

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF ALABAMA  
 NORTHEASTERN DIVISION**

Debbie Constantine, individually and on )	
behalf of all others similarly situated, )	
	)
Plaintiff, )	
	)
v. )	No.
	)
Convergent Outsourcing, Inc., a )	
Washington corporation and Pinnacle )	
Credit Services, LLC, a Minnesota )	Class Action
limited liability company, )	
	)
Defendants. )	<u>Jury Demanded</u>

**CLASS ACTION COMPLAINT**

Plaintiff, Debbie Constantine, individually, and on behalf of all others similarly situated, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a finding that Defendants' form debt collection letter violated the FDCPA, and to recover damages, and alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.
2. Venue is proper in this District because: a) the acts and transactions occurred here; and, b) Plaintiff and Defendants reside here.

**PARTIES**

3. Plaintiff, Debbie Constantine ("Constantine"), is a citizen of the State of Alabama, residing in the Northern District of Alabama, from whom Defendants

attempted to collect a delinquent consumer debt, which was allegedly owed for a cell phone bill.

4. Defendant, Convergent Outsourcing, Inc. (“Convergent”), is a Washington corporation that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, directly or indirectly, delinquent consumer debts that it did not originate. Defendant Convergent operates a nationwide debt collection business and attempts to collect debts from consumers in virtually every state, including consumers in the State of Alabama. In fact, Defendant Convergent was acting as a debt collector as to the delinquent consumer debt it attempted to collect from Plaintiff.

5. Defendant, Pinnacle Credit Services, LLC (“Pinnacle”), is a Minnesota limited liability company that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, directly or indirectly, delinquent consumer debts. Defendant Pinnacle operates a nationwide debt collection business and attempts to collect debts from consumers in virtually every state, including consumers in the State of Alabama. In fact, Defendant Pinnacle was acting as a debt collector, as that term is defined in the FDCPA, as to the delinquent consumer debt it attempted to collect from Plaintiff.

6. Defendant Pinnacle is a bad debt buyer that buys large portfolios of defaulted consumer debts for pennies on the dollar, which it then collects upon through other collection agencies. Defendant Pinnacle’s principal, if not sole, business purpose is the collection of delinquent consumer debts originated by others.

## FACTUAL ALLEGATIONS

7. More than six years ago, Ms. Constantine allegedly did not pay a debt she owed for a cell phone. Sometime after that debt became delinquent, it was allegedly purchased/obtained by Pinnacle, which tried to collect upon it, by having Defendant Convergent send Ms. Constantine a form collection letter, dated July 6, 2017, demanding payment of the cell phone debt. This letter made a settlement offer and told Ms. Constantine not to pass up this “opportunity”. The then letter then belatedly stated:

\* \* \*

The law limits how long you can be sued on a debt. Because of the age of your debt, Pinnacle Credit Services, LLC will not sue you for it, and Pinnacle Credit Services, LLC will not report it to any credit reporting agency.

\* \* \*

A copy of these collection letters are attached as Exhibit A.

8. Defendants’ letter, however, failed to state that Convergent, the original creditor, or any of the related entities listed on the reverse side of the letter could not also sue on the debt, and that Convergent and the original creditor could not also make a credit report about the debt; moreover, by stating that Pinnacle “will not” sue or credit report, rather than it “cannot” sue or credit report, the letter implied that Pinnacle still had the option to take those actions, and that it was simply choosing not to do so.

9. In fact, no one could sue to collect the debt at issue because it was time-barred by the statute of limitations in the State of Alabama, namely four years from the date of the last payment, see. Alabama Code § 7-2-725,.

10. Defendants’ failure to disclose that no one could sue or credit report about the debt is material. This lack of a proper disclosure would leave the consumer without

enough information to make a decision as to what to do about the collection of the debt at issue and cause them to believe Defendants, that the debt needed to be settled and/or would result in the alleged savings.

11. Defendants' collection actions complained of herein occurred within one year of the date of this Complaint.

12. Defendants' collection communications are to be interpreted under the "least sophisticated consumer" standard, see, Jeter v. Credit Bureau, 760 F.2d 1168, 1176 (11th Cir. 1985); LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1193-1194 (11th Cir. 2010).

**COUNT I**  
**Violation Of § 1692e Of The FDCPA –**  
**False, Deceptive Or Misleading Collection Actions**

13. Plaintiff adopts and realleges ¶¶ 1-12.

14. Section 1692e of the FDCPA prohibits a debt collector from using any false and/or any deceptive or misleading representation or means in connection with the collection of a debt, including, but not limited to, the false representation of the character, amount or legal status of any debt, see 15 U.S.C. § 1692e(2)(A). Moreover, debt collectors are barred from threatening to take any action that the collector cannot legally take, see, 15 U.S.C. § 1692e(5).

15. Attempts by debt collectors to collect time-barred debts via deceptive and misleading collection letters violate § 1692e of the FDCPA. See, Pantoja v. Portfolio Recovery Assocs., 852 F.3d 679 (7th Cir. 2017); Daugherty v. Convergent Outsourcing, 836 F.3d 507 (5th Cir. 2016); Buchanan v. Northland Group, 776 F.3d 393 (6th Cir. 2015); and McMahon v. LVNV Funding, 744 F.3d 1010 (7th Cir. 2014).

16. Although Defendants attempted to provide a disclaimer that the debt was time-barred, that disclaimer was ineffective because: a) they failed to foreclose the possibility that Convergent, the original creditor or any of the related entities listed on the reverse side of the letter would not sue on the debt; b) they did not foreclose the possibility that Convergent, the original creditor or any of the related entities listed on the reverse side of the letter could credit report the debt; and c) they failed to foreclose that Pinnacle could not legally sue or credit report the debt, not that Pinnacle had simply chosen not to do so.

17. These are materially false or misleading statements that would lead any consumer to believe that they had to pay this debt to avoid being sued, credit reported or having to pay the full amount at some point in the future, or that there was some benefit in paying the debt, see, Lox v. CDA, 689 F.3d 818, 826 (7th Cir. 2012), in violation of § 1692e of the FDCPA.

18. Defendants' violation of § 1692e of the FDCPA renders them liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

**COUNT II**  
**Violation Of § 1692f Of The FDCPA --**  
**Unfair Or Unconscionable Collection Actions**

19. Plaintiff adopts and realleges ¶¶ 1-12.

20. Section 1692f of the FDCPA prohibits a debt collector from using any unfair or unconscionable means to collect or attempt to collect a debt, see, 15 U.S.C. § 1692f.

21. Although Defendants attempted to provide a disclaimer that the debt was time-barred, that disclaimer was ineffective because: a) they failed to foreclose the possibility that Convergent, the original creditor or any of the related entities listed on the reverse side of the letter would not sue on the debt; b) they did not foreclose the possibility that Convergent, the original creditor or any of the related entities listed on the reverse side of the letter could credit report the debt; and c) they failed to foreclose that Pinnacle could not legally sue or credit report the debt, not that Pinnacle had simply chosen not to do so.

22. These are materially unfair or unconscionable means that would lead any consumer to believe that they had to pay this debt to avoid being sued or being credit reported, or to obtain the alleged savings/aid, see, Lox v. CDA, 689 F.3d 818, 826 (7th Cir. 2012), in violation of § 1692f of the FDCPA.

23. Defendants' violation of § 1692f of the FDCPA renders them liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

### **CLASS ALLEGATIONS**

24. Plaintiff, Debbie Constantine, brings this action individually and as a class action on behalf of all persons similarly situated in the State of Alabama from whom Defendants attempted to collect a delinquent, time-barred consumer debt (i.e., where the date of last payment/statement is more than six years from the date of the letter), via the same form collection letter (Exhibit A), that Defendants sent to Plaintiff, from one year before the date of this Complaint to the present. This action seeks a finding that

Defendants' form letter violates the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

25. Defendants regularly engage in debt collection, using the same form collection letter they sent Plaintiff Constantine, in their attempts to collect delinquent consumer debts from other consumers.

26. The Class consists of more than 35 persons from whom Defendants attempted to collect delinquent consumer debts by sending other consumers the same form collection letter they sent Plaintiff Constantine.

27. Plaintiff Constantine's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

28. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendants have acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

29. Plaintiff Constantine will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action

complaint will not require extended contact with the members of the Class, because Defendants' conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff Constantine has retained counsel experienced in class action litigation, including class actions brought under the FDCPA.

### **PRAYER FOR RELIEF**

Plaintiff, Debbie Constantine, individually and on behalf of all others similarly situated, prays that this Court:

1. Certify this action as a class action;
2. Appoint Plaintiff Constantine as Class Representative of the Class, and her attorneys as Class Counsel;
3. Find that Defendants' form collection letter violates the FDCPA;
4. Enter judgment in favor of Plaintiff Constantine and the Class, and against Defendants, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,
5. Grant such further relief as deemed just.

### **JURY DEMAND**

Plaintiff, Debbie Constantine, individually and on behalf of all others similarly situated, demands trial by jury.

Debbie Constantine, individually and on behalf of all others similarly situated,

By: /s/ David J. Philipps  
One of Plaintiff's Attorneys

Dated: July 27, 2017



David J. Philipps (Ill. Bar No. 06196285)(pro hac vice to be sought)  
Mary E. Philipps (Ill. Bar No. 06197113)(Pro hac vice to be sought)  
Philipps & Philipps, Ltd.  
9760 S. Roberts Road  
Suite One  
Palos Hills, Illinois 60465  
(708) 974-2900  
(708) 974-2907 (FAX)  
davephilipps@aol.com  
mephilipps@aol.com

Ronald C. Sykstus (AL Bar No. ASB-7064-K73R)  
Bond, Botes, Sykstus, Tanner & Ezzell, P.C.  
225 Pratt Avenue  
Huntsville, Alabama 35801  
(256) 539-9899  
(256) 713-0237 (FAX)  
Rsykstus@bondnbotes.com

ATERSQ01  
PO Box 1022  
Wixom MI 48393-1022  
CHANGE SERVICE REQUESTED



Date: 07/06/2017  
Current Creditor: Pinnacle Credit Services, LLC  
Client Account #: [REDACTED]  
Convergent Account #: [REDACTED]  
Original Creditor: Rural Cellular Corporation

Reduced Balance Amount: \$ 91.44  
Amount Owed: \$ 457.18  
Total Balance: \$ 457.18

[REDACTED]  
Debbie Constantine  
[REDACTED]  
AL [REDACTED]

Reduced Balance Opportunity

Dear Debbie Constantine:

This account was placed with our office to recover the amount due, Convergent Outsourcing will be handling the account on behalf of Pinnacle Credit Services, LLC. The records of Pinnacle Credit Services, LLC show that your account has a past due balance of \$ 457.18.

Our client has advised us that they are willing to satisfy your account for 20% of your total balance due to satisfy your past balance. The full reduced balance amount must be received in our office by an agreed upon date. If you are interested in taking advantage of this opportunity, call our office within 60 days of this letter. Your reduced balance amount would be \$ 91.44. Even if you are unable to take advantage of this arrangement, please contact our office to see what terms can be worked out on your account. We are not required to make this arrangement to you in the future.

The law limits how long you can be sued on a debt. Because of the age of your debt, Pinnacle Credit Services, LLC will not sue you for it, and Pinnacle Credit Services, LLC will not report it to any credit reporting agency.

Sincerely,

Convergent Outsourcing, Inc.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

NOTICE: PLEASE SEE REVERSE SIDE FOR IMPORTANT CONSUMER INFORMATION.

**3 CONVENIENT WAYS TO PAY:**

Pay Online: Email our office or pay your bill online with your credit/debit card or checking account at [www.payconvergent.com](http://www.payconvergent.com). Your temporary identification number is: [REDACTED]

Pay by Phone: Please call Convergent Outsourcing, Inc. at 800-764-6702. We offer check by phone, Western Union, and credit/debit card.

Pay by Mail: Send Payments to Convergent Outsourcing, Inc., PO Box 9021, Renton WA 98057-9021

PLEASE DETACH THE BOTTOM PORTION WITH YOUR PAYMENT. BEFORE MAILING, PLEASE ENSURE RETURN ADDRESS ON REVERSE SIDE APPEARS CORRECTLY THROUGH THE WINDOW OF THE REPLY ENVELOPE

800-764-6702  
Re: Debbie Constantine

Date: 07/06/2017  
Current Creditor: Pinnacle Credit Services, LLC  
Client Account #: [REDACTED]  
Convergent Account #: [REDACTED]  
Reduced Balance Amount: \$ 91.44  
Total Balance: \$ 457.18

**Select Your Plan:**

- OPPORTUNITY #1 - Lump Sum Reduced Balance Offer of 20%:**  
Enclosed is my payment of \$ 91.44 (a 80% discount). My account is now satisfied in full.
- OPPORTUNITY #2 - Reduced Balance Offer of 40% & Pay Over 3 Months:**  
Enclosed is my first payment of \$60.96 towards the reduced balance of \$182.87 (a 60% discount).
- OPPORTUNITY #3 - Spread Your Payments Over 12 Months:**  
Enclosed is my first payment of \$38.10 towards the balance due of \$ 457.18.

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

PLEASE COMPLETE IF PAYING BY CREDIT CARD.	
<input type="checkbox"/>	<input type="checkbox"/>
CARD NUMBER	EXP. DATE
CARDHOLDER NAME	AMOUNT \$
CARDHOLDER SIGNATURE	

If we are calling you in error, please call 855-728-9701 or visit our website at [www.convergentusa.com](http://www.convergentusa.com).

\*If Options 2 or 3 Have Been Selected, Please Enter Monthly Payment Date and Amount: \_\_\_\_\_ \$ \_\_\_\_\_





**PRIVACY NOTICE**

This Privacy Notice is being provided on behalf of each of the following related companies (collectively, the "Resurgent Companies"): It describes the general policy of the Resurgent Companies regarding the personal information of customers and former customers.

Resurgent Capital Services L.P.  
Sherman Acquisition L.L.C.  
Resurgent Capital Services PR LLC  
CACV of Colorado, LLC

LVNV Funding, LLC  
PYOD LLC  
Anson Street LLC  
CACH, LLC

Ashley Funding Services LLC  
SFG REO, LLC  
Pinnacle Credit Services, LLC

**Information We May Collect.** The Resurgent Companies may collect the following personal information: (1) information that we receive from your account file at the time we purchase or begin to service your account, such as your name, address, social security number, and assets; (2) information that you may give us through discussion with you, or that we may obtain through your transactions with us, such as your income and payment history; (3) information that we receive from consumer reporting agencies, such as your creditworthiness and credit history, and (4) information that we obtain from other third party information providers, such as public records and databases that contain publicly available data about you, such as bankruptcy and mortgage filings. All of the personal information that we collect is referred to in this notice as "collected information".

**Confidentiality and Security of Collected Information.** At the Resurgent Companies, we restrict access to collected information about you to individuals who need to know such collected information in order to perform certain services in connection with your account. We maintain physical safeguards (like restricted access), electronic safeguards (like encryption and password protection), and procedural safeguards (such as authentication procedures) to protect collected information about you.

**Sharing Collected Information with Affiliates.** From time to time, the Resurgent Companies may share collected information about customers and former customers with each other in connection with administering and collecting accounts to the extent permitted under the Fair Debt Collection Practices Act or applicable state law.

**Sharing Collected Information with Third Parties.** The Resurgent Companies do not share collected information about customers or former customers with third parties, except as permitted in connection with administering and collecting accounts under the Fair Debt Collections Practices Act and applicable state law.



Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

**Notice about Electronic Check Conversion:** When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment and you will not receive your check back from your financial institution. Also, you authorize us to represent a check as an electronic fund transfer from your account if your payment is returned unpaid.

PLEASE DETACH THE BOTTOM PORTION WITH YOUR PAYMENT BEFORE MAILING, PLEASE ENSURE RETURN ADDRESS APPEARS CORRECTLY THROUGH WINDOW OF THE REPLY ENVELOPE

Date: 07/05/2017  
Current Creditor: Pinnacle Credit Services, LLC  
Client Account #: [REDACTED]  
Convergent Account #: [REDACTED]

Reduced Balance Amount: \$ 01.44

Total Balance: \$ 457.18

**New Address:**

Address: \_\_\_\_\_

City: \_\_\_\_\_ ST \_\_\_\_\_ Zip: \_\_\_\_\_

Daytime Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Evening Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Convergent Outsourcing, Inc.  
PO Box 9021  
Renton WA 98057-9021



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Convergent Outsourcing, Pinnacle Credit Services Hit with FDCPA Lawsuit Over Time-Barred Debt](#)

---