

**COMMONWEALTH OF MASSACHUSETTS
County of Suffolk
The Superior Court**

Robert Raslavsky, *on behalf of himself and all
others similarly situated,*

Plaintiff,

v.

NewRez LLC dba Shellpoint Mortgage
Servicing,

Defendant.

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Civil Docket #: _____

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

For this Class Action Complaint, Plaintiff Robert Raslavsky, by and through undersigned counsel, pleading on his own behalf and on behalf of all others similarly situated, states as follows:

INTRODUCTION

1. Defendant NewRez LLC dba Shellpoint Mortgage Servicing (“Shellpoint”) is a mortgage loan servicer. As part of its Massachusetts mortgage servicing business, Shellpoint regularly places more than two collection calls a week to Massachusetts consumers.

2. Indeed, consumer complaints online about Shellpoint consistently include complaints that Shellpoint places excessive collection calls to consumers. *See, e.g.* <https://www.bbb.org/us/sc/greenville/profile/loan-servicing/shellpoint-mortgage-servicing-0673-90007399/complaints> (“I can not get any help with this only annoying telephone calls!!”; “they call use almost every day stating that we owe a payment since May”; “I continually receive phone calls stating that they are attempting to collect a debt. I have been harassed by this

company for so long now that it is beginning to affect my health.”; “Also they are harassing debt collection calls even though I have told them I am in dispute with the mortgage company.”) (last visited Aug. 10, 2020).

3. Shellpoint’s calling practices are illegal in Massachusetts as the Massachusetts Attorney General has regulated it an “unfair or deceptive act or practice for a creditor” to “initiate a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor’s residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number, for each debt” 940 CMR § 7.04(1)(f); *see also Armata v. Target Corp.*, 480 Mass. 14, 15–16, 23, 99 N.E.3d 788, 790, 795-96 (2018) (“The regulation applies to any attempted telephonic communication by a creditor to a debtor in an effort to collect a debt, so long as . . . the creditor is able to reach the debtor or to leave a voicemail message for the debtor.”) (quoting 940 CMR § 7.04(1)(f)).¹

4. Shellpoint placed more than two collection calls to Plaintiff Robert Raslavsky (“Plaintiff”) within a seven-day period in an attempt to collect a debt, violating the express provisions of § 7.04(1)(f).

5. Plaintiff seeks to represent all consumers similarly situated. Plaintiff seeks injunctive relief to end Shellpoint’s illegal practice, declaratory relief to make Shellpoint’s violations known to the class, actual and statutory damages, as well as attorneys’ fees and costs.

¹ This is not the first time Shellpoint has been accused of engaging in unfair practices regarding its Massachusetts mortgage servicing. On December 20, 2018, the Massachusetts Attorney General announced that it entered into a \$4 million settlement with Shellpoint to settle allegations that it failed to help homeowners avoid foreclosure. *See* <https://www.mass.gov/news/ag-healey-secures-4-million-in-relief-for-homeowners-from-company-that-mishandled-mortgage#:~:text=Under%20the%20terms%20of%20the,%24450%2C000%20payment%20to%20the%20Commonwealth.> (last visited Aug. 10, 2020).

PARTIES

6. Plaintiff, Robert Raslavsky, is an adult individual residing in North Brookfield, Massachusetts, and is a “debtor” as defined by 940 C.M.R. § 7.03.

7. Defendant, NewRez LLC dba Shellpoint Mortgage Servicing, is a mortgage loan servicer and collector, with a principal place of business located at 1100 Virginia Drive, Suite 125, Fort Washington, Pennsylvania 19034, and is a “creditor” as defined by 940 CMR § 7.03. Shellpoint’s registered agent in the Commonwealth of Massachusetts is located at 84 State Street, Boston, Massachusetts 02109. Upon information and belief, Shellpoint does not maintain a place of business within the Commonwealth of Massachusetts, nor does it keep any assets in the Commonwealth of Massachusetts.

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. Shellpoint Engages in Unfair Business Practices

8. Plaintiff allegedly incurred a financial obligation arising out of a home mortgage loan (the “Debt”) which meet the definition of a “debt” under 940 CMR § 7.03.

9. Shellpoint attempted to collect the Debt from Plaintiff and, as such, initiated and engaged in “communications” as defined in 940 CMR § 7.03.

10. At all relevant times that Shellpoint attempted to collect the Debt from Plaintiff, the Debt was alleged to be more than thirty days past due.

11. Shellpoint called Plaintiff’s cellular telephone in an attempt to collect the Debt.

12. Shellpoint called Plaintiff’s cellular telephone at number 508-XXX-0011.

13. Within the last four years, Shellpoint called Plaintiff’s cellular telephone in excess of two times within a seven-day period in an attempt to collect the Debt.

14. During the calls, Shellpoint demanded that Plaintiff make a payment towards the Debt.

B. Plaintiff Suffered Actual Damages and Injury

15. As a direct consequence of Shellpoint's repeated calls to Plaintiff's cellular telephone in an attempt to collect the Debt, Plaintiff became angry, frustrated and anxious, and suffered from emotional distress.

16. Shellpoint's repeated calls to Plaintiff were also distracting and an inconvenience to Plaintiff, and wasted Plaintiff's time and energy spent tending to Shellpoint's calls.

C. 93A Demand Letter

17. On June 19, 2020, Plaintiff mailed a letter to Shellpoint via certified mail which, pursuant to M.G.L. c. 93A § 9(3), identified Plaintiff's claim and described Shellpoint's unfair and deceptive acts.

CLASS ACTION ALLEGATIONS

A. The Class

18. Plaintiff brings this case as a class action pursuant to M.G.L. c. 93A, § 9(2) and Rule 23 of the Massachusetts Rules of Civil Procedure.

19. Plaintiff seeks to represent the following class (the "Class"):

All consumers residing in the Commonwealth of Massachusetts who, within four years prior to the filing of this action, received in excess of two telephone calls regarding a debt from Shellpoint within a seven-day period to their residence, cellular telephone, or other provided telephone number.

B. Numerosity

20. As its regular business practice, Shellpoint hounds Massachusetts consumers with numerous debt collection calls per week. Class members are believed to be so numerous that joinder of all members is impractical.

21. The exact number and identities of class members are unknown at this time and can only be ascertained through discovery. Identification of the class members is a matter capable of ministerial determination from Defendant's records.

22. Plaintiff reasonably believes that there are thousands of Massachusetts consumers who are members of the Class.

C. Common Questions of Law and Fact

23. There are common questions of law and fact raised in this Complaint which predominate over any questions affecting only individual class members.

24. The following questions of law and fact common to the class members are ripe for determination and are raised herein:

- a. Whether it was Shellpoint's practice and policy during the Class Period to place more than two collection calls within a seven-day period to Massachusetts debtors;
- b. Whether Shellpoint violated M.G.L. c. 93A § 2 and 940 CMR § 7.04(1)(f) by placing in excess of two debt collection calls per debt per seven-day period; and
- c. Whether Shellpoint willfully and knowingly placed in excess of two debt collection calls per debt per seven-day period.

D. Typicality

25. Plaintiff's claims are typical of the claims of the class members, since each of the

claims arises from receiving in excess of two debt collection calls within a seven-day period.

E. Protecting the Interests of Class Members

26. Plaintiff will fairly and adequately represent the interests of class members, all of whom are victims of Defendant's unlawful conduct.

27. All of the class members' claims arise from the very course of conduct and specific activities complained of herein and require application of the same legal principles.

28. Plaintiff has retained counsel experienced in bringing class actions and debt collection abuse claims and who stands ready, willing and able to represent the Class.

F. Proceeding Via Class Action is Superior and Advisable

29. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

30. Absent a class action, most members of the class would find the cost of litigating their claims to be prohibitive and, therefore, would have no effective remedy at law.

31. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the court and the litigants and promotes consistency and efficiency of adjudication.

32. Prosecution of separate actions could result in inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendant and other debt collectors. Conversely, adjudications with respect to individual class members would be dispositive of the interest of all other class members.

33. The amount of money at issue is such that proceeding by way of a class action is the only economical and sensible manner in which to vindicate the injuries sustained by Plaintiffs and the other class members.

COUNT I
VIOLATIONS OF M.G.L. c. 93A, § 2,
AND 940 CMR § 7.04(1)(f)

34. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

35. Defendant initiated communication via telephone in excess of two times within a seven-day period regarding a Debt to Plaintiff's cellular telephone in violation of 940 CMR § 7.04(1)(f).

36. Defendant's failure to comply with 940 CMR § 7.04(1)(f) constitutes an unfair or deceptive act in violation of M.G.L. c. 93A § 2.

37. Defendant willfully or knowingly violated 940 CMR § 7.04(1)(f), and as such, Plaintiff is entitled to double or treble damages plus reasonable attorney's fees and costs.

38. Pursuant to M.G.L. c. 93A, § 9, Plaintiff is entitled to and does seek equitable relief in the form of an injunction preventing Defendant from placing in excess of two collection calls within any seven days to any Massachusetts consumers' telephone regarding a debt.

39. Pursuant to M.G.L. c. 93A, § 9, Plaintiff is entitled to and does seek declaratory relief such that:

- Defendant knowingly and willfully violated M.G.L. c. 93A c. 93A, § 2 and 940 CMR § 7.04(1)(f) as to Plaintiff and the class; and

- It has been Defendant's practice and history to place in excess of two debt collection telephone calls within seven days to Massachusetts consumers regarding a debt.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff asks that the Court enter judgment in favor of Plaintiff and the Class and against Defendant, as follows:

- A) An injunction preventing Defendant from placing in excess of two collection calls within any seven days to any Massachusetts consumers' telephone regarding a debt;
- B) Declaratory relief as prayed for herein;
- C) Awarding actual and/or statutory damages under M.G.L. c. 93A § 9;
- D) Awarding actual and/or statutory damages under M.G.L. c. 93A § 9 for the Class;
- E) Awarding treble damages under M.G.L. c. 93A § 9;
- F) Awarding treble damages under M.G.L. c. 93A § 9 for the Class;
- G) Awarding reasonable attorney fees, litigation expenses and costs incurred pursuant to M.G.L. c. 93A § 9; and
- H) Granting such other and further relief this Court deems just and appropriate.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: August 18, 2020

PLAINTIFF,

ROBERT RASLAVSKY

By Plaintiff's attorneys,

LEMBERG LAW, LLC

Sergei Lemberg (BBO# 650671)

slemberg@lemborglaw.com

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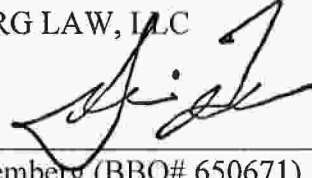
Dated: August 18, 2020

PLAINTIFF,

ROBERT RASLAVSKY

By Plaintiff's attorneys,

LEMBERG LAW, LLC

A handwritten signature in black ink, appearing to read 'S. Lemberg', is written over a horizontal line.

Sergei Lemberg (BBO# 650671)

slemberg@lemborglaw.com

LEMBERG LAW, LLC

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CIVIL ACTION COVER SHEET

DOCKET NUMBER

Trial Court of Massachusetts
The Superior Court



PLAINTIFF(S): Robert Raslavsky, on behalf of himself and all others similarly situated,
ADDRESS: 106 South Main Street
North Brookfield, MA 01535

COUNTY Suffolk

DEFENDANT(S): NewRez LLC dba Shellpoint Mortgage Servicing,

ATTORNEY: Sergei Lemberg
ADDRESS: Lemberg Law, LLC
43 Danbury Rd., Wilton, CT 06897

ADDRESS: 4000 CHEMICAL ROAD, SUITE 200
PLYMOUTH MEETING, PA 19462

BBO:

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO. B99 TYPE OF ACTION (specify) M.G.L. c. 93A § 2, et seq TRACK F HAS A JURY CLAIM BEEN MADE? [X] YES [] NO

*If "Other" please describe:

Is there a claim under G.L. c. 93A? [X] YES [] NO

Is this a class action under Mass. R. Civ. P. 23? [X] YES [] NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(attach additional sheets as necessary)

A. Documented medical expenses to date:

- 1. Total hospital expenses
2. Total doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe below)
Subtotal (A):

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F):\$

CONTRACT CLAIMS

(attach additional sheets as necessary)

[] This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Provide a detailed description of claim(s):

TOTAL: \$ 50,000.00

Greater than \$50,000 on behalf of Plaintiff and putative class.

Signature of Attorney/ Unrepresented Plaintiff: X /s/ Sergei Lemberg

Date: 08/18/2020

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X /s/ Sergei Lemberg

Date: 08/18/2020