

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CYNTHIA CLENDINEN AZOR,
f/k/a CYNTHIA CLENDINEN,
*individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

MIDLAND CREDIT MANAGEMENT, INC.,
a foreign for-profit corporation, and
MIDLAND FUNDING LLC,
a foreign limited liability company,

Defendants.

Case No.:

CLASS REPRESENTATION

JURY TRIAL DEMAND

CLASS-ACTION COMPLAINT

COMES NOW, Plaintiff, CYNTHIA CLENDINEN AZOR, f/k/a CYNTHIA CLENDINEN (hereinafter, "Plaintiff"), by and through the undersigned counsel, and hereby sues Defendants, MIDLAND CREDIT MANAGEMENT, INC. (hereinafter, "MCM") and MIDLAND FUNDING LLC (hereinafter, "MF") (hereinafter collectively, "Defendants"). In support thereof, Plaintiff alleges:

PRELIMINARY STATEMENT

1. This is a class-action brought against Defendants for their systematic violations of the Fair Debt Collection Practices Act, 15 United States Code, Section 1692, *et seq.* (hereinafter, the "FDCPA") and the Florida Consumer Collection Practices Act, Chapter 559, Florida Statutes (hereinafter, the "FCCPA"). Plaintiff brings this case on behalf of herself and on behalf of Class Members, as defined herein, of all others similarly situated.

2. Specifically, Defendants routinely and systematically violate the FDCPA and the FCCPA by attempting to collect consumer debts from Class Members, including Plaintiff, through the use of a Form Debt Collection Letter, as defined herein.

3. Defendants' Form Debt Collection Letter improperly and illegally attempts to collect consumer debts by offering monthly payment options to Class Members, including Plaintiff, which purport to provide a credit reporting benefit to Plaintiff and Class Members when Defendants cannot legally provide such a benefit.

4. More specifically, Defendants' Form Debt Collection Letter improperly and illegally attempts to collect consumer debts by harassing and abusing Plaintiff and Class Members as well as asserting legal rights that do not exist in violation of the FCCPA, Sections (7) and (9), and by harassing, oppressing, or abusing Plaintiff and Class Members, by making generally false or misleading representations as well as engaging in deceptive, unfair, and/or unconscionable means to collect consumer debts from Plaintiff and Class Members in violation of the FDCPA, Sections (d), (e), e(10), and (f).

JURISDICTION, VENUE & PARTIES

5. Plaintiff is a resident of Pinellas County, Florida.

6. MCM is a foreign for-profit corporation existing under the laws of the state of Kansas with its principal place of business located at 3111 Camino Del Rio North, Suite 1300, San Diego, CA 92108. MCM regularly conducts business in the state of Florida and also within this Judicial District.

7. MF is a foreign limited liability company existing under the laws of the state of Delaware with its principal place of business located at 3111 Camino Del Rio North, Suite 1300, San Diego, CA 92108. MF regularly conducts business in the state of Florida and also within this

Judicial Circuit.

8. Defendants engage in the business of collecting consumer debts using mail and telephone, and Defendants regularly attempt to collect debts alleged to be due to another, arising out of a transaction for goods or services that were incurred for personal, family, or household purposes.

9. The present complaint alleges Defendants violated the FDCPA thereby conferring subject matter jurisdiction on this Court pursuant to 15 United States Code, Section 1692k(d) and supplemental jurisdiction exists for the FCCPA pursuant to 28 United States Code, Section 1367. Declaratory relief is available pursuant to 28 United States Code, Sections 2201 and 2202.

10. This Court maintains personal jurisdiction over Defendants as Defendants operate, conduct, engage in, or carry on business in the state of Florida. In addition, this Court maintains personal jurisdiction over Defendants as Defendants conduct substantial—and not isolated—activity within the state of Florida. Finally, Defendants each intentionally availed itself of the laws of the state of Florida by collecting debts in the state of Florida.

FACTUAL ALLEGATIONS

11. At all material times herein, Plaintiff is a “debtor” or “consumer” as defined by 15 United States Code, Section 1692a(3) as well as Florida Statutes, Section 559.55(2).

12. At all material times herein, Defendants are each a “debt collector” as defined by 15 United States Code, Section 1692a(6) and Florida Statutes, Section 559.55(6). *See Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1258 (finding that buyers of defaulted debts are unequivocally debt collectors under the FDCPA.)

13. At all material times herein, Defendants used interstate mail while engaging in a business, the principal purpose of which is the collection of consumer debts allegedly due another.

Defendants also each use instrumentalities of interstate commerce of mails in a business the principal purpose of which is the collection of debts.

Defendant's Form Debt Collection Letter Sent to Plaintiff

14. At all material times herein, Defendants attempt to collect a consumer debt from Plaintiff, specifically, a balance allegedly due on a Home Depot retail consumer credit card owed to Citibank, N.A. referenced by account numbers ending -6199 and -9215 (hereinafter, the "Debt").

15. Plaintiff originally incurred the Debt as a result of transactions for goods or services primarily used for personal, family, or household purposes.

16. Upon information and belief, the Debt became delinquent on or before December 31, 2010.

17. After June 30, 2018, Defendants are not lawfully allowed to report the Debt on Plaintiff's consumer credit reports.^{1, 2}

18. Prior to Defendants' attempts to collect the Debt from Plaintiff, MF purchased the Debt from the original creditor, a debt buyer, or a third-party entity after the Debt entered default status.

19. Additionally, prior to Defendants' attempts to collect the Debt from Plaintiff, MF turned the Debt over to MCM for collection, servicing, or both.

20. On or about September 28, 2016, MCM, on MF's behalf—and with MF's consent,

¹ "Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:...(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years." 15 U.S.C. § 1681c(a)(4).

² "The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charged to profit and loss, or similar action." 15 U.S.C. § 1681c(c)(1).

knowledge, and approval—sent Plaintiff a Form Debt Collection Letter in an attempt to collect the Debt. Please see attached a true and correct copy of the Form Debt Collection Letter sent by MCM to Plaintiff on MF’s behalf attached as Exhibit “A.”

21. Defendants sent Plaintiff other Debt collection letters in substantially the same form as the Form Debt Collection Letter attached as Exhibit “A.”

22. Defendants’ Form Debt Collection Letter asserts a balance due on the Debt owed by Plaintiff in the amount of \$3,011.38. *Id.*

23. Defendants’ Form Debt Collection Letter offers three different payment plan options, including: (1) a one-time payment valued at forty percent (60%) of the total outstanding balance in full satisfaction of the Debt; (2) six monthly payments valued at eighty percent (80%) of the total outstanding balance in full satisfaction of the Debt; or (3) monthly payments as low as \$50.00 until the total outstanding balance due on the Debt is paid (hereinafter, the “Monthly Payment Option”). *See* Exhibit “A.”

24. If Plaintiff accepted the Monthly Payment Option offered in the Form Debt Collection Letter by electing to pay \$50.00 per month toward the total outstanding balance, Plaintiff would tender *at least* sixty (60) monthly payments to pay Defendants the total outstanding balance due on the Debt.³

25. Further, Defendants’ Form Debt Collection Letter states “[t]he law limits how long you can be sued on a debt. Because of the age of your debt, we *will* not sue you for it. If you do not pay the debt, we *may continue to report it to the credit reporting bureaus as unpaid*” (emphasis added). *Id.*

26. Alternatively, Defendants’ Form Debt Collection Letter offers “[i]f you pay your

³ $\$3,011.38 \div \$50.00 = 60.2276$ monthly payments.

balance in full, we will report your account as **Paid in Full**. If you pay less than your full balance, we will report your account as **Paid in Full for less than the full balance.**” (emphasis in original) *Id.*

27. If Plaintiff accepted the third Monthly Payment Option offered in the Form Debt Collection Letter—thus requiring *at least* sixty (60) monthly payments of \$50.00—Plaintiff would not pay the Debt in full until *at least* October 2021.

28. Defendants’ Form Debt Collection Letter did not include the date of transactions giving rise to the Debt, the original date of delinquency or default, or the relevant statute of limitations to report negative or derogatory account information concerning the Debt on Plaintiff’s credit reports.

29. By asserting that Defendants will report the Debt on Plaintiff’s credit reports if Plaintiff does not pay, and then offering to report the Debt as “Paid in Full” *only* upon receiving the total outstanding balance due on the Debt, Defendants purport to offer a benefit to Plaintiff, namely, that Defendants will cease reporting the Debt negatively on Plaintiff’s credit reports after receiving full payment on the Debt.

30. Therefore, Defendant’s Form Debt Collection Letter in part asserts that Defendant will *only* cease reporting the Debt negatively on Plaintiff’s credit reports after receiving *at least* sixty (60) months of payments in the amount of \$50.00, until October 2021.

31. Defendants, however, cannot legally report the Debt on Plaintiff’s credit reports after June 30, 2018.⁴

32. MF reported on Plaintiff’s May 2016 TransUnion credit report that the Debt will be removed by June 2018, and Plaintiff’s May 2016 Experian credit report that the Debt will be

⁴ See ¶ 16 and FN 1 and 2 *supra*.

removed by April 2018 (hereinafter collectively, “May 2016 Credit Reports”). Please see attached true and correct copies of the relevant pages from Plaintiff’s May 2016 TransUnion and Experian credit reports labeled as Composite Exhibit “B.”

33. MCM maintains the policy and practice of sending the Form Debt Collection Letter to Plaintiff on MF’s behalf—and with MF’s consent, knowledge, and approval—seeking to collect the Debt via the Monthly Payment Option without informing the consumer debtor in the Form Debt Collection Letter of the date of the transactions giving rise to the claimed debt, the date of the original delinquency or default date of the claimed debt, and the latest possible date that Defendants could report the Debt on Plaintiff’s credit reports.

34. Defendants possess the information listed in the immediately aforementioned paragraph, as evidenced and indicated by its inclusion on Plaintiff’s May 2016 Credit Reports, but consciously chooses not to include it in the Form Debt Collection Letter.

Defendants’ Form Debt Collection Letter Deceives Consumers

35. By asserting that Defendants will adversely report outstanding debts on a consumer’s credit reports if the consumer does not pay Defendants the balance due on the respective Debt in full, Defendants purport to offer a benefit to Plaintiff, namely, that Defendants will cease negatively reporting the debts on Plaintiff’s credit reports after receiving full payment on the Debt.

36. Defendants, however, purposefully and consciously fail to include information regarding the age of the Debt—and Defendants’ ability to report the Debt on Plaintiff’s consumer credit reports due to the age of the Debt as a result of the applicable statute of limitations—so as to gain a competitive advantage over other debt collectors in the marketplace who either appropriately provide debtors notice that the FCRA limits how long a creditor or debt collector

can report delinquent debts on debtors consumer credit reports, or who do not assert the legal right to report the debt—positively or negatively—on debtors consumer credit reports past the seven (7) year time limit stipulated by the FCRA.

37. While Defendants' Form Debt Collection Letter indicates that "[t]he law limits how long you can be sued on a debt," Defendants' letter does *not* explicitly and clearly convey to the least sophisticated consumer that the law prohibits Defendants from credit reporting information—positive or negative—regarding the Debt on Plaintiff's consumer credit reports after June 30, 2018.

38. Defendants' Form Debt Collection Letter also states that "[b]ecause of the age of your debt, we *will not* sue your for it." (emphasis added). *See* Exhibit A.

39. Defendants' Form Debt Collection Letter does not state that Defendants cannot sue Plaintiff for the Debt because of its age.

40. Defendants' omission of any language concerning the statute of limitations for reporting negative or derogatory information on Plaintiff's credit report creates a significant risk that Plaintiff would lose the benefits and protections of such statute of limitation, as Defendants are prohibited from reporting any credit information after June 30, 2018 regardless of a consumer's voluntary decision to pay Defendants pursuant to the Monthly Payment Option.

41. Defendants' Form Debt Collection Letter misled Plaintiff as to the legal status of the Debt that Defendants sought to collect, both via the Monthly Payment Option and otherwise.

42. Defendants continue to attempt to collect the Debt directly from Plaintiff in violation of the FCCPA and the FDCPA.

43. Defendants' conduct, as described above, constitutes a knowing, willful, and continuing violations of Plaintiff's rights as enumerated under federal and state law.

44. Given Defendants' conduct, and their apparent intention and ability to continue to collect the Debt from Plaintiff in violation of the FCCPA and FDCPA, Plaintiff possesses no adequate remedy at law.

45. Plaintiff retained LeavenLaw as counsel for the purposes of pursuing this matter against Defendants, and Plaintiff is obligated to pay her attorneys a reasonable fee for their services.

46. Title 15, United States Code, Section 1692k provides for an award of up to \$1,000.00 in statutory damages, actual damages, and an award of attorneys' fees and costs to Plaintiff, should Plaintiff prevail in this matter in this action against Defendants.

47. Florida Statutes, Section 559.77 provides for the award of up to \$1,000.00 statutory damages, actual damages, punitive damages, and an award of attorneys' fees and costs to the Plaintiff, should Plaintiff prevail in this matter against Defendants.

48. Any and all necessary conditions precedent to bring this action occurred, or Defendants waived or excused the same.

CLASS ACTION ALLEGATIONS

49. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), Plaintiff brings this class action on behalf of herself and all others similarly situated who are members of one or both of the following classes defined herein:

FDCPA Class

All consumer debtors from whom MCM, on MF's behalf—and with MF's consent, knowledge, and approval—sent, in connection with the collection of a debt, or in an attempt to collect a debt, a form letter in substantially the same form as the Form Debt Collection Letter attached as Exhibit "A" to the Complaint, to an address in Florida, for the purpose of collecting a consumer debt where such improper collection activity took place or is continuing to take place within a one-year period of time prior to the filing of this Complaint

and up through the present date (hereinafter, “FDCPA Class” or “FDCPA Class Members”).

FCCPA Class

All consumer debtors from whom MCM, on MF’s behalf—and with MF’s consent, knowledge, and approval—sent, in connection with the collection of a debt, or in an attempt to collect a debt, a form letter in substantially the same form as the Form Debt Collection Letter attached as Exhibit “A” to the Complaint, to an address in Florida, for the purpose of collecting a consumer debt where such improper collection activity took place or is continuing to take place within a two-year period of time prior to the filing of this Complaint and up through the present date (hereinafter, “FCCPA Class” or “FCCPA Class Members”).

50. Excluded from the FDCPA Class and FCCPA Class are all directors, officers, agents, and employees of Defendants and the court to which this case may be assigned. Also excluded from the Classes are the Judge, members of the Judge’s staff, and the Judge’s immediate family members.

51. The FDCPA Class Members and the FCCPA Class Members at all times herein shall be collectively referred to as “Class Members” or “Classes.”

52. All recipients of the Form Debt Collection Letter, namely Plaintiff and Class Members, are victims of the same improper conduct and unlawful demands of Defendants.

53. The number of potential Class Members is undetermined at this time, but can be readily determined from Defendants’ books and records as well as the public record. Plaintiff believes that each Class most likely have thousands of members.

54. Defendants’ Form Debt Collection Letter:

a. Harasses, oppresses, or abuses Plaintiff and Class Members by failing to advise Plaintiff and Class Members of Defendants’ limitation regarding their ability to report debts on consumer credit reports as a result of the applicable statute of limitations,

and simultaneously attempts to collect such debts by offering payment plans purporting to offer a benefit to Plaintiff and Class Members that Defendants cannot lawfully provide;

b. Asserts a legal right that does not exist by offering payment plans on consumer debt, extending beyond the applicable statute of limitations to report such debt on a consumer credit report, and simultaneously asserting that Defendants would continually adversely report such debts on consumer credit reports—past the applicable statute of limitations—until the total outstanding debt was paid;

c. Is false, deceptive, and misleading, and uses false representations and deceptive means by offering payment plans on consumer debt that purport to benefit Plaintiff and Class Members, but again extend beyond the applicable statute of limitations for Defendants' ability to report such debt on a consumer credit report without also notifying the consumer about the applicable statute of limitations to report such debt on a consumer's credit report;

d. Uses unfair or unconscionable means of collecting Plaintiff's and Class Members' respective consumer debts by offering payment plans on consumer debt that purport to benefit Plaintiff and Class Members, but again extend beyond the applicable statute of limitations for Defendants' ability to report such debt on a consumer credit report without also notifying the consumer about the applicable statute of limitations to report such debt on a consumer's credit report;

e. Is false, deceptive, and misleading, and uses false representations and deceptive means by intimating to the Plaintiff and Class Members in the Form Debt Collection Letter that Defendants are kindly *choosing not* to sue Plaintiff and Class

Members for their Debts, when in actuality Defendants *cannot* sue Plaintiff and Class Members for the Debt; and

f. Uses unfair or unconscionable means of collecting Plaintiff's and Class Members' respective consumer debts by intimating to the Plaintiff and Class Members in the Form Debt Collection Letter that Defendants are kindly *choosing not* to sue Plaintiff and Class Members for their Debts, when in actuality Defendants *cannot* sue Plaintiff and Class Members for the Debt.

55. This action is properly brought as a class action under Rule 23, Federal Rules of Civil Procedure, for the following reasons:

a. Each Class consists of likely hundreds if not thousands of persons, so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

b. There are questions of law and fact common to all Class Members relating to Defendants' actions regarding the Form Debt Collection Letter, which questions predominate over any question affecting only individual Class Members, including:

i. Whether Defendants, through the use of the Form Debt Collection Letter, engaged in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff and Class Members into paying consumer debts;

ii. Whether Defendants, through the use of the Form Debt Collection Letter, knowingly asserted a legal right that does not exist;

iii. Whether Defendants used false, deceptive, or misleading means or representations in its collection of the debts from Plaintiff and Class Members;

iv. Whether Defendants used unfair or unconscionable means in its

collection of the debts from Plaintiff and Class Members;

v. Whether Plaintiff's and Class Members' debts could be adversely reported on Plaintiff's and Class Members' consumer credit reports beyond the applicable time limitation pursuant to the FCRA;

vi. Whether Plaintiff and Class Members' debts could be favorably reported (i.e., Paid in Full) on Plaintiff and Class Members' credit reports beyond the applicable time period pursuant to the FCRA;

vii. Whether Plaintiff and Class Members are entitled to statutory damages as a result of Defendants' unlawful debt collection practices described herein and in what amount;

viii. Whether Plaintiff and Class Members are entitled to costs and attorneys' fees in bringing this action, and if so, in what amount; and

ix. Whether Plaintiff and Class Members are entitled to declaratory and injunctive relief.

56. Defendants acted, or refused to act, on grounds generally applicable to Class Members in that they engaged in a routine and systematic course of conduct, namely the utilization of the Form Debt Collection Letter which harasses, oppresses, or abuses Plaintiff and Class Members, knowingly asserts a legal right that does not exist, uses false and deceptive means in collecting debts, and uses unfair or unconscionable representations or means to attempt to collect debts from Plaintiff and Class Members.

57. Declaratory relief is appropriate with respect to the Class Members as a whole as a result of Defendants' routine and systematic course of conduct.

58. Injunctive relief is appropriate with respect to Class Members who received the

Form Debt Collection Letter in violations of the FCCPA as a result of Defendants' apparent and present intention and ability to continue to use the Form Debt Collection Letter to collect debts in the state of Florida.

59. Plaintiff's claims are typical of the claims of the proposed Class Members, given the uniform nature and use of the Form Debt Collection Letter and the common legal and factual issues concerning whether sending the Form Debt Collection Letter to Plaintiff and Class Members in an attempt to collect consumer debt violates the FDCPA or FCCPA.

60. More specifically, Defendants' Form Debt Collection Letter can be analyzed to assess whether Defendants:

- a. abused, oppressed, or harassed Plaintiff and Class Members into paying consumer debts;
- b. made and false or misleading representations;
- c. used false and deceptive means to collect consumer debts; or
- d. attempted to collect consumer debts from Plaintiff and Class Members in an unfair and unconscionable manner, all in violation of Plaintiff's and Class Members' rights under the FDCPA.

61. Similarly, Defendants' Form Debt Collection Letter can be analyzed to assess whether Defendants abused, oppressed, or harassed Plaintiff and Class Members into paying consumer debts, and whether Defendants falsely asserted a legal right that does not exist in violation of Plaintiff's and Class Members' rights under the FCCPA.

62. Plaintiff is a member of the Classes and is committed to prosecuting this action. Plaintiff gathered and reviewed all relevant documents necessary for filing this case and will continue to proactively participate in this class litigation and is committed to thoroughly reviewing

documents, asking questions, and following the counsel of her lawyers for the benefit of the Classes she seeks to represent. Plaintiff will fairly and adequately protect the interests of the Class Members.

63. Adjudication of this case on a class-wide basis is manageable by this Court. Plaintiff and Class Members received the same or substantially similar Form Debt Collection Letter throughout the state of Florida. Plaintiff's and Class Members' rights as they relate to the Form Debt Collection Letter are the same or are so similar as to be legally and factually indistinguishable in all material aspects. As a result, it will not be difficult for the Court or jury to determine who received the Form Debt Collection Letter and whether Defendants violated the FDCPA and FCCPA. As such, this Court is an appropriate forum for this dispute.

64. Plaintiff retained attorneys as counsel who are competent and experienced in consumer, class action, and complex litigation. More specifically, Plaintiff retained a firm with attorneys with specific experience in certifying class actions at the trial court level, defending certified classes on appeal, and assisting class representatives with all aspects of class-action litigation, as well as possess significant experience in handling bankruptcy matters, including two members who are board certified in consumer bankruptcy law. Plaintiff's and Class Members' counsel will fairly and adequately represent Plaintiff and the interests of the Class Members.

65. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- a. Given the likely size of the proposed Classes, individual joinder of each Class Member's FDCPA and FCCPA claims is impracticable;
- b. Given the relatively small damages suffered by individual Class Members, as well as the unlikelihood that many Class Members will know their federal and state

rights have been violated, most Class Members possess little ability to prosecute an individual action due to the complexity of issues involved in this litigation and the significant costs attendant to litigation on this scale;

c. After Defendants' liability is adjudicated, claims of all Class Members can be determined by the Court;

d. This action will cause an orderly and expeditious administration of Class Members' claims, and economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured;

e. Other available means of adjudicating the claims of Plaintiff and Class Members—likely thousands of individual actions brought separately and pursued independently in courts throughout the state of Florida—are impracticable and inefficient;

f. Without a class action, Class Members will continue to suffer damages and Defendants' violations of law will proceed without remedy while they continue their unlawful debt collection activities; and

g. This action presents no difficulties that would preclude management by the Court as a class action.

66. United States Code, Title 15, Section 1692k(a)(2)(A) provides for the award of up to \$1,000.00 statutory damages for the named Plaintiff, actual damages, and in the case of a class action, such amount as the court may allow for all other members of the Classes, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000.00 or 1 per centum of Defendants' net worth, and an award of attorneys' fees and costs to Plaintiff should Plaintiff prevail in this matter against Defendants.

67. Florida Statutes, Section 559.77(2) provides for the award of up to \$1,000.00

statutory damages for the named Plaintiff, as well as an aggregate award of additional statutory damages up to the lesser of \$500,000.00 or 1 percent of Defendants' net worth for all remaining Class Members, declaratory and injunctive relief, as well as an award of attorneys' fees, and costs should Plaintiff prevail in this matter against Defendants.

**COUNT ONE:
FAIR DEBT COLLECTION PRACTICES ACT –
VIOLATION OF 15 UNITED STATES CODE, SECTION 1692d**

Plaintiff re-alleges paragraphs one (1) through sixty-seven (67) as if fully restated herein and further states as follows:

68. Defendants are both subject to, and each violated the provisions of, 15 United States Code, Section 1692d by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff and Class Members in connection with collecting consumer debt.

69. Specifically, Defendants' Form Debt Collection Letter asserted that until Defendants received the total outstanding balance due, Defendants would report negative information regarding the underlying debts on Plaintiff's and Class Members' consumer credit reports.

70. Further, Defendants' Form Debt Collection Letter offers a payment plan option with purported positive credit reporting at its successful completion. The payment plan option timeline, however, extends beyond the time period Defendants are allowed to report the debt pursuant to the FCRA without disclosing the impact of the applicable statute of limitations to report such consumer debts on Plaintiff's and Class Members' credit reports.

71. Moreover, Defendants implicitly but falsely asserted that Defendants could continually report negative information regarding the underlying debts on Plaintiff's and Class

Members' credit reports until the Debts were paid in full, which could only occur after the applicable time limit to credit report such Debts expired.

72. Defendants knew they could not report the debts—positively or negatively—beyond the applicable time limit to report delinquent debts pursuant to the FCRA; in fact, MF's reporting of the Debt on Plaintiff's May 2016 Credit Reports noted that the Debt will be removed by April 2018 or June 2018.

73. Defendants' conduct served no purpose other than to annoy, oppress, and harass Plaintiff and Class Members into paying consumer debt, as Defendants failed to advise Plaintiff and Class Members of Defendants' ability to report debts on consumer credit reports—including the latest date that Defendants could lawfully report derogatory or negative information concerning such consumer debt on Plaintiff's and Class Members' credit reports despite possessing such information as indicated on Plaintiff's May 2016 Credit Reports—and simultaneously attempted to collect such debts by offering payment plans purporting to offer a benefit to Plaintiff and Class Members that Defendants could not provide.

74. As a direct and proximate result of Defendants' actions, Plaintiff and Class Members sustained damages as defined by and provided for under 15 United States Code, Section 1692k, as well as attorneys' fees and costs.

**COUNT TWO:
FAIR DEBT COLLECTION PRACTICES ACT –
VIOLATION OF 15 UNITED STATES CODE, SECTION 1692e and e(10)**

Plaintiff re-alleges paragraphs one (1) through sixty-seven (67) as if fully restated herein and further states as follows:

75. Defendants are both subject to, and each violated the provisions of, 15 United States Code Section 1692e and e(10) by using false, deceptive, or misleading means or representations in attempting to collect consumer debt.

76. Specifically, Defendants' Form Debt Collection Letter falsely represents Defendants' ability to report Plaintiff's and Class Members debts on Plaintiff's and Class Members' consumer credit reports beyond the applicable time limit as permitted by the FCRA without disclosing the impact of the applicable statute of limitations to report such consumer debts on Plaintiff's and Class Members' credit reports, and despite possessing such information as indicated on Plaintiff's and Class Members' credit reports.

77. Additionally, Defendants' Form Debt Collection Letter purports to offer a benefit to Plaintiff and Class Members, namely, that Defendants will remove any negative credit reporting information regarding (or alternative affirmatively report the tradeline as "Paid in Full" at the completion of the plan) such consumer Debts from Plaintiff's and Class Members' credit reports upon—and only upon—paying the consumer Debts in full.

78. However, the Form Debt Collection Letter offers a payment option that will extend beyond the time period Defendants are allowed to report the debts pursuant to the FCRA (without disclosure of the same) despite Defendants clearly possessing such information as indicated on Plaintiff's and Class Members' credit reports.

79. Defendants' actions, as described herein, attempt to deceive and mislead Plaintiff and Class Members into paying consumer debt to receive either the purported benefit of removing negative credit reporting information or the reporting of the debts, as paid in full, at a time after

Defendants could no longer report such debts by law without notifying Plaintiff and Class Members of the same.⁵

80. Further, Defendants Form Debt Collection Letter advises each recipient that Defendants have made a choice not to sue Plaintiff and Class Members (i.e. will not sue) when in actuality, Defendants cannot lawfully sue Plaintiff and Class Members to collect the respective Debts.

81. Overall, Defendants' actions in sending the Form Debt Collection Letter to Plaintiff and Class Members, as alleged herein, constitute the use of false, deceptive, and/or misleading representations or means in attempting to collect Plaintiff's and Class Members' respective consumer debt.

82. As a direct and proximate result of Defendants' actions, Plaintiff and Class Members sustained damages as defined by and provided for under 15 United States Code, Section 1692k, as well as attorneys' fees and costs.

**COUNT THREE:
FAIR DEBT COLLECTION PRACTICES ACT –
VIOLATION OF 15 UNITED STATES CODE, SECTION 1692f**

83. Plaintiff re-alleges paragraphs one (1) through sixty-seven (67) as if fully restated herein and further states as follows:

⁵ See *Pantoja v. Portfolio Recovery Associates, LLC*, Case No. 15-1567, 2017 WL 1160902 at *3-5, United States Court of Appeals for the Seventh Circuit (Mar. 29, 2017) (holding that a debt collection letter that did not explicitly and clearly indicate that the law prohibits the collector from suing to collect a time-barred debt and that omits any reference to the protections afforded by the applicable statute of limitation constitutes deceptive and misleading conduct in violation of the FDCPA. The Court stated, “the opportunities for mischief and deception, particularly when sophisticated parties aim carefully crafted messages at unsophisticated consumers, may well be so great that the better approach is simply to find that any such efforts violate the FDCPA’s prohibitions on deceptive or misleading means to collect a debt, § 1692e, and on ‘unfair or unconscionable means’ to attempt to collect debts, § 1692f” and further noted “we believe the FDCPA prohibits a debt collector from luring debtors away from the shelter of the statute of limitations without providing an unambiguous warning that an unsophisticated consumer would understand”).

84. Defendants are both subject to, and each violated the provisions of, 15 United States Code, Section 1692f by using the Form Debt Collection Letter that uses unfair or unconscionable means in attempting to collect consumer debt.

85. Specifically, Defendants' Form Debt Collection Letter purports to offer a benefit to Plaintiff and Class Members, namely, that Defendants will remove any negative information regarding such consumer debts from Plaintiff's and Class Member's credit reports upon—and only upon—paying the consumer debts in full.

86. However, the Form Debt Collection Letter also offers a payment option that will extend beyond the time period Defendants are allowed to report the debts pursuant to the FCRA—without disclosure of the same despite Defendants clearly possessing such information as indicated on Plaintiff's and Class Members' credit reports. Such representations and means of Debt Collection is unfair and unconscionable as it makes Plaintiff and Class Members believe that the negative reporting information would only be removed once the total outstanding balance on the debts were paid.⁶

87. Such representations and means of Debt Collection also falsely and unfairly assert that Defendants will positively report the Debts after the completion of the payment plan option, a time when Defendants actually cannot report the Debts at all.

88. Further, Defendants Form Debt Collection Letter advises each recipient that Defendants have made a choice not to sue Plaintiff and Class Members (i.e. will not sue) when in actuality, Defendants cannot lawfully sue Plaintiff and Class Members to collect the respective Debts.

⁶ See FN 5, *supra*.

89. As a direct and proximate result of Defendants' actions, Plaintiff and Class Members sustained damages as defined by, and provided for under, 15 United States Code, Section 1692k, as well as attorneys' fees and costs.

**COUNT FOUR:
UNLAWFUL DEBT COLLECTION PRACTICE –
VIOLATION OF FLORIDA STATUTES, SECTION 559.72(7)**

Plaintiff re-alleges paragraphs one (1) through sixty-seven (67) as if fully restated herein and further states as follows:

90. Defendants are both subject to, and each violated the provisions of, Florida Statutes, Section 559.72(7) by collecting consumer Debt from Plaintiff and Class Members through means which can reasonably be expected to abuse or harass Plaintiff and Class Members.

91. Specifically, Defendants' Form Debt Collection Letter asserted that until Defendants received the total outstanding balance due on the Debt, Defendants would report negative information regarding underlying consumer debt on Plaintiff's and Class Members' consumer credit reports.

92. Further, Defendants' Form Debt Collection Letter offers a payment option that will extend beyond the time period Defendants are allowed to report the debts pursuant to the FCRA in any fashion whatsoever without disclosing the impact of the applicable statute of limitations to report such consumer debts on Plaintiff's and Class Members' credit reports.

93. Moreover, Defendants implicitly but falsely asserted that Defendant could continually report negative information regarding underlying consumer debt on Plaintiff's and Class Members' credit reports until the debts were paid in full, which could only occur after the applicable time limit to report such debts expired. Defendants knew they could not report the debts beyond the applicable time limit to report delinquent debts pursuant to the FCRA; in fact, MF's

reporting of the Debt on Plaintiff's and Class Members' credit reports would note that the Debts would be removed at a time period as required by the FCRA.

94. Defendants' conduct served no purpose other than to annoy, oppress, and harass Plaintiff and Class Members into paying consumer debt, as Defendants failed to advise Plaintiff and Class Members of Defendants' ability to report debts on consumer credit reports—including the latest date that Defendants could lawfully report derogatory or negative information concerning such consumer debt despite clearly possessing such information as indicated on Plaintiff's and Class Members' credit reports—and simultaneously attempted to collect such debts by offering payment plans purporting to offer a benefit to Plaintiff and Class Members that Defendants could not provide.

95. Further, Defendants Form Debt Collection Letter advises each recipient that Defendants have made a choice not to sue Plaintiff and Class Members (i.e. will not sue) when in actuality, Defendants cannot lawfully sue Plaintiff and Class Members to collect the respective Debts.

96. Defendants' willful and flagrant violation of, *inter alia*, the Florida Consumer Collections Practices Act as a means to collect a Debt, constitutes unlawful conduct and harassment as is contemplated under Florida Statutes, Section 559.72(7).

97. As a direct and proximate result of Defendants' actions, Plaintiff and Class Members are entitled to damages as defined by Florida Statutes, Section 559.77, actual damages, as well as attorneys' fees and costs.

**COUNT FIVE:
UNLAWFUL DEBT COLLECTION PRACTICE –
VIOLATION OF FLORIDA STATUTES, SECTION 559.72(9)**

98. Plaintiff re-alleges paragraphs one (1) through sixty-seven (67) as if fully restated herein and further states as follows:

99. Defendants are both subject to, and each violated the provisions of, Florida Statutes, Section 559.72(9) by collecting debts from Plaintiff and Class Members by asserting the existence of a legal right with knowledge that such right does not exist.

100. Specifically, Defendants' Form Debt Collection Letter asserted that until Defendants received the total outstanding balance due, Defendants would report negative information regarding underlying consumer debt on Plaintiff's and Class Members' consumer credit reports. Defendants, however, are knowingly limited in how long they can report Plaintiff's and Class Members' Debts by time periods provided for under the FCRA, not just by Plaintiff's and Class Members' full payment of their respective Debts.

101. Further, Defendants' Form Debt Collection Letter offers a payment option that will extend beyond the time period Defendants are allowed to report the Debts pursuant to the FCRA in any fashion whatsoever without disclosing the impact of the applicable statute of limitations to report such consumer Debts on Plaintiff's and Class Members' credit reports. Defendants know there are credit reporting limitations provided by the FCRA, not just by Plaintiff's and Class Members' full payment, and have the information need to calculate such dates in Plaintiff's and Class Members' accounts (i.e., debt files).

102. Moreover, Defendants implicitly but falsely asserted that Defendants could continually report negative information regarding underlying consumer debt on Plaintiff's and Class Members' credit reports until the debts were paid in full, which could only occur after the

applicable time limit to report such debts expired. Defendants knew of such limitations but made the time assertion in an attempt to collect the Debt anyway.

103. Defendants knew they could not report the debts beyond the applicable time limit to report delinquent debts pursuant to the FCRA; in fact, MF's reporting of the Debt on Plaintiff's May 2016 Credit Reports noted that the Debt will be removed by April 2018 or June 2018.

104. Finally, Defendants implicitly asserted they had the lawful ability to sue Plaintiff and Class Members to collect their respective Debts, but instead were merely choosing not to do so. Defendants are aware of the prohibition to lawfully suing Plaintiff and Class Members, yet chose to make the knowingly false assertion in an attempt to collect the Debts anyways.

105. As a direct and proximate result of Defendants' actions, Plaintiff and Class Members are entitled to statutory damages as defined by Florida Statutes, Section 559.77, actual damages, as well as attorneys' fees and costs.

COUNT SIX:
DECLARATORY AND INJUNCTIVE RELIEF

106. Plaintiff re-alleges paragraphs one (1) through sixty-seven (67) as if fully restated herein and further states as follows:

107. Unless Defendants are immediately enjoined from continuing to attempt to collect consumer debt from Plaintiff and Class Members in violation of the FCCPA and FDCPA, Plaintiff and Class Members will suffer irreparable injury.

108. Plaintiff and Class Members possess no adequate remedy at law.

109. Plaintiff and Class Members possess a clear legal right to the protections of the FCCPA and FDCPA regarding Defendants' unfair, deceptive, and violative consumer collection practices.

110. Furthermore, at all material times herein, by virtue of the business relationships between the parties, Defendants owed a duty to the public and to all parties to which they communicated to accurately and completely convey information in all matters, and specifically about Plaintiff's and Class Members' respective rights under the FDCPA, as well as Defendants' inability to continue to report the debts on Plaintiff's and Class Members' consumer credit reports beyond the time limit allowed pursuant to the FCRA in an effort to collect such consumer debts.

111. Defendants breached the above-referenced duties by making false, deceptive, misleading, and incorrect statements in the Form Debt Collection Letter.

112. Given Defendants' conduct—and their apparent intention and ability to continue to collect consumer debt directly from Plaintiff and Class Members in violation of said debt collection laws—Plaintiff and Class Members possess no adequate remedy at law.

113. Plaintiff and Class Members need and are entitled to injunctive relief.

114. The requested injunction is reasonably necessary to protect the legal rights of Plaintiff and Class Members and will not adversely affect the public welfare.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class Members respectfully request the following relief:

- a. An Order certifying the Classes requested herein, appointing Plaintiff as class representative to act on behalf of the Classes, and appointing her attorneys as counsel for the Classes;
- b. Declaring that communications, such as in the Form Debt Collection Letter, violate the FCCPA and FDCPA;
- c. Declaring that Defendants violated the FCCPA;
- d. Declaring that Defendants violated the FDCPA;

- e. Awarding maximum statutory damages allowed under the FCCPA;
- f. Awarding maximum statutory damages allowed under the FDCPA;
- g. Ordering injunctive relief, including an order permanently enjoining Defendants from further engaging in the same debt collection activities in violation of the FCCPA, namely, the continued use of the Form Debt Collection Letter;
- h. Awarding Plaintiff and Class Members attorneys' fees and costs; and
- i. Any other such relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues triable by right.

SPOILIATION NOTICE AND DEMAND TO RETAIN EVIDENCE

Plaintiff hereby gives notice to Defendants and demands that Defendants and their affiliates safeguard all relevant evidence—paper, electronic documents or data—pertaining to this litigation as required by law.

Respectfully submitted,

LEAVENLAW

/s/ Ian R. Leavengood

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Midland Credit Fails to Include Info on Age of Consumers' Debt, Lawsuit Claims](#)
