

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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VINCENT CARIERI, on behalf of himself and all  
others similarly situated,

Plaintiff(s),

-against-

MIDLAND CREDIT MANAGEMENT, INC.; and  
JOHN DOES 1-25,

Defendant(s).

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Civil Case Number: \_\_\_\_\_

**CIVIL ACTION**

**CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Plaintiff, VINCENT CARIERI, on behalf of himself and all others similarly situated (hereinafter "Plaintiff") by and through his undersigned attorney, alleges against the above-named Defendant, MIDLAND CREDIT MANAGEMENT, INC. ("MIDLAND), JOHN DOES 1-25 their employees, agents, and successors (collectively "Defendants") the following:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for damages and declaratory relief arising from the Defendants' violation of 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violations of 15 U.S.C. § 1692 *et seq.*

3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because the acts of the Defendant that give rise to this action, occurred in substantial part, in this district.

### **DEFINITIONS**

4. As used in reference to the FDCPA, the terms “creditor,” “consumer,” “debt,” and “debt collector” are defined in § 803 of the FDCPA and 15 U.S.C. § 1692a.

### **PARTIES**

5. The FDCPA, 15 U.S.C. § 1692 *et seq.*, which prohibits certain debt collection practices provides for the initiation of court proceedings to enjoin violations of the FDCPA and to secure such equitable relief as may be appropriate in each case.

6. Plaintiff is a natural person and a resident of the County of Essex, State of New Jersey, and is a “Consumer” as defined by 15 U.S.C. § 1692a(3).

7. MIDLAND has a business location at 8875 Aero Drive, Suite 200, San Diego, California 92123.

8. Upon information and belief, MIDLAND uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

9. MIDLAND is a “Debt Collector” as that term is defined by 15 U.S.C. § 1692(a)(6).

10. John Does 1-25, are fictitious names of individuals and business alleged for the purpose of substituting names of defendants whose identities will be disclosed in discovery and should be made parties to this action.

### **CLASS ACTION ALLEGATIONS**

11. Plaintiff brings this action as a state wide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter “FRCP”), on behalf of himself and all New Jersey consumers and their successors in interest (the “Class”), who were sent debt collection letters

and/or notices from the Defendants which are in violation of the FDCPA, as described in this Complaint.

12. This Action is properly maintained as a class action. The Class is initially defined as:

- All New Jersey consumers who were sent letters and/or notices from MIDLAND concerning a debt owned by MIDLAND FUNDING, LLC which originated with CHASE BANK USA, N.A. and which contained at least one of the alleged violations of 15 U.S.C. § 1692 *et seq.* herein.

The class definition may be subsequently modified or refined. The Class period begins one year to the filing of this Action.

13. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there may be hundreds and/or thousands of persons who were sent debt collection letters and/or notices from the Defendants that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice. (See **Exhibit A**, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 redacted the financial account numbers and/or personal identifiers in an effort to protect Plaintiff's privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

- a. Whether the Defendants violated various provisions of the FDICPA including but not limited to:  
15 U.S.C. §§ 1692e *et seq.* and 1692e(10).
- b. Whether Plaintiff and the Class have been injured by the Defendants' conduct;
- c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendants' wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
- d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would

engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendants' conduct is allowed to proceed without remedy, they will continue to reap and retain the proceeds of their ill-gotten gains.

- Defendants have acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

#### **STATEMENT OF FACTS**

14. Plaintiff is at all times to this lawsuit, a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

15. Sometime prior to May 25, 2016, Plaintiff allegedly incurred a financial obligation to CHASE BANK USA, N.A. ("CHASE BANK").

16. The CHASE BANK obligation arose out of a transaction, in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.

17. The CHASE BANK obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).

18. CHASE BANK is a "creditor" as defined by 15 U.S.C. § 1692a(4).

19. Sometime prior to May 25, 2016, CHASE BANK, either directly or through intermediate transactions assigned, placed, or transferred the CHASE BANK obligation to MIDLAND FUNDING, LLC ("MIDLAND FUNDING").

20. At the time CHASE BANK assigned, placed, or transferred the CHASE BANK obligation to MIDLAND FUNDING, the obligation was past due.

21. At the time CHASE BANK assigned, placed, or transferred the CHASE BANK obligation to MIDLAND FUNDING, the obligation was in default.

22. On or about May 25, 2016, MIDLAND FUNDING, either directly or through intermediate transactions assigned, placed, or transferred the CHASE BANK obligation to MIDLAND for the purpose of collection.

23. MIDLAND, caused to be delivered to Plaintiff a letter dated May 25, 2016 concerning the alleged CHASE BANK obligation, which sought a balance of \$4,491.47. A copy of said letter is annexed hereto as **Exhibit A** except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers and/or personal identifiers in an effort to protect Plaintiff's privacy.

24. The May 25, 2016 letter was sent to Plaintiff in connection with the collection of the CHASE BANK obligation.

25. The May 25, 2016 letter is a "communication" as defined by 15 U.S.C. § 1692a(2).

26. Upon receipt, Plaintiff read the May 25, 2016 letter.

27. The May 25, 2016 letter offered Plaintiff several repayment options on the CHASE BANK obligation:

**AVAILABLE PAYMENT OPTIONS**

**Option 1: 40% OFF**

**Option 2: 20% OFF** Over 12 months

**Option 3: Monthly Payments As Low As: \$50 per month**

Call today to discuss your options and get more details.

28. The May 25, 2016 letter also stated in part the following:

Benefits of Paying Your Debt

- Save \$1,796.58 if you pay by 06-24-2016 -
  - Put this debt behind you –
- No more communication on this account -
  - Peace of mind -

After receiving your final payment, we will consider the account paid\*.

**POLICIES AND PRACTICES COMPLAINED OF**

29. It is Defendants' policy and practice to send written collection communications, in the form annexed hereto as **Exhibit A**, which violate the FDCPA, by *inter alia*:

- (a) Using false, deceptive or misleading representations or means in connection with the collection of a debt; and
- (b) Using unfair or unconscionable means to collect or attempt to collect any debt.

30. On information and belief, Defendants sent written communications in the form annexed hereto as **Exhibit A**, to at least 50 natural persons in the State of New Jersey with one year of this Complaint.

**COUNT I**

**FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. §  
1692 et seq. VIOLATIONS**

31. Plaintiff, on behalf of himself and others similarly situated, repeats and realleges all prior allegations as if set forth at length herein.

32. Collection letters and/or notices, such as those sent by Defendants, are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

33. Defendant's settlement offer would cause the least sophisticated consumer to believe that if the requested payment was made that the consumer would receive a \$1,796.58 savings. Defendant knew that the \$1,796.58 savings may cause a tax consequence thereby reducing the actual savings amount that Defendant specifically represented.

34. The form, layout and content of Defendant's letter would cause the least sophisticated consumer to be confused about his or her rights and the consequences of accepting Defendant's offer to settle.

35. The form, layout and content of Defendant's letter would cause the least sophisticated consumer to be wrongly believe that by accepting Defendant's offer to settle, the consumer would satisfy this debt with the current creditor and achieve a receive a total savings of \$1,796.58.

36. Defendant attempted to entice Plaintiff and others similarly into accepting the settlement offer by explicitly representing a specific savings amount when the Defendant knew that the savings offer was a false, deceptive or misleading representation.

37. Defendant violated various provisions of the FDCPA including but not limited to: 15 U.S.C. §§ 1692e *et seq* and 1692e(10).

38. Defendants violated 15 U.S.C. § 1692e of the FDCPA by using any false, deceptive or misleading representation or means in connection with their attempts to collect debts from Plaintiff and others similarly situated.

39. Defendants violated 15 U.S.C. § 1692e of the FDCPA in connection with their communications to Plaintiff and others similarly situated.

40. Defendant's conduct, as described herein, violated 15 U.S.C. § 1692e of the FDCPA in connection with its communications to Plaintiff and others similarly situated.



41. Defendants violated 15 U.S.C. § 1692e by attempting to entice Plaintiff and others similarly into accepting the settlement offer by explicitly representing a specific savings amount when the Defendant knew that the savings offer was a false, deceptive or misleading representation.

42. Defendants violated 15 U.S.C. § 1692e by falsely representing a specific savings amount to Plaintiff when the Defendant knew that there may be a tax consequence thereby reducing the actual savings amount.

43. Defendants violated 15 U.S.C. § 1692e by falsely or deceptively representing that if Plaintiff accepted Defendant's offer to settle, the consumer would satisfy this debt with the current creditor and achieve a receive a total savings of \$1,796.58.

44. Defendants violated 15 U.S.C. § 1692e by failing to advise Plaintiff and others similarly situated that the savings amount could have an impact on his or her taxes or on income-sensitive benefits.

45. Section 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.

46. Defendants violated 15 U.S.C. § 1692e(10) by making a false representation or deceptive means to collect or attempt to collect the debt as described herein.

47. Congress enacted the FDCPA in part to eliminate abusive debt collection practices by debt collectors.

48. Plaintiff and others similarly situated have a right to free from abusive debt collection practices by debt collectors.

49. Plaintiff and others similarly situated have a right to receive proper notices mandated by the FDCPA.

50. Plaintiff and others similarly situated were sent letters which have the propensity to affect their decision-making with regard to the debt.

51. Plaintiff and others similarly situated have suffered harm as a direct result of the abusive, deceptive and unfair collection practices described herein.

52. Plaintiff has suffered damages and other harm as a direct result of the Defendants' actions, conduct, omissions and violations of the FDCPA described herein.

**WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

(a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and the attorneys, Joseph K. Jones, Esq., as Class Counsel;

(b) Awarding Plaintiff and the Class statutory damages;

(c) Awarding Plaintiff and the Class actual damages;

(d) Awarding pre-judgment interest;

(e) Awarding post-judgment interest.

(f) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses; and

(g) Awarding Plaintiff and the Class such other and further relief as the Court may deem just and proper.

Dated: December 31, 2016

s/ Joseph K. Jones  
Joseph K. Jones, Esq.  
JONES, WOLF & KAPASI, LLC  
375 Passaic Avenue, Suite 100  
Fairfield, New Jersey 07004  
(973) 227-5900 telephone  
(973) 244-0019 facsimile  
jkj@legaljones.com

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

*s/ Joseph K. Jones* \_\_\_\_\_  
Joseph K. Jones, Esq.

**CERTIFICATION PURSUANT TO LOCAL RULE 11.2**

I, Joseph K. Jones, the undersigned attorney of record for Plaintiff, do hereby certify to my own knowledge and based upon information available to me at my office, the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: December 31, 2016

*s/ Joseph K. Jones* \_\_\_\_\_  
Joseph K. Jones, Esq.

# Exhibit

A

**mcm** Midland Credit Management, Inc.

2365 Northside Drive, Suite 300, San Diego, CA 92108

Call: (800) 282-2644

Offer Expiration Date: 06-24-2016

Midland Credit Management, Inc. (MCM), is the debt collection company, which will be collecting on, and servicing your account.

05-25-2016

001 Vincent Carleri  
P4T105



|                         |                      |
|-------------------------|----------------------|
| Original Creditor       | Chase Bank USA, N.A. |
| Original Account Number | [REDACTED]           |
| MCM Account Number      | [REDACTED]           |
| Current Balance         | \$4,491.47           |
| Current Owner           | MIDLAND FUNDING LLC  |
| Discount                | 40% OFF              |

RE: Chase Bank USA, N.A.

Dear Vincent Carleri,

## CALL US TODAY! (800) 282-2644

### AVAILABLE PAYMENT OPTIONS

- Option 1** 40% OFF
- Option 2** 20% OFF Over 12 Months
- Option 3** Monthly Payments As Low As: \$50 per month  
Call today to discuss your options and get more details.

### Benefits of Paying Your Debt

- Save \$1,796.58 if you pay by 06-24-2016 -
- Put this debt behind you -
- No more communication on this account -
- Peace of mind -

After receiving your final payment, we will consider the account paid\*.

Sincerely,  
*Tim Bolin*  
Tim Bolin, Division Manager

#### Hours of Operation:

M - Th: 5:00am - 9:00pm PST  
Fri: 5:00am - 4:30pm PST  
Sat: 5:00am - 4:30pm PST  
Sun: 5:00am - 9:00pm PST



Call: (800) 282-2644



Pay Online at: [www.midlandcreditonline.com](http://www.midlandcreditonline.com)



Mail: Payment Certificate

The 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 agencies as unpaid.

\*If you pay your full balance, 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**.

We are not obligated to renew this offer.  
PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION.

### PAYMENT CERTIFICATE

I would like to take advantage of this offer and save 40%

Amount Enclosed: \$

MCM Account Number..... [REDACTED]

Original Account Number..... [REDACTED]

Due Date.....06-24-2016

Please make check payable to:  
MIDLAND CREDIT MANAGEMENT INC.

Please return this portion along with your payment to:  
PO BOX 60578  
LOS ANGELES, CA 90060-0578

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

VINCENT CARIERI, on behalf of himself and all others similarly situated

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Joseph K. Jones, LLC
Joseph K. Jones, Esq.

DEFENDANTS

MIDLAND CREDIT MANAGEMENT, INC.; and JOHN DOES 1-25

County of Residence of First Listed Defendant Out-of-State (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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 (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. 1692

Brief description of cause: Violations of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

12/31/2016

Joseph K. Jones

Digitally signed by Joseph K. Jones
DN: cn=Joseph K. Jones, o=Law Offices of Joseph K. Jones, LLC, ou, email=jkj@legaljones.com, c=US
Date: 2013.12.17 10:01:01 -0500

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Midland Credit Management Swiped with FDCPA Lawsuit](#)

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