

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY (Newark)**

=====	:	
	:	
<b>NATALIE A. WILLIAMS and ALAN J.,</b>	:	<b>2:11-cv-07296 (KSH)(PS)</b>
<b>SETNESKA, individually and on behalf</b>	:	
<b>of all others similarly situated,</b>	:	
	:	
Plaintiffs	:	
	:	<b>ANSWER and DEFENSES OF</b>
vs.	:	<b>PRESSLER &amp; PRESSLER, LLP</b>
	:	
<b>PRESSLER &amp; PRESSLER, LLP,</b>	:	
	:	
Defendant	:	
=====	:	

**Defendant, Pressler and Pressler, L.L.P.**, (“Pressler”) by way of answer to Plaintiffs’ complaint (the “Complaint”) says:

**I. NATURE OF THE ACTION**

1. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**II. PARTIES**

2. Admitted.

3. Defendant neither admits nor denies this paragraph which makes allegations regarding Plaintiff’s domicile and status and leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

4. Defendant is without information or belief as to this paragraph which makes allegations regarding Plaintiff’s identity status and leaves plaintiff to her proofs. As to those allegations

which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

5. Admitted.

6. Defendant neither admits nor denies this paragraph which makes allegations regarding Plaintiff's domicile and status and leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

7. Admitted.

### **III. JURISDICTION AND VENUE**

8. Defendant denies any factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

9. Admitted that Pressler is located in the State of New Jersey and is engaged in the practice of law. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

### **IV. LEGAL BASIS FOR FAIR DEBT COLLECTION PRACTICES ACT CLAIMS**

10. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

11. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

12. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

13. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

14. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

15. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

16. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

17. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

18. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

19. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

20. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

21. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

22. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

23. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

24. Defendant denies the factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

## **V. FACTS REGARDING WILLIAMS**

25. Admitted.

26. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs.

27. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs.

28. Admitted that Pressler is located in the State of New Jersey and is engaged in the practice of law, which on some occasions involves collecting monies due and owing through legal process.

29. Admitted that Defendant is engaged in the practice of law, which on some occasions involves collecting monies due and owing through legal process.

30. Admitted.

31. Admitted that Defendant is engaged in the practice of law, which on some occasions involves collecting monies due and owing through legal process.

32. Admitted.

33. Defendant admits it sent correspondence dated November 1, 2010 to one Natalie Freeman. As to the characterization of the correspondence the document speaks for itself and no further response will be made at this time.

34. Defendant admits it sent correspondence dated November 1, 2010 in the form annexed as Exhibit 1. As to the characterization of the correspondence the document speaks for itself and no further response will be made at this time.

35. Defendant admits it filed a complaint on or about December 17, 2010 against one Natalie Freeman in the form annexed to the complaint as Exhibit 2. As to the characterization of the correspondence the document speaks for itself and no further response will be made at this time.

36. Defendant admits it filed a complaint on or about December 17, 2010 in the form annexed to the complaint as Exhibit 2. As to the characterization of the document the document speaks for itself and no further response will be made at this time.

37. Admitted.

38. Defendant admits it filed a complaint on or about December 17, 2010 in the form annexed to the complaint as Exhibit 2. As to the characterization of the document the document speaks for itself and no further response will be made at this time.

39. Denied.

40. Denied.

41. Denied.

42. Defendant neither admits nor denies any factual allegations contained within this paragraph which is directed towards unidentified third parties and leaves plaintiff to his proofs.

43. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs. As to the characterization of the document the document speaks for itself and no further response will be made at this time.

44. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs. As to the characterization of the document annexed to the complaint as Exhibit 3 the document speaks for itself and no further response will be made at

this time.

45. Defendant admits it sent correspondence dated January 12, 2011 in the form annexed as Exhibit 4. As to the characterization of the correspondence the document speaks for itself and no further response will be made at this time.

46. Defendant admits it sent correspondence dated January 12, 2011 in the form annexed as Exhibit 4. As to the characterization of the correspondence the document speaks for itself and no further response will be made at this time.

47. Defendant admits it sent correspondence dated January 12, 2011 in the form annexed as Exhibit 4. As to the characterization of the correspondence the document speaks for itself and no further response will be made at this time.

48. Defendant is without information or belief as to the factual allegations contained within this paragraph leaves Plaintiff to her proofs.

48.01 Defendant denies all allegations which may have been made against it. As to those allegations regarding actions taken by Plaintiff or other third parties, this answering Defendant is without information or belief and leaves Plaintiff to her proofs.

48.02 Defendant denies all allegations which may have been made against it. As to those allegations regarding actions taken by Plaintiff or other third parties, this answering Defendant is without information or belief and leaves Plaintiff to her proofs.

48.03 Defendant denies all allegations which may have been made against it. As to those allegations regarding actions taken by Plaintiff or other third parties, this answering Defendant is without information or belief and leaves Plaintiff to her proofs.

49. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

50. Defendant neither admits nor denies any factual allegations contained within this

paragraph leaves Plaintiff to her proofs.

51. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

52. Admitted.

53. Admitted that Defendant caused a letter dated February 25, 2011 to be sent in the underlying state court action. Denied that said letter was in an attempt to collect a debt.

54. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

55. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

56. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

57. Admitted.

58. Denied.

59. Defendant denies the factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

60. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

61. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves Plaintiff to her proofs.

62. Admitted.

63. Admitted.

64. Defendant is without information or belief as to the allegations contained within this



paragraph and leaves plaintiff to her proofs.

65. Denied.

#### **VI. WILLIAMS' CLAIM FOR VIOLATIONS OF THE FDCPA**

66. Defendant repeats and incorporates by reference all responses made in the above paragraphs.

67. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

68. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

69. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

70.01. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

70.02. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

70.03. Defendant denies any factual allegations contained within this paragraph directed towards

it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

70.04. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

71. Denied.

## **VII. FACTS REGARDING SETNESKA**

72. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

73. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

74. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

75. Admitted that Pressler is located in the State of New Jersey and is engaged in the practice of law, which on some occasions involves collecting monies due and owing through legal process.

76. Admitted that Defendant is engaged in the practice of law, which on some occasions involves collecting monies due and owing through legal process.

77. Denied.

78. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

79. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

80. Admitted that Pressler filed a complaint entitled New Century Financial Services, Inc. vs. Alan Setneska, Docket No. MER-L-001502-11 in the Superior Court of New Jersey, Law Division, Mercer County on behalf of its client New Century Financial Services, Inc. All other factual allegations are denied.

81. Defendant admits it filed a complaint on or about June 7, 2011 in the form annexed to the complaint as Exhibit 5. As to the characterization of the document the document speaks for itself and no further response will be made at this time.

82. Admitted.

83. Defendant admits it filed a complaint on or about June 7, 2011 in the form annexed to the complaint as Exhibit 5. As to the characterization of the document the document speaks for itself and no further response will be made at this time.

84. Denied.

85. Denied.

86. Admitted.

87. Admitted.

88. Admitted,

89. Admitted to the extent that a letter in the form annexed as Exhibit 7 was sent. All other factual allegations are denied.

90. Admitted.

91. Admitted to the extent that a letter in the form annexed as Exhibit 7 was sent. All other factual allegations are denied.

92. Denied.

92.01. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

92.02. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

92.03. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

#### **VIII. SETNESKA'S CLAIM FOR VIOLATIONS OF THE FDCA**

93. Defendant repeats and incorporates by reference all responses made in the above paragraphs.

94. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

95. Defendant neither admits nor denies any factual allegations contained within this

paragraph leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

96. Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

97. Denied.

98. Denied.

#### **IX. POLICIES AND PRACTICES COMPLAINED OF**

99. Denied.

100. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

#### **VIII. CLASS ALLEGATIONS**

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

106.01. Defendant denies any factual allegations contained within this paragraph directed

towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

106.02. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

106.03. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

106.04. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

107. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

108. Defendant denies any factual allegations contained within this paragraph directed towards it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

#### **IX. PRAYER FOR RELIEF**

**109. WHEREFORE** Defendant, Pressler, hereby requests dismissal of Plaintiffs' Complaint with costs and attorney's fees as allowed under the Fair Debt Collection Practices Act 15 U.S.C. §1692k (a)(3) or otherwise by statute or rule of court.

#### **SEPARATE DEFENSES**

1. Plaintiffs fail to state a claim under State or Federal Statutory Law.
2. Plaintiffs fail to states a claim for which relief may be sought.

3. Any damages allegedly sustained by Plaintiffs were a result of actions by 3<sup>rd</sup> parties over whom Defendant had no dominion or control. Without limitation see Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692a(6)(C).

4. Any damages allegedly sustained by Plaintiffs were the result of the negligence or wrongdoing of the Plaintiffs, which negligence or wrongdoing exceeded any alleged wrongdoing of Defendant.

5. Any claims of the Plaintiffs relating to events prior to December 16, 2010 (Williams) and/or July 2, 2011 (Setneska) are barred by the one year statute of limitations as a matter of law under 15 U.S.C. §1692k(d)..

6. Defendant violated no duty owed to the Plaintiffs.

7. Defendant reserves the right to amend this answering pleading following the receipt of discovery.

8. Defendant complied with all applicable statutes regarding the collection of the underlying debt.

9. By their own actions and otherwise the Plaintiffs herein are not entitled to equitable relief.

10. Defendant made no material misrepresentations.

11. Plaintiffs did not rely on any representation made by Defendant.

12. To the extent Plaintiffs claim to or did in fact rely upon any representations by Defendant such reliance was unjustified.

13. Defendant denies the injuries and damages allegedly sustained by Plaintiffs resulted from any actions by Defendant.

14. The Defendant therefore reserves the right to assert all defenses which may be pertinent once the precise nature of the claims at issue is ascertained through discovery.

15. In the event that plaintiffs are able to adequately plead a violation of the FDCPA, either of their entitlement to statutory damages is capped at \$1,000 per action, not per violation. See Goodmann v. Peoples Bank, et al., 209 Fed. Appx. 111 (3d Cir. 2006); Brown v. Law Offices of Butterfield, U.S. Dist. LEXIS 9822 (E.D. Pa. 2004); Dowling v. Kucker Kraus & Bruh, LLP, 2005 U.S. Dist. LEXIS 1100 (S.D. NY. 2005); Mann v. Acclaim Fin Servs, 348 F. Supp. 2d 923 (S.D. Ohio 2004).

16. Defendant asserts on information and belief that Plaintiffs' claims were brought in bad faith and for the purposes of harassment and Defendant requests an award of attorneys fees and costs pursuant to 15 U.S.C.A. §1962k(a)(3) and Sanctions pursuant to FRCP 11.

17. Plaintiff Williams is bound by the terms and conditions governing the defaulted GE Capital - Regular Wal-Mart account number C77W03423244788, the collection of which forms the basis for the instant action. On information and belief, the written terms and conditions governing the alleged underlying account include an agreement to arbitrate claims related to it and, if so, Defendant reserves the right, upon reviewing the terms and conditions to insist on specific enforcement of the arbitration terms which would entail invoking the Arbitration clause and demanding the instant action be dismissed without prejudice and sent to arbitration.

18. Plaintiff Setneska is bound by the terms and conditions governing the defaulted Sears Mastercard account number 5121 0796 4037 5975, issued by Citibank (South Dakota), N.A., the collection of which forms the basis for the instant action. On information and belief, the written terms and conditions governing the alleged underlying account include an agreement to arbitrate claims related to it and, if so, Defendant reserves the right, upon reviewing the terms and conditions to insist on specific enforcement of the arbitration terms which would entail invoking the Arbitration clause and demanding the instant action be dismissed without prejudice and sent to arbitration.



**DEMAND FOR SPECIFICATION OF MONEY DAMAGES**

Pursuant to Local Rule 8.1, Pressler demands that Plaintiffs, within fourteen (14) days, furnish Pressler with a written statement detailing the amount of damages claimed, including, but not limited to, all concrete damages in the form of out of-pocket expenses, and pecuniary loss, as asserted in the Complaint, and the methodology in assessing such actual damages.

Dated: August 9, 2012

          s/Mitchell L. Williamson  
Mitchell L. Williamson, Esq.  
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