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JONATHAN A. STIEGLITZ, ESQ.
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THE LAW OFFICES OF
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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: '18CV2140 WQHJMA

THOMAS McFARLAND
individually and on behalf of all
others similarly situated;

Plaintiff,

-against-

MIDLAND CREDIT
MANAGEMENT, INC.,
MIDLAND FUNDING, LLC,
AND John Does 1-25.

Defendant(s).

COMPLAINT for violations of the Fair
Debt Collection Practices Act, 15 U.S.C.
§ 1692 *et seq.*

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Thomas McFarland (hereinafter, "Plaintiff"), brings this Class
Action Complaint by and through his attorneys, against Defendant Midland Credit
Management, Inc. (hereinafter "Defendant MCM") and Defendant Midland
Funding, LLC (hereinafter "Defendant Midland Funding") 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,

1 except for allegations specifically pertaining to Plaintiff, which are based upon
2 Plaintiff's personal knowledge.
3

4
5 **JURISDICTION AND VENUE**

6 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C.
7 § 1331, as well as 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. The Court
8 also has pendant jurisdiction over the State law claims in this action pursuant
9 to 28 U.S.C. § 1367(a).
10

11 2. Venue is proper in this judicial district pursuant to 28 U.S.C.
12 § 1391(b)(2), as this is where a substantial part of the events or omissions
13 giving rise to the claim occurred.
14

15 3. Plaintiff brings this action for damages and declaratory and injunctive
16 relief arising from the Defendant's violations of 15 U.S.C. § 1692 *et seq.*,
17 commonly known as the Fair Debt Collections Practices Act ("FDCPA").
18
19

20
21 **PARTIES**

22 4. Plaintiff is a resident of the State of Washington, residing in the at
23 1011B E 30th Street, Tacoma, WA, 98404.
24
25
26
27
28

1 5. Defendant Midland Funding is a "debt collector" as the phrase is defined in
2 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 3111
3 Camino Del Rio N Ste 103, San Diego, CA, 92108.
4

5 6. Defendant Midland Credit Management is a "debt collector" as the phrase is
6 defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at
7 3111 Camino Del Rio N Ste 103, San Diego, CA, 92108.
8

9 7. Upon information and belief, Defendants MCM and Midland Funding are
10 companies that use the mail, telephone, and facsimile and regularly engage in
11 business the principal purpose of which is to attempt to collect debts alleged
12 to be due another.
13

14 8. John Does 1-25, are fictitious names of individuals and businesses alleged for
15 the purpose of substituting names of Defendants whose identities will be
16 disclosed in discovery and should be made parties to this action.
17
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21 **CLASS ALLEGATIONS**

22 9. Plaintiff brings this claim on behalf of the following case, pursuant to Fed. R.
23 Civ. P. 23(a) and 23(b)(3).
24

25 10. The Class consists of:

26 a. all individuals with addresses in the State of Washington;
27
28

- b. to whom Defendant MCM sent a collection letter attempting to collect a consumer debt on behalf of Midland Funding LLC;
- c. whose letter states that the Defendants will not sue the consumer;
- d. without clearly stating that the consumer could no longer be sued by any party;
- e. and further the letter fails to disclose that the previously-lapsed statute of limitations to file a lawsuit to collect the debt may re-start upon payment;
- f. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

11. 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.

12. Excluded from the Plaintiff Classes are the Defendants and all officer, 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.

13. 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

1 communications to consumers, in the forms attached as Exhibits A, violate
2 15 U.S.C. §§ 1692e.

3
4 14. The Plaintiffs' claims are typical of the class members, as all are based upon
5 the same facts and legal theories. The Plaintiffs will fairly and adequately
6 protect the interests of the Plaintiff Classes defined in this complaint. The
7 Plaintiffs have retained counsel with experience in handling consumer
8 lawsuits, complex legal issues, and class actions, and neither the Plaintiffs
9 nor their attorneys have any interests, which might cause them not to
10 vigorously pursue this action.
11

12
13 15. This action has been brought, and may properly be maintained, as a class
14 action pursuant to the provisions of Rule 23 of the Federal Rules of Civil
15 Procedure because there is a well-defined community interest in the
16 litigation:
17

18 a. Numerosity: The Plaintiffs are informed and believe, and on that
19 basis allege, that the Plaintiff Classes defined above are so
20 numerous that joinder of all members would be impractical.
21

22 b. Common Questions Predominate: Common questions of law and
23 fact exist as to all members of the Plaintiff Classes and those
24 questions predominate over any questions or issues involving
25 only individual class members. The principal issue is whether the
26
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1 Defendants' written communications to consumers, in the forms
2 attached as Exhibit A violate 15 USC §1692e.

3
4 c. Typicality: The Plaintiffs' claims are typical of the claims of the
5 class members. The Plaintiffs and all members of the Plaintiff
6 Classes have claims arising out of the Defendants' common
7 uniform course of conduct complained of herein.

8
9 d. Adequacy: The Plaintiffs will fairly and adequately protect the
10 interests of the class members insofar as Plaintiffs have no interests
11 that are adverse to the absent class members. The Plaintiffs are
12 committed to vigorously litigating this matter. Plaintiffs have also
13 retained counsel experienced in handling consumer lawsuits,
14 complex legal issues, and class actions. Neither the Plaintiffs nor
15 their counsel have any interests which might cause them not to
16 vigorously pursue the instant class action lawsuit.

17
18 e. Superiority: A class action is superior to the other available means
19 for the fair and efficient adjudication of this controversy because
20 individual joinder of all members would be impracticable. Class
21 action treatment will permit a large number of similarly situated
22 persons to prosecute their common claims in a single forum
23 efficiently and without unnecessary duplication of effort and
24 expense that individual actions would engender.
25
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1 16.Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil
2 Procedure is also appropriate in that the questions of law and fact common to
3 members of the Plaintiff Classes predominate over any questions affecting an
4 individual member, and a class action is superior to other available methods
5 for the fair and efficient adjudication of the controversy.
6
7

8 17.Depending on the outcome of further investigation and discovery, Plaintiffs
9 may, at the time of class certification motion, seek to certify a class(es) only
10 as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).
11

12 **FACTUAL ALLEGATIONS**

13 *Violation – September 13, 2017 Collection Letter*

14
15
16 18.Plaintiff repeats, reiterates and incorporates the allegations contained in
17 paragraphs numbered above herein with the same force and effect as if the
18 same were set forth at length herein.
19

20 19.Some time prior to September 13, 2017, an obligation was allegedly incurred
21 to Webbank by the Plaintiff.
22

23 20.The Webbank account was used primarily for personal, family or household
24 purposes.
25

26 21.The alleged Webbank account is a "debt" as defined by 15 U.S.C.§ 1692a(5).
27
28

1 22. Webbank, or a subsequent owner of the obligation, sold the debt to
2 Defendant Midland Funding LLC who contracted the Defendant Midland
3 Credit Management to collect the alleged debt.
4

5
6
7 **September 13, 2017 Collection Letter**

8 23. On or about September 13, 2017, Defendant MCM sent the Plaintiff a
9 collection letter (the “Letter”) regarding the alleged debt owed. See Exhibit
10 A.
11

12 24. The very bottom of the collection letter states in part:

13
14 “The law limits how long you can be sued on a debt...
15 Due to the age of this debt, we will not sue you for it..”

16 25. The debt is time-barred, meaning that no party ever can sue the Plaintiff.

17 26. The debt is time-barred meaning that Defendants’ cannot sue Plaintiff.

18 27. The Letter implies that the Defendants’ have chosen not sue, instead of the
19 true statement that neither Defendant nor any subsequent creditors can file a
20 lawsuit.
21

22 28. The statement contained in Defendants’ Letter is materially deceptive to the
23 unsophisticated consumer, who would believe that the Defendant can change
24 their mind and sue.
25

26 29. More importantly the letter is silent to that fact no subsequent creditor or
27 collector can file a lawsuit.
28

1 30. Furthermore, the Collection Letter is materially deceptive as it fails to
2 disclose that the previously lapsed statute of limitations to file a lawsuit may
3 recommence through certain actions such as a payment by Plaintiff.
4

5 31. This statement is necessary especially when the letter contains a settlement
6 offer as does this letter in question here.
7

8 32. These deceptive statements and material omissions by the Defendants are
9 harmful to the Plaintiff, since they fail to clearly state the legal status of the
10 debt and potential ramifications for paying or not paying.
11

12 33. As a result of Defendant's deceptive, misleading and unfair debt collection
13 practices, Plaintiff has been damaged.
14

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

18 34. Plaintiff repeats, reiterates and incorporates the allegations contained in
19 paragraphs above herein with the same force and effect as if the same were
20 set forth at length herein.
21

22 35. Defendant's debt collection efforts attempted and/or directed towards the
23 Plaintiff violated various provisions of the FDCPA, including but not limited
24 to 15 U.S.C. § 1692e.
25
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1 36.Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false,
2 deceptive, or misleading representation or means in connection with the
3 collection of any debt.
4

5 37.Defendants made deceptive and misleading representations when they
6 communicated to Plaintiff that the Defendant will sue Plaintiff and implying
7 that the they have chosen this remedy and any subsequent creditors would be
8 able to sue, when, in fact, it was not permitted to sue as a matter of law, in
9 violation of 15 U.S.C. §§1692e, 1692e(2) and 1692e(10).
10
11

12 38.Defendants statements were further misleading by failing to inform the
13 Plaintiff that and action such as a payment could restart the statute of
14 limitations for a lawsuit to occur, in violation of 15 U.S.C. §§1692e,
15 1692e(2) and 1692e(10).
16

17 39.By reason thereof, Defendant is liable to Plaintiff for judgment that
18 Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual
19 damages, statutory damages, costs and attorneys' fees.
20
21

22 **DEMAND FOR TRIAL BY JURY**

23 40.Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby
24 requests a trial by jury on all issues so triable.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Thomas McFarland, individually and on behalf of all others similarly situated, demands judgment from Defendant Midland Credit Management, Inc. and Defendant Midland Funding, LLC, as follows:

1. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Jonathan Stieglitz, Esq. as Class Counsel;
2. Awarding Plaintiff and the Class statutory damages;
3. Awarding Plaintiff and the Class actual damages;
4. Awarding Plaintiff costs of this Action, including reasonable attorneys’ fees and expenses;
5. Awarding pre-judgment interest and post-judgment interest; and
6. Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: September 13, 2018

THE LAW OFFICES OF
JONATHAN A. STIEGLITZ

By: /s/ Jonathan A Stieglitz
Jonathan A Stieglitz

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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
THOMAS MCFARLAND individually and on behalf of all others similarly situated;
(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
THE LAW OFFICES OF JONATHAN A. STIEGLITZ
11845 W. Olympic Blvd., Suite 800, Los Angeles, California 90064
(323) 979-2063 jonathan.a.stieglitz@gmail.com

DEFENDANTS
MIDLAND CREDIT MANAGEMENT, INC.,
MIDLAND FUNDING, LLC,
and John Does 1-25.
County of Residence of First Listed Defendant San Diego
(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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Debt Collection Practices Act 15 USC Sect. 1692 et seq
Brief description of cause:
Improper Collection Letter

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: X Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE DOCKET NUMBER

DATE 09/13/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Jonathan A Stieglitz

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. 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 – 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.


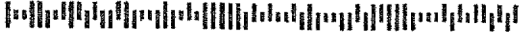
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

EXHIBIT A

Midland Credit Management, Inc. (MCM), is the debt collection company, which will be collecting on, and servicing your account.

09-13-2017

Thomas McFarland
1011B E 30th St
Tacoma, WA 98404-3204
P48T1701 001



Original Creditor	Webbank
Original Account Number	[REDACTED]
MGM Account Number	[REDACTED]
Current Balance	\$5,291.66
Current Owner	Midland Funding LLC
Discount	40% OFF

RE Webbank · Dell Financial Services L.L.C.

Dear Thomas McFarland,

CALL US TODAY! (800) 321-3809

AVAILABLE PAYMENT OPTIONS

Option 1	40% OFF
Option 2	20% OFF Over 12 Months
Option 3	Monthly Payments As Low As: \$50 per month Call today to discuss your options and get more details.

Benefits of Paying Your Debt

- Save \$2,116.66 if you pay by 10-13-2017 -
- Put this debt behind you -
- No more communication on this account -
- Peace of mind -

Hours of Operation
Sun-Th: 5am-9pm PT;
Fri-Sat: 5am-4:30pm PT;

Sincerely,
Tim Bolin
Tim Bolin, Division Manager

The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we may continue to report it to the credit reporting agencies as unpaid.

We are not obligated to renew any offers provided.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumer Claims MCM, Midland Funding Misrepresented Time-Barred Debt](#)
