

CIVIL COVER SHEET

APPENDIX H

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Patricia Distefano

DEFENDANTS

Gerald E Moore & Assoc, PC

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

County of Residence of First Listed (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) Lawrence S. Rubin, Esquire 337 W State Street Media, PA 19063

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF 1, 2, 3
DEF 4, 5, 6

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

Table with 5 main categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Each category contains a list of specific legal issues with checkboxes.

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
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

FDCPA 15 USC 1692a et seq.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ unspecified < \$150,000 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 5/10/07 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CMR

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Patricia Distefano

: Civil Action No.

v.

:

07 1935

Gerald E Moore & Assoc, PC

:

Complaint

Jurisdiction & Venue

1. This is an action under the **Fair Debt Collection Practices Act**, hereinafter "FDCPA," 15 U.S.C. §1692a, et seq, as well as under the Pennsylvania **Fair Credit Extension Uniformity Act** 73 P.S. § 2270, et seq.
2. Jurisdiction in this case is founded upon 15 U.S.C. 1692k which grants the United States District Courts jurisdiction to hear this action without regard to the amount in controversy.
3. Venue is founded upon 28 U.S.C. §1391(b)(2).

Parties

4. The plaintiff is Patricia Distefano, sui juris adults.
5. Defendant Gerald E Moore & Assoc, PC is a debt collection law firm, located at POB 724087, Atlanta, GA 31139.
6. The defendant is a debt collector as defined by the FDCPA, 15 U.S.C. §1692a(6).
7. The plaintiffs are "consumers" as defined by 15 U.S.C. §1692a(3).

Factual Allegations

8. Plaintiff repeats, realleges and incorporates by reference the foregoing paragraphs.
9. In early February, 2007, defendant contacted a third party, to wit, plaintiff's daughter, and left a message for plaintiff to call back.
10. At all times, defendant knew the true location of and phone number for plaintiff. As such, there was no reason to contact any third party.

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11. Plaintiff returned the call to defendant thereafter.
12. In the call, defendant's agent stated that she owed \$10,906, but that they would settle for \$8753.
13. Plaintiff at that time offered to make payments over time, however, defendant advised plaintiff at that time that "this is a law office and we don't accept payments [over time]."
14. Defendant's agent then advised plaintiff that she "had 24 hours to come up with the money or we will contact a lawyer in your state and sue."
15. Defendant's agent continued to use humiliating and embarrassing language in an attempt to break down the will of plaintiff.
16. Plaintiff then offered a payment of \$1,000 which was quickly accepted by defendant.
17. In order to pay this sum, defendant demanded a debit card account, to which plaintiff agreed.
18. Plaintiff was told that her account would be debited \$1,000 and she agreed..
19. Without consent and against the wishes of plaintiff, defendant unilaterally increased the amount debited from plaintiff's account to \$1,007.50.
20. When plaintiff complained to defendant about the charge, defendant told her there were other "fees," however, these fees were never disclosed to her beforehand.
21. Plaintiff was then told she must report back defendant in a few days.
22. Plaintiff did speak with defendant's agent several days later, at which time defendant's agent berated plaintiff asking her, "What did you do on your lunch break to get the money?", "Are you and your husband still married?" and "you will need to borrow the money from family and friends." The tenor of the conversation and the demeaning and condescending nature made plaintiff feel disgraced and humiliated.

23. Defendant's agent then told plaintiff that he was going to "contact plaintiff's employer." As a result, plaintiff feared for her job security as well as the possible disgrace and humiliation flowing from such threatened disclosure.
24. Plaintiff then asked if her conversations were being recorded. Defendant's agent stated that they were indeed being recorded.
25. Defendant actually had no intention of suing plaintiff, nor contacting her employer. All of the aforesaid threats and representations were made in bad faith, without any intent to follow through, with the sole intent to embarrass, humiliate, harass, annoy and alarm the plaintiff.
26. Defendant's agent then called back about six times thereafter with the intent of wearing down plaintiff's will to resist payment.
27. Plaintiff had not been advised beforehand of the recordings.
28. Defendant violated the Pennsylvania Wiretapping statute, 18 Pa.C.S. §5703 by recording plaintiff without her fore knowledge.
29. As a direct and proximate result of the phone calls plaintiff suffered embarrassment, humiliation, significant distress, including severe anxiety, sleeplessness, an inability to concentrate at work, and distraction from work tasks.
30. The defendant has employed false, misleading and deceptive tactics to collect this debt.
31. On or about February 1, 2007, defendant mailed plaintiff a collection letter dated February 1, 2007.
32. The said letter purported to be from an attorney as it stated it was from the "Law Office of Gerald E. Moore & Associates."
33. No attorney ever reviewed the letter.
34. Plaintiff mails thousands, perhaps tens of thousands of letters to debtors each month.

35. No one attorney could ever review each letter and hence, the letter itself is deceptive.

First Claim for Relief

36. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
37. The defendant violated 15 U.S.C. § 1692c by communicating or threatening to communicate with third parties not the spouse, attorney or a consumer reporting agency.
38. The defendant violated 15 U.S.C. § 1692d by causing plaintiffs' telephone to ring and engaging plaintiffs in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass them.
39. The defendant violated 15 U.S.C. § 1692d by using language the natural consequence of which was to abuse plaintiffs.
40. As a result of defendant's action, plaintiffs were harassed, lost sleep, and suffered a disruption of her household.
41. The defendant violated 15 USC 1692e by giving plaintiff deceptive, false and misleading information, to wit:
- a. That they would not accept payments over time, which they actually do;
 - b. By advising plaintiff that they were going to refer the matter to a local attorney, when in fact, they never did, and had no intention of doing;
 - c. By advising plaintiff that her account would be debited \$1000 for a payment, when in actuality, it was debited more that sum;
 - d. By saying to plaintiff that she had only 24 hours to come up with the funds, when in fact, the funds would have been accepted at a much later time;
 - e. By not advising her that her conversations were being recorded, which violated the Pennsylvania Wiretapping Law;

- f. By threatening to contact plaintiff's employer, when, in fact, no action was contemplated.
 - g. By mailing her a letter that purportedly was mailed from an attorney, when in fact, no attorney ever review or approved it.
42. The defendant violated 15 USC 1692f by collecting a fee, charge, or expense incidental to the principal obligation where such amount was not expressly authorized by the agreement creating the debt or permitted by law.
43. As a result of the actions of defendants, plaintiffs have been required to hire the undersigned counsel. Counsel has been an attorney in good standing since 1978. Counsel has 28 years of experience in handling consumer law cases. Counsel is known in his field as a competent, experienced consumer law attorney. As a result, counsel's time is billed at a rate of \$350 an hour, which is reasonable in the community.
44. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiff for actual damages, statutory damages, and costs and attorney's fees.

Second Claim for Relief

45. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
46. Defendant violated the Pennsylvania **Fair Credit Extension Uniformity Act** 73 P.S. § 2270 et seq (the "FCEUA"). Defendants' violations of the FCEUA include, but are not limited to, the following:
- a. The Defendant violated 73 P.S. §§ 2270.4(a) by violating the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et Seq.)
 - b. Defendant' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt
47. As a result of the above violations of the FCEUA, the Defendant is liable to the Plaintiffs for actual damages, statutory damages, and attorney's fees and

costs.

48. A violation of the FCEUA is a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq.
49. Plaintiff is entitled to treble damages pursuant to 73 P.S. § 201-8 for a violation of the above statute.

Third Claim for Relief

50. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
51. At no time did plaintiff consent to her phone conversation being recorded.
52. Each of plaintiff's conversations was recorded and all without her consent or knowledge.
53. Defendant's agent advised plaintiff that the conversation was recorded surreptitiously.
54. 18 Pa.C.S. §5725 grants a private right of action for unlawful interception, disclosure or use of wire, electronic or oral communication in violation of §5703, the Pennsylvania Wiretapping Law.
55. Plaintiff is entitled to actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation, or \$ 1,000, whichever is higher.
56. Pursuant to 18 Pa.C.S. §5725 plaintiff is entitled to punitive damages and reasonable attorney's fees and other costs of litigation.

Fourth Claim for Relief

57. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
58. The taking of funds from plaintiff in excess of the amount authorized amounted to a wilful conversion of those funds.
59. Plaintiff is entitled to punitive damages as a result of defendant's intention tort

and willful misconduct.

Fifth Claim for Relief

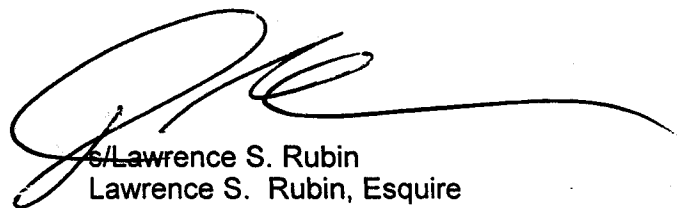
60. Plaintiff repeats and realleges and incorporates by reference the foregoing paragraphs.
61. The withdrawing of funds from plaintiff's bank account amounted to a fraud against the plaintiff.
62. Plaintiff is entitled to punitive damages as a result of defendant's intention tort and willful misconduct.

WHEREFORE, Plaintiffs respectfully prays that judgment in a sum less than \$150,000 be entered against the Defendant for the following:

- A. Actual damages;
- B. Statutory damages pursuant to 15 U.S.C. § 1692k.
- C. Punitive damages
- D. Treble damages as may be lawful;
- E. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k and 73 P.S.

§2270.5.

- F. For such other and further relief as may be just and proper.



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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Patricia Distefano	:	CIVIL ACTION
	:	
v.	:	
Gerald E Moore & Assoc, PC	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (x)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

<u>5/10/07</u>	<u>Lawrence S Rubin</u>	<u>plaintiff</u>
Date	Attorney-at-law	Attorney for
<u>610-565-6660</u>	<u>610-565-1912</u>	<u>echo@pennlawyer.com</u>
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

OFFICE OF THE CLERK OF COURT

Rule 5.1.4 of the Local Rules of Civil Procedure
Governing the Format of Documents in Electronic Form

Validation of Signature Form

Pursuant to Rule 5.1.4, *Format of Documents in Electronic Form*, all attorneys who are not Electronic Case Filing ("ECF") Users, as defined in the *Procedural Order on Electronic Case Filing* referenced in Rule 5.1.2 of the Local Rules of Civil Procedure, are required to complete this *Validation of Signature* form validating his or her signature for submission of all filings (subsequent to the complaint) on disk in portable document format (PDF), so that the filings may be entered into the District Court's ECF system. The document on disk must be accompanied by a courtesy copy of the document in paper format for use by the court. Attorneys who complete this form will receive a signature code which must be used by the attorney on the signature line of all courtesy copies submitted with a disk. The document as submitted on the disk will constitute the original document under Section (b) of Local Civil Rule 5.1.4.

(Please Print or Type)

First Name: Lawrence Middle Initial/Name: S

Last Name: Rubin Generation (i.e., Sr., Jr.) _____

Firm: _____ Bar Id No. and State: 27195

Address: 337 W State St

Address: _____

City: Media State: PA Zip Code 19063

Telephone No: (610) 565-6660 FAX No: (610) 565-1912

E-mail Address: echo@pennlawyer.com

Are you admitted to practice in the Eastern District of Pennsylvania?

Yes No

If yes, are you a member in good standing?

Yes No

Are you admitted to practice pro hac vice in the Eastern District of Pennsylvania?

Yes No