

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

Erica Cooper, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	No.
)	
Atlantic Credit & Finance, Inc., a)	
Virginia corporation, and Midland)	
Funding, LLC, a Delaware limited)	<u>Class Action</u>
liability company,)	
)	
Defendants.)	<u>Jury Demanded</u>

CLASS ACTION COMPLAINT

Plaintiff, Erica Cooper, 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 letters violated the FDCPA, and to recover damages for Defendants' violations of the FDCPA, 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; b) Plaintiff resides here; and, c) Defendants transact business here.

PARTIES

3. Plaintiff, Erica Cooper ("Cooper"), is a citizen of the State of Alabama, residing in the Northern District of Alabama, from whom Defendants attempted to collect a defaulted consumer debt which she allegedly owed to Synchrony Bank.

4. Defendant, Atlantic Credit & Finance, Inc. (“Atlantic”), is a Virginia 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, defaulted consumer debts. Defendant Atlantic operates a nationwide defaulted debt collection business and attempts to collect debts from consumers in virtually every state, including consumers in the State of Alabama. In fact, Defendant Atlantic was acting as a debt collector as to the defaulted consumer debt it attempted to collect from Plaintiff.

5. Defendant, Midland Funding, LLC (“Midland”), is a Delaware limited liability company that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails, the telephone and credit reporting in its business, the principal purpose of which is to collect, or attempt to collect, directly or indirectly, defaulted consumer debts that it did not originate. Defendant Midland 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 Midland was acting as a debt collector, as that term is defined in the FDCPA, as to the defaulted consumer debt it attempted to collect from Plaintiff.

6. Defendant Midland 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, like its sister company, Atlantic. Defendant Midland’s principal, if not sole, business purpose is the collection of defaulted consumer debts originated by others.

7. Defendant Atlantic and Midland are both authorized to conduct business in Alabama, and maintain registered agents here, see, records from the Alabama

Secretary of State, see, attached Group Exhibit A. In fact, Defendants Atlantic and Midland conduct business in Alabama.

FACTUAL ALLEGATIONS

8. Defendants sent Ms. Cooper an initial form collection letter, dated October 3, 2017, demanding payment of a debt that she allegedly owed for a Synchrony Bank credit account. That collection letter contained the notice required by § 1692g of the FDCPA of her “validation rights”, i.e., that she had 30 days to dispute the debt, and demand verification. A copy of this letter is attached as Exhibit B.

9. Only 10 days later, Defendants sent Ms. Cooper another form collection letter, dated October 13, 2017, demanding that she contact them before expiration of the 30-day validation period. Moreover, this letter noted that it was a “PRE-LEGAL NOTIFICATION”, and threatened litigation over the debt:

* * *

Atlantic Credit & Finance has made several attempts to contact you regarding this account. This letter is to inform you that Midland Funding, LLC is considering forwarding this account to an attorney in your state for possible litigation. Upon receipt of this notice, please call 800-888-9419 to discuss your options.

If we don't hear from you or receive payment, Midland Funding, LLC may proceed with forwarding this account to an attorney.

* * *

The letter then went on to demand full payment by October 31, 2017 – well before expiration of the 30-day validation period. A copy of this letter is attached as Exhibit C.

10. Violations of the FDCPA which would lead a consumer to alter his or her course of action as to whether to pay or whether to dispute a debt, or which would be a factor in the consumer's decision making process, are material, see, Lox v. CDA, 689

F.3d 818, 827 (7th Cir. 2012). Defendants' conflicting collection demands left Plaintiff confused about her statutory rights to dispute the debt and seek validation, as well as whether she had the full 30 days to dispute the debt and demand validation, all of which is material information that would play a role in a consumer's decision of what to do about the collection of the debt at issue.

11. Defendants' collection actions complained of herein (Exhibits B and C) 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 § 1692g –
Ineffectively Conveying the 30-Day Validation Notice

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

14. Section 1692g(a) of the FDCPA also requires a debt collector to send the consumer an effective validation notice within 5 days after the debt collector's initial communication with the consumer. The debt collector must notify the consumer that he or she has 30 days after receipt of the notice to challenge the validity or amount of the debt, and seek verification of it. Even if § 1692g(a) information is properly included in a communication from a debt collector to a debtor, the debt collector may not overshadow or contradict that information with other messages sent, see, 15 U.S.C. § 1692(b).

15. While Defendants' October 3, 2017 letter (Exhibit B) contained the information required by § 1692g(a) of the FDCPA, Defendants rendered this notice

ineffective by sending a second collection letter, dated October 13, 2017 (Exhibit C), before the 30-day validation period had expired. Defendants' language in its October, 2017 collection letter (Exhibit C) – “Upon receipt of this notice, please call 800-888-9419” and threatening litigation – contradicts the language notifying Ms. Cooper of her validation rights under the FDCPA, because the 30-day validation period had not expired. Thus, the October 3, 2017 validation notice was rendered ineffective, and Defendants' form collection letters violate § 1692g of the FDCPA, see, Chauncey v. JDR Recovery Corporation, 118 F.3d 516, 518-519 (7th Cir. 1997).

16. Defendants' violation of § 1692g 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

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

18. 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.

19. Defendants, by threatening to sue during the 30-day validation period, used unfair or unconscionable means to collect a debt, which thus violates § 1692f of the FDCPA.

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

CLASS ALLEGATIONS

21. Plaintiff, Erica Cooper, 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 defaulted consumer debt allegedly owed for a Synchrony Bank credit card, via the same form collection letters (Exhibits B and C), that Defendants sent to Ms. Cooper, sent within 30 days of each other, from one year before the date of this Complaint to the present. This action seeks a finding that Defendants' form letters violate the FDCPA, and asks that the Court award damages as authorized by § 1692k(a)(2) of the FDCPA.

22. Defendants Atlantic and Midland regularly engage in debt collection, using the same form collection letters they sent to Plaintiff Cooper, in their attempts to collect defaulted consumer debts from other consumers.

23. The Class consists of more than 35 persons from whom Defendants Atlantic and Midland attempted to collect defaulted consumer debts by sending other consumers the same form collection letters they sent to Plaintiff Cooper.

24. Plaintiff Cooper'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.

25. 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.

26. Plaintiff Cooper 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 Cooper has retained counsel experienced in class action litigation, including class actions brought under the FDCPA.

PRAYER FOR RELIEF

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

1. Certify this action as a class action;
2. Appoint Plaintiff Cooper as Class Representative of the Class, and her attorneys as Class Counsel;
3. Find that Defendants' form collection letters violates the FDCPA;
4. Enter judgment in favor of Plaintiff Cooper and the Class, and against Defendants Atlantic and Midland, for 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, Erica Cooper, individually and on behalf of all others similarly situated,
demands trial by jury.

Erica Cooper, individually and on
behalf of all others similarly situated,

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

By: /s/ Bradford W. Botes
One of Plaintiff's Attorneys

Dated: August 8, 2018

David J. Philipps (Ill. Bar No. 06196285)(pro hac vice pending)
Mary E. Philipps (Ill. Bar No. 06197113)(pro hac vice pending)
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

Bradford W. Botes (AL Bar No. ASB-1379043B)
Bond, Botes, Reese & Shinn, P.C.
600 University Park Place
Suite 510
Birmingham, Alabama 35209
(205) 802-2200
(205) 802-2209 (FAX)
bbotes@bondnbotes.com



Alabama Secretary of State

Receivables Billing International, Inc.	
Entity ID Number	920 - 343
Legal Name in Place of Origin	Atlantic Credit & Finance, Inc.
Entity Type	Foreign Corporation
Principal Address	3353 ORANGE AVE ROANOKE, VA 24012
Principal Mailing Address	PO BOX 13386 ROANOKE, VA 24033
Status	Exists
Place of Formation	Virginia
Formation Date	6-1-1996
Qualify Date	8-14-2001
Registered Agent Name	CORPORATION SERVICE COMPANY INC
Registered Office Street Address	641 SOUTH LAWRENCE STREET MONTGOMERY, AL 36104
Registered Office Mailing Address	641 SOUTH LAWRENCE STREET MONTGOMERY, AL 36104
Nature of Business	
Capital Authorized	
Capital Paid In	
Annual Reports	
Annual Report information is filed and maintained by the Alabama Department of Revenue. If you have questions about any of these filings, please contact Revenue's Business Privilege Tax Division at 334-242-1170 or www.ador.alabama.gov . The Secretary of State's Office cannot answer questions about or make changes to these reports.	
Report Year	<u>2001</u> <u>2002</u> <u>2003</u> <u>2004</u> <u>2005</u> <u>2006</u> <u>2007</u> <u>2008</u> <u>2009</u> <u>2010</u> <u>2011</u> <u>2012</u> <u>2013</u> <u>2014</u> <u>2015</u> <u>2016</u>
Transactions	
Transaction Date	8-11-2003
Principal Office Changed From	4423 PHEASANT RIDGE RD STE 200 ROANOKE, VA 24014
Transaction Date	12-12-2003
Registered Agent Changed From	LEXIS DOCUMENT SERVICES INC 125 TENSAW RD MONTGOMERY, AL 36117
Transaction Date	9-21-2016



Receivables Billing International, Inc.	
Registered Agent Changed From	LEXIS DOCUMENT SERVICE INC 150 S PERRY ST MONTGOMERY, AL 36104
Transaction Date	9-21-2016
Agent Mailing Address Changed From	LEXIS DOCUMENT SERVICE INC 150 S PERRY ST MONTGOMERY, AL 36104
Transaction Date	4-28-2017
Registered Agent Changed From	CSC-LAWYERS INCORPORATING SRVC INC 150 SOUTH PERRY STREET MONTGOMERY, AL 36104
Scanned Documents	
Purchase Document Copies	
Document Date / Type / Pages	8-14-2001 Certificate of Formation 2 pgs.
Document Date / Type / Pages	8-11-2003 Principal Address Change 1 pg.
Document Date / Type / Pages	12-12-2003 Registered Agent Change 1 pg.
Document Date / Type / Pages	3-17-2014 Articles of Amendment 2 pgs.
Document Date / Type / Pages	9-21-2016 Registered Agent Change 2 pgs.
Document Date / Type / Pages	4-28-2017 Registered Agent Change 1 pg.

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Alabama Secretary of State



Midland Funding LLC

Entity ID Number	614 - 752
Entity Type	Foreign Limited Liability Company
Principal Address	8875 AERO DR STE 200 SAN DIEGO, CA 92123
Principal Mailing Address	Not Provided
Status	Exists
Place of Formation	Delaware
Formation Date	6-1-2005
Qualify Date	1-15-2008
Registered Agent Name	CORPORATION SERVICE COMPANY INC
Registered Office Street Address	641 SOUTH LAWRENCE STREET MONTGOMERY, AL 36104
Registered Office Mailing Address	641 SOUTH LAWRENCE STREET MONTGOMERY, AL 36104
Nature of Business	HOLDING COMPANY
Capital Authorized	
Capital Paid In	
Transactions	
Transaction Date	4-28-2017
Registered Agent Changed From	CSC LAWYERS INCORPORATING SRV INC 150 S PERRY ST MONTGOMERY, AL 36104
Scanned Documents	
Purchase Document Copies	
Document Date / Type / Pages	1-15-2008 Certificate of Formation 1 pg.
Document Date / Type / Pages	4-28-2017 Registered Agent Change 1 pg.

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Atlantic Credit & Finance, Inc.
PO Box 11887
Roanoke, VA 24022-1887



CREDIT & FINANCE INCORPORATED
866-397-4100 * Fax 540-772-7895
http://www.atlanticcreditfinance.com

FILED
2018 Aug-08 PM 01:06
U.S. DISTRICT COURT
N.D. OF ALABAMA

Return Service Requested

[Redacted]
[Redacted]
ERICA COOPER
[Redacted]
[Redacted] AL [Redacted]

Original Creditor ▶ SYNCHRONY BANK
CARE CREDIT PREF. DENTAL
Current Creditor ▶ MIDLAND FUNDING, LLC ("MID")
Acct # ▶ *****7958
ACF Acct # [Redacted]
Balance ▶ \$1,140.99

000587

October 3, 2017

Dear Mr./Ms. Erica Cooper:

Please allow this letter to serve as an introduction to MID. MID has purchased or was otherwise assigned the account (the "Account") referenced above and it has been placed with Atlantic Credit & Finance, Inc. ("Atlantic") for collection.

Our records reflect you are obligated on the Account which is in default. Accordingly, Atlantic is entitled to be paid the balance due of \$1,140.99. All payments on the account should be sent as noted below.

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 this 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 of 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.

To discuss this debt, please contact Alicia Shiflett toll free at 866-397-4100, between 12:00 P.M. and 9:00 P.M. EST Monday through Wednesday, 8:30 A.M. to 5:30 P.M. on Thursday and 9:00 A.M. to 5:00 P.M. EST on Friday.

Mail all Correspondence to:
Atlantic Credit & Finance, Inc.
PO Box 13386
Roanoke, VA 24033-3386

Mail all Payments to:
Atlantic Credit & Finance, Inc.
PO Box 2001
Warren, MI 48090-2001

Office Hours: 8:30 A.M. - 9:00 P.M., Monday - Wednesday; 8:30 A.M. - 5:30 P.M., Thursday; 9:00 A.M. - 5:00 P.M. Friday (EST)

This communication is from a debt collector.
This is an attempt to collect a debt. Any information obtained will be used for that purpose.
NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

← Detach Here →

DETACH HERE AND ENCLOSE THIS PORTION ALONG WITH PAYMENT
Make check or money order payable to Atlantic Credit & Finance, Inc.

← Detach Here →

[Redacted]
ERICA COOPER
[Redacted]
[Redacted] AL [Redacted]

October 3, 2017

Original Creditor ▶ SYNCHRONY BANK
Acct # ▶ *****7958
ACF Acct # [Redacted]
Balance ▶ \$1,140.99
Amount Enclosed ▶

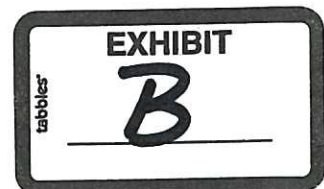
WE ACCEPT M/C AND VISA



Account Number: _____
Expiration Date: _____
Amount To Be Applied to Card: \$ _____
Cardholder Signature: (Print Name Below Line)

ATLANTIC CREDIT & FINANCE, INC.
PO BOX 2001
WARREN, MI 48090-2001

09001





Reply by calling our office at:
800-888-9419
by
10/31/2017

PRE-LEGAL NOTIFICATION

600.
684.59

ERICA COOPER
[Redacted]
[Redacted] AL [Redacted]

Original Creditor: SYNCHRONY BANK
CARE CREDIT PREF. DENTAL
Current Owner: Midland Funding LLC
Current Servicer: Atlantic Credit & Finance, Inc.
Original Account Number: [Redacted] 7958

ACF Account # [Redacted]
Balance: \$1,140.99
Date of Default: 12/20/2016
Last Paid Date: 3/5/2017

10/13/2017

Dear Mr/Ms ERICA COOPER:

Atlantic Credit & Finance has made several attempts to contact you regarding this account. This letter is to inform you that Midland Funding, LLC is considering forwarding this account to an attorney in your state for possible litigation. Upon receipt of this notice, please call 800-888-9419 to discuss your options.

If we don't hear from you or receive payment, Midland Funding, LLC may proceed with forwarding this account to an attorney.

Atlantic Credit & Finance would like to make arrangements with you to resolve the above-referenced account using one of the following options:

- 1) A one time repayment amount of \$798.69 to be due on 10/31/2017;
- 2) Biweekly payments as low as \$25.00 until balance is paid in full.

These payment opportunities do not alter or amend your validation rights as described in our previous letter to you. Please contact our office at 800-888-9419 to take advantage of one of the above options. Once you have completely fulfilled one of the above payment arrangements you will be released of the obligation. We are not obligated to renew this offer.

Thank you for your cooperation in resolving this matter.

OUR OFFICE HOURS ARE 8:30 A.M. to 9:00 P.M. EST MONDAY – WEDNESDAY, 8:30 A.M. to 5:30 P.M. EST THURSDAY AND 9:00 A.M. to 5:00 P.M. EST ON FRIDAY.

Sincerely,

Alicia Shifflett

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained should be used for that purpose.

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Alabama Consumer Claims Atlantic Credit & Finance, Midland Funding Demanded Payment During Validation Period](#)
