

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
DENVER DIVISION**

JESSICA EVANS (SHREWSBURY),
individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

FENTON & MCGARVEY LAW FIRM,
P.S.C. and MIDLAND CREDIT
MANAGEMENT, INC.,

Defendants.

Civil Case Number:

CIVIL ACTION

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

Plaintiff JESSICA EVANS (SHREWSBURY) (hereinafter, “Plaintiff”), a Colorado resident, brings this class action complaint by and through her attorneys, Marcus & Zelman, LLC, against Defendant FENTON & MCGARVEY LAW FIRM, P.S.C. and MIDLAND CREDIT MANAGEMENT, INC. (“Defendant”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re inadequate to protect consumers,” and that “the effective collection of debts”

does not require “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to “insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

NATURE OF THE ACTION

5. Plaintiff brings this class action on behalf of herself and a class of similarly situated Colorado consumers seeking redress for Defendant’s actions of using false, deceptive and misleading representations or means in connection with the collection of an alleged debt.
6. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”) which prohibits debt collectors from engaging in false, deceptive or misleading practices.
7. Plaintiff is seeking damages, and declaratory and injunctive relief.

PARTIES

8. Plaintiff is a natural person and a resident of Denver, Colorado, and is a “Consumer” as

defined by 15 U.S.C. §1692(a)(3).

9. Defendant FENTON & MCGARVEY LAW FIRM, P.S.C. (F&M) is a collection law firm with its principal office and registered agent located at 2401 Stanley Gault Parkway, Louisville, KY 40223.
10. Upon information and belief, Defendant F&M is a company that uses the mail, telephone, or facsimile in a business the principal purpose of which is the collection of debts, or that regularly collects or attempts to collect debts alleged to be due another.
11. Defendant F&M is a “debt collector,” as defined under the FDCPA under 15 U.S.C. § 1692a(6).
12. Defendant MIDLAND CREDIT MANAGEMENT, INC. (MCM) is a collection agency with its principal place of business located in the State of California.
13. Defendant, MCM acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone, in its business, the principal purpose of which is to collect, or attempt to collect, directly or indirectly, delinquent consumer debts. MCM operates a nationwide delinquent debt collection business, and attempts to collect debts from consumers in virtually every state, including consumers in the State of Colorado via collection letters and phone calls. In fact, Defendant MCM 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.
14. Defendant MCM is a “debt collector,” as defined under the FDCPA under 15 U.S.C. § 1692a(6).

CLASS ALLEGATIONS

15. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure (hereinafter “FRCP”) Rule 23, individually and on behalf of the following consumer class (the “Class”) consisting of: a) All consumers who have an address in the state of Colorado b) who were sent a collection letter from Defendant FENTON & MCGARVEY LAW FIRM, P.S.C. on behalf of Defendant MIDLAND CREDIT MANAGEMENT, INC. c) attempting to collect a consumer debt, d) that states “because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater” (e) where no interest, late charges or other charges were accruing (f) which letter was sent on or after a date one year prior to the filing of this action and on or before a date 21 days after the filing of this action.
16. The identities of all class members are readily ascertainable from the records of Defendants and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.
17. Excluded from the Plaintiff Classes are the Defendants and all officers, members, partners, managers, directors, and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
18. There are questions of law and fact common to the Plaintiff Classes, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendants’ written communications to consumers, in the forms attached as *Exhibit A*, violate 15 U.S.C. § 1692e and 1692f.
19. The Plaintiffs’ claims are typical of the class members, as all are based upon the same facts

and legal theories.

20. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff Classes defined in this complaint. The Plaintiffs have retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiffs nor their attorneys have any interests, which might cause them not to vigorously pursue this action.

21. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- (a) **Numerosity:** The Plaintiffs are informed and believe, and on that basis allege, that the Plaintiff Classes defined above are so numerous that joinder of all members would be impractical.
- (b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Classes and those questions predominate over any questions or issues involving only individual class members. The principal issue is whether the Defendants' written communications to consumers, in the forms attached as *Exhibit A*, violate 15 U.S.C. § 1692e and § 1692f.
- (c) **Typicality:** The Plaintiffs' claims are typical of the claims of the class members. The Plaintiffs and all members of the Plaintiff Classes have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- (d) **Adequacy:** The Plaintiffs will fairly and adequately protect the interests of the class members insofar as Plaintiffs have no interests that are averse to the absent class members. The Plaintiffs are committed to vigorously litigating this matter.

Plaintiffs have also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiffs nor their counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.

- (e) **Superiority**: A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

22. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Classes predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

23. Depending on the outcome of further investigation and discovery, Plaintiffs may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

ALLEGATIONS OF FACT

24. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

25. Some time prior to September 6, 2016, an obligation was allegedly incurred to CITIBANK,

N.A./BEST BUY.

26. The CITIBANK, N.A./BEST BUY obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.
27. The alleged CITIBANK, N.A./BEST BUY obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).
28. CITIBANK, N.A./BEST BUY is a "creditor" as defined by 15 U.S.C. § 1692a(4).
29. At some point prior to September 6, 2016, MCM or one of its affiliates purchased the defaulted CITIBANK, N.A./BEST BUY debt.
30. Defendant MCM contends that the CITIBANK, N.A./BEST BUY debt is past due.
31. Defendant is a company that uses mail, telephone or facsimile in a business the principal purpose of which is the collection of debts, or that regularly collects or attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors.
32. MCM directly or through an intermediary contracted the Defendant F&M to collect the alleged debt.
33. On or about September 6, 2016, Defendant F&M caused to be delivered to the Plaintiff a collection letter in an attempt to collect the alleged CITIBANK, N.A./BEST BUY debt on behalf of MCM. *See, Exhibit A.*
34. Upon information and belief, the September 6, 2016 letter was the first communication between the Defendant and Plaintiff regarding the CITIBANK, N.A./BEST BUY debt.
35. The September 6, 2016 letter was sent or caused to be sent by persons employed by Defendant as a "debt collector" as defined by 15 U.S.C. § 1692a(6).

36. The September 6, 2016 letter is a “communication” as defined by 15 U.S.C. §1692a(2).

37. The Plaintiff received and read the Letter sometime after September 6, 2016.

38. The Letter stated in part:

“Account Balance: \$1,448.75”

39. The Letter further stated:

“Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater.”

40. The Plaintiff, as would any least sophisticated consumer read the above statement and believed that the Defendant could potentially impose additional charges, even though that would never actually incur. *See e.g., Beauchamp v. Fin. Recovery Servs., Inc.*, No. 10 CIV. 4864 SAS, 2011 WL 891320, at *3 (S.D.N.Y. Mar. 14, 2011) (finding that a letter stating that the debt balance may increase could mislead the least sophisticated debtor into believing that additional charges or interest would accrue).

41. By inputting this language, the Defendant caused the Plaintiff a real risk of harm. Plaintiff, as would the least sophisticated consumer, would believe that they have a financial incentive to pay this debt sooner, or risk owing a higher amount. Defendant further subjected the Plaintiff to an abusive debt collection practice, which she had a substantive right to be free from, and caused her to be uncertain as to the amount of money that she allegedly owed.

42. Defendants could have taken the steps necessary to bring its actions within compliance with the FDCPA, but neglected to do so and failed to adequately review its actions to ensure compliance with the law.

COUNT I

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

43. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

44. Defendants' debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

45. Pursuant to 15 U.S.C. § 1692e, a debt collector may not use any false, misleading and/or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

46. The Defendants violated said section in its letter to the Plaintiff by:

- a. Using a false, deceptive, and misleading representations or means in connection with the collection of a debt;
- b. Falsely misrepresenting the amount of the alleged debt in violation of 1692e(2)(A);
- c. Falsely threatening that the amount of the Plaintiff's alleged debt may increase, in violation of 1692e(5);
- d. Making a false representation or using deceptive means to collect a debt in violation of 1692e(10).

47. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's

conduct violated Section 1692e *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT II

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

48. Plaintiff repeats, reiterates and incorporates the allegations contained in the paragraphs numbered above with the same force and effect as if the same were set forth at length herein.

49. Defendants' debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

50. Pursuant to 15 U.S.C. § 1692g(a)(1), 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 the amount of the debt.

51. Upon information and belief, the September 6, 2016 Collection Letter was the initial communication between Plaintiff and F&M, acting on behalf of MCM.

52. The September 6, 2016 Collection Letter failed to clearly and accurately state the amount of the Plaintiff's debt, where on one hand it stated that the amount owed was \$1,448.75, but on the other hand stated that "Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may

be greater” thereby leaving the Plaintiff unsure as the amount of her debt.

DEMAND FOR TRIAL BY JURY:

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and Plaintiff’s Counsel as Class Counsel;
- (b) Awarding Plaintiff and the Class statutory damages;
- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys’ fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: September 6, 2017

By: /s/ Ari H. Marcus
Ari Marcus, Esq.
MARCUS ZELMAN, LLC
1500 Allaire Avenue, Suite 101
Ocean, New Jersey 07712
Phone: (732) 695-3282
Facsimile: (732) 298-6256
Email: ari@marcuszelman.com
Attorneys for Plaintiff

Fenton & McGarvey Law Firm, P.S.C.

2401 Stanley Gault Parkway

Louisville, Kentucky 40223

Phone: 303-796-8300

Toll Free: 866-796-8300

Fax: 303-741-3755

September 6, 2016

JESSICA SHREWSBURY
343 VAN GORDON ST APT 20-416
DENVER CO 80228-6503

Re: Current Creditor: Midland Credit Management, Inc.
Original Creditor: CITIBANK, N.A. BEST BUY
Account Balance: \$1,448.75
Account Number: *****3324
Internal File No.: REDACTED7280

Dear JESSICA SHREWSBURY:

Please be advised that this firm represents the above referenced creditor in connection with your account. Please contact us (866) 796-8300 with any questions.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you dispute the validity of the debt or any portion thereof, within 30 days after receipt of this letter, we shall assume the debt to be valid. If you, the consumer, notify us in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you, the consumer, and a copy of such verification or judgment will be mailed to you by our office. A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.

Upon your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor.

As of the date of this letter you owe the above amount. Because of interest, late charges and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing your check for collection. At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. For further information, write or call the undersigned toll free at 1-866-796-8300. This communication is from a debt collector.

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE
WWW.COAG.GOV/CAR.

Very truly yours,
Fenton & McGarvey Law Firm, P.S.C.

Online Payment Available: <https://fandm.accountpayment.net>

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 JESSICA EVANS (SHREWSBURY), individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Marcus & Zelman, LLC, 1500 Allaire Avenue, Ocean, NJ 07712. (732)695-3282

DEFENDANTS
 FENTON & MCGARVEY LAW FIRM, P.S.C. and MIDLAND CREDIT MANAGEMENT, INC.

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or 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 and 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	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander		PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	LABOR	SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 740 Railway Labor 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"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	IMMIGRATION	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other			
	<input type="checkbox"/> 448 Education			
		PRISONER PETITIONS		
		Habeas Corpus:		
		<input type="checkbox"/> 463 Alien Detainee		
		<input type="checkbox"/> 510 Motions to Vacate Sentence		
		<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		Other:		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

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 USC 1692

Brief description of cause: AP Docket
 Defendant violated the FDCPA

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

DATE: 09/06/2017

SIGNATURE OF ATTORNEY OF RECORD: /s/ Ari H. Marcus, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

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

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

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

Or:

"AP Docket"

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.

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

JESSICA EVANS (SHREWSBURY), individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

FENTON & MCGARVEY LAW FIRM, P.S.C. and MIDLAND CREDIT MANAGEMENT, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) FENTON & MCGARVEY LAW FIRM, P.S.C. 2401 Stanley Gault Parkway Louisville, Kentucky 40223

MIDLAND CREDIT MANAGEMENT, INC. c/o Corporation Service Company 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received 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 plaintiff's attorney, whose name and address are:

Marcus & Zelman, LLC 1500 Allaire Avenue Ocean, New Jersey 07712

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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons 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 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: [Lawsuit: Debt Collectors' Letters Unlawfully Coerce Payment](#)
