

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VALENE REED, individually and on behalf of all others
similarly situated,

Plaintiff,

-against-

CONTINENTAL GUEST SERVICES
CORPORATION,

Defendant.

Civil Action No. 10 CV 5642 (DLC)

ECF CASE

**DEFENDANT'S ANSWER
TO CLASS ACTION COMPLAINT
AND AFFIRMATIVE DEFENSES**

Defendant Continental Guest Services Corporation ("CGSC"), by its undersigned attorneys, Ganfer & Shore, LLP, answers the Class Action Complaint (the "Complaint") of Plaintiff Valene Reed ("Plaintiff") as follows:

1. With respect to the allegations contained in paragraph 1 of the Complaint, CGSC states that the language of the Fair and Accurate Credit Transactions Act ("FACTA") speaks for itself and such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required and/or to the extent that paragraph 1 seeks to mischaracterize FACTA or the President's statements "during the signing of the bill," CGSC denies such allegations.

2. With respect to the allegations contained in paragraph 2 of the Complaint, CGSC states that the language of the FACTA speaks for itself and such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required and/or to the extent that paragraph 2 seeks to mischaracterize FACTA, CGSC denies such allegations.

3. With respect to the allegations contained in paragraph 3 of the Complaint relating to the content of FACTA, CGSC states that the language of FACTA speaks for itself and such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies such allegations.

4. With respect to the allegations contained in paragraph 4 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

5. With respect to the allegations contained in paragraph 5 of the Complaint, CGSC states that the language of the so-called Credit and Debit Card Receipt Clarification Act of 2007 (the "Clarification Act") speaks for itself and such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required and/or to the extent that paragraph 5 seeks to mischaracterize the Clarification Act, CGSC denies such allegations.

6. With respect to the allegations contained in paragraph 6 of the Complaint, CGSC states that the language of the so-called Clarification Act speaks for itself and such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required and/or to the extent that paragraph 6 seeks to mischaracterize the Clarification Act, CGSC denies such allegations.

7. With respect to the allegations contained in paragraph 7 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies such allegations.

8. With respect to the allegations contained in paragraph 8 of the Complaint, CGSC

states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies such allegations.

9. With respect to the allegations contained in paragraph 9 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC admits that this Court has federal question jurisdiction with respect to the claims alleged in the Complaint.

10. With respect to the allegations contained in paragraph 10 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC admits that the Court may exercise personal jurisdiction over it based on the claims alleged in the Complaint.

11. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. CGSC admits the allegations contained in the first sentence of paragraph 12 of the Complaint, and with respect to the allegations contained in second sentence of paragraph 12, such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

13. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. With respect to the allegations contained in paragraph 16 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

17. With respect to the allegations contained in paragraph 17 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

18. With respect to the allegations contained in paragraph 18 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

19. With respect to the allegations contained in paragraph 19 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

20. With respect to the allegations contained in paragraph 20 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

21. With respect to the allegations contained in paragraph 21 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, as to those allegations

pertaining to other merchants CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and as to those allegations pertaining to CGSC, it denies such allegations.

22. With respect to the allegations contained in paragraph 22 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations.

23. CGSC denies the allegations contained in paragraph 23 of the Complaint.

24. With respect to the allegations contained in paragraph 24 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies such allegations.

25. With respect to the allegations contained in paragraph 25 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies such allegations.

26. With respect to the allegations contained in paragraph 26 of the Complaint, CGSC states that such allegations constitute a legal conclusion as to which no responsive pleading is required and that, if and to the extent that a response is required, CGSC denies such allegations.

27. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

28. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint, and specifically denies the implication that CGSC has committed any violations under FACTA.

29. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, except specifically denies that the class so defined may be certified and also denies the implication that CGSC has committed any violations under FACTA or other applicable law.

30. With respect to the allegations contained in paragraph 30 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

31. With respect to the allegations contained in paragraph 31 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

32. With respect to the allegations contained in paragraph 32 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

33. With respect to the allegations contained in paragraph 33 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

34. With respect to the allegations contained in paragraph 34 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

35. With respect to the allegations contained in paragraph 35 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

36. With respect to the allegations contained in paragraph 36 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of

Civil Procedure.

37. With respect to the allegations contained in paragraph 37 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

38. Paragraph 38 was omitted from the Complaint.

39. Paragraph 39 was omitted from the Complaint.

40. With respect to the allegations contained in paragraph 40 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

41. With respect to the allegations contained in paragraph 41 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

42. With respect to the allegations contained in paragraph 42 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is

required and that, if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

43. CGSC incorporates by reference its responses to the allegations contained in the Complaint set forth above as if fully restated herein.

44. With respect to the allegations contained in paragraph 44 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required, and that if and to the extent a responsive pleading is required, CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and denies that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

45. With respect to the allegations contained in paragraph 45 of the Complaint, CGSC states that the language of 15 U.S.C. §1681(g)(1) speaks for itself and such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required and/or to the extent that paragraph 45 seeks to mischaracterize 15 U.S.C. §1681(g)(1), CGSC denies such allegations.

46. With respect to the allegations contained in paragraph 46 of the Complaint, CGSC states that the language of 15 U.S.C. §1681(g)(1) speaks for itself and such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required and/or to the extent that paragraph 46 seeks to mischaracterize 15 U.S.C. §1681(g)(1), CGSC denies such allegations.

47. With respect to the allegations contained in paragraph 47 of the Complaint, CGSC states that the language of 15 U.S.C. §1681(g)(1) speaks for itself and such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required and/or to the extent that paragraph 46 seeks to mischaracterize 15 U.S.C. §1681(g)(1), CGSC denies such allegations.

48. CGSC denies the allegations contained in paragraph 48 of the Complaint, including specifically that Plaintiff may maintain a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, except admits that CGSC transacts business in the United States, accepts credit cards and debit cards in the course of transacting business with its customers, and for some transactions electronically prints receipts for credit card and debit card transactions.

49. CGSC denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint.

50. With respect to the allegations contained in paragraph 50 of the Complaint, CGSC states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

51. With respect to the allegations contained in paragraph 51 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required and/or to the extent that paragraph 51 seeks to mischaracterize FACTA, CGSC denies such allegations.

52. With respect to the allegations contained in paragraph 52 of the Complaint, CGSC states that the language of the FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

53. With respect to the allegations contained in paragraph 53 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

54. With respect to the allegations contained in paragraph 54 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, as to those allegations pertaining to other entities CGSC denies knowledge or information sufficient to form a belief as to the truth of such allegations, and as to those allegations pertaining to CGSC, it denies such allegations.

55. With respect to the allegations contained in paragraph 55 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

56. With respect to the allegations contained in paragraph 56 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

57. With respect to the allegations contained in paragraph 57 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

58. With respect to the allegations contained in paragraph 58 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

59. With respect to the allegations contained in paragraph 59 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

60. With respect to the allegations contained in paragraph 60 of the Complaint, CGSC states that the language of FACTA speaks for itself and states that such allegations constitute a legal conclusion to which no responsive pleading is required and that, if and to the extent that a responsive pleading is required, CGSC denies such allegations.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

61. Plaintiff has failed to allege sufficient facts upon which a claim for relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

62. Any damages to which Plaintiff and/or the members of the putative class may be found entitled to in this action were not directly or proximately caused, in whole or in part, by

CGSC, and must be decreased to the extent the acts or omissions of Plaintiff, the members of the putative class, or any third party were a cause of those damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

63. Plaintiff's Complaint fails to adequately define any class of persons who could properly prosecute this action as a class action; fails to allege any claim that can be prosecuted as a class action; and otherwise fails to satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

64. Plaintiff has failed to state a claim for which punitive damages may be recovered. Moreover, the recovery of punitive damages in this case would violate CGSC's rights under applicable provisions of the United States and New York constitutions, including, but not limited to, due process, and there is no basis under law by which Plaintiff or any putative class member would be entitled to punitive damages against CGSC.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

65. Plaintiff's claims may be barred or limited because the statutory provision on which Plaintiff's claims are based is unconstitutionally vague and ambiguous on its face and as applied and, as such, provides insufficient notice of what constitutes a violation, and in other respects violates CGSC's rights under the United States Constitution. Furthermore, Plaintiff's claims may be barred or limited because Plaintiff's claims and requests for relief are disproportionate to the harm alleged or suffered by Plaintiff and, as such, granting the requested relief would violate CGSC's rights under the United States Constitution, including, but not limited to, due process.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

66. The claims of Plaintiff and members of the proposed class for damages are barred, in whole or in part, by the United States Constitution, to the extent that, among other things, Plaintiff and members of the proposed class seek damages without proof of injury.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

67. Some or all of the claims made by Plaintiff or other members of the putative class may be barred or limited under the applicable statute of limitations, and/or barred by the grace period afforded under the Clarification Act.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

68. CGSC did not commit any wrongful act against Plaintiff and/or the members of the putative class. Accordingly, CGSC is not responsible for any alleged damages to Plaintiff and/or the members of the putative class.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

69. Plaintiff's claims may be barred or limited because CGSC did not act with intent to injure Plaintiff, and because CGSC did not act willfully within the meaning of any statutes or other legal provisions under which Plaintiff seeks relief.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

70. Plaintiff's claims may be barred or limited because CGSC acted reasonably and in the good faith belief that its actions were lawful.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

71. Some or all of the claims made by Plaintiff or other members of the putative class may be barred by the doctrines of laches, waiver, estoppel and/or unclean hands.

AS AND FOR A TWLEFTH AFFIRMATIVE DEFENSE

72. Plaintiff's claims may be barred or limited by Plaintiff's failure to mitigate any alleged damages.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

73. CGSC is informed and believes, and on that basis alleges, that Plaintiff and/or the members of the putative class have not suffered any damages as a result of any action taken by CGSC. As a result, Plaintiff and/or the members of the putative class are barred from asserting any claims for relief against CGSC.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

74. The claims made in Plaintiff's Complaint are barred because the members of the putative class lack standing.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

75. CGSC reserves the right to file further pleadings and assert other defenses, including appropriate counterclaims, cross-claims and third-party complaints as may become apparent during the course of discovery herein.

WHEREFORE, Defendant Continental Guest Services Corporation respectfully requests that the Court:

- A. Deny Plaintiff's request for certification of a class;
- B. Enter judgment in favor of Defendant;
- C. Enter an order assessing costs and attorneys' fees against Plaintiff; and
- D. Grant Defendant all other relief as this Court deems appropriate.

Dated: New York, New York
October 19, 2010

Respectfully submitted,

GANFER & SHORE, LLP

By: 

Steven J. Shore

Mark A. Berman

William A. Jaskola

360 Lexington Avenue

New York, New York 10017

(212) 922-9250

Attorneys for Defendant