

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Jacob Adoni, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Citicorp Credit Services, Inc. (USA),

Defendant

Case No. 2:21-cv-02108

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Citicorp Credit Services, Inc. (USA) (“defendant”) markets, distributes and promotes Home Depot credit cards with “add-on” services that purport to cancel a cardholder’s balance upon occurrence of a qualifying event (“Product” or “Balance Protect”).¹

2. The cost is a monthly fee that may be \$0.99 for each \$100 of a cardholder’s balance.

3. Balance protection insurance is virtually worthless to almost all cardholders due to the inability to qualify for coverage under its terms.

4. Defendant markets and sells Balance Protect through its agents at point-of-sale terminals in retail stores and through its call centers.

5. Defendant enrolled persons such as plaintiff through a small point-of-sale terminal.

6. Plaintiff and prospective and active cardholders were not informed they were enrolling in Balance Protect.

7. Plaintiff and prospective and active cardholders were not informed of the limitations, eligibility restrictions and costs of Balance Protect at the time they were enrolled.

¹ “Add-on” products include credit monitoring and identity theft protection.

8. Defendant utilized pin-pad screen sequences with the Balance Protect option in the middle of the application as one of the “click through” question screens.

9. This caused prospective cardholders, like plaintiff, to conflate signing up for the credit card and enrollment in Balance Protect and made it more likely they would not realize that were enrolling in Balance Protect in addition to signing up for the store card.

10. Plaintiff and consumers received unclear written prompts which made them think they were only acknowledging their application for the Home Depot credit card instead of enrolling in Balance Protect.

11. The confirmation screen text was formatted to avoid providing clear and conspicuous notification of enrollment in Balance Protect.

12. In-store agents of defendant and Home Depot were incentivized to enroll customers into add-on products like Balance Protect.

13. When plaintiff and consumers inquired about the ambiguous confirmation screens and raised questions about what they were signing up for, defendant’s agents reassured them it was only for the store credit card.

14. Defendant failed to properly train its representatives to adequately disclose terms and existence of Balance Protect to plaintiff prior to completion of the enrollment process.

15. When cardholders contacted defendant’s customer service, they were given ambiguous and inaccurate information regarding their enrollment and cancellation options for Balance Protect.

16. When cardholders sought to cancel Balance Protect, defendant’s agents failed to adequately follow these requests.

17. Defendant charged cardholders during the trial period.

18. The enrollment of consumers into Balance Protect was addressed in a 2015 Consent Order between the Consumer Financial Protection Bureau (“CFPB”) and defendant, Citibank, N.A. and Department Stores National Bank. *In the Matter of Citibank, N.A., et al*, No. 2015-CFPB-0015 (July 21, 2015), Doc. 2 (“Stipulation and Consent to the Issuance of a Consent Order”).

19. The Consent Order required defendant to pay no less than \$700,000,000 in restitution to approximately 9 million cardholders.

20. Where a cardholder was signed up for Balance Protect for up to 12 months, they were supposed to be refunded all fees paid for this service.

21. Where a cardholder was signed up for Balance Protect for more than 12 months, they were not refunded fees beyond 12 months.

22. The Consent Order did not require defendant to cancel a cardholder’s enrollment in the Balance Protector service.

23. The Consent Order required defendant to develop and implement a Compliance Plan to inform Balance Protect enrollees of the restrictions, possible benefits, fees, costs, expenses, charges, and billing practices of this service.

24. Defendant’s Compliance Plan was deficient in that it did not cancel the enrollment of cardholders like plaintiff, who never affirmatively consented to the Balance Protector service.

25. Defendant knew or should have known through reasonable diligence, of conditions that would make Balance Protect customers ineligible for some or all benefits of the service and was obligated to inform them.

26. Defendant engaged in deceptive, misleading and unfair acts by failing to cancel plaintiff’s enrollment in the Balance Protector service and refund all fees paid by plaintiff.

27. When plaintiff and class members contacted defendant about Balance Protect after

the Consent Order, they were not provided clear information about the service, its conditions, limitations, fees and ability to cancel.

28. Defendant regularly and consistently denies and constructively denies claims of class members who sought to invoke the Balance Protect coverage due to qualifying events.

29. Had plaintiff and the proposed class members known the truth, they would never have signed up for Balance Protect.

Jurisdiction and Venue

30. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

31. Plaintiff Jacob Adoni is a citizen of New York.

32. Defendant Citicorp Credit Services, Inc. (USA) is a Delaware corporation with a principal place of business in Jacksonville, Duval County, Florida.

33. Diversity exists because plaintiff Jacob Adoni and defendant are citizens of different states.

34. Upon information and belief, sales of the Product and any available statutory and other monetary damages, exceed \$5 million during the applicable statutes of limitations, exclusive of interest and costs.

35. Venue is proper because a substantial part of the events or omissions giving rise to the claim occurred here – plaintiff’s purchase of the Product.

36. Venue is further supported because many class members reside in this District.

Parties

37. Plaintiff Jacob Adoni is a citizen of Oyster Bay, Nassau County, New York.

38. Defendant Citicorp Credit Services, Inc. (USA) is a Delaware corporation with a principal place of business in Jacksonville, Florida, Duval County.

39. Defendant is one the nation's largest credit card companies, and issues store-branded credit cards for hundreds of retailers including Home Depot.

40. Plaintiff was signed up for Balance Protect without his knowledge in or around 2008, at a Home Depot store on Long Island.

41. When plaintiff contacted the number next to the line-item of Balance Protect on his statement, he was given conflicting and confusing information including its cost, eligibility and what it covers.

42. Plaintiff did not receive a refund of all money he paid towards Balance Protect.

43. Plaintiff's balance has hovered around \$4,000, which means his monthly fee for Balance Protect is over \$40.

44. Plaintiff was signed up for Balance Protect for over 12 months at the time of the July 2015 Consent Order.

45. Plaintiff was entitled to receive a refund of the full amount of money he paid for Balance Protect but did not receive such a refund.

46. Plaintiff never affirmatively consented to sign up for Balance Protect.

Class Allegations

47. The class will consist of all cardholders in New York who were signed up for Balance Protect without their affirmative consent, who were not eligible for some or all of the benefits of Balance Protect, such as self-employed persons, and who were not refunded all monies paid for Balance Protect as a result of the Consent Order and defendant's failure to adhere to the Compliance Plan.

48. Plaintiff seeks class-wide injunctive relief based on Rule 23(b) in addition to a monetary relief class.

49. Common questions of law or fact predominate and include whether defendant's representations, marketing and charges were and are misleading and if plaintiff and class members are entitled to damages and refunds.

50. Plaintiff's claims and bases for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

51. Plaintiff is an adequate representative because his interests do not conflict with other members.

52. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

53. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

54. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

55. Plaintiff seeks class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350
(Consumer Protection Statutes)

56. Plaintiff incorporates by reference all preceding paragraphs.

57. Plaintiff and class members were signed up for Balance Protect without their affirmative consent, and when they did not meet some or all the criteria to seek the benefits of Balance Protect upon occurrence of a qualifying event.

58. The utility of Balance Protect is outweighed by the harm to cardholders, in the amount of the additional amounts that must be paid monthly.

59. Defendant failed to cancel the Balance Protect enrollment of persons who were signed up without their knowledge.

60. Defendant failed to fully refund those who were signed up for Balance Protect, with and without their knowledge.

61. Defendant's acts and omissions are not unique to the parties and have a broader impact on the public.

62. Plaintiff and class members relied on defendant's omissions, when they were not told that they were signed up for Balance Protect.

63. Class members who experienced qualifying events were consistently and uniformly denied coverage under Balance Protect.

Breach of Contract

64. Defendant breached the agreement with cardholders who signed up for Balance Protect, with or without their knowledge, by failing to carry out its obligations when claims were submitted, and refund cardholders.

65. Defendant breached the implied covenant of good faith and fair dealing in its practices.

Fraud

66. Defendant signed up prospective and active cardholders for Balance Protect without

their knowledge and failed to adequately explain or inform them of its limitations, including the uniform denial of coverage upon qualifying events.

67. Defendant failed to refund all monies paid for Balance Protect where a cardholder was not eligible for some or all the benefits of Balance Protect or was enrolled without their knowledge.

68. Defendant's fraudulent intent is evinced by its failure to adequately refund all Balance Protect fees incurred by customers who it signed up for Balance Protect without their knowledge.

Unjust Enrichment

69. Defendant obtained and retained benefits and monies due to cardholders' continued enrollment in Balance Protect.

70. Plaintiff and class members seek disgorgement and restitution of monies retained by defendant.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct and cease the challenged practices;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages, statutory damages pursuant to any statutory claims and

interest pursuant to the common law and other statutory claims;

5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: April 18, 2021

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

60 Cutter Mill Rd Ste 409

Great Neck NY 11021-3104

Tel: (516) 268-7080

Fax: (516) 234-7800

spencer@spencersheehan.com

2:21-cv-02108
United States District Court
Eastern District of New York

Jacob Adoni, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Citicorp Credit Services, Inc. (USA),

Defendant

Class Action Complaint

Sheehan & Associates, P.C.
60 Cuttermill Rd Ste 409
Great Neck NY 11021-3104
Tel: (516) 268-7080
Fax: (516) 234-7800

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: April 18, 2021

/s/ Spencer Sheehan
Spencer Sheehan

CIVIL COVER SHEET

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 next page of this form.)

I. (a) PLAINTIFFS

Jacob Adoni, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

DEFENDANTS

Citicorp Credit Services, Inc. (USA)

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

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

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 (For Diversity Cases Only.)

(Check one box, only for plaintiff and one box for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:

False advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

DATE 4/18/2021 JUDGE _____ DOCKET NUMBER _____
SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY
Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Spencer Sheehan, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/Spencer Sheehan

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Jacob Adoni, individually and on behalf of all
others similarly situated,

Plaintiff(s)
v.
Citicorp Credit Services, Inc. (USA),

Defendant(s)

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Civil Action No. 2:21-cv-02108

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Citicorp Credit Services, Inc. (USA)
 c/o C T Corporation System
 1200 S Pine Island Rd
 Plantation FL 33324-4413

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are: Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk