

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

BRIDGET LEAK, On Behalf Of Herself
and Others Similarly Situated,

Plaintiffs,

v.

SETERUS, Inc.,

Defendant.

CIVIL ACTION FILE NO.:

JURY DEMAND

COMPLAINT – CLASS ACTION

Bridget Leak (“Ms. Leak” or “Plaintiff”), on behalf of herself and all others similarly situated, files this class action complaint against Seterus, Inc. (“Seterus” or “Defendant”) and states:

NATURE OF THE ACTION

1. This is a consumer protection action brought by Plaintiff and others similarly situated to obtain redress from Seterus’ systematic use of unlawful and unfair debt collection practices to collect upon residential consumer mortgage loans.

2. Specifically, Seterus sends borrowers form letters alleging that the borrowers are in default of their mortgages and that the failure to immediately

make a *full and complete* payment of all arrearages will result in immediate acceleration of their loan.

3. The form letter has been distributed across the nation, including a form letter sent out to citizens and residents of the state of Georgia (hereinafter referred to as the “Georgia Final Letter(s)”).

4. The Georgia Final Letter presents a false ultimatum: pay the entire balance of arrearages immediately or face acceleration.

5. Upon information and belief, the ultimatum does not comport with Seterus’ intentions, corporate policy, or legal authority.

6. Thus, Seterus’ representation that failure to immediately pay all arrearages will result in immediate acceleration of the loan is false, misleading, and unfairly coercive.

7. This false and deceptive ultimatum in the Georgia Final Letter contradicts Seterus’ actual policy to *never* accelerate a loan so long as any payment sufficient to bring the loan less than 45 days delinquent is made prior to the expiration date set forth in the Georgia Final Letter.

8. The Georgia Final Letter sent by Seterus to Plaintiff and others similarly situated is a false and misleading threat of acceleration and foreclosure designed to intimidate borrowers into making payments to Seterus that are beyond

their means and beyond what is necessary to avoid acceleration and save their homes from foreclosure.

9. By misrepresenting the conditions under which Seterus intends to accelerate mortgage loans, the Georgia Final Letter creates a false sense of urgency, intimidates consumers into making payments to Seterus beyond what is necessary to avoid acceleration, and deprives consumers of the ability to make informed decisions in violation of the Georgia Fair Business Practices Act, O.C.G.A. § 10-9-390, *et seq.* (“FBPA”) and the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (“FDCPA”).

10. This class action is filed pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who are members of the Class (defined below) to whom Seterus has sent or will send a Georgia Final Letter during the applicable Class Period (defined below).

JURISDICTION AND VENUE

11. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331 in that this action arises under, *inter alia*, the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*

12. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 because these claims form part of a class action in which the amount in controversy

exceeds the sum of \$5,000,000 and the class contains citizens of different states than Defendant.

13. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 in that the state law allegations contained herein are so related to the claims asserted under 15 U.S.C. 1692 *et seq.* over which the Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

14. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to the claims asserted herein occurred within this District.

PARTIES

15. Plaintiff is a citizen and resident of Troup County, Georgia.

16. Seterus is a corporation organized and existing under and by virtue of the laws of the State of Delaware.

17. Seterus' principal place of business is in Research Triangle Park, North Carolina.

18. Upon information and belief, Seterus is not a bank, trust company, or lending institution.

19. Upon information and belief, Seterus does not originate mortgage loans and only becomes involved with a consumer by acquiring the servicing rights to a portfolio of loans from Fannie Mae or from another mortgage loan servicer with Fannie Mae's consent.

20. Upon information and belief, Seterus services \$24 billion in mortgages and subservices an additional \$24 billion in mortgages for more than 300,000 customers.

21. Upon information and belief, Seterus generated over \$200 million in revenue in 2018.

22. Upon information and belief, Seterus' specialty is servicing distressed residential mortgage loans that are in default or at an increased risk of default at the time it acquires the servicing rights.

23. Upon information and belief, at least three percent (3%) of Seterus' loans reach maturity, are foreclosed upon, or are service transferred each year.

24. Upon information and belief, Seterus acquires servicing rights from Fannie Mae to collect payments, fees, and other amounts owed by consumers on defaulted or high risk loans and provides related "services" to investors.

25. Upon information and belief, Seterus earns money based upon a percentage of the funds it collects from consumers' mortgage payments as well as through the assessment of late fees and other penalties.

26. Upon information and belief, when Seterus acquires the servicing rights to a particular loan portfolio a substantial number, if not all, of the loans contained in that portfolio are delinquent and/or at an increased risk of becoming delinquent.

27. Upon information and belief a high percentage of the residential mortgage loans serviced by Seterus experience one or more payment delinquencies of 45 days or more.

28. Seterus' employees, affiliates, directors, agents, and attorneys act under the direction and supervision of Seterus and, therefore, Seterus is responsible and/or vicariously liable for the actions of its employees, affiliates, directors, agents, and attorneys under, *inter alia*, the theory of *respondeat superior*.

FACTUAL ALLEGATIONS

29. Plaintiff is the owner and resident of a home located at 104 N. Cary Street, LaGrange, Georgia, 30241 ("Home").

30. Plaintiff's Home is secured by a mortgage owned, backed, or controlled by Federal National Mortgage Association ("Fannie Mae") and serviced by Seterus.

31. Upon information and belief, Plaintiff's mortgage is governed by promissory note, ("the Note") which defines default as failure to pay the full amount of each monthly payment on the date it is due.

32. Upon information and belief, Plaintiff's mortgage was transferred to Seterus while in a state of default.

33. Upon information and belief, Plaintiff's loan was in a state of default at the time that Seterus acquired servicing rights thereto.

34. During the course of Seterus' servicing of Plaintiff's loan, Seterus occasionally alleged that his loan became more than 45 days delinquent under the terms of the Note.

35. Upon information and belief, Seterus sends a form letter that it refers to as a "Georgia Final Letter" to consumers that become more than 45 days delinquent in an effort to coerce and intimidate consumers into paying the entire default amount of the loan.

36. A true and correct copy of a Georgia Final Letter sent to and received by Plaintiff is attached as **Exhibit A**.¹

37. Each Georgia Final Letter specifically states:

“If full payment of the default amount is not received by us . . . on or before [the Expiration Date], *we will accelerate* the maturity date of your loan and upon such acceleration the ENTIRE balance of the loan, including principal, accrued interest, and all other sums due thereunder, shall, at once and without further notice, become immediately due and payable.” (emphasis added).

38. The Georgia Final Letters create a false sense of urgency by threatening to accelerate the entire indebtedness of a consumer’s loan if “full payment of the default amount is not received . . . on or before the Expiration Date,” when Seterus’ actual policy, attested to by a Rule 30(b)(6) Deponent, is to never accelerate a loan that is less than 45 days delinquent.

39. The following is a relevant portion of Seterus’ deposition in a similar case²:

¹ This exhibit is a non-exclusive example of the Georgia Final Letters sent to Plaintiff.

² See **Exhibit B** (a true and accurate copy of pages 177-180 of Seterus’ 30(b)(6) deposition) and **Exhibit C** (a true and accurate copy of the corresponding Notice of Deposition to Seterus, Inc.).

Q. My understanding of your testimony just now is that if Seterus receives a payment in response to an NC Final,³ then the debt is no longer 45 days due and so that's sufficient to hold off the acceleration process?

A. That's correct.

Q. Okay. And is that -- is that Seterus' policy just with regard to North Carolina?

A. That's Seterus' policy for the loans where we are accepting payments and we're able to apply full contractual payment to the loan.

Q. Okay. So in response to a letter like Exhibit 11,⁴ Seterus' policy, if they're accepting payments, is if they receive an amount equal to a normal monthly payment, they will not accelerate the debt?

A. As long as, right, it brings the loan less than 45 days due.

Q. Okay. Where does it say that in this letter that if you make one payment or enough such that one payment is recorded, we won't do this, or does it say that?

³ This excerpt is of a deposition taken in North Carolina regarding a NC Final Letter; however, the NC Final Letter at issue in this deposition excerpt is substantially similar to the Georgia Final Letters discussed in this Complaint and the legal issues are virtually identical.

⁴ Exhibit 11 (a true and accurate copy of which is attached hereto as **Exhibit D**) was a NC Final Letter substantially similar to the Georgia Final Letter attached as **Exhibit A**.

A. Well, the expiration date provides really the -- the timeline where the customer needs to make some sort of payment so that the 45 days are not past due.

Q. Not some sort of payment, \$3,204.72, that's what it says, right?

A. Yes. And we're allowing the customer, we're also -- yes. We would like the \$3,204.72. But our objective is not to foreclose on our customers. Our objective is to be able to take -- even if it's a partial payment, if where -- if they're in the bucket where a partial payment can be made, our objective is to collect that payment to help them stay in their house. Because them making payments, staying in their house helps us in our business as well. Foreclosing on them is really not, you know, helpful to us nor to them.

Q. Yeah.

A. And so therefore, this letter is sent out per the guidelines that are outlined and we allow the customer -- we allow the customer to make that partial payment. And then when a full -- if a partial payment does not equal the contractual payment, then your -- then this letter still -- still stands. But because a contractual payment is able to be applied to the loan account, then we don't have to continue with the -- this letter.

[Seterus Dep. at pp. 177:11-180:10]

40. Upon information and belief, Seterus will not accelerate consumers' loans and proceed to foreclosure even if the consumer fails to make a payment

equal to the default amount listed in any Georgia Final Letter and fails to make any payments that come due during the notice period.

41. Put simply, Seterus does not accelerate loans in the manner threatened by its Georgia Final Letters in the usual course of its business.

42. The Georgia Final Letters misrepresent the conditions under which Seterus intends to accelerate loans and materially deceives consumers, including Plaintiff, into believing their loans will be accelerated if they fail to fully cure their default prior to the specified Expiration Date.

43. The Georgia Final Letters misrepresent Seterus' intentions and present consumers, including Plaintiff, with a false ultimatum that they satisfy all arrearages within the false deadline identified in the Georgia Final Letter, or face acceleration and ultimately foreclosure.

44. The Georgia Final Letters are materially misleading in that they threaten consumers, including Plaintiff, with acceleration and foreclosure when Seterus has neither the present intent, nor the present ability, to undertake such actions.

45. The Georgia Final Letters cause consumers, including Plaintiff, to believe that they will lose their homes if all arrearages to Seterus are not paid within the time period identified in each particular Letter.

46. The Georgia Final Letters cause consumers, including Plaintiff, to believe that they will face acceleration and/or lose their homes if they do not become current on their loan within the time period identified in each particular Georgia Final Letter.

47. The false threats of acceleration and foreclosure contained within the Georgia Final Letters are used by Seterus to scare and intimidate consumers as a means of collecting debt.

48. The false threats of acceleration and foreclosure contained within the Georgia Final Letters have the potential of causing individuals, including Plaintiff, to send additional money to Seterus that, absent the false and misleading statements, could have been allocated to other necessary expenditures, including food and utility payments.

49. The false threats of acceleration and foreclosure are designed to scare consumers into making payments they otherwise may not have made absent Seterus' misrepresentations.

50. Seterus understands the frightening and unnerving nature of the misrepresentations utilized in its Georgia Final Letters.

51. Upon information and belief, the form Georgia Final Letter was purposefully crafted in such a way to frighten and intimidate consumers into paying money to Seterus.

52. Accordingly, the Georgia Final Letters threaten action not actually intended to be taken by Seterus in the ordinary course of business and constitute unfair threats, coercion, or attempts to coerce payments from consumers in violation of the FDCPA, the Georgia Unlawful Trade Practices Act, and the Georgia Unfair and Deceptive Trade Practices Act.

53. Upon information and belief, Seterus uses the identical language set forth above and in **Exhibit A** in all of its Georgia Final Letters that are sent to borrowers who are alleged to be 45 days or more in default.

54. By definition, each class member has received one or more Georgia Final Letters.

55. Each Georgia Final Letter constitutes a separate violation of the FDCPA, the Georgia Unlawful Trade Practices Act, and the Georgia Unfair and Deceptive Trade Practices Act, in that, *inter alia*, each Georgia Final Letter misrepresents Seterus' intentions by threatening to take action not taken in the ordinary course of business nor intended to be taken in the particular instance.

56. Each Georgia Final Letter creates a false sense of urgency designed to unfairly coerce payments from consumers in that the letters indicate an intent to accelerate indebtedness if the arrearages are not cured by the deadline set forth in the Georgia Final Letters; however, pursuant to Defendant's actual corporate policy discussed *supra*, Seterus does not actually intend to follow through with its false ultimatum so long as consumers partially satisfy their arrearage.

57. On information and belief, Seterus' use of false representations in the Georgia Final Letter are willful and intentional in that, *inter alia*, Seterus has been on notice that the misrepresentations are actionable under the FDCPA since, at the latest, November 21, 2016 when its Motion for Summary Judgment was denied in *Hager v. Seterus, Inc.*, Case No. 1:15-cv-222 (W.D.N.C.) and has failed to take remedial action.

58. Additionally, Seterus has been on notice that the misrepresentations are actionable under the FDCPA since its Motion to Dismiss was denied in *Koepplinger v. Seterus, Inc.*, 2018 U.S. Dist. LEXIS 144270 * 13-18 (M.D.N.C., Sept. 14, 2018).

59. As a result of the forgoing, Plaintiff and all putative class members have been subjected to false and deceptive debt collection attempts that created a false sense of urgency and deprived him of accurate information that would have

been important to him in deciding how to respond to Seterus' attempts to collect the alleged debt.

60. In addition, the misrepresentations and false sense of urgency connoted by the Georgia Final Letter caused Plaintiff and the Class Members anxiety in that the letters created false impressions in Plaintiff's minds that the risk of acceleration and foreclosure was greater and more immediate than it actually was; and otherwise impeded their ability to make reasoned decisions.

61. Due to Seterus' actions, Plaintiff and Class Members suffered informational injury in that they were not provided accurate information regarding their debt that would have been important to them in deciding how to respond to the debt collection attempts.

62. Due to Seterus' actions, Plaintiff and Class Members were subjected to harms and/or material risks of harm, such as, for example, forfeiting substantive rights or being exposed to financial risk that otherwise may have been avoided had Seterus provided the proper information in the Georgia Final Letters.

63. Due to Seterus' actions, Plaintiff and Class Members were subjected harms and/or material risks of harm, such as, for example, suffering emotional distress resulting from the false sense of urgency created by Seterus'

misrepresentations regarding the circumstances under which it intends to accelerate and ultimately foreclose upon mortgages.

64. As a direct and proximate result of the foregoing, specifically including the false, misleading, and overbroad threats to accelerate his note and to commence foreclosure proceedings included in the Georgia Final Letters, Plaintiff not only suffered the harm and/or increased risks of harm described above, but suffered additional actual harms including, among other things, (a) deprivation of accurate information that would have been important to him in making informed decisions in response to Seterus' collection attempts (e.g., truthful information about the circumstances under which Seterus' intended to accelerate their loan and the actions necessary to avoid acceleration), (b) causing him to perceive the risk of acceleration and foreclosure to be greater and more imminent than it actually was which naturally gave rise to anxiety, and (c) subjecting him to unfair and abusive threats and coercion in violation of their substantive rights under, *inter alia*, the FDCPA (e.g., false ultimatums and coercive threats to accelerate and foreclose upon his home under terms and conditions that were inconsistent with Seterus' actual intentions).

CLASS ALLEGATIONS

65. Pursuant to Federal Rules of Civil Procedure 23, Plaintiff brings this action on behalf of a Class(es) defined as follows:

All residential mortgagors who reside in this district to whom Seterus sent a letter substantially similar to the Georgia Final Letter attached as **Exhibit A** to this Class Action Complaint, in that the letter warned of immediate acceleration of the home loan and/or commencement of foreclosure proceedings upon less than full payment of the “amount due” or “default amount,” dated within the statute of limitations.

Excluded from the Class are officers, directors, and managers of Seterus; the Court; and staff of the judicial officer(s) assigned to this action.

66. The Class as defined above shall be for a period commencing two years before the filing of this Class Action Complaint and ending on the last day of trial or, in the event of a class settlement, ending on the date of entry of an order preliminary approving such class settlement, whichever is later (the “Class Period”).

FDCPA Subclass

67. Pursuant to Federal Rule of Civil Procedure 23(c)(5), Plaintiff seeks certification of a subclass for the FDCPA claim (the “FDCPA Subclass” or “Subclass”), as follows:

All residential mortgagors who reside in this district whose mortgage servicing was transferred to Seterus while in a state of default, to whom Seterus sent a letter substantially similar to the Georgia Final Letter attached as Exhibit A to this Class Action Complaint, in that the letter warned of immediate acceleration of the loan and/or commencement of foreclosure proceedings, upon less than full payment of the “amount due” or “default amount,” dated within one year preceding the date of filing of this Class Action Complaint.

Excluded from the Class are officers, directors, and managers of Seterus; the Court; and staff of the judicial officer(s) assigned to this action.

68. The FDCPA Subclass shall be for a period commencing one year preceding the filing of this Class Action Complaint and ending on the last day of trial or, in the event of a class settlement, ending on the date of entry of an order preliminary approving such class settlement, whichever is later (the “Subclass Period”)

69. *Numerosity*: Upon information and belief, the Class and the Subclass each contain several thousand members, based upon an analysis of the volume of Seterus’ mortgage default servicing activity nationwide and in Georgia.

70. The size of the Class and of the Subclass are each so numerous that joinder of all members would be impracticable.

71. *Commonality*: Several common questions of law or fact pertaining to claims of the Class and of the Subclass are presented in this action, including without limitation:

- Were Seterus' communications seeking to collect amounts it claimed were in default on home mortgages a form of "debt collection" under the FDCPA?
- Is Seterus a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6), when it communicates with homeowners whose mortgage servicing rights it acquired after default?
- What were Seterus' policies and practices concerning acceleration of defaulted loans upon receipt of a partial payment?
- What were Seterus' policies and practices concerning the commencement of foreclosure proceedings against homeowners who made a partial payment of the "amount due" or "default amount" as described in Seterus' Georgia Final Letter?
- Does the Georgia Final Letter violate the FDCPA in one or more of the ways alleged? and

- o Does the Georgia Final Letter violate the Georgia Unlawful Trade Practices Act or the Georgia Unfair and Deceptive Trade Practices Act.in one or more of the ways alleged?

72. *Typicality*: The claims of Plaintiff are typical of the claims of the Class and the Subclass and all are based on the same facts and legal theories, as all such claims arise out of the complained-of Seterus' conduct.

73. *Adequate Representation*: Plaintiff is an adequate representatives of the Class and the Subclass in that she is members of each and do not have antagonistic or conflicting claims with other Class and Subclass members.

74. Plaintiff has also retained counsel experienced in the prosecution of complex class actions.

75. Neither Plaintiff nor her counsel have any interests that might cause them not to vigorously pursue this action.

76. Plaintiff is aware of her responsibilities as class representatives and has accepted such responsibilities.

77. *Injunctive or Declaratory Relief*. The grant of injunctive or declaratory relief is appropriate under Federal Rule of Civil Procedure 23(b)(2) because Seterus has acted and continues to act in violation of federal and state debt

collection law with respect to all Georgia homeowners whose mortgages it services.

78. Seterus has acted and refused to act on grounds generally applicable to the Class making final injunctive and declaratory relief appropriate.

79. *Predominance*: Under Federal Rule of Civil Procedure 23(b)(3), the common questions of law and fact listed above, and others, predominate over any individual issues that may be presented.

80. Seterus has sought to and continues to attempt to collect amounts it claims are due under defaulted home loans in Georgia using form letters, and its policies and practices regarding partial payments were and are consistently applied to all homeowners.

81. *Superiority*: Under Federal Rule of Civil Procedure 23(b)(3), the Class and the Subclass are appropriate for certification because a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

82. Actual tangible damages are unlikely based upon the violations alleged, and the statutory damages sought on behalf of Class members are small, such that individual Class members could not economically pursue individual actions.

83. Absent a class, Class members would be unlikely to receive any recovery.

84. Accordingly, individual Class members do not have an interest in controlling the prosecution of separate actions.

85. Plaintiff's counsel anticipate no undue difficulties in the management of this action on a class basis.

86. Alternatively, absent a class courts throughout Georgia may be confronted with a multiplicity of lawsuits, which would unnecessarily burden the courts while also creating the risk of inconsistent rulings and contradictory judgments.

FIRST CAUSE OF ACTION
(Violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*)

87. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

88. Seterus is a "debt collector," as defined by the FDCPA, 15 U.S.C. § 1692(a)(6), because Seterus obtained the servicing rights to Plaintiff's mortgage while in a state of default.

89. Plaintiff and all members of the Subclass are "consumers," as defined by the FDCPA, 15 U.S.C. § 1692(a)(3), since they are natural persons allegedly obligated to pay a consumer debt.

90. At all material times, Plaintiff's debt and the debts of the Subclass members were "debt," as defined by the FDCPA, 15 U.S.C. § 1692(a)(5).

91. Dunning letters such as the Georgia Final Letter attached as **Exhibit A** hereto are to be evaluated by the objective "least sophisticated consumer" standard.

92. FDCPA 15 U.S.C. § 1692(e) states in part:

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

...

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

...

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

93. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(e), in that it used false representations and deceptive means to collect or attempt to collect the Debt; threatened action it did not intend to take; and/or threatened to take action that it could not legally take.

94. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(e), in that it utilized false threats and misleading representations regarding the amounts that consumers must pay, and when they must pay it, in order to continue to own their homes.

95. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(e) in that it falsely represented its intention to accelerate and foreclose on Plaintiff's home in an effort to induce the payment of additional funds.

96. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(e), in that it misrepresented its intentions and presented Plaintiff and other consumers with a false ultimatum that they must pay all arrearages within the false deadline identified in the Georgia Final Letters, or face immediate acceleration and initiation of foreclosure proceedings.

97. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(e), in that it has threatened to take action, including acceleration and

foreclosure, when it had no intention of taking such measures under the terms threatened in its Georgia Final Letter.

98. Seterus' violations of 15 U.S.C. § 1692(e) were material, *inter alia*, because the Georgia Final Letter misled consumers about information necessary to permit them to determine their best course of conduct; created a substantial risk of causing homeowners to make less than optimal decisions in managing their finances; and increased and foreseeably increased the anxiety of homeowners regarding the risk of immediate acceleration or commencement of foreclosure proceedings.

99. Moreover, Congress has expressly determined that Seterus' violations are material by specifically designating that threats to take actions that the debt collector does not intend to take are an unfair collection practice and a violation of the FDCPA.

100. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(e) by using false representations and deceptive means, including false threats of acceleration and commencement of foreclosure proceedings, and the Georgia Final Letters are therefore illegal.

101. Under 15 U.S.C. § 1692(e), Plaintiff and Class Members have a statutory right to be free from abusive debt-collection practices and Plaintiff and

Class Members suffered concrete and particularized injury when Seterus violated that right. Indeed, Seterus violated Plaintiff and Class Members' substantive rights under the FDCPA through its conduct, including the false, misleading, and/or deceptive communications regarding Plaintiff and Class Members' respective debts.

102. FDCPA § 1692(f) states in pertinent part that "a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt."

103. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(f) in that it unfairly utilized false threats and misleading representations regarding the amounts that consumers must pay, and when they must pay it, in order to continue to own their homes.

104. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(f) in that it falsely represented its intention to accelerate and foreclose on Plaintiff's home in an effort to induce the payment of additional funds.

105. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(f), in that it misrepresented its intentions and presented Plaintiff and other consumers with a false ultimatum that they must satisfy all arrearages within the false deadline identified in the Georgia Final Letters, or face acceleration and ultimately foreclosure.

106. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(f), in that it has threatened to take action, including acceleration and foreclosure, when it had no intention of taking such measures.

107. Seterus has attempted to collect debt in violation of 15 U.S.C. § 1692(f) by using unfair and unconscionable means, including false threats of acceleration and foreclosure.

108. The FDCPA is meant to protect consumers from harmful or abusive debt-collection practices, such as Seterus' practices described herein. Seterus' use of such practices connection with Plaintiff and Class Members' debt constitute a concrete injury.

109. As a direct result of Seterus' actions, Plaintiff and Class Members suffered injury and were subjected to harms and/or material risks of harm.

110. As a result of Seterus' unlawful attempts to collect debt, Plaintiff and the FDCPA Subclass Members are entitled to statutory damages, as well as their reasonable attorneys' fees.

SECOND CAUSE OF ACTION
(Violations of the Georgia Fair Business Practices Act, O.C.G.A. § 10-1-391, *et seq.*)

111. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

112. The debt that Seterus has collected or attempted to collect from Plaintiff and the Class arose from “consumer transactions” as defined by the (FBPA), O.C.G.A. § 10-1-392(a)(10) in that the “debt” arose from a transaction involving the “sale, purchase, lease, or rental of goods, services or property, real or personal, primarily for personal, family, or household purposes.”

113. Seterus’ actions violated the FBPA by, among other things: Threatening to enforce a right or remedy while knowing or having reason to know that the right or remedy does not exist and/or by threatening to take action that the debt collector in the regular course of business does not take in violation of O.C.G.A. § 10-1-393(a).

114. Seterus has attempted to collect debt in violation of the FBPA from Plaintiff and the Georgia Class in that, *inter alia*, it has falsely represented that failure to immediately and completely satisfy all arrearages would result in acceleration of their loan in contravention of Seterus’ specific intentions and ordinary practices.

115. Seterus has attempted to collect debt in violation of the FBPA in that it used false representations and deceptive means to collect or attempt to collect the Debt; threatened action it did not intend to take; and/or threatened to take action that it could not legally take.

116. Seterus has attempted to collect debt in violation of FBPA, in that it utilized false threats and misleading representations regarding the amount that consumers must pay, and when they must pay it, for the purpose of coercing additional payments.

117. Seterus has attempted to collect debt in violation of FBPA, in that it falsely represented its intention to accelerate and foreclose on Plaintiff's home in an effort to induce the payment of additional funds.

118. Seterus has attempted to collect debt in violation of FBPA, in that it misrepresented its intentions and presented Plaintiff and other consumers with a false ultimatum that they must satisfy all arrearages within the false deadline identified in the Georgia Final Letters, or face acceleration and ultimately foreclosure.

119. Seterus has attempted to collect debt in violation of FBPA, in that it has threatened to take action, including acceleration and foreclosure, when it had no intention of taking such measures under the terms stated in the Georgia Final Letters.

120. Seterus has attempted to collect debt in violation of FBPA, in that it has threatened to take action, including acceleration and foreclosure, when such actions are not taken in the usual course of business.

121. Seterus has attempted to collect debt in violation of FBPA by using unfair threats and coercion, including false threats of acceleration and foreclosure.

122. Seterus has attempted to collect debt in violation of FBPA in that it unfairly utilized false threats and misleading representations regarding the amounts that consumers must pay, and when they must pay it, in order to continue to own their homes.

123. Seterus has attempted to collect debt in violation of FBPA in that it falsely represented its intention to accelerate and foreclose on Plaintiff's home in an effort to induce the payment of additional funds.

124. Seterus has attempted to collect debt in violation of the FBPA, in that it misrepresented its intentions and presented Plaintiff and other consumers with a false ultimatum that they must satisfy all arrearages within the false deadline identified in the Georgia Final Letters, or face acceleration and ultimately foreclosure.

125. Seterus has attempted to collect debt in violation of the FBPA, in that it has threatened to take action, including acceleration and foreclosure, when it had no intention of taking such measures.

126. Seterus has attempted to collect debt in violation of the FBPA by using unfair and unconscionable means, including false threats of acceleration and foreclosure.

127. Accordingly, the acts and practices complained of herein constitute unfair business practices because these acts and practices are patently unfair, substantially injurious to the general public, and offensive to public policy.

128. Plaintiff is entitled under the FBPA to enjoin these acts and practices by Seterus.

129. As a result of the foregoing, Plaintiff and the Georgia Class are entitled to compensatory and statutory damages, injunctive relief, as well as their reasonable attorneys' fees and costs.

130. Plaintiff is entitled under the FBPA to enjoin these acts and practices by Seterus.

131. Pursuant to the FBPA, Plaintiff, individually and on behalf of all members of the general public has been, or may be, subjected to Seterus' unlawful and fraudulent business acts and practices are entitled to declaratory and preliminary and permanent injunctive relief prohibiting such practices in the future, and other orders as may be necessary to restore to any person in interest, any

money or property, real or personal, which Seterus acquired by means of such unlawful, unfair and fraudulent business practices.

132. All conditions precedent for this claim have been met.

133. Seterus has been on notice of the false and deceptive nature of the Georgia Final Letter since approximately November 21, 2016 when its motion for summary judgment was denied in the *Hager* matter.

134. Further, Plaintiff complied with all conditions precedent for this claim because, upon information and belief, Seterus does not own any assets or have a physical presence in the State of Georgia.

135. In addition, Plaintiff and the Class are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

133. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

134. In the Georgia Final Letters, Seterus made representations to Plaintiff, Class members as set forth in this complaint.

135. Those representations were false.

136. When Seterus made the representations, it knew they were untrue or it had a reckless disregard for whether they were true, or it should have known they were untrue.

137. Seterus knew that Plaintiff, class members, were relying on the representations.

138. In reliance upon the representations, Plaintiff and class members used their funds to pay the entire balance when they could have made a partial payment and used their funds on other necessary living expenses.

139. As a direct and proximate result of Seterus' negligent misrepresentations, Plaintiff and Class members have been damaged as set forth in this complaint.

140. As a direct and proximate result of the foregoing, Plaintiff and the class members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, including punitive damages, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all others similarly situated pray the Court for judgment as set forth below:

1. Certifying this action as a class action as provided by Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, appointing Plaintiff as class representatives, and appointing the undersigned as Class counsel;
2. Declaring that Seterus has violated the FDCPA and the Georgia Fair Business Practices Act in the ways alleged in this Class Action Complaint;
3. Enjoining further violations of these statutes by Seterus and its agents and employees;
4. Awarding Plaintiff and the Class statutory damages for all causes of action, including statutory damages;
5. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs incurred;
6. Ordering that the costs of this action be taxed to Seterus; and,
7. Providing such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 1st day of March, 2019.

/s/ Harper T. Segui

Harper T. Segui

Georgia Bar No.: 09654

Scott C. Harris (to be admitted pro hac vice)

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Fax: 919-882-8763

emaginnis@maginnislaw.com

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

BRIDGET LEAK, on behalf of herself and others similarly situated

(b) County of Residence of First Listed Plaintiff TROUP

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

WHITFIELD BRYSON & MASON LLP

900 W. Morgan St., Raleigh, NC 27603. (919) 600-5000

DEFENDANTS

SETERUS, 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" 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 checked="" 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)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <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 - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Sec 1692

Brief description of cause:

Fair Debt Collection Practice Act and Unfair Trade Practices Against Debt Collector**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

03/01/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Harper T. Segui

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 in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

Northern District of Georgia

Civil Action No.

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: [Seterus Allegedly Misrepresented the Potential Acceleration of Consumers' Mortgage Loans](#)
