_\_\_  
(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  
☒ 3 Federal Question (U.S. Government Not a Party)  
  
☐ 2 U.S. Government Defendant  
☐ 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)  
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice  <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act  <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes

REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement

**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 (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
  
Brief description of cause:  
failure to accurately set forth the amount of the 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  
04/10/2018

SIGNATURE OF ATTORNEY OF RECORD

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, \_\_\_\_\_, counsel for \_\_\_\_\_, 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:

**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? ☐ Yes ☒ 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? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:\_\_\_\_\_.

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? ☐ Yes ☒ No

(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: \_\_\_\_\_

**Print****Save As...****Reset**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Enhanced Recovery Company Sued Over 'Unfair and Abusive' Debt Collection Practices](#)

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