

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

PENNY DEFALICO, Individually and on Behalf of All Others Similarly Situated,	)	Case No.: 18-cv-559
	}	<b>CLASS ACTION COMPLAINT</b>
Plaintiff,	}	
v.	}	
	}	<b>Jury Trial Demanded</b>
FMA ALLIANCE LTD. and JH PORTFOLIO DEBT EQUITIES LLC d/b/a JH CAPITAL GROUP,	}	
Defendants.	)	

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**INTRODUCTION**

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”) and the Wisconsin Consumer Act, ch. 421-427, Wis. Stats. (the “WCA”).

**JURISDICTION AND VENUE**

2. The court has jurisdiction to grant the relief sought by Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331, 1337, and 1367. Venue in this District is proper in that Defendants directed their collection efforts into the District.

**PARTIES**

3. Plaintiff Penny Defalico is an individual who resides in the Eastern District of Wisconsin (Milwaukee County).

4. Plaintiff is a “consumer” as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that Defendant sought to collect from her debts allegedly incurred for personal, family, or household purposes, namely a personal credit card account.

5. Plaintiff is also a “customer” as defined in the Wisconsin Consumer Act, Wis. Stat. § 421.301(17), in that she allegedly engaged in consumer credit transactions – purchases of household goods and services with a personal credit card account.

6. Defendant FMA Alliance, Ltd. (“FMA”) is a foreign limited partnership with its principal offices located at 12339 Cutten Road, Houston, Texas 77066.

7. FMA is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

8. FMA is engaged in the business of collecting debts owed to others and incurred for personal, family, or household purposes.

9. FMA is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

10. Defendant JH Portfolio Debt Equities, LLC (“JH Capital”) is a foreign limited liability company with its primary offices located at principal offices located at 5757 Phantom Drive, Suite 225, Hazelwood, Missouri 63042.

11. JH Capital does business under the fictitious or trade name “JH Capital Group.”

12. JH Capital is engaged in the business of collecting debts, in that it purchases and receives assignment of consumer debts that are in default at the time JH Capital acquires them.

13. JH Capital uses third-party debt collection agencies, including FMA, to collect consumer debts originally owed to others and currently held by JH Capital. JH Capital, directly or indirectly, is a debt collector under this arrangement. 15 U.S.C. § 1692a(6).

14. The FDCPA defines a “debt” as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or

services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”

15. The FDCPA defines a “debt collector” as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, *or* who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6) (emphasis added); *see Barbato v. Greystone All., LLC*, Civil Action No. 3:13-2748, 2017 U.S. Dist. LEXIS 172984 (M.D. Pa. Oct. 19, 2017); *Tepper v. Amos Fin., LLC*, No. 15-cv-5834, 2017 U.S. Dist. LEXIS 127697 \*20-22 (E.D. Pa. Aug. 9, 2017) (“the statute provides two possible paths for a plaintiff to prove that a particular defendant is a ‘debt collector.’ Subject to certain exceptions not relevant here, the defendant will be a debt collector if either (1) its ‘principal purpose . . . is the collection of any debts,’ or (2) it ‘regularly collects or attempts to collect . . . debts owed or due . . . another.’”); *Chenault v. Credit Corp Sols.*, 2017 U.S. Dist. LEXIS 197747, at \*4-6 (E.D. Pa. Dec. 1, 2017); *Kurtzman v. Nationstar Mortg. LLC*, No. 16 17236, 2017 U.S. App. LEXIS 19750, at \*6-7 (11th Cir. Oct. 10, 2017); *Skinner v. LVNV Funding LLC*, 2018 U.S. Dist. LEXIS 2812, at \*7-8 (N.D. Ill. Jan 8, 2018); *Mitchell v. LVNV Funding LLC*, 2017 U.S. Dist. LEXIS 206440, at \*7-12 (N.D. Ind. Dec. 15, 2017).

16. The primary purpose of JH Capital’s business, and JH Capital’s principal purpose, is the collection of consumer debts. JH Capital’s website contains an “About” webpage, which states:

JH Portfolio Debt Equities is one of the nation’s largest investors of unpaid debt, offering innovative and regulatory compliant end-to-end solutions for distressed credit consumers. The Firm invests in portfolios of consumer receivables and works with individuals as they repay their obligations.

*See* <https://jhportfoliodebtequities.com/about-jh-capital-group/> (accessed March 26, 2018).

17. JH Capital is engaged in the business of a collection agency, directly and indirectly using the mails and telephone to collect defaulted consumer debts. JH Capital's website contains a "Consumer Resources" page, which states:

If you are one of our consumers, you might have received something in the mail or received a call from us. JH Portfolio Debt Equities, LLC acquires charged-off accounts from some of the nation's largest lenders and works with select partners to resolve the accounts with consumers.

See <https://jhportfoliodebtequities.com/consumers/> (accessed March 26, 2018).

18. Debt purchasers, including JH Capital, are also debt collectors as a matter of Wisconsin law. On its face, Wis. Stat. § 427.103(3) applies to creditors collecting on their own behalf.

19. Wis. Stat. § 427.103(3) defines debt collector:

Any person engaging, *directly or indirectly*, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme, intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms.

(emphasis added).

20. Wis. Stat § 427.103(2) states: "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant by a customer."

21. At a minimum, debt buyers like JH Capital engage in debt collection indirectly through their servicing agents, like FMA. See, e.g., *Mitchell v. LVNV Funding, LLC*, 2017 U.S. Dist. LEXIS 206440 \*16 ("'[t]here is no business purpose in purchasing charged off debts if the ultimate goal is not to collect them,' and that '[d]ebt buyers don't buy debts to use them as wallpaper, but to turn them into money'" (citing Pl.'s Reply Br.)).

22. JH Capital is a “merchant” as defined in the WCA, as it has, or claims to have, taken assignment of Plaintiff’s former consumer credit card account, originally owed to Citibank, N.A. (“Citibank”). Wis. Stat. § 421.301(25) (“The term [merchant] includes but is not limited to a seller, lessor, manufacturer, creditor, arranger of credit and any assignee of or successor to such person.”).

23. The WCA’s debt collection chapter applies to all persons collecting, either directly or indirectly, consumer debts, including merchants collecting debts owed to themselves.

24. The Western District of Wisconsin has noted: “Unlike the FDCPA, the Wisconsin Consumer Act does not provide exceptions to its general definition of a debt collector.” *Hartman v. Meridian Fin. Servs.*, 191 F. Supp. 2d 1031, 1048 (W.D. Wis. 2002).

25. The Wisconsin Department of Financial Institutions (“DFI”) has likewise observed that merchants and creditors are “Debt Collectors” under the WCA:

Anyone attempting to collect a debt arising from a consumer credit transaction in Wisconsin, whether a merchant doing its own debt collecting or a third-party debt collector, must follow Wisconsin’s debt collection law, Ch. 427, Wis. Stats. This is an important point because many merchants collecting debt owed directly to them mistakenly believe that they are exempt from Wisconsin’s debt collection law because they are not included within the definition of “debt collector” under the federal Fair Debt Collection Practices Act.

[https://www.wdfi.org/wca/business\\_guidance/creditors/debt\\_collection/](https://www.wdfi.org/wca/business_guidance/creditors/debt_collection/).

26. In addition to mail and telephone communications, JH Capital also regularly uses Wisconsin courts in its debt collection activities. A general search on Wisconsin Circuit Court Access (“CCAP”) for “JH Portfolio” returns at least 358 actions filed and a general search for “JH Capital” returns at least 74 actions filed. Upon information and belief, all or almost all of these cases are collection actions against Wisconsin consumers.

27. JH Capital uses both standard collection methods, such as mail and telephone communications, and also civil lawsuits, in its collection business.

28. JH Capital is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

29. A company meeting the definition of a “debt collector” (here, JH Capital) is vicariously liable for the actions of a second company collecting debts on its behalf (here, FMA). *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 325-26 (7th Cir. 2016) (assignees who are “debt collectors” are responsible for the actions of those collecting on their behalf); *citing Pollice*, 225 F.3d at 404-05.

### **FACTS**

30. Sometime prior to January 8, 2018, Plaintiff’s “Home Depot”-brand consumer credit card account, issued by Citibank and with an account number ending 0100, went into default.

31. On or about January 8, 2018, Citibank mailed Plaintiff a “Notice of Assignment” letter, informing Plaintiff that her “Home Depot”-brand consumer credit card account had been sold to JH Capital. A copy of this letter is attached to this complaint as Exhibit A.

32. Exhibit A contains the following:

Dear PENNY M DEFALICO

Your loan ending in 0100 with a balance of \$717.72 has been sold to JH Portfolio Debt Equities, LLC and is no longer owned by Citi. The balance consists of \$398.75 of principal, \$83.97 in interest, and \$235.00 in fees.

Exhibit A.

33. Exhibit A states that, as of January 8, 2018, the balance of Plaintiff’s account ending in 0100 was \$717.72, and that the balance consisted of \$398.75 of principal, \$83.97 in interest, and \$235.00 in fees.

34. On or about January 9, 2018, FMA mailed a debt collection letter to Plaintiff regarding the same alleged “Home Depot”-brand consumer credit card account, allegedly owed to JH Capital, and allegedly originally owed to Citibank and associated with Plaintiff’s Citibank account ending in 0100. A copy of this letter is attached to this complaint as Exhibit B.

35. Upon information and belief, Exhibit B is a form letter, generated by computer, and with the information specific to Plaintiff inserted by computer.

36. Upon information and belief, Exhibit B is a form debt collection letter used by FMA and JH Capital to attempt to collect alleged debts.

37. Upon information and belief, Exhibit B was the first debt collection letter FMA and JH Capital mailed to Plaintiff regarding this alleged debt.

38. Exhibit B contains the statutory validation notice that the FDCPA, 15 U.S.C. § 1692g, requires that the debt collector send the alleged debtor along with, or within five days of, the initial communication:

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 that this debt, or any portion thereof, is disputed, within 30 days from receiving this notice, 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.

Exhibit B.

39. Exhibit B also contains the following:

01/09/2018	
ACCOUNT INFORMATION	
Personal & Confidential	
Original Creditor:	Citibank N.A.
Original Account #:	XXXXXXXXXXXX0100
Brand Name:	The Home Depot Consumer
Current Creditor:	JH Portfolio Debt Equities LLC DBA JH Capital Group
Current Account #:	██████████5645
File#:	██████████0115
Total Balance Due:	\$398.75

Exhibit B.

40. Exhibit B states that, as of January 9, 2018, Plaintiff's account with JH Capital had a "Total Balance Due" of \$398.75.

41. Upon information and belief, Citibank sold Plaintiff's account to JH Capital along with a "portfolio" of other "bad," "distressed," or "toxic" credit card accounts. *See, e.g., Harvey v. Great Seneca Fin. Corp.*, 2005 U.S. Dist. LEXIS 37002, at \*8 (S.D. Ohio July 18, 2005) (debt buyers may "specialize[] in the purchase of and the collection of distressed consumer debt consisting of old defaulted and delinquent obligations or accounts which it purchases in bulk and at a discount from prior creditors.").

42. Upon information and belief, at the time Citibank sold this portfolio of accounts to JH Capital, Citibank transmitted underlying account information for these accounts to JH Capital, and JH Capital and FMA had access to this account information.

43. Upon information and belief, at the time Citibank sold this portfolio of accounts to Defendants, Citibank transmitted underlying account history for the accounts, including copies of Citibank's account statements. *See Livermore v. Unifund CCR LLC*, 2018 U.S. Dist. LEXIS 12643, at \*2-3 (E.D. Wis. Jan. 26, 2018).

44. Upon information and belief, the account information that Citibank transmitted to JH Capital states that the "PRINCIPAL" of the debt is \$398.75, and that the "CURRENT BALANCE" of the debt is \$717.72.

45. Upon information and belief, the balance stated in Exhibit B, \$398.75 is based on the "PRINCIPAL" amount stated in Citibank's underlying account information, rather than the "CURRENT BALANCE" amount.

46. Upon information and belief, FMA's letter misstates the amount of the debt because it does not include amounts added to the balance as a result of interest and fees. *See*



*Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 875 (7th Cir. 2000) (“The unpaid principal balance is not the debt; it is only a part of the debt; the Act requires statement of the debt.”).

47. Understating the balance of the debt is a material misrepresentation. *See Miller*, 214 F.3d at 875; *Muller v. Midland Funding*, 2016 U.S. Dist. LEXIS 68939, at \*6-8 (W.D. Mo. May 26, 2016) (denying judgment on the pleadings where debt buyer understated amount of the debt); *McDermott v. Marcus, Errico, Emmer & Brooks, P.C.*, 911 F. Supp. 2d 1, \*62-63 (D. Mass. Nov. 20, 2012) (“MEEB therefore understated the amount of legal fees owed for both units in the first May 17, 2005 letter. MEEB’s false representation of the amount of the debt through May 17, 2005, thus violated section 1692e(2)(A).”), *amended in part*, 969 F. Supp. 2d 74 (D. Mass. 2013), *aff’d in part, rev’d in part and remanded*, 775 F.3d 109, 127-28 (1st Cir. 2014) (affirming magistrate judge’s finding that debt collector violated FDCPA but did not act willfully or knowingly because “in at least one instance, MEEB’s incorrect statement about the amount owed by McDermott went in McDermott’s favor (i.e., MEEB said he owed less than he really did), which supports her finding that MEEB was not simply trying to increase its legal fees.”); *Pickard v. Lerch*, 2005 U.S. Dist. LEXIS 45457, at \*13 (S.D. Ind. May 26, 2005) (“The fact that Wright decided to underestimate the amount of debt allegedly owed rather than overestimate is unavailing.”).

48. Understating the balance of a credit card debt has real life consequences for the consumer. Debt collectors generally do not forgive the difference between the understated balance and the real balance. Consumers who believe they have paid off an account in full are frequently contacted, sometimes years later, by the same or different debt collectors seeking the unpaid amount plus interest, which is often substantial.

49. The unsophisticated consumer who paid the understated amount would be misled into believing that the account was paid in full when in reality, almost half of the debt remains unpaid.

50. Moreover, a debt collector may induce partial payments by understating the amount of the debt, and misleading the consumer to believe she may eventually be able to pay the debt in full when, in fact, she would be better off discharging the debt in bankruptcy. *See DeKoven v. Plaza Assocs.*, 599 F.3d 578, 579 (7th Cir. 2010); *see also, Johnson v. Enhanced Recovery Co., LLC*, 228 F. Supp. 3d 870, 878 (N.D. Ind. Jan. 17, 2017) (a false statement is material where “a debt collector might get itself bumped to the top of her list of payments to make.”).

51. Alternatively, FMA’s letter states the correct amount of the debt but does so in an unfair, deceptive, and misleading way because it does not explain how the balance was calculated, information which the debtor needs to assess any interest or fees sought by Defendants may likewise have been invalid. *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004) (debtor stated claims under 15 U.S.C. §§ 1692e(2)(A) and 1692f because debt collector’s failure to itemize an accurate, but confusing, balance impaired her ability to knowledgeably assess the validity of the debt); *Pickard v. Lerch*, 2005 U.S. Dist. LEXIS 45457, at \*13-14 (S.D. Ind. May 26, 2005) (failure to explain contradiction between two different balances was materially misleading because “even if the Wright letter was not literally false in its statement of the amount of the debt, the Wright letter was confusingly misleading.”).

### ***The FDCPA***

52. The FDCPA states that its purpose, in part, is “to eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e). It is designed to protect

consumers from unscrupulous collectors, whether or not there is a valid debt. *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997); *Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982); *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir. 1992). The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§ 1692d, 1692e, 1692f and 1692g.

53. The Seventh Circuit has held that whether a debt collector's conduct violates the FDCPA should be judged from the standpoint of an "unsophisticated consumer." *Avila v. Rubin*, 84 F.3d 222, 227 (7th Cir. 1996); *Gammon v. GC Services, LP*, 27 F.3d 1254, 1257 (7th Cir. 1994). The standard is an objective one—whether the plaintiffs or any class members were misled is not an element of a cause of action. *Bartlett v. Heibl*, 128 F.3d 497, 499 (7th Cir. 1997). "The question is not whether these plaintiffs were deceived or misled, but rather whether an unsophisticated consumer would have been misled." *Beattie v. D.M. Collections Inc.*, 754 F. Supp. 383, 392 (D. Del. 1991).

54. Because it is part of the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 *et seq.*, the FDCPA should be liberally construed in favor of the consumer to effectuate its purposes. *Cirkot v. Diversified Fin. Services, Inc.*, 839 F. Supp. 941, 944 (D. Conn. 1993).

The [Consumer Credit Protection] Act is remedial in nature, designed to remedy what Congressional hearings revealed to be unscrupulous and predatory creditor practices throughout the nation. Since the statute is remedial in nature, its terms must be construed in liberal fashion if the underlying Congressional purpose is to be effectuated.

*N.C. Freed Co. v. Board of Governors*, 473 F.2d 1210, 1214 (2d Cir. 1973).

55. Statutory damages are recoverable for violations, whether or not the consumer proves actual damages. *Baker*, 677 F.2d at 780-1; *Woolfolk v. Van Ru Credit Corp.*, 783 F. Supp. 724, 727 and n. 3 (D. Conn. 1990); *Riveria v. MAB Collections, Inc.*, 682 F. Supp. 174, 177 (W.D.N.Y. 1988); *Kuhn v. Account Control Tech.*, 865 F. Supp. 1443, 1450 (D. Nev. 1994); *In re Scrimpsheer*, 17 B.R. 999, 1016-7 (Bankr. N.D.N.Y. 1982); *In re Littles*, 90 B.R. 669, 680 (Bankr. E.D. Pa. 1988), *aff'd as modified sub nom. Crossley v. Lieberman*, 90 B.R. 682 (E.D. Pa. 1988), *aff'd*, 868 F.2d 566 (3d Cir. 1989)

56. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *Pogorzelski v. Patenaude & Felix APC*, No. 16-C-1330, 2017 U.S. Dist. LEXIS 89678 \*9 (E.D. Wis. June 12, 2017) (“A plaintiff who receives misinformation from a debt collector has suffered the type of injury the FDCPA was intended to protect against.”); *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 177631 (E.D. Wis. Oct. 26, 2017) (“As in *Pogorzelski*, the Spuhlers’ allegations that the debt collection letters sent by State Collection contained false representations of the character, amount, or legal status of a debt in violation of their rights under the FDCPA sufficiently pleads a concrete injury-in-fact for purposes of standing.”); *Long v. Fenton & McGarvey Law Firm P.S.C.*, 223 F. Supp. 3d 773, 777 (S.D. Ind. Dec. 9, 2016) (“While courts have found that violations of other statutes . . . do not create concrete injuries in fact, violations of the FDCPA are distinguishable from these other statutes and have been repeatedly found to establish concrete injuries.”); *Bock v. Pressler & Pressler, LLP*, No. 11-7593, 2017 U.S. Dist. LEXIS 81058 \*21 (D.N.J. May 25, 2017) (“through [s]ection 1692e of the FDCPA, Congress established ‘an enforceable right to truthful information

concerning’ debt collection practices, a decision that ‘was undoubtedly influenced by congressional awareness that the intentional provision of misinformation’ related to such practices, ‘contribute[s] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy,”); *Quinn v. Specialized Loan Servicing, LLC*, No. 16 C 2021, 2016 U.S. Dist. LEXIS 107299 \*8-13 (N.D. Ill. Aug. 11, 2016) (rejecting challenge to Plaintiff’s standing based upon alleged FDCPA statutory violation); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 U.S. Dist. LEXIS 89258 \*9-10 (N.D. Ill. July 11, 2016) (“When a federal statute is violated, and especially when Congress has created a cause of action for its violation, by definition Congress has created a legally protected interest that it deems important enough for a lawsuit.”); *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 U.S. App. LEXIS 12414 \*7-11 (11th Cir. July 6, 2016) (same); *see also Mogg v. Jacobs*, No. 15-CV-1142-JPG-DGW, 2016 U.S. Dist. LEXIS 33229, 2016 WL 1029396, at \*5 (S.D. Ill. Mar. 15, 2016) (“Congress does have the power to enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute,” (quoting *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 623 (7th Cir. 2014))). For this reason, and to encourage consumers to bring FDCPA actions, Congress authorized an award of statutory damages for violations. 15 U.S.C. § 1692k(a).

57. Moreover, Congress has explicitly described the FDCPA as regulating “abusive practices” in debt collection. 15 U.S.C. §§ 1692(a) – 1692(e). Any person who receives a debt collection letter containing a violation of the FDCPA is a victim of abusive practices. *See* 15 U.S.C. §§ 1692(e) (“It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive

debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses”).

58. 15 U.S.C. § 1692e generally prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

59. 15 U.S.C. § 1692e(2)(A) specifically prohibits: “The false representation of—the character, amount, or legal status of any debt.”

60. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

61. 15 U.S.C. § 1692f generally prohibits “unfair or unconscionable means to collect or attempt to collect any debt.”

62. 15 U.S.C. § 1692g(a) states:

a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

63. The Seventh Circuit has held that a debt collector must state the correct amount of the debt on the date a letter is sent to a consumer, and cannot only state the principal amount and neglect amounts that are due as a result of interest and fees. *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 875 (7th Cir. 2000):

It is no excuse that it was “impossible” for the defendants to comply when as in this case the amount of the debt changes daily. What would or might be impossible for the defendants to do would be to determine what the amount of the debt might be at some future date if for example the interest rate in the loan agreement was variable. What they certainly could do was to state the total amount due--interest and other charges as well as

principal--on the date the dunning letter was sent. We think the statute required this.

64. The debt collector must make the 15 U.S.C. § 1692g disclosures in a non-confusing manner. See *Bartlett v. Heibl*, 128 F.3d 497, 500 (7th Cir. 1997); *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 875 (7th Cir. 2000); *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 317-18 (7th Cir. 2016).

65. While *Miller* addressed a debt collector's obligation to provide the amount of the debt under 15 U.S.C. § 1692g(a)(1), the Seventh Circuit has held that the standards for claims under § 1692e and § 1692g are the same. *McMillan v. Collection Professionals, Inc.*, 455 F.3d 754, 759 (7th Cir. 2006):

We cannot accept the district court's view that claims brought under § 1692e or § 1692f are different from claims brought under § 1692g for purposes of Rule 12(b)(6) analysis. Whether or not a letter is 'false, deceptive, or misleading' (in violation of § 1692e) or 'unfair or unconscionable' (in violation of § 1692f) are inquiries similar to whether a letter is confusing in violation of § 1692g. After all, as our cases reflect, the inquiry under §§ 1692e, 1692g and 1692f is basically the same: it requires a fact-bound determination of how an unsophisticated consumer would perceive the letter.

66. The Seventh Circuit has also held that a debt collector may not hide the character of a debt; thus where a balance is subject to adjustments that would potentially confuse the unsophisticated consumer as to the amount and character of the debt, "one simple way to comply with § 1692e and § 1692f in this regard would be to itemize the various charges that comprise the total amount of the debt." *Fields v. Wilber Law Firm P.C.*, 383 F.3d 562, 566 (7th Cir. 2004).

67. Where a debt collector has actual or imputed knowledge that the balance of a debt is subject to charges or adjustments that would confuse or mislead a debtor as to the character of that debt, the debt collector must provide adequate notice and disclosure as to the character of the

debt and the basis for the adjustments. *Acik v. I.C. Sys.*, 640 F. Supp. 2d 1019, 1023-25 (N.D. Ill. Aug. 6, 2009) (“The question under section 1692e is not whether these charges were fair or proper, but whether the fees were ‘clearly and fairly communicated’ so that Acik could ascertain the fees’ validity.”) (applying *Fields*, 383 F.3d 562 (7th Cir. 2004)).

### ***The WCA***

68. The Wisconsin Consumer Act (“WCA”) was enacted to protect consumers against unfair, deceptive, and unconscionable business practices and to encourage development of fair and economically sound practices in consumer transactions. Wis. Stat. § 421.102(2).

69. The Wisconsin Supreme Court has favorably cited authority finding that the WCA “goes further to protect consumer interests than any other such legislation in the country,” and is “probably the most sweeping consumer credit legislation yet enacted in any state.” *Kett v. Community Credit Plan, Inc.*, 228 Wis. 2d 1, 18 n.15, 596 N.W.2d 786 (1999) (citations omitted).

70. To further these goals, the Act’s protections must be “liberally construed and applied.” Wis. Stat. § 421.102(1); *see also* § 425.301.

71. “The basic purpose of the remedies set forth in Chapter 425, Stats., is to induce compliance with the WCA and thereby promote its underlying objectives.” *First Wisconsin Nat’l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983). Thus, private actions under the WCA are designed to both benefit consumers whose rights have been violated and also competitors of the violators, whose competitive advantage should not be diminished because of their compliance with the law.

72. To carry out this intent, the WCA provides Wisconsin consumers with an array of protections and legal remedies. The Act contains significant and sweeping restrictions on the activities of those attempting to collect debts. *See* Wis. Stats. § 427.104.



73. The Act limits the amounts and types of additional fees that may be charged to consumers in conjunction with transactions. Wis. Stats. § 422.202(1). The Act also provides injured consumers with causes of action for class-wide statutory and actual damages and injunctive remedies against defendants on behalf of all customers who suffer similar injuries. *See* Wis. Stats. §§ 426.110(1); § 426.110(4)(e). Finally, “a customer may not waive or agree to forego rights or benefits under [the Act].” Wis. Stat. § 421.106(1).

74. Consumers’ WCA claims under Wis. Stat. § 427.104(1) are analyzed using the same methods as claims under the FDCPA. Indeed, the WCA itself requires that the court analyze the WCA “in accordance with the policies underlying a federal consumer credit protection act,” including the FDCPA. Wis. Stat. § 421.102(1).

75. Further, the Wisconsin Supreme Court has held that WCA claims relating to debt collection are to be analyzed under the “unsophisticated consumer” standard. *Brunton v. Nuvel Credit Corp.*, 785 N.W.2d 302, 314-15. In *Brunton*, the Wisconsin Supreme Court explicitly adopted and followed the “unsophisticated consumer” standard, citing and discussing *Gammon v. GC Servs. Ltd. P’ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). *Id.*

76. Wis. Stat. § 427.104(1)(g) states that a debt collector may not: “Communicate with the customer . . . in such a manner as can reasonably be expected to threaten or harass the customer.”

77. Wis. Stat. § 427.104(1)(h) states that a debt collector may not: “Engage in other conduct which can reasonably be expected to threaten or harass the customer . . . .”

78. Wis. Stat. § 427.104(1)(j) states that a debt collector may not: “Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist.”

79. Wis. Stat. § 427.104(1)(L) states that a debt collector may not: “Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt.”

80. DFI has ruled that conduct that violates the FDCPA also violates the WCA.

**DFI–Bkg 74.16 Oppressive and deceptive practices prohibited.** A licensee shall not engage in any oppressive or deceptive practices. In attempting to collect an alleged account, bill or other indebtedness, a licensee shall not do any of the following: ...

(9) Engage in other conduct which can reasonably be expected to threaten or harass the debtor or a person related to the debtor including conduct which violates the Federal Fair Debt Collection Practices Act.

81. Misrepresenting the amount of the debt is “conduct which violates the [FDCPA]” and WCA. 15 U.S.C. § 1692e(2)(a), 1692g(a)(1); Wis. Admin. Code § DFI-Bkg 74.16(9).

#### **COUNT I – FDCPA**

82. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

83. Count I is brought against both Defendants.

84. Exhibit B states that the “Total Balance Due” is \$398.75 but, upon information and belief, the account information Citibank transmitted, which JH Capital and FMA had prior to mailing Exhibit A, shows that JH Capital and FMA knew or should have known that the “Current Balance” of the account was \$717.72.

85. JH Capital and FMA misrepresented the amount of the debt.

86. JH Capital and FMA knew Plaintiff had not made a payment on the account since it had charged off.

87. JH Capital and FMA that Exhibit B’s use of the phrase “Total Balance Due,” alongside Defendants’ attempt to collect an amount less than the current account balance, would

confuse the unsophisticated consumer about the amount, character, and legal status of the debt because JH Capital and FMA knew Plaintiff had recently received account statements and debt collection letters attempting to collect different amounts on the same account, including Exhibit A, the Notice of Assignment letter that Citibank mailed Plaintiff. *See Fields*, 383 F.3d at 566.

88. Defendants failed to provide any explanatory language or itemization of credits to clarify why the amount of the debt decreased after charge off even though Plaintiff had not made a payment.

89. Defendants violated 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10), 1692f, and 1692g(a)(1).

## **COUNT II – WCA**

90. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

91. Count II is brought against both Defendants.

92. Exhibit B states that the “Total Balance Due” is \$398.75 but, upon information and belief, the account information Citibank transmitted, which JH Capital and FMA had prior to mailing Exhibit A, shows that JH Capital and FMA knew or should have known that the “Current Balance” of the account was \$717.72.

93. JH Capital and FMA misrepresented the amount of the debt.

94. JH Capital and FMA knew Plaintiff had not made a payment on the account since it had charged off.

95. JH Capital and FMA knew that Exhibit B’s use of the phrase “Total Balance Due,” alongside Defendants’ attempt to collect an amount less than the current account balance, would confuse the unsophisticated consumer about the amount, character, and legal status of the

debt because JH Capital and FMA knew Plaintiff had recently received account statements and debt collection letters attempting to collect different amounts on the same account, including Exhibit A, the Notice of Assignment letter that Citibank mailed Plaintiff. *See Fields*, 383 F.3d at 566.

96. Defendants failed to provide any explanatory language or itemization of credits to clarify why the amount of the debt decreased after charge off even though Plaintiff had not made a payment.

97. Misrepresenting the amount of the debt is “conduct which violates the [FDCPA]” and WCA. 15 U.S.C. § 1692e(2)(a), 1692g(a)(1); Wis. Admin. Code § DFI-Bkg 74.16(9).

98. Defendants violated Wis. Stat. § 427.104(1) and Wis. Admin. Code § DFI-Bkg 74.16(9).

### **CLASS ALLEGATIONS**

99. Plaintiff brings this action on behalf of two Classes.

100. Class I (“Nationwide Class”) consists of:

(a) all natural persons in the United States of America (b) who were sent a collection letter in the form represented by Exhibit B to the complaint in this action, (c) seeking to collect a debt owed to JH Capital and originally owed to Citibank, (d) which debt was incurred for personal, family, or household purposes, (e) in which the collection letter in the form represented by Exhibit B, the “Total Balance Due” to be the “PRINCIPAL” amount, instead of the “CURRENT BALANCE” amount provided by Citibank, (f) where the collection letter in the form of Exhibit B was mailed between April 10, 2017 and April 10, 2018, inclusive, (g) and was not returned by the postal service.

Expressly excluded from the class are individuals whose differences in balance are attributed solely to additional interest assessed by Defendants after Citibank assigned the debt to Defendants.

101. Class II (“Wisconsin Class”) consists of:

(a) all natural persons in the United States of America (b) who were sent a collection letter in the form represented by Exhibit B to the complaint in this

action, (c) seeking to collect a debt owed to JH Capital and originally owed to Citibank, (d) which debt was incurred for personal, family, or household purposes, (e) in which the collection letter in the form represented by Exhibit B, the “Total Balance Due” to be the “PRINCIPAL” amount, instead of the “CURRENT BALANCE” amount provided by Citibank, (f) where the collection letter in the form of Exhibit B was mailed between April 10, 2017 and April 10, 2018, inclusive, (g) and was not returned by the postal service.

Expressly excluded from the class are individuals whose differences in balance are attributed solely to additional interest assessed by Defendants after Citibank assigned the debt to Defendants.

102. Each Class is so numerous that joinder is impracticable. Upon information and belief, there are more than 50 members of each class.

103. There are questions of law and fact common to the members of the each class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether the Defendants complied with the FDCPA and the WCA.

104. Plaintiff’s claims are typical of the claims of the members of each class. All are based on the same factual and legal theories.

105. Plaintiff will fairly and adequately represent the interests of the members of each class. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

106. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

#### **JURY DEMAND**

107. Plaintiff hereby demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendants for:

- (a) actual damages;
- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and
- (d) such other or further relief as the Court deems proper.

Dated: April 10, 2018

**ADEMI & O'REILLY, LLP**

By: /s/ John D. Blythin  
John D. Blythin (SBN 1046105)  
Mark A. Eldridge (SBN 1089944)  
Jesse Fruchter (SBN 1097673)  
Ben J. Slatky (SBN 1106892)  
3620 East Layton Avenue  
Cudahy, WI 53110  
(414) 482-8000  
(414) 482-8001 (fax)  
jblythin@ademilaw.com  
meldridge@ademilaw.com  
jfruchter@ademilaw.com  
bslatky@ademilaw.com

# **EXHIBIT A**

CITI  
PO BOX 790040  
St. Louis, MO 63179-9819



January 08, 2018



5-682-80376-0007061-002-01-000-000-000-000

PENNY M DEFALICO  
312 N 75TH ST APT 8  
MILWAUKEE WI 53213-3580

Account Number Ending In: 0100

Dear PENNY M DEFALICO

Your loan ending in 0100 with a balance of \$717.72 has been sold to JH Portfolio Debt Equities, LLC and is no longer owned by Citi. The balance consists of \$398.75 of principal, \$83.97 in interest, and \$235.00 in fees.

Effective immediately, please send any future payments or correspondence to JH Portfolio Debt Equities, LLC at:

JH Portfolio Debt Equities, LLC  
5757 Phantom Drive, Suite 225  
Hazelwood MO 63042

JH Portfolio Debt Equities, LLC may also be reached at 877-395-3648.

In case you have already sent payment to Citi, the payment will be forwarded to JH Portfolio Debt Equities, LLC.

Please note this is not a bill.

Sincerely,

G. Goldberg  
Vice President  
Citibank, N.A.

682-3026-0809F



# Exhibit B



ACCOUNT INFORMATION

Personal & Confidential  
 Original Creditor: Citibank N.A.  
 Original Account #: XXXXXXXXXXXXX0100  
 Brand Name: The Home Depot Consumer  
 Current Creditor: JH Portfolio Debt Equities LLC DBA JH Capital Group  
 Current Account #: [REDACTED] 5645  
 File#: [REDACTED] 0115  
 Total Balance Due: \$398.75

**FMA Alliance, Ltd.**  
 12339 Cutten Road, Houston, TX 77066  
 8003158297

**A different kind of collection experience!**

Your Citibank N.A. account has been purchased by JH Portfolio Debt Equities LLC DBA JH Capital Group and placed with us for collection. FMA knows - if you had the money to pay off the balance, you would. We understand repaying your debt isn't easy in today's economy. FMA is here to help create a win-win solution to resolve this debt. Experience the FMA difference!



*Simple! Fast! Secure! Available 24 hours/365 days!*  
 Pay on-line at [www.PayFma.com](http://www.PayFma.com)

*No conversations and no interactions with a live person when online.  
 Plus our professionally trained staff is here to assist you on the phone. Our hours of operation are Monday - Thursday 8am - 8pm, Friday 8am - 5pm, and Saturday 8am - 12pm Central Time.*



Scan here to access  
[www.PayFma.com](http://www.PayFma.com)  
 Mobile data rates may apply.

Pay Online Login Information

Username: [REDACTED] 0115  
 Pin: [REDACTED]  
 Password: [REDACTED]

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 that this debt, or any portion thereof, is disputed, within 30 days from receiving this notice, 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.

**See important information on the reverse side.**

This has been sent to you by a debt collector.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.

\*\*\* Please detach and return lower portion with payment \*\*\*  
 8003158297

FMBC1000-0110-967892046-04269-4268

DEPT 287 4690793618017  
 PO BOX 4115  
 CONCORD CA 94524



ADDRESS SERVICE REQUESTED

Make your check payable to FMA Alliance, Ltd.

Amount Paid: \$ \_\_\_\_\_

Current Creditor: JH Portfolio Debt Equities LLC DBA JH Capital Group  
 Current Account #: [REDACTED] 5645



PENNY M DEFALICO  
 312 N 75TH ST APT 8  
 MILWAUKEE WI 53213-3580



FMA Alliance, Ltd.  
 P.O. Box 2409  
 Houston, TX 77252-2409

JH Capital Group's Privacy Notice Disclaimer:

#### WHAT INFORMATION WE COLLECT AND HOW WE USE THAT INFORMATION

You may use the Site without disclosing to us any personally identifiable information. We do not collect any personally identifiable information from you (e.g., name, address, telephone number, email address) when you use the Site. If you contact us, we may keep a record of your contact information and correspondence, and we reserve the right to use your contact information, and any other information that you provide to us in your message, to respond thereto. If you wish to change any information submitted to us, please do so by contacting us at the address provided above.

We may use cookies to collect non-personally identifiable information in connection with the Site. Our web pages may incorporate "pixel tags," "web beacons," or similar tracking technologies (collectively, "pixel tags") that allow us or our agents to track the actions of users of the Site. Pixel tags are used to collect non-personally identifiable information, such as the name of your Internet service provider, the IP address of the computer you are using, the type of browser software and operating system that you use, the date and time you access the Site, the website address, if any, from which you linked directly to the Site, the website address, if any, to which you travel from the Site and other similar traffic-related information. We may also aggregate your information with similar data collected from other users to help us improve the Site and the services that we provide through the Site.

In the event of a sale or transfer of assets or of any portion of our business, we reserve the right to transfer any and all information that we collect from users, or that we otherwise collect in connection with the Site, to unaffiliated third parties or third parties.

#### Monitoring, Enforcement and Legal Requests

JH Capital Group has no obligation to monitor the Site or the use of the Site or to retain the content of any user session. However, JH Capital Group reserves the right, at all times, to monitor, review, retain and/or disclose any information, as necessary, to satisfy any applicable law, regulation, legal process or governmental request or to cooperate with law enforcement and other authorities in investigating a claim of illegal activity. We may use IP addresses to identify a user when we feel it is necessary to protect the Site, our service, clients, potential clients or others.

#### Other Sites

Except as otherwise expressly discussed in this Privacy Policy, this policy only addresses our use and disclosure of information we collect from you. Any email messages and associated information that you send to addresses published on the Site are not governed by this policy. To the extent that you disclose personal or non-personal information to other sites, you are subject to the privacy customs and policies of those sites. We encourage you to ask questions before you disclose any personal information.

# 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.)

Place an X in the appropriate Box:  Green Bay Division  Milwaukee Division

### I. (a) PLAINTIFFS

**PENNY DEFALICO**

(b) County of Residence of First Listed Plaintiff Milwaukee

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Ademi & O'Reilly, LLP, 3620 E. Layton Ave., Cudahy, WI 53110  
(414) 482-8000-Telephone (414) 482-8001-Facsimile

### DEFENDANTS

**FMA ALLIANCE LTD. et al.**

County of Residence of First Listed Defendant \_\_\_\_\_

(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
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- |   |                            |                            |  |                            |                            |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |  | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
	<b>PRISONER PETITIONS</b>			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

### 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 et seq

Brief description of cause:

Violation of Fair Debt Collection Practices Act and Wisconsin Consumer 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

April 10, 2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Mark A. Eldridge

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFF \_\_\_\_\_

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.

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

PENNY DEFALICO

Plaintiff(s)

v.

FMA ALLIANCE LTD. and JH PORTFOLIO DEBT
EQUITIES LLC d/b/a JH CAPITAL GROUP

Defendant(s)

Civil Action No. 18-cv-559

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
FMA ALLIANCE LTD.
c/o MICHAEL JANAKES
12339 Cutten Road
Houston, Texas 77066

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

John D. Blythin
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, WI 53110

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))*

This summons and the attached complaint for *(name of individual and title, if any)*:

\_\_\_\_\_ were received by me on *(date)* \_\_\_\_\_.

I personally served the summons and the attached complaint on the individual at *(place)*:

\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_, a person of suitable age and discretion who resides there, on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* \_\_\_\_\_ who is designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

PENNY DEFALICO

Plaintiff(s)

v.

FMA ALLIANCE LTD. and JH PORTFOLIO DEBT
EQUITIES LLC d/b/a JH CAPITAL GROUP

Defendant(s)

Civil Action No. 18-cv-559

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JH PORTFOLIO DEBT EQUITIES LLC d/b/a JH CAPITAL GROUP
c/o C T CORPORATION SYSTEM
301 S. Bedford St. Suite 1
Madison, Wisconsin 53703

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff’s attorney, whose name and address are:

John D. Blythin
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, WI 53110

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_, a person of suitable age and discretion who resides there, on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons and the attached complaint on *(name of individual)* \_\_\_\_\_ who is designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims FMA Alliance, JH Portfolio Understated Amount of Consumer's Debt](#)

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