

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
LUIS COLONTORRES, on behalf of himself and all  
other similarly situated consumers,

Civil Docket No.:  
5:18-CV-035 (FJS/TWD)

Plaintiff,  
-against-

**NOTICE OF REMOVAL**

MIDLAND CREDIT MANAGEMENT, INC.,

Defendant.

-----X  
TO: CLERK - UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF  
NEW YORK

**NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1331, Defendant Midland Credit Management, Inc. ("Midland"), by and through its counsel, Marshall Dennehey Warner Coleman & Goggin, P.C., hereby removes the action captioned as *Luis Colontorres v. Midland Credit Management, Inc.*, Index No. 2017EF3222, as filed in the Supreme Court of the State of New York, Onondaga County ("the Action"), to the United States District Court for the Northern District of New York, based upon the following:

1. On or about July 31, 2017, Plaintiff filed the Action in the Supreme Court of the State of New York, County of Onondaga. A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit A.
2. Plaintiff served notice of the Action on Midland on December 19, 2017.

3. Midland first received notice of the Action on or about December 19, 2017, when it received Plaintiff's Complaint.

4. Based on the foregoing, Midland has timely filed this Notice of Removal within thirty days of being served with the Complaint and within thirty days of the date that the Action was first removable. See 28 U.S.C. § 1446(b).

5. The Action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441, in that Plaintiff has alleged that Midland violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a *et seq.*, thereby asserting claims that arise under federal law.

6. In that Plaintiff alleges that he resides within Onondaga County, New York, the United States District Court for the Northern District of New York should be assigned the Action pursuant to 28 U.S.C. § 1391(b)(2).

7. Pursuant to 28 U.S.C. § 1446(d), Midland will file a copy of this Notice of Removal with the Clerk of the United States District Court for the Northern District of New York, will serve Plaintiff with copies of this Notice of Removal and will file the Notice of Removal in the Supreme Court for the State of New York, County of Onondaga.

**WHEREFORE**, Midland notifies this Court that the Action is removed from the Supreme Court for the State of New York, County of Onondaga, to the United States District Court for the Northern District of New York pursuant to the provisions of 28 U.S.C. §§ 1331 and 1446.

Dated: New York, New York  
January 8, 2018

Respectfully submitted,

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN, P.C.**



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Joseph A. Hess, Esq.  
Wall Street Plaza  
88 Pine Street, 21st Floor  
New York, New York 10005  
Tel: 212.376.6438  
JAHess@mdwgc.com  
*Attorneys for Defendant  
Midland Credit Management, Inc.*

# Exhibit A

**FILED: ONONDAGA COUNTY CLERK 07/31/2017 06:51 PM**

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 08/01/2017

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

LUIS COLONTORRES, on behalf of himself ) Index No.:  
and all other similarly situated consumers. )

Plaintiff, )

vs. )

) SUMMONS

MIDLAND CREDIT MANAGEMENT INC., )

Defendant. )

) Date Index No. Purchased:  
)  
)

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is the Plaintiff's residence in Onondaga County. Plaintiff's Address which is 104 Baker Blvd. Syracuse, NY 13208.

Dated this 31st day of July, 2017.



Daniel Zemel, Esq.  
Elizabeth Apostola, Esq.  
Zemel Law, LLC  
78 John Miller Way Suite 430  
Kearny, New Jersey 07032  
Tel: 862.227.3106  
[dz@zemellawllc.com](mailto:dz@zemellawllc.com)  
[ea@zemellawllc.com](mailto:ea@zemellawllc.com)

Notice: The nature of this action is violation of the Fair Debt Collection Practices Act.

NEW YORK SUPREME COURT  
ONONDAGA COUNTY

LUIS COLONTORRES, on behalf of himself and all other similarly situated consumers,	)	Case No.:
	)	
Plaintiff,	)	
	)	
vs.	)	CLASS ACTION COMPLAINT
	)	
MIDLAND CREDIT MANAGEMENT INC.,	)	
	)	
Defendant.	)	
	)	

Plaintiff, Luis Colontorres (hereinafter "Plaintiff"), on behalf of himself and all other similarly situated consumers, by and through undersigned counsel, hereby alleges against Midland Credit Management, Inc. (hereinafter "Defendant"), as follows:

**PRELIMINARY STATEMENT**

1. This is an action for damages arising from Defendant's violations of the Fair Debt Collections Practices Act, 15 U.S.C. §1692 *et seq.* (hereinafter "FDCPA").

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to NY CPLR §301, 15 U.S.C. §1692k (d).

3. Venue is proper in the Supreme Court of the State of New York, Onondaga County pursuant to NY CPLR §503(c) because Plaintiff resides in this county and the cause of action arose in this county.



### PARTIES

4. Plaintiff is a natural person, who at all relevant times has resided in Syracuse, New York and is a "consumer" as the phrase is defined and applied under 15 U.S.C. §1692(a) of the FDCPA.

5. Defendant is a corporation doing business in the State of California, with its corporate address as 2365 Northside Drive, Suite 300, San Diego, California 92108 and is a "debt collector" as the phrase is defined and applied under 15 U.S.C. §1692(a) of the FDCPA in that they regularly attempt to collect on debts primarily incurred for personal, family or household purposes.

### FACTUAL STATEMENT

6. On or about August 3, 2016, Defendant sent Plaintiff the letter attached as Exhibit A, presenting the "current balance" as \$630.85, for a personal credit card bill from GE Capital Retail Bank.

7. Said personal bill was a debt incurred for personal, family or household purposes and not for business purposes.

8. Exhibit A is false, deceptive, and misleading given Defendant's placement of ambiguous language and the resulting multiple interpretations of the letter that follow.

9. Because Exhibit A is in Spanish, I have filed Exhibit B which is an identical letter from Midland.

10. Exhibit A offers Plaintiff three options: 40% discount with a single payment, 20% discount over six monthly payments, or an option for monthly payments as low as \$50.

11. Along the right of these options, Defendant's letter reads: "Offer Expiration date: 9-2-2016."

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12. Below this, the letter states: "After receiving your final payment, we will consider the account paid\*."

13. Along the bottom, the letter reads "\*\*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."

14. Under the FDCPA, collection letters are to be judged from the standard of the least sophisticated consumer. If a letter has multiple interpretations, more than one of which are reasonable, the collection letter is confusing and is a violation of the FDCPA.

15. The above language provided by Defendant is ambiguous and has many different material interpretations.

16. As an initial matter, the phrase "Offer Expiration date" is false, deceptive, and misleading because the offer issued is not a "one-time, take-it-or-leave-it offer." Upon information and belief, Defendant will continue to offer these discounts past the supposed offer expiration date. Upon further information and belief, Defendant placed this language within the letter to create a false sense of urgency to the consumer, to create the impression that this is the last time these accounts may be settled at such a discount. Furthering this deception, is Defendant's placement of set dates along each discount option offered.

17. Confusing a consumer as to what types of discounts he or she may receive, and when he or she may receive them directly affects whether the consumer will pay the debt. Accordingly, Defendant's letter violates the FDCPA.

18. In addition to the above, the sentence advising the consumer that "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" is ambiguous as to whom Defendant will "report" this information to.



19. Under one reasonable interpretation, by "report" Defendant means it will *credit report* the payment to the credit reporting agencies.

20. Under another reasonable interpretation, by "report" Defendant means it will report the payment to the consumer's creditor (GE Capital Retail Bank). Consumers of all levels of sophistication believe that the lending bank wants to know whether their debts are paid by the consumer, even in instances where the debts are sold. In fact, banks often consider whether a consumer paid back the debts owed to that bank as a major lending criteria. These criteria will take into account whether the debt was Paid in Full, or Paid for less than the full balance. By failing to utilize the verb associated with sending consumer information to a credit reporting agency, i.e. "credit report," this interpretation of "report" appears to be the most reasonable.

21. Yet another reasonable interpretation of the letter is that Defendant utilizes the word "report" to indicate that the payment will be reported to both the credit reporting agencies and to the original lender.

22. Confusing the consumer as to whom Defendant will report is false, deceptive, and misleading within the confines of the FDCPA. The confusion is material because the agency which Defendant will report to may affect the consumer's decision in choosing to pay off the debt. For instance, one consumer may not be worried whether GE Retail Bank learns of the payment because the consumer does not intend to business with this bank again, while another consumer may so intend.

23. Another component of the letter which is ambiguous is when the debt will be reported as Paid in Full, and when it will be reported as Paid in Full for less than the full balance.

24. Under one reasonable interpretation, the least sophisticated consumer believes that Defendant is offering to report "Paid in Full" once the consumer accepts the one-pay Option 1, after which Defendant will consider the debt as paid in full. Under this interpretation, the

consumer believes that only where the consumer enters into payment plans, Option 2 and Option 3, will there be a reporting that the debt is Paid in Full for less than the full balance. To the least sophisticated consumer, this is reasonable because throughout its letter Defendant only emphasizes payment at the discounted rates, and not the full balance. Therefore, it does not stand to reason that only the full balance must be paid before the debt is reported as Paid in Full.

25. Another similar interpretation of Defendant's letter is that if the consumer accepts Option 1, the debt will be reported as Paid in Full. Once the consumer begins a payment plan, under Option 2 or Option 3 however, the Defendant will then report "Paid in Full for less than the full balance," until the final payment of the discount plan is made. After final payment, the consumer believes that Defendant will then report "Paid in Full."

26. Another interpretation of Defendant's letter is that if the consumer accepts Option 1, the debt will be reported as Paid in Full. Once the consumer begins a payment plan, under Option 2 or Option 3 however, the Defendant will then report "Paid in Full for less than the full balance," until the debt is paid off completely, in a final payment. After this final payment, the consumer believes that Defendant will then report "Paid in Full."

27. Another conflicting reasonable interpretation is that the consumer's acceptance of Option 1, Option 2, or Option 3 will result in a reporting of "Paid in Full for less than the full balance," while the "Paid in Full" reporting will not be made unless the consumer pays the full original amount.

28. Another interpretation is that the consumer's acceptance of Option 1 or Option 2 will result in a reporting of "Paid in Full," while Option 3 will result in a reporting of "Paid in Full for less than the full balance." This interpretation is warranted because only Option 1 and Option 2 are made clear as to the amounts sought by Defendant, and therefore only those options are clearly delineated as to what amount these options will be considered paid in full. Whereas



Option 3 is left open ended without a quantifiable number, making the consumer believe that under that option, Defendant will report "Paid in Full for less than the full balance."

29. Yet another reasonable interpretation of the least sophisticated consumer is the plain reading of the final sentence "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." According to the least sophisticated consumer *any* partial payment may result in the account reporting as "Paid in Full for less than the full balance." In other words, the consumer views the letter and interprets it to say that no matter the amount he or she pays, as long as that amount is less than the full balance, Defendant will report it as Paid in Full for less than full the balance—because that is the exact wording of the letter. Under this interpretation, were the consumer to pay \$10, he or she would believe that the payment necessitates the positive reporting "Paid in Full for less than the full balance."

30. This vague and ambiguous language directly impacts whether and how much the consumer will pay to Defendant to resolve the debt.

31. Finally, Defendant's use of the term Paid in Full for less than full the balance is itself a center of confusion for the consumer, making it unclear as to how something will be reported as paid in full when there is a settlement. Given the confusion, the least sophisticated consumer is unsure how the entity receiving Defendant's reporting will treat a debt that is "Paid in Full for less than the full balance" given the inherent oxymoron. Thus, the confusion as to this phrase also effects the consumer's choice in paying the debt.

### **CLASS ACTION ALLEGATIONS**

#### **The Class**

32. Plaintiff brings this as a class action pursuant to NY CPLR § 901.

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33. Plaintiff seeks certification of the following classes, initially defined as follows:

**Class:** All consumers with a New York address that have received collection letters from Defendant concerning debts for GE Retail Bank used primarily for personal, household, or family purposes within one year prior to the filing of this complaint that provide deceptive reporting language or deceptive offer language.

34. Excluded from the Class is Defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Defendant.

#### Numerosity

35. Upon information and belief, Defendant has sent collections letters in attempt to collect a debt to hundreds if not thousands of consumers New York, each of which violates the FDCPA. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

36. The letters sent by Defendant, and received by the Class, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

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

#### Common Questions of Law and Fact

38. There are questions of law and fact common to the class that predominates over any questions affecting only individual Class members. These common questions of law and fact include, without limitation: (i) whether Defendant violated various provisions of the FDCPA; (ii) whether the Plaintiff and the Class have been injured by the conduct of Defendant; (iii) whether the 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 (iv) whether the Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

#### Typicality

39. The Plaintiff's claims are typical of the claims of the class members. Plaintiff and all members of the Plaintiff's Class defined in this complaint have claims arising out of the Defendants common uniform course of conduct complained of herein. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

#### Protecting the Interests of the Class Members

40. Plaintiff will fairly and adequately represent the Class members' interests, in that the Plaintiff's counsel is experienced and, further, anticipates no impediments in the pursuit and maintenance of the class action as sought herein.

41. Neither the Plaintiff nor his counsel have any interests, which might cause them not to vigorously pursue the instant class action lawsuit.

#### Proceeding Via Class Action is Superior and Advisable

42. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, this being specifically envisioned by Congress as a principal means of enforcing the FDCPA, as codified by 15 U.S.C. § 1692(k).

43. The members of the Class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action.

44. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties.



45. Certification of a class is also appropriate in that the questions of law and fact common to members of the Plaintiff's Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

46. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify one or more classes only as to particular issues pursuant to NY CPLR § 901.

47. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will 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.

48. Absent a class action, the Class members will continue to suffer losses borne from Defendants' breaches of Class members' statutorily protected rights as well as monetary damages, thus allowing and enabling: (a) Defendants conduct to proceed and; (b) Defendants to further enjoy the benefit of its ill-gotten gains.

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

**COUNT I**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
**15 U.S.C. §1692 et seq.**

49. Plaintiff repeats the allegations contained in the above paragraphs and incorporates them as if specifically set forth at length herein.

50. Defendant's false and deceptive representations to Plaintiff violate the below provisions of the FDCPA.

51. Section 1692e provides:

**§ 1692e. False or misleading representations**

**A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .**

- (5) The threat to take any action that is not intended to be taken;**
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.**

52. Section 1692f provides:

**§ 1692f. Unfair Practices**

**A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. . . .**

WHEREFORE, Plaintiff, Luis Colontorres, respectfully requests that this Court do the following for the benefit of Plaintiff:

- A. Certify the class described herein and appoint Plaintiff as Lead Plaintiff, and Plaintiff's Counsel as Lead Counsel;
- B. Enter judgment against Defendant for statutory damages pursuant to the FDCPA;
- C. Enter judgment for injunctive relief stopping Defendant from using letters similar to Exhibit A;

D. Award costs and reasonable attorneys' fees;

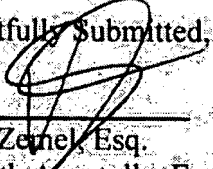
E. Grant such other and further relief as may be just and proper.

**JURY TRIAL DEMAND**

53. Plaintiff demands a jury trial on all issues so triable.

Dated this 31st of July, 2017

Respectfully Submitted,

  
\_\_\_\_\_  
Daniel Zemel, Esq.  
Elizabeth Apostolla, Esq.  
Zemel Law LLC  
78 John Miller Way  
Suite 430  
Kearny, NJ 07032  
862-227-3106  
dz@zemelawllc.com  
ea@zemelawllc.com





**mcm** Midland Credit Management, Inc.  
2365 Northside Drive, Suite 300, San Diego, CA 92108

05-25-2018

002  
P29T1007



You are pre-approved for a 40% discount!  
Call now: (800) 282-2644

**Choose The Option That Works For You.**

RE: Barclays Bank Delaware

Dear [Redacted]

Congratulations! You have been **pre-approved** for a discount program designed to save you money. Act now to maximize your savings and put this debt behind you by calling (800) 282-2644. Pay online today at [www.midlandcreditonline.com](http://www.midlandcreditonline.com).

<b>Option 1 - 20% OFF</b> Final Payment Due Date: 06-24-2016	<b>You Pay Only</b> <b>\$612.17</b>
<b>Option 2 - 20% OFF</b> Final Payment Due Date: 06-24-2016	<b>6 Monthly Payments of Only</b> <b>\$136.03</b>
<b>Option 3 - Monthly Payments As Low As:</b> Call today to discuss your options and get more details.	<b>\$50 per month!</b>

If these options don't work for you, call one of our Account Managers to help you set up a payment plan that does.

Sincerely,

*Tim Bolin*

Tim Bolin, Division Manager

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.

Federal law prohibits certain methods of debt collection, and requires that we treat you fairly. You can stop us from contacting you by writing a letter to us that tells us to stop the contact or that you refuse to pay the debt. Sending such a letter does not make the debt go away if you owe it. Once we receive your letter, we may not contact you again, except to let you know that there won't be any more contact or that we intend to take a specific action.

If you have a complaint about the way we are collecting this debt, please write us at 2365 Northside Drive, Suite 300, San Diego, CA 92108, email us at [customerservice@mcmcs.com](mailto:customerservice@mcmcs.com), or call us toll-free at 1-800-825-8131 between Mon-Fri 5:00am-4:30pm PST.

The Federal Trade Commission enforces the Fair Debt Collection Practices Act (FDCPA). If you have a complaint about the way we are collecting your debt, please contact the FTC online at [www.ftc.gov](http://www.ftc.gov); by phone at 1-877-FTC-HELP; or by mail at 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

\*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.

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



Click:  
[www.midlandcreditonline.com](http://www.midlandcreditonline.com)



Mail:  
Payment coupon below

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION

**PAYMENT COUPON**



Payment Due Date: 06-24-2016

Amount Enclosed: \_\_\_\_\_

**Payment Options:**

- 1) Mail in this coupon with your payment
- 2) Pay by phone (800) 282-2644

Make Check Payable to:  
Midland Credit Management, Inc.



PO Box 60578  
Los Angeles, CA 90060-0578

12 8560417675 7 0061217 062416 1 416267086

B469 DOE7



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

Luis Colontorres, on behalf of himself and all other similarly situated consumers,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel Zemel, Esq., Zemel Law, LLC, 78 John Miller Way, Suite 430, Kearny, NJ 07032 862.227.3106

DEFENDANTS

MIDLAND CREDIT MANAGEMENT, INC.

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)

Joseph A. Hess, Marshall Dennehey Warner Coleman & Goggin 88 Pine St, 21st Fl, New York, NY 10005 Ph: 212.376.6400

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 - Transfer, 8 Multidistrict Litigation - Direct File

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 - Fair Debt Collection Practices Act. Brief description of cause: Alleged violation of consumer debt collection law

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/08/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Joseph A. Hess

FOR OFFICE USE ONLY

RECEIPT # 0206-4244915 AMOUNT \$400 APPLYING IFP JUDGE FJS MAG. JUDGE TWD

Print

Save As...

5:18-CV-035 (FJS/TWD)

Reset

**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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 actual dollar amount 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 Hit with Debt Collection Suit Over 'Ambiguous' Letter](#)

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