

★ FEB 13 2018 ★

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

LONG ISLAND OFFICE

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**Lisa Sells individually and on behalf of  
all others similarly situated,**

**CV - 18 0957**

**Plaintiff,**

**CLASS ACTION**

**v.**

**CAC Financial Corp.**

**FEUERSTEIN, J.**

**Jury Demanded**

**BROWN, M. J.**

**Defendant.**

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**Class Action Complaint for  
Violations of the Fair Debt Collection Practices Act**

1. Plaintiff Lisa Sells ("Plaintiff" or "Sells") files this Complaint seeking redress for the illegal practices of Defendant, CAC Financial Corp. ("Defendant" or "CAC"), in connection with the collection of a debt allegedly owed by Plaintiff in violation of the Fair Debt Collection Practices Act, ("FDCPA"), 15 U.S.C. § 1692, *et seq.*

2. Among other violations, CAC has violated the Plaintiff and the putative class members' rights under the FDCPA by failing to provide them with the notices to which they are entitled by statute; by depriving them of their ability to fully resolve their alleged debts.

**Parties**

3. Plaintiff Lisa Sells is a citizen of New York State who resides within this District.

4. Plaintiff is a “consumer” as that term is defined by FDCPA § 1692a(3).

5. The alleged debt of Plaintiff is a “debt” as defined by 15 U.S.C. § 1692a in that it is a debt alleged to be owed for personal, family, or household services. The alleged debt was incurred for a consumer credit card.

6. Defendant is regularly engaged in the collection of debts allegedly due to others.

7. Defendant is a “debt collector,” as defined by FDCPA § 1692a(6).

#### **Jurisdiction and Venue**

8. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

9. Declaratory relief is available under 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district under 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

11. Venue is also proper in this district since Defendant transact business in this district.

#### **Factual Allegations**

12. CAC alleges that Plaintiff owes a debt to Synchrony Bank/Walmart Credit Card.

13. In an attempt to collect the alleged debt, on or after February 14, 2017 Defendant sent Plaintiff a debt collection letter. (**Exhibit A**)

14. **Exhibit A** seeks to collect a total debt of \$628.48.

15. Exhibit A fails to indicate to Plaintiff that amount of the debt was going to continue to increase.

16. Exhibit A violates 15 USC 1692e, and various subdivisions thereto, in that it fails to inform the Plaintiff that interest was continuing to accrue on the account per the original contract between the parties. *Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72 (2d Cir. N.Y. 2016); *Carlin v. Davidson Fink LLP*, 852 F.3d 207, 215-17 (2d Cir. 2017).

17. Exhibit A violates the FDCPA, *Avila*, and *Carlin* in that the Plaintiff is misled as to the proper amount, character, and status of the debt.

18. Exhibit A does not disclose that if the Plaintiff did not pay the alleged debt, the Plaintiff would be liable for accruing interest.

19. The Plaintiff has not received any notice indicating that the interest per the original contract has stopped being assessed.

20. Neither the Defendant, the creditor, nor anyone on their behalf has informed the Plaintiff that the creditor has permanently waived their right to charge interest on the account.

21. Exhibit A does not include the “safe harbor” language required by *Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72 (2d Cir. N.Y. 2016).

22. The amount and status of the alleged debt is not clear from Exhibit A in that it is unclear whether interest has been permanently waived.

**23. Exhibit A can be understood two different ways, one of which is false.**

**Exhibit A can be read to be imposing interest, and Exhibit A can be read to not be imposing interest.**

**24. For the reasons stated herein, Exhibit A is false, deceptive, misleading, unfair and unconscionable and violates 15 USC 1692e, 15 USC 1692e(2), 15 USC 1692e(5), 15 USC 1692e(10), 15 USC 1692f, and 15 USC 1692f(1).**

***Class Action Allegations***

**25. Under Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:**

- a. Based on the fact that the collection letter at the heart of this litigation is a mass-mailed form letters, the class is so numerous that joinder of all members is impractical.**
- b. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions include whether Exhibit A violates the FDCPA.**
- c. The claims of Plaintiff are typical of the class members' claims. All are based on the same facts and legal theories. The only individual issue is the identification of the consumers who received the letter, (i.e., the class members), which is a matter capable of ministerial determination from the Defendants' records.**
- d. Plaintiff will fairly and adequately represent the class members' interests. All claims are based on the same facts and legal theories and Plaintiff's interests are consistent with the interests of the class.**
- e. Plaintiff has retained counsel experienced in bringing class actions and collection abuse claims.**

**26. A class action is superior for the fair and efficient adjudication of the class members' claims.**

27. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. See 15 U.S.C. § 1692k.

28. The class members are generally unsophisticated individuals unaware of the protections afforded them by the FDCPA, which rights will not be vindicated in the absence of a class action.

29. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

30. If the facts are discovered to be appropriate, Defendant will seek to certify a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

31. This Count is brought by Plaintiff, individually, and on behalf of a class that, according to Defendant's records, consists of: (a) all individuals who have mailing addresses within the United States; and (b) within one year before the filing of this action; (c) were sent a collection letter in a form materially identical or substantially similar to Exhibit A attached to Plaintiff's Complaint (d) which was not returned by the postal service as undeliverable.

32. Collection letters, such as those sent by Defendant, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

**Violations of the Fair Debt Collection Practices Act**

33. Plaintiff restates, realleges, and incorporates herein by reference all foregoing paragraphs as if set forth fully in this Count.

**Class Allegations Related to Exhibit A**

34. By sending Exhibit A to Plaintiff, the Defendant violated 15 USC 1692e, 15 USC 1692e(2), 15 USC 1692e(5); 15 USC 1692e(10); 15 USC 1692f; and 15 USC 1692f(1), in that the Defendant did not properly and effectively convey the amount and status of the debt.

35. By sending Exhibit A to Plaintiff, the Defendant violated 15 USC 1692g(a), 15 USC 1692e, 15 USC 1692e(2), 15 USC 1692e(10) and 15 USC 1692f, in that the Defendant did not properly indicate to the Plaintiff that the alleged debt may continuing to accrue interest.

36. By sending Exhibit A to Plaintiff, the Defendant also violated 15 U.S.C. §§ 1692 e, e(2), e(5), e(10), and f by falsely indicating that the Plaintiff owed a static amount not subject to interest.

37. By sending Exhibit A to Plaintiff, the Defendant violated 15 USC 1692e, 15 USC 1692e(2), 15 USC 1692e(5); 15 USC 1692e(10); 15 USC 1692f; and 15 USC 1692f(1), in that Exhibit A can be read to have more than one meaning, one of which is false or deceptive.

38. Defendant's violations of 15 U.S.C. §1692, *et seq.*, render Defendant liable to Plaintiff and the Class.

39. As a result of Defendant's deceptive, insidious, and unfair debt collection practices, Defendant is liable to Plaintiff and the Class.

**WHEREFORE**, Plaintiff asks that this Court enter judgment in her favor and in favor of the members of the Class, against Defendant, awarding damages as follows:

- (A) Statutory damages as provided by § 1692k of the FDCPA;
- (B) Attorneys' fees, litigation expenses and costs incurred in bringing this action;
- (C) Declaratory relief declaring that Exhibit A and/or the initial letter Defendant sent Plaintiff violates the FDCPA; and
- (D) Any other relief this Court deems appropriate and just.

**Jury Demand**

Plaintiff demands trial by jury.

Dated: West Islip , New York  
February 13, 2018

 RESPECTFULLY SUBMITTED,

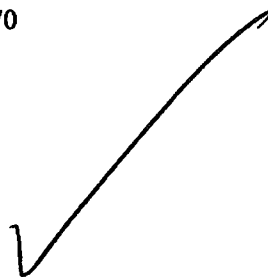
S/ JOSEPH MAURO  
Joseph Mauro  
The Law Offices of Joseph Mauro, LLC  
306 McCall Ave.  
West Islip, NY 11795  
Tel: (631) 669-0921

# **EXHIBIT A**



**CAC FINANCIAL CORP**  
2601 NW EXPRESSWAY, SUITE 1000 EAST  
OKLAHOMA CITY, OKLAHOMA 73112-7236  
(405) 425-1550 • 1-800-304-6070  
02-14-17

**CREDITOR: Synchrony Bank/Walmart Credit Card**  
**ACCOUNT #.: 17807683**  
**BALANCE: \$682.48**  
**CLIENT ACCT # :\*\*\*\*\*0066**



Your account above remains unpaid. In an effort to resolve your account, we would like to offer you several payment options that meet your current financial needs, including breaking the balance in to three (3) monthly payments, six (6) monthly payments, or other possible options.

Please contact our office today, and let our representatives work with you to find a payment solution that fits your needs.

You may also make a payment online at [www.paycacfinancial.com](http://www.paycacfinancial.com) or by sending a payment in the enclosed envelope.

Thank you.

THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS HAS ASSIGNED LICENSE #0991650 TO THIS AGENCY.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

DEBT COLLECTORS, IN ACCORDANCE WITH THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 ET SEQ., ARE PROHIBITED FROM ENGAGING IN ABUSIVE, DECEPTIVE, AND UNFAIR DEBT COLLECTION EFFORTS, INCLUDING BUT NOT LIMITED TO:

- (i) THE USE OR THREAT OF VIOLENCE;
- (ii) THE USE OF OBSCENE OR PROFANE LANGUAGE; AND
- (iii) REPEATED PHONE CALLS MADE WITH THE INTENT TO ANNOY, ABUSE, OR HARASS.

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:

- 1) SUPPLEMENTAL SECURITY INCOME, (SSI);
- 2) SOCIAL SECURITY;
- 3) PUBLIC ASSISTANCE (WELFARE);
- 4) SPOUSAL SUPPORT, MAINTENANCE (ALIMONY) OR CHILD SUPPORT;
- 5) UNEMPLOYMENT BENEFITS;
- 6) DISABILITY BENEFITS;
- 7) WORKERS' COMPENSATION BENEFITS;
- 8) PUBLIC OR PRIVATE PENSIONS;
- 9) VETERANS' BENEFITS;
- 10) FEDERAL STUDENT LOANS, FEDERAL STUDENT GRANTS, AND FEDERAL WORK STUDY FUNDS; AND;
- 11) NINETY PERCENT OF YOUR WAGES OR SALARY EARNED IN THE LAST SIXTY DAYS.



----- DETACH AND RETURN WITH PAYMENT -----

PO BOX 20909  
PORTLAND OR 97294-0909  
CHANGE SERVICE REQUESTED

BALANCE: \$682.48  
ACCOUNT #:17807683



YOU MAY MAKE PAYMENTS TO:



SELLS, LISA  
26 MALVERNE RD  
SOUND BEACH NY 11789-2917

CAC FINANCIAL CORP  
2601 NW EXPRESSWAY STE 1000 E  
OKLAHOMA CITY OK 73112-7236



JS 44 (Rev. 09/11)

**CIVIL COVER SHEET**

★ FEB 13 2018 ★  
 LONG ISLAND OFFICE

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**  
 Lisa Sells individually and on behalf of all others similarly situated

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

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
 Joseph Mauro, Esq.  
 306 McCall Ave.  
 West Islip, NY 11795

**DEFENDANTS**  
 CAC Financial Corp

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) \_\_\_\_\_

**CV-18 0957**

**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)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input checked="" type="checkbox"/> 4	DEF <input type="checkbox"/> 4
<b>FEUERSTEIN, J.</b>					
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<b>CROWN, M. J.</b>					
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

**SUMMONS ISSUED**

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 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 (Excl. 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	<b>PERSONAL INJURY</b> <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 - Med. Malpractice	<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 <b>PERSONAL PROPERTY</b> <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <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"/> 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. 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 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <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))	
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 USC 1692 et seq.

Brief description of cause:  
Debt Collection Abuse

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 02/13/2018

SIGNATURE OF ATTORNEY OF RECORD: /s/ Joseph Mauro

FOR OFFICE USE ONLY

RECEIPT # 24653 AMOUNT \$400.00 APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

EDNY Revision 12/2011

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Joseph mauro, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason **Case is a class action. An Arbitrator can't certify a class. Damages may exceed \$150,000 depending on Defendant's net worth.**

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
  - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: 

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CAC Financial Corp. Sued Over Alleged FDCPA Violation](#)

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