

1 James L. Davidson*
2 Florida Bar No. 723371
3 GREENWALD DAVIDSON RADBIL PLLC
4 5550 Glades Road, Suite 500
5 Boca Raton, FL 33431
6 Telephone: 561-826-5477
7 Fax: 561-961-5684
8 j davidson@gdrlawfirm.com

9 *Counsel for Plaintiff and the proposed classes*

10 * to seek admission *pro hac vice*

11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 Vanessa Spencer, on behalf of herself and)
14 others similarly situated,)

15 Plaintiff,)

16 vs.)

17 Credence Resource Management, LLC,)

18 Defendant.)
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20)
21)
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23)
24)
25)
26)
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) Case No.
)
)
) **CLASS ACTION COMPLAINT AND**
) **TRIAL BY JURY DEMAND**

NATURE OF ACTION

1
2 1. This is a class action under the Fair Debt Collection Practices Act
3 (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, the Electronic Fund Transfer Act (“EFTA”), 15
4 U.S.C. § 1693, *et seq.*, and Regulation E, 12 C.F.R. §1005.10(b) (“Regulation E”),
5 promulgated by the Consumer Financial Protection Bureau (“CFPB”), for the benefit of
6 Arizona consumers who have been the subject of debt collection efforts by Credence
7 Resource Management, LLC (“Defendant”).

8 2. Congress enacted the FDCPA in 1977 to “eliminate abusive debt collection
9 practices by debt collectors,” 15 U.S.C. § 1692(e), and in response to “abundant evidence
10 of the use of abusive, deceptive, and unfair debt collection practices by many debt
11 collectors,” which Congress found to have contributed “to the number of personal
12 bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual
13 privacy.” 15 U.S.C. § 1692(a).

14 3. As the CFPB—the federal agency tasked with enforcing the FDCPA—
15 explained, “[h]armful debt collection practices remain a significant concern today.

16 4. In fact, the CFPB receives more consumer complaints about debt collection
17 practices than about any other issue.” *See* Brief for the CFPB as Amicus Curiae, ECF No.
18 14, p. 2, *Hernandez v. Williams, Zinman, & Parham, P.C.*, No. 14-15672 (9th Cir. Aug.
19 20, 2014).¹

20 5. The EFTA establishes the basic rights, liabilities, and responsibilities of
21 consumers who use electronic fund transfer services and of financial institutions that
22 offer those services.

23 6. The primary objective of the EFTA is the protection of individual
24 consumers engaging in electronic fund transfers. Regulation E is the implementing
25 regulation for the EFTA.

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27
28 ¹ https://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf

JURISDICTION AND VENUE

1
2 7. This Court has jurisdiction under to 15 U.S.C. § 1692k(d), 15 U.S.C.
3 1693m(g), and 28 U.S.C. § 1331.

4 8. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
5 the acts and transactions giving rise to Vanessa Spencer’s (“Plaintiff”) action occurred in
6 this district, and where Defendant transacts business in this district.

7 **PARTIES**

8 9. Plaintiff is a natural person who, at all relevant times, resided in Maricopa
9 County, Arizona.

10 10. Plaintiff is obligated, or allegedly obligated, to pay a debt owed or due, or
11 asserted to be owed or due, a creditor other than Defendant.

12 11. Plaintiff’s obligation, or alleged obligation, owed or due, or asserted to be
13 owed or due a creditor other than Defendant arises from a transaction in which the
14 money, property, insurance, or services that are the subject of the transaction were
15 incurred primarily for personal, family, or household purposes—namely, ambulance
16 services (the “Debt”).

17 12. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) and 15 U.S.C.
18 § 1693a(6).

19 13. Defendant is a limited liability company with principal offices located in
20 Dallas, Texas.

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

24 15. Upon information and belief, at the time Defendant attempted to collect the
25 Debt from Plaintiff, the Debt was in default, or Defendant treated the Debt as if it were in
26 default from the time that Defendant acquired it for collection.

27 16. Defendant uses instrumentalities of interstate commerce or the mails in a
28 business the principal purpose of which is the collection of any debts, and/or to regularly

1 collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be
2 owed or due, another.

3 17. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. §
4 1692a(6).

5 **FACTUAL ALLEGATIONS**

6 18. On or about March 10, 2017, Defendant sent a written communication to
7 Plaintiff in connection with the collection of the Debt.

8 19. The March 10, 2017 communication advised Plaintiff that she owed
9 \$1,503.32 to Rural Metro Corporation for ambulance services, and that the Debt had been
10 placed with Defendant for collection.

11 20. In response to the March 10, 2017 communication, Plaintiff telephoned
12 Defendant to pay the Debt.

13 21. During that call, which occurred around early April 2017, Plaintiff agreed
14 orally with Defendant that she would make a one-time payment of approximately \$100
15 on the Debt, and that she would thereafter make six monthly recurring payments of
16 approximately \$196 each from her BMO Harris checking account through her debit card,
17 and in addition pay a \$5 card fee for each debit (the “EFT Agreement”).

18 22. Defendant informed Plaintiff that if she wanted to make recurring payments
19 using her debit card, she would have to pay the \$5 card fee for each debit.

20 23. Plaintiff’s BMO Harris checking account was established primarily for
21 personal, family, or household purposes, and thus is an “account” as defined by 15 U.S.C.
22 § 1693a(2).

23 24. Thereafter, on or about April 6, 2017, Defendant debited \$105 from
24 Plaintiff’s BMO Harris account, and then on approximately May 17, 2017, June 19, 2017,
25 July 19, 2017, August 17, 2017, September 18, 2017 and October 19, 2017, Defendant
26 debited approximately \$201 (\$196 plus the \$5 card fee) from Plaintiff’s BMO Harris
27 account.
28

1
2 32. Excluded from the Classes is Defendant, its officers and directors, members
3 of their immediate families and their legal representatives, heirs, successors, or assigns,
4 and any entity in which Defendant has or had a controlling interest.

5 33. The proposed classes satisfy Rule 23(a)(1) because, upon information and
6 belief, they are so numerous that joinder of all members is impracticable.

7 34. The exact number of the members of the classes is unknown to Plaintiff at
8 this time and can only be determined through appropriate discovery.

9 35. The proposed classes are ascertainable because they are defined by
10 reference to objective criteria.

11 36. In addition, upon information and belief, the names and addresses of all
12 members of the proposed classes can be identified in business records maintained by
13 Defendant.

14 37. The proposed classes satisfy Rules 23(a)(2) and (3) because Plaintiff's
15 claims are typical of the claims of the members of the classes.

16 38. To be sure, Plaintiff's claims and those of the members of the classes
17 originate from the same standardized conduct utilized by Defendant, and Plaintiff
18 possesses the same interests and has suffered the same injuries as each member of the
19 proposed classes.

20 39. Plaintiff satisfies Rule 23(a)(4) because she will fairly and adequately
21 protect the interests of the members of the classes and has retained counsel experienced
22 and competent in class action litigation.

23 40. Plaintiff has no interests that are contrary to or in conflict with the members
24 of the classes that she seeks to represent.

25 41. A class action is superior to all other available methods for the fair and
26 efficient adjudication of this controversy, since, upon information and belief, joinder of
27 all members is impracticable.
28

1 42. Furthermore, as the damages suffered by individual members of the classes
2 may be relatively small, the expense and burden of individual litigation make it
3 impracticable for the members of the classes to individually redress the wrongs done to
4 them.

5 43. There will be little to no difficulty in the management of this action as a
6 class action.

7 44. Issues of law and fact common to the members of the classes predominate
8 over any questions that may affect only individual members, in that Defendant has acted
9 on grounds generally applicable to the class.

10 45. Among the issues of law and fact common to the class:

- 11 a. Defendant's violations of the FDCPA as alleged herein;
- 12 b. Whether Defendant is a debt collector as defined by the FDCPA;
- 13 c. Defendant's charging of a card fee for recurring payments;
- 14 d. Defendant's violations of the EFTA as alleged herein;
- 15 e. Defendant's failure to provide written copies of preauthorized electronic
16 fund transfer authorizations to consumers;
- 17 f. The availability of statutory penalties; and
- 18 g. The availability of attorneys' fees and costs.

19 **COUNT I: VIOLATION OF 15 U.S.C. § 1692f(1)**

20 46. Plaintiff repeats and re-alleges the factual allegations contained in
21 paragraphs 1 through 45.

22 47. The FDCPA at 15 U.S.C. § 1692f(1) provides:

23 A debt collector may not use unfair or unconscionable means to collect or
24 attempt to collect any debt. Without limiting the general application of the
25 foregoing, the following conduct is a violation of this section:

 * * *

26 (1) The collection of any amount (including any interest, fee, charge, or
27 expense incidental to the principal obligation) unless such amount is
28 expressly authorized by the agreement creating the debt or permitted by
 law.

1 48. The \$5 card fee that Defendant charged Plaintiff was not expressly
2 authorized by the agreement creating the Debt or permitted by law. *See, e.g., Quinteros v.*
3 *MBI Assocs., Inc.*, 999 F. Supp.2d 434 (E.D.N.Y. 2014) (plaintiff stated a claim under §
4 1692f(1) for \$5.00 credit card processing fee).

5 49. As a result, Defendant violated 15 U.S.C. § 1692f(1).

6 50. Plaintiff paid the \$5 card fee to Defendant on at least six occasions.

7 51. The harm suffered by Plaintiff is particularized in that the violative conduct
8 at issue was directed to her personally and regarded her personal alleged debt.

9 52. Likewise, Defendant's actions created a concrete harm in that they
10 constituted a debt collection practice that Congress prohibited because such practice is
11 likely to mislead consumers, causing them to pay money they do not owe.

12 53. In addition, Defendant collected monies from Plaintiff by way of the card
13 fee that it was not entitled to collect.

14 **COUNT II: VIOLATION OF THE EFTA, 15 U.S.C. § 1693e(a) AND**
15 **REGULATION E, 12 C.F.R. § 1005.10(b)**

16 54. Plaintiff repeats and re-alleges the factual allegations contained in
17 paragraphs 1 through 45.

18 55. 15 U.S.C. § 1693e(a) provides, in pertinent part:

19 A preauthorized electronic fund transfer from a consumer's account may be
20 authorized by the consumer only in writing, *and a copy of such*
21 *authorization shall be provided to the consumer when made.*

22 (emphasis added).

23 56. 12 C.F.R. § 1005.10(b) provides, in pertinent part:

24 Written authorization for preauthorized transfers from consumer's account.
25 Preauthorized electronic fund transfers from a consumer's account may be
26 authorized only by a writing signed or similarly authenticated by the
27 consumer. *The person that obtains the authorization shall provide a copy to*
28 *the consumer.*

(emphasis added).

1 57. The Official Staff Interpretations to the EFTA, at 12 C.F.R. Pt. 1005.10(b),
2 Supp. I, provide, in pertinent part:

3 2. Authorization obtained by third party. The account-holding financial
4 institution does not violate the regulation when a third-party payee fails to
5 obtain the authorization in writing or fails to give a copy to the consumer;
6 *rather, it is the third-party payee that is in violation of the regulation.*

7 (emphasis added).

8 58. Defendant never provided Plaintiff with a copy of the EFT Agreement or a
9 copy of any authorization of the EFT Agreement.

10 59. Specifically, Defendant failed to provide to Plaintiff in writing the total
11 amount of the payments to be made to Defendant, the recurring schedule of the payments,
12 or information regarding how to cancel or change the recurring payment arrangement.
13 *See* CFPB Compliance Bulletin 2015–06 (“In at least one examination, CFPB examiners
14 observed that one or more companies provided consumers a notice of terms for
15 preauthorized EFTs from a consumer’s account. Supervision determined that these
16 notices of terms did not satisfy Regulation E, because the notices did not disclose
17 important authorization terms such as the recurring nature of the preauthorized EFTs, or
18 the amount and timing of all the payments to which the consumer agreed.”).²

19 60. As a result, Defendant violated 15 U.S.C. § 1693e and 12 C.F.R. §
20 205.10(b).

21 61. The harm suffered by Plaintiff is particularized in that the violative conduct
22 at issue was directed to her personally, and regarded her personal alleged debt.

23 62. Likewise, Defendant’s actions created a concrete harm in that Defendant
24 failed to provide Plaintiff with information that Congress found to be important. *See, e.g.,*
25 *Kemply v. Cashcall, Inc.*, Case No. 08-cv-03174-MEJ, 2016 WL 1055251, at *6 (N.D.
26 Cal. Mar. 16, 2016) (“Congress accordingly recognized at the time that ‘[m]ost

27 ² [http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-](http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf)
28 [requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-](http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf)
[transfers.pdf](http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf) (last accessed November 2, 2017).

1 consumers are not aware of the risks they run in using EFT services.”) (quoting 124
2 Cong. Rec. 25,731 (1978), RJN, Dkt. No. 289-4 at 1).

3 63. In addition, Defendant’s actions invaded a specific private right created by
4 Congress, and the invasion of said right created the risk of real harm.

5 WHEREFORE, Plaintiff respectfully requests relief and judgment as follows:

- 6 A. Determining that this action is a proper class action under Rule 23 of the
7 Federal Rules of Civil Procedure;
- 8 B. Adjudging and declaring that Defendant violated 15 U.S.C. § 1692f(1), 15
9 U.S.C. § 1693e, and 12 C.F.R. § 205.10(b);
- 10 C. Awarding Plaintiff and members of the FDCPA class statutory and actual
11 damages pursuant to 15 U.S.C. § 1692k;
- 12 D. Awarding Plaintiff and members of the EFTA class statutory damages
13 pursuant to 15 U.S.C. § 1693m;
- 14 E. Awarding Plaintiff and members of both classes their reasonable costs and
15 attorneys’ fees incurred in this action, including expert fees, pursuant to 15
16 U.S.C. § 1692k, 15 U.S.C. § 1693m, and Rule 23 of the Federal Rules of
17 Civil Procedure;
- 18 F. Awarding Plaintiff and members of the classes any pre-judgment and post-
19 judgment interest as may be allowed under the law; and
- 20 G. Awarding other and further relief as the Court may deem just and proper.

21 **TRIAL BY JURY**

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

23
24 Respectfully submitted this 22nd day of November, 2017.

25 By: s/ James L. Davidson
26 James L. Davidson*

27 *to seek admission *pro hac vice*
28

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the
Complaint or Notice of Removal.**

Plaintiff(s): Vanessa Spencer

**Defendant(s): Credence Resource Management
LLC**

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**James Davidson
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, Florida 33431
5618265477**

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

890 Other Statutory Actions

VI. Cause of Action:

**15 U.S.C. 1692; 15 U.S.C. 1693; violations of the Fair Debt Collection
Practices Act and the Electronic Funds Transfer Act.**

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: James L. Davidson

Date: 11/22/17

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Credence Resource Management Sued Over Electronic Payment Fees](#)
