

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | |
|--|---|
| LESLIE PAPIERSKI, |) |
| on behalf of plaintiff and the class members |) |
| described herein, |) |
| |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| SIMM ASSOCIATES, INC., |) |
| |) |
| Defendant. |) |

COMPLAINT – CLASS ACTION

INTRODUCTION

1. Plaintiff, Leslie Papierski, brings this action to secure redress from unlawful credit and collection practices engaged in by defendant Simm Associates, Inc. (“SAI”). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”) and Illinois state laws.

2. The FDCPA broadly prohibits unfair or unconscionable collection methods, conduct which harasses or abuses any debtor, and the use of any false or deceptive statements in connection with debt collection attempts. It also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

3. In enacting the FDCPA, Congress found that: “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. §1692(a).

4. Because of this, courts have held that “the FDCPA's legislative intent emphasizes the need to construe the statute broadly, so that we may protect consumers against debt collectors' harassing conduct.” and that “[t]his intent cannot be underestimated.” *Ramirez v. Apex Financial Management LLC*, 567 F.Supp.2d 1035, 1042 (N.D.Ill. 2008).

5. The FDCPA encourages consumers to act as "private attorneys general" to enforce the public policies and protect the civil rights expressed therein. *Crabill v. Trans Union, LLC*, 259 F.3d 662, 666 (7th Cir. 2001).

6. Plaintiff seeks to enforce those policies and civil rights which are expressed through the FDCPA, 15 U.S.C. §1692 *et seq.*

JURISDICTION AND VENUE

7. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331, 28 U.S.C. §1337 and 28 U.S.C. §1367.

8. Venue and personal jurisdiction in this District are proper because:

- a. Defendant's collection communications were received by plaintiff within this District;
- b. Defendant does or transacts business within this District.

PARTIES

9. Plaintiff is a resident of the Northern District of Illinois.

10. Defendant SAI is a Delaware corporation with principal offices at 800 Pencader Drive, Newark, DE 19702. It does business in Illinois. Its registered agent and office is CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

11. Defendant SAI operates a collection agency and holds a collection agency license from the state of Illinois.

12. Defendant has a web site on which it states: "SIMM Associates were established in 1991 as an accounts receivable management firm that has quickly grown into a highly respected and successful collection agency. Our team includes a staff of more than 200 employees and is ranked as one of the top 100 agencies in the United States. Our clients include organizations of all sizes ranging from Fortune 500 companies to smaller credit issuers in our local Delaware area." (<https://www.simmassociates.com/about-our-team-simm-associates/>)

13. Defendant uses the mails and interstate wire communications to collect consumer

debts allegedly owed to others.

14. Defendant is a debt collector as defined by the FDCPA.

FACTS

15. Defendant has been attempting to collect from plaintiff a high-interest Internet loan allegedly owed to “Maxlend.”

16. On or about February 7, 2018, defendant sent plaintiff the letter attached as Exhibit A to collect such debt.

17. Exhibit A demands payment and makes settlement offers.

18. “Maxlend” makes high-interest loans over the Internet at rates in excess of 450% and as high as 840%.

19. “Maxlend” does not possess and has never had a license from the Illinois Department of Financial and Professional Regulation or a state or federal banking or credit union charter, entitling it to make loans to Illinois residents at more than 9% interest.

20. “Maxlend” nevertheless advertises and makes loans to Illinois residents at rates greatly exceeding 9%.

21. Defendant SAI engages in a practice of attempting to collect high-interest loans (greatly in excess of 9%) obtained by Illinois residents over the Internet from unlicensed lenders, including but not limited to “Maxlend.”

22. The lenders sought out Illinois residents for such loans.

23. The lenders were never licensed to make loans by the Illinois Department of Financial and Professional Regulation (“IDFPR”).

24. The lenders did not have a bank or credit union charter that would authorize them to lend to Illinois residents at over 9%.

25. All loans made by Maxlend exceeded the 9% annual percentage rate which is the rate a non-bank lender is permitted by the Illinois Department of Financial and Professional Regulation to charge for a loan to an Illinois resident.

26. Under Illinois law, such loans are void and unenforceable. 205 ILCS 670/20(d); 815 ILCS 122/4-10(h).

27. All loans made by the lenders were made at more than 20% interest and violated the Illinois criminal usury statute, 720 ILCS 5/17-59 (formerly 720 ILCS 5/39-1 et seq).

28. Defendant SAI knew or recklessly disregarded the fact that the loans it was attempting to collect were unenforceable.

29. By demanding payment and offering a settlement, as it did in Exhibit A, SAI implied that the debt it sought to collect was legally enforceable.

30. Any inquiry into the legality of collecting 450%+ loans made to Illinois residents over the Internet would have disclosed to defendant that it was violating the law. There have been multiple proceedings against persons making or collecting high-interest loans over the Internet, by lenders not licensed to make loans in the states where the borrowers are located. *Consumer Financial Protection Bureau v. CashCall, Inc.*, 15cv7522, 2016 WL 4820635 (C.D. Cal. August 31, 2016); *CashCall, Inc. v. Maryland Comm'r of Fin. Regulation*, 139 A.3d 990, 995 n.12 (Md. 2016); *Colorado v. Western Sky Fin., L.L.C.*, 845 F. Supp. 2d 1178, 1181 (D. Colo. 2011); *Western Sky Financial, LLC v. State ex rel. Olens*, 300 Ga. 340, 793 S.E.2d 357 (2016).

31. In addition lawsuits listed above, the IDFPB has issued cease and desist orders to out of state unlicensed lenders for making loans to Illinois residents with 359.1% and 170% annual percentage rates. *See In re Onward Credit, LLC*, No. 16 CC119 (June 23, 2016) *Future Income Payment, LLC*, No. 18 CC 100 (February 16, 2018)¹. The lenders were ordered to ceased and desist from making and collecting on the loans made to Illinois consumers.

COUNT I – FDCPA – ILLEGAL LOANS

32. Plaintiff incorporates paragraphs 1-31.

¹ <https://www.idfpr.com/DFI/CCD/CCDDiscipline.asp>.

33. Defendant violated 15 U.S.C. §§1692e, 1692e(2), 1692e(5), 1692e(10), 1692f and 1692f(1) by attempting to collect illegal high-interest loans.

34. Section 1692e provides:

§ 1692e. False or misleading representations [Section 807 of P.L.]

A debt collector may not use any false, deceptive, or misleading representation 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: . . .

(2) The false representation of—

(A) the character, amount, or legal status of any debt; . . .

(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. . . .

35. Section 1692f provides:

§ 1692f. Unfair practices [Section 808 of P.L.]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. . . .

CLASS ALLEGATIONS

36. Plaintiff brings this claim on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3).

37. The class consists of (a) all individuals with Illinois addresses (b) from whom Simm Associates, Inc., sought to collect a loan made at more than 9% interest (c) by an entity which did not possess a bank or credit union charter and was not licensed by the Illinois Department of Financial and Professional Regulation (d) by communicating with the consumer

and/or credit reporting (e) where any such activity occurred on or after a date one year prior to the filing of this action.

38. The class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 class members.

39. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are whether defendants engage in a practice of attempting to collect illegal debts.

40. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

41. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

42. A class action is superior for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible;
- b. Members of the class are likely to be unaware of their rights; and
- c. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

- i. Statutory damages;
- ii. Actual damages including all amounts collected by defendant from members of the class;
- iii. Attorneys' fees, litigation expenses and costs of suit; and
- iv. Such other and further relief as the Court deems proper.

COUNT II - EQUITABLE RELIEF

43. Plaintiff incorporates paragraphs 1-31.

CLASS ALLEGATIONS

44. Plaintiff brings this claim on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(2) and (b)(3).

45. The class consists of (a) all individuals with Illinois addresses (b) from whom Simm Associates, Inc. has sought or will seek to collect a loan made at more than 9% interest (c) by an entity which did not possess a bank or credit union charter and was not licensed by the Illinois Department of Financial and Professional Regulation (d) by any means.

46. The class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 class members.

47. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are whether defendants engage in a practice of attempting to collect illegal debts.

48. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

49. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

50. The Defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate." Fed. R. Civ. P. 23(b)(2).

51. The class seeks:

- a. a declaration that Defendant is not entitled to collect on the loans at more than 9% interest made by an entity which did not possess a bank or credit union charter and was not licensed by the Illinois Department of Financial

and Professional Regulations,

- b. an injunction against such collection efforts, and
- c. restitution of all such amounts collected.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

- i. Declaratory relief;
- ii. Restitution of all amounts collected by defendant from members of the class;
- iii. Injunctive relief;
- iv. Costs of suit; and
- v. Such other and further relief as the Court deems proper.

s/Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Cathleen M. Combs
James O. Lattuner
David Kim
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 South Clark Street, Suite 1500
Chicago, IL 60603-1824
(312) 739-4200
(312) 419-0379 (FAX)
Email address for service: courtecl@edcombs.com

NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

s/Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

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EXHIBIT A

Department # 119823
PO Box 1259
Oaks PA 19456



SIMM ASSOCIATES, INC.

800 PENCADER DRIVE
NEWARK DE 19702
(302) 283-2800/(855) 427-8739



PAY ONLINE

www.simmassociates.com/Payments-on-your-account/

| | |
|------------------------------------|----------------------|
| SIMM Account No: [REDACTED] 193 | Balance: \$971.97 |
| Client: MAXLEND | |



126898 - 7108



007745

LESLIE PAPIERSKI



SIMM ASSOCIATES, INC.
P.O. BOX 7526
NEWARK DE 19714-7526



Detach Upper Portion And Return With Payment

February 07 2018

CLIENT: MAXLEND
ORIGINAL CREDITOR: MaxLend
BALANCE: \$971.97
ACCOUNT #: [REDACTED] 965
SIMM #: [REDACTED] 193

Dear Leslie Papierski,

Your account has been forwarded to this office for collections. This is a formal demand upon you for your payment of this debt; however our client, MAXLEND, has authorized us to accept a discounted payoff of your current outstanding balance.

We are presenting you with three options that will enable you to avoid further collection activity:

Option 1: Pay ONE PAYMENT of \$388.79 that must be received in this office on 03/29/2018.

Option 2: Pay TWO PAYMENTS of \$291.60 each that must be received in this office. Please contact our office at (855) 427-8739 or via email at CustomerService@simmassociates.com to select due dates or if you need more details specific to this offer.

Option 3: A monthly payment plan suited for your unique financial situation is available upon request.

We have no obligation to renew this offer.

By resolving this matter, you will make continued collection efforts unnecessary. Our demand for payment does not affect your right to dispute this debt.

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

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice, that you dispute the validity of this debt or any portion thereof, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Sincerely,
Jeffrey S. Simendinger
Simm Associates
(855) 427-8739

PLEASE: To ensure proper credit remit payment directly to our office only.
Remit to: SIMM Associates, Inc.
P.O. Box 7526 Newark, DE 19714-7526
Payments can be made via credit card or bankdraft at:
www.simmassociates.com/payments-on-your-account/

****PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION****
Opt-Out Notice (see back for details)



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| Money gram: Receive Code: 2800 City: Newark, DE | Overnight Mail: 800 Pencader Drive Newark DE 19702 | Western Union Quick Collect: Code City: SIMM State: DE |
| Pay-by-Internet www.simmassociates.com/Payments-on-your-account/ | Pay-by-Phone: TOLL FREE (855) 427-8739 | |

CALIFORNIA RESIDENTS:

AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTION ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS.

"The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act required that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov."

COLORADO RESIDENTS:

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.

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

Local Office: 1776 S Jackson St., #900
Denver, Colorado 80210
(720) 287-8654

MINNESOTA RESIDENTS:

This collection agency is licensed by the Minnesota Department of Commerce.

NEW YORK CITY RESIDENTS:

New York City Department of Consumer Affairs, license number 1135923.

NEW YORK RESIDENTS:

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

- Supplemental security income (SSI);
- Social security;
- Public assistance (welfare);
- Spousal support, maintenance (alimony) or child support;
- Unemployment benefits;
- Disability benefits;
- Workers' compensation benefits;
- Public or private pensions;
- Veterans' benefits;
- Federal student loans, federal student grants, and federal work study funds; and
- Ninety percent of your wages or salary earned in the last sixty days.

MASSACHUSETTS RESIDENTS:

Notice of important rights

You have the right to make a written or oral request that telephone calls regarding your debt not to be made to you at your place of employment. Any such oral request will be valid for only ten days unless you provide written confirmation of the request postmarked and delivered within seven days of such request. You may terminate this request by writing to the collection agency.

If you wish to discuss this matter, please call us direct, between the hours of 8:00 am and 5 pm EST, at the telephone number listed on the front of this notice. Local address: 49 Winter Street, Weymouth MA 02188. Office hours are: M-TH 9am-6pm EST.

TENNESSEE:

This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance.

MAINE Hours of operation:

Mon-Thurs: 8am - 10pm, Fri: 8am - 4pm, Sat: 8am - 12 pm EST.

NORTH CAROLINA:

North Carolina Department of Insurance, permit number 3947.

UTAH:

AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTION ON YOUR CREDIT RECORD MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Simm Associates Attempts to Collect Debts for Non-Licensed Lenders](#)