

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HILMA STOVER,)
on behalf of herself and a class of similarly)
situated persons,)
))
Plaintiff,)
v.)
FLUENT HOME, LLC, and THE BANK)
OF MISSOURI d/b/a FORTIVA RETAIL)
CREDIT,)
))
Defendants.)

CIVIL ACTION NO. 5:21-cv-00191

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant The Bank of Missouri (“TBOM”), hereby removes this action from Wyoming County, West Virginia to the United States District Court for the Southern District of West Virginia. This Court has jurisdiction based on federal question jurisdiction, 28 U.S.C. § 1331, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Pursuant to 28 U.S.C. § 1446(a), the grounds for removal are as follows:

I. BACKGROUND

1. Plaintiff Hilma Stover (“Plaintiff”) filed a Class Action Complaint (“Complaint”) in the Circuit Court of Wyoming County, West Virginia, entitled *Hilma Stover v. Fluent Home, LLC and The Bank of Missouri*, on February 26, 2021, Case No. 21 C 14, (the “State Court Action”). See Exhibit A, Complaint.

2. The Complaint seeks relief pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (the “FCRA”), the Truth in Lending Act, 15 U.S.C. § 1642 *et seq.* (the “TILA”), and state law.

3. By filing this Notice of Removal, TBOM does not waive and specifically reserves any and all defenses, exceptions, rights, and motions with respect to the claims asserted in the Complaint. No statement or omission in this Notice shall be deemed an admission of any of the allegations of or relief sought in the Complaint.

4. As set forth below, this case is properly removed to this Court based on federal question.

II. THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 1331 AND 28 U.S.C. § 1367(a).

5. This Court has original jurisdiction over this action under 28 U.S.C. § 1331, which provides: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

6. Pursuant to 28 U.S.C. § 1441(b), “[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.”

7. Specifically, this Court has original jurisdiction of this action because Plaintiff’s allegations arise under the FCRA and TILA.

8. Further, this Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a), which provides that “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” Specifically, this Court has supplemental jurisdiction over Plaintiff’s claims for (Count IV)

fraudulent inducement, (Count V) common law unconscionable inducement, (Count VI) joint venture, and (Count VII) unjust enrichment.

III. ALL OTHER PROCEDURAL REQUISITES FOR REMOVAL ARE SATISFIED.

9. Pursuant to 28 U.S.C. § 1441(a), removal to this Court is appropriate because the State Court Action is currently pending in the Wyoming Circuit Court in West Virginia, which is located within the geographical boundaries of the United States District Court for the Southern District of West Virginia.

10. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon TBOM in the State Court Action are attached hereto as Exhibit A.

11. This Notice of Removal is timely filed with this Court within thirty (30) days of receipt of the Complaint through service as required by 28 U.S.C. § 1446(b) because this Notice of Removal is being filed within thirty (30) days from the date of the filing of the Complaint.

12. Pursuant to 28 U.S.C. § 1446(b)(2)(a), all defendants who have been properly joined and served join in or consent to the removal of the action. A copy of Fluent Home, LLC's Consent to Removal is attached hereto as Exhibit B. Fluent Home, LLC consents to removal. *Id.*

13. Pursuant to 28 U.S.C. § 1446(d), TBOM has promptly given written notice to Plaintiff by contemporaneously serving this Notice of Removal on counsel for Plaintiff, and TBOM has filed a Notice of Removal with the Wyoming Circuit Court. A copy of TBOM Notice to State Court of Removal to Federal Court without exhibits is attached hereto as Exhibit C.

14. This case is not precluded from being removed under 28 U.S.C. § 1445 because: (a) it is not brought against a railroad or its receivers or trustees, arising under 45 U.S.C. 51–54, 55–60; (b) it is not brought against a carrier or its receivers or trustees to recover damages for delay, loss or injury of shipments arising under section 11706 or 14706 of title 49; (c) it does not

arise under the workmen's compensation laws; and (d) it does not arise under Section 40302 of the Violence Against Women Act of 1994.

WHEREFORE, Defendant The Bank of Missouri respectfully requests that the above-captioned action now pending in Wyoming County, West Virginia, be removed to the United States District Court for the Southern District of Western Virginia and that this District Court enter such other and further orders as may be necessary to accomplish the requested removal.

Dated: March 29, 2021

Respectfully submitted,

/s/ Elizabeth M. Thomas, Esq.

Elizabeth M. Thomas, Esq.
MCGUIREWOODS LLP
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Tower Two-Sixty
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Suite 1800
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Fax: (412) 667-7995
ethomas@mcguirewoods.com

Exhibit A



(/DEFAULT.ASPX)

Civil

Case Information

Twenty-Seventh Judicial Circuit of Wyoming County

21-C-14

Judge: WARREN MCGRAW

HILMA STOVER ETC VS. FLUENT HOME LLC

Plaintiff(s)**Plaintiff Attorney(s)**

STOVER, HILMA

N/A

Defendant(s)**Defendant Attorney(s)**

FLUENT HOME LLC

THE BANK OF MISSOURI

N/A

Date Filed: 02/26/2021

Case Type: MISCELLANEOUS CIVIL

Appealed: 0

Final Order Date: N/A

Statistical Close Date: N/A

<u>Line</u>	<u>Date</u>	<u>Action / Result</u>
0001	02/26/2021	CASE FILED. SUMMONS ISSUED AND FORWARDED TO SS FOR SERVICE ON
0002		BOTH DEFTS.
0003	03/22/2021	RETURN OF SVC OF SUMMONS ON BANK OF MISSOURI BY SOS 3/4/21.
0004	03/22/2021	RETURN OF SVC OF SUMMONS ON FLUENT HOME BY SOS ON 3/4/21.

These materials have been prepared by the Office of the Clerk of the various Circuit Courts from original sources and data believed to be reliable. The information contained herein, however, has not been independently verified by the Office of the Clerk or Software Computer Group, Incorporated. The Office of the Clerk of the Circuit Courts and Software Computer Group, Inc. assume no liability for the accuracy, completeness, or timeliness of the information contained herein.

Software Computer Group | PO Box 27 | Fraziers Bottom WV 25082

CIVIL CASE INFORMATION STATEMENT

CIVIL CASES

(Other than Domestic Relations)

In the Circuit Court, WYOMING County, West Virginia

I. CASE STYLE:

Plaintiff(s)

HILMA STOVER

on behalf of herself and all others similarly

situated.

Case # 21-C-14

Judge: Mc GRAW

vs.

Defendant(s) FLUENT HOME, LLC, c/o Cor

209 WEST WASHINGTON STREET

Street
CHARLESTON, WV 25302

City, State, Zip

Days to
Answer

30

Type of Service

SECRETARY OF STATE

THE BANK OF MISSOURI D/B/A FORITVA

916 NORTH KINGS HIGHWAY

Street
PERRYVILLE, MO 63775

City, State, Zip

30

SECRETARY OF STATE

Street

City, State, Zip

Street

City, State, Zip

FILED
FEB 26 A 9:47
CIRCUIT CLERK OF
WYOMING COUNTY, WV

Original and 7 copies of complaint enclosed/attached.

PLAINTIFF: HILMA STOVER DEFENDANT: FORITVA FINANCIAL GROUP, INC.	CASE NUMBER: <u>21-C-14</u>
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II. TYPE OF CASE:

- | | |
|---|--|
| <input checked="" type="checkbox"/> General Civil

<input type="checkbox"/> Mass Litigation
(As defined in T.C.R. Rule XIX (c))

<input type="checkbox"/> Asbestos
<input type="checkbox"/> Carpal Tunnel Syndrome
<input type="checkbox"/> Diet Drugs
<input type="checkbox"/> Environmental
<input type="checkbox"/> Industrial Hearing Loss
<input type="checkbox"/> Silicone Implants
<input type="checkbox"/> Other: _____

<input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ

<input checked="" type="checkbox"/> Other: <u>CLASS ACTION</u> | <input type="checkbox"/> Adoption

<input type="checkbox"/> Administrative Agency Appeal

<input type="checkbox"/> Civil Appeal from Magistrate Court

<input type="checkbox"/> Miscellaneous Civil Petition

<input type="checkbox"/> Mental Hygiene

<input type="checkbox"/> Guardianship

<input type="checkbox"/> Medical Malpractice |
|---|--|

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): _____/_____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY? YES NO

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: BENJAMIN SHERIDAN
 Firm: KLEIN & SHERIDAN, LC
 Address: 3566 TEAYS VALLEY RD., HURON
 Telephone: (304) 562-7111
 Dated: 2/17/2021

REPRESENTATIVE OF
 WASHINGTON COUNTY, WV
 Representing:
 Plaintiff Defendant
 Cross-Complainant Cross-Defendant
 2/17/2021 A P: 4
FILED
 Signature

Proceeding Without an Attorney

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**HILMA STOVER,
on behalf of herself and a class
of similarly situated persons**

Plaintiff,

vs.

Civil Case No. 21-C-14

**FLUENT HOME, LLC, and
THE BANK OF MISSOURI d/b/a
FORTIVA RETAIL CREDIT,**

Defendants.

CLASS ACTION COMPLAINT

1. This complaint involves a home solicitation sale by Fluent Home, LLC. During a global pandemic, Fluent solicited an eighty-(80)-year-old widow into upgrading her home security service through a maskless door-to-door salesman. However, Fluent never provided her a contract that day, and after she cancelled the agreement, it never retrieved the equipment from her. Furthermore, Fluent fraudulently opened a credit card in Ms. Stover's name to finance its equipment, and that credit card company is now harassing Ms. Stover. Ms. Stover brings this action on behalf of herself and a class of similarly situated person to enforce the Fair Credit Reporting Act's rule regarding *Duties of Users Regarding Risk-Based Pricing* and prohibitions on impermissible reviews of a person's credit.

FILED
2021 FEB 26 A 9 41
CROSSING CLERK
WYOMING COUNTY WV

PARTIES

- 2. Plaintiff Hilma Stover is an eighty-year-old widow residing in Kanawha County, WV.
- 3. Defendant Fluent Home, LLC ("Fluent") is a home security sales company engaging in door-to-door solicitations of consumers in West Virginia, with a principal place of business at

3400 N 1200 W, Lehi, UT, 84043 and a notice of process agent of Corporation Service Company, 209 West Washington Street, Charleston, WV, 25302.

4. Defendant The Bank of Missouri d/b/a Fortiva Retail Credit (“Fortiva”) is a subprime credit lender that does business in West Virginia and is based at 916 North Kings Highway, Perryville, MO 63775.

FACTS

Sale and Financing

5. On or about October 12, 2020, Plaintiff Hilma Stover was in her home when salesman Larry Araiza arrived at her home.

6. Plaintiff’s daughter, Kelly Kennedy, was also present at the house and witnessed Mr. Araiza’s interactions with her mother.

7. Mr. Araiza offered for sale a Fluent home security system free for three months along with Fluent’s assistance with cancelling Plaintiff’s existing home security contract.

8. Mr. Araiza promised a 30-day right of cancellation if Plaintiff was not satisfied with the product.

9. Mr. Araiza provided Plaintiff with a pamphlet and handwrote “30 Day ROC” to memorialize the right of cancellation.

10. Mr. Araiza did not provide any other documentation to Plaintiff.

11. Plaintiff’s daughter urged Mr. Araiza to reschedule for when Plaintiff’s son could attend the sales pitch.

12. Mr. Araiza claimed that that was unnecessary because Plaintiff could cancel anytime for 30 days.

13. Mr. Araiza obtained a payment from Plaintiff of approximately \$40 to activate the sale using a credit card reader on a tablet device he brought with him.

14. Mr. Araiza then showed Plaintiff an introductory video about Fluent.

15. Mr. Araiza represented that the monthly payment would include an amount for security monitoring and an amount for payoff of the equipment.

16. Mr. Araiza did not provide a contract for Plaintiff to sign nor did he review any contracts with the Plaintiff.

17. Later that same evening, an installer arrived at Plaintiff's home and began doing work that was unsatisfactory to Plaintiff, including:

- a. Running an extension cord to an outdoor motion detector rather than installing an appropriate electrical line;
- b. Attempting to run wires along the back of the home; and
- c. Attempting to drill a hole in Plaintiff's home to run an additional electrical line before being stopped by Plaintiff.

18. Plaintiff contacted Fluent's agent Mr. Araiza to cancel the sale.

19. Fluent salesman Larry Araiza yelled at Plaintiff over the phone when she attempted to cancel.

20. Plaintiff advised Fluent that the equipment would be safely stored at her home until Fluent made arrangements to retrieve the equipment.

21. However, Fluent never arrived to claim the equipment.

22. Instead, Plaintiff received notice from Fortiva that she had been approved for a credit card and also had a balance of over \$1,000.00.

23. Thereafter, Plaintiff began receiving harassing debt collection letters from Fortiva.

24. Fluent had arranged credit card financing through Fortiva for its security system unbeknownst to Plaintiff.

25. Plaintiff never would have agreed to open a credit card account to purchase the home security system.

26. Fluent's agent, Mr. Araiza, knew that Fluent was financing the equipment on a credit card.

27. Mr. Araiza knew that the 30-day cancellation period was a nullity due to the credit card financing of the equipment purchase.

Fluent's Credit Granting Business Model

28. At all times relevant to this Complaint, Fluent has obtained and used consumers' credit scores to determine the amount of activation fees and creditworthiness for its products and services but has not provided consumers with the notice required by FCRA and Regulation V.

29. Fluent and Fortiva are required pursuant to FCRA §§ 1681q, 1681n and 1681o to refrain from obtaining consumer reports from credit reporting agencies under false pretenses.

30. At no time material hereto did Plaintiff ever have a relationship of any kind with Fortiva as defined under FCRA § 1681b(3)(A)-(E).

31. At no time material hereto did Plaintiff ever have a relationship of any kind with Fluent regarding credit cards as defined under FCRA § 1681b(3)(A)-(E).

32. Plaintiff has never knowingly given written instructions to Fluent or Fortiva to obtain and/or release to a third party a consumer report of which Plaintiff was the subject; nor has Fluent or Fortiva ever been ordered by a court of competent jurisdiction to issue a consumer report pursuant to FCRA § 1681b(1).

33. Fluent and Fortiva have compromised Plaintiff's access to credit in imparting to past, present and future credit grantors that Plaintiff has applied for a credit card in tandem with a relationship with Fortiva.

34. Reasonable procedures for users such as Fluent and Fortiva include restricting its agents' ability to obtain consumer reports on consumers for any impermissible purpose.

35. Additionally, companies must give consumers notice when they provide consumers with less favorable credit terms based on a review of their credit reports, also known as risk-based pricing. 15 U.S.C. § 1681m(h).

36. When consumers are alerted to the existence of negative information on their consumer reports, they can choose to check their consumer reports for accuracy and correct any inaccurate information that may affect their ability to obtain the product or service they are seeking or its price.

37. When consumers are informed that their credit score may increase the price of a product or service, they can comparison-shop.

38. FCRA and Regulation V's Risk-Based Pricing Rule require that a "person" provide a consumer with a risk-based-pricing notice if the person "uses a consumer report in connection with" an application for or extension of credit and, "based in whole or in part on the consumer report," extends "credit to that consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers." 15 U.S.C. § 1681m(h)(1); 12 C.F.R. § 1022.72(a).

39. FCRA defines a "consumer report" as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living

which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for . . . credit or insurance to be used primarily for personal, family, or household purposes." 15 U.S.C. § 1681a(d)(1).

40. The Risk-Based Pricing Rule provides that a business providing closed-end credit must provide consumers with a risk-based-pricing notice before "consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is communicated to the consumer by the person required to provide the notice." 12 C.F.R. § 1022.73(c)(1)(i).

41. Fluent is a closed-end creditor that grants its customers the right to defer payment for its alarm and security-system equipment over the life of a long-term contract.

42. Customers receive security monitoring equipment when they agree to a long-term Home Security Contract, generally for five years, that requires monthly payments and other fees.

43. Customers are typically charged an activation fee, a material term, and then must pay the contract's monthly fees even if they cancel the monitoring service. Upon cancellation, the customer must pay 90% of the contract's remaining balance.

44. Here, Plaintiff was charged approximately \$40 to initiate service and was told that monthly payments would include an amount for the security monitoring and an amount for the equipment payoff.

45. Upon information and belief, Fluent's customer contracts list retail prices for the equipment that it provides. Fluent then effectively uses activation fees, monthly fees, and long-term contracts to recoup, over time, the cost of equipment "given" to customers, and the terms of this deferral vary based on customers' credit scores.

46. Upon information and belief, Fluent charges customers 90% of the remaining balance on the contract as a lump sum if they cancel the monitoring service, demonstrating that the residual value is attributed to the equipment, not ongoing monitoring or other services.

47. Because Fluent allows customers to defer payment for the alarm and security-system equipment over the life of a long-term contract, Fluent is extending credit to its customers.

48. Fluent determines the amount of the activation fee that it charges consumers, if any, which is a material term, by evaluating the consumer's credit score, and without providing consumers notice that their credit scores are being used to determine pricing.

49. Upon information and belief, Fluent's sales representatives run a credit check during their door-to-door sales presentations.

50. Further, Fluent's salespeople use tablets or smartphones during their sales pitches that reveal potential customers' credit scores at the outset of the sales presentation and before they negotiate the contract's activation fee and other key terms.

51. Fluent uses credit scores, in whole or in part, to offer credit to customers on terms that are materially less favorable than those available to a substantial proportion of customers.

52. Despite engaging in risk-based pricing when it extends credit and obtains and uses consumers' credit scores to determine the amount of activation fees, Fluent does not provide a risk-based-pricing notice to customers informing them that their credit scores could impact whether they would be charged an activation fee and, if so, the amount of the fee.

Fortiva's Subprime Credit Granting Without Application

53. Fortiva specializes in subprime "second look" credit for consumers "overlooked by traditional lenders."

54. Fortiva has a joint venture with Fluent wherein Fluent solicits homeowners to purchase home security equipment to be financed with credit card financing provided by Fortiva.

55. Fluent is able to recoup its costs with an immediate payment from Fortiva, and Fortiva is able to charge interest on credit granted to the unsuspecting consumer.

56. A credit card issuer may not issue a credit card, except in response to an explicit oral or written request or application for the card from a consumer or business (or when renewing a card which the customer has already accepted). 15 U.S.C. § 1642; Reg. Z § 1026.12(a).

57. Plaintiff never orally or in writing requested a credit card from Fortiva.

58. Plaintiff has suffered annoyance, inconvenience, aggravation, and embarrassment from the home solicitation sale and resultant debt collection due to the acts and omissions of Fluent and Fortiva.

CLASS ACTION ALLEGATIONS

59. Plaintiff incorporates the preceding paragraphs as if stated herein.

60. This action is also filed as a class action. Plaintiff, serving as class representative, tentatively defines the classes, subject to modification after discovery and case development, as follows:

Nationwide Risk-Based Pricing Notice Class: All persons who were solicited in their homes by Fluent within two years prior to the filing of the lawsuit who received credit on less favorable terms based upon information in their credit report but did not receive the Risk-Based Pricing Notice before consummation of the transaction.

Nationwide FCRA Credit Report Pull Class: All persons who were solicited in their homes by Fluent within two years prior to the filing of the lawsuit whose credit was obtained without giving written instructions to Fluent to obtain and/or release to a third party a consumer report.

Nationwide Equitable Class: All persons who were extended credit with Fortiva to pay Fluent following an interaction with Fluent without requesting credit or providing consent.

Nationwide TILA Class: All persons who were extended credit with Fortiva following an interaction with Fluent without requesting credit or providing consent.

61. Plaintiff reserves the right to refine the class definitions in light of discovery and additional investigation.

62. The putative classes are so numerous that joinder of all members is impractical.

63. There are questions of law and fact common to the putative classes, which predominate over any questions affecting only individual class members.

64. The principal common issues involve whether Defendants' conduct regarding the aforementioned communications constitute a violation of the federal Fair Credit Reporting Act, and the federal Truth in Lending Act.

65. One or more of Plaintiff's claims are typical of those of the putative classes and said claims are based on the same legal and factual theories.

66. Plaintiff will fairly and adequately protect the interests of the classes. She has suffered pecuniary injury as a result of Defendants' actions and will, accordingly, vigorously litigate this matter. Plaintiff is greatly annoyed at being the victim of Defendants' illegal and fraudulent conduct and wishes to see that wrong remedied. To that end, Plaintiff has retained counsel experienced in claims involving unfair business practices.

67. Neither the Plaintiff nor her counsel has any interest that might prevent them from vigorously pursuing this claim.

68. A class action is a superior method for the fair and efficient adjudication of this particular claim and controversy.

69. The interest of putative class members in individually controlling and maintaining the prosecution of separate claims against Defendants is small given the fact that they are unlikely to

be aware of their legal rights and the amount of statutory or actual damages in an individual action is relatively small.

70. The management of the class claims is likely to present significantly fewer difficulties than those presented in many larger, and more complex, class actions.

71. As a proximate and/or foreseeable result of Defendants' wrongful conduct, each member of the putative classes has suffered actual and/or statutory damages.

**COUNT I – VIOLATION OF THE FCRA
15 U.S.C. § 1681 *et seq***

On behalf of Plaintiff Ms. Stover and the Nationwide FCRA Credit Report Pull Class

72. Plaintiff incorporates the preceding paragraphs as if stated herein.

73. Fluent has provided credit to Plaintiff and class members on material terms that are materially less favorable terms than those offered to a substantial proportion of other consumers, based on information in consumer reports.

74. Fluent has failed to provide its customers receiving less favorable material terms based on their credit scores with a notice with all the information required by the Risk-Based Pricing Rule before consummation of the transaction. 15 U.S.C. § 1681m(h)(1); 12 C.F.R. § 1022.73(c)(1)(i).

75. Fluent's acts or practices, as described above, violate the Risk-Based Pricing Rule.

76. Fluent's conduct, action and inactions were and continue to be willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. §1681n. In the alternative, Fluent has been negligent, entitling Plaintiff to recover under 15 U.S.C. §1681o.

**COUNT II – VIOLATION OF THE FCRA
15 U.S.C. § 1681 *et seq***

On behalf of Plaintiff Ms. Stover and the Nationwide Risk Based Pricing Notice Class

77. Plaintiff incorporates the preceding paragraphs as if stated herein.

78. Defendants Fluent and Fortiva willfully and/or negligently violated the provisions of the FCRA in the following respects:

- a. Fluent and Fortiva have used or obtained a consumer report without a purpose authorized by the FCRA in violation of 15 U.S.C. § 1681b(f).
- b. Fluent and Fortiva have falsely, purposely, surreptitiously and maliciously obtained the Plaintiff's and class members' credit reports in violation of FCRA § 1681q.
- c. Fluent and Fortiva have falsely, purposely, surreptitiously and maliciously obtained the Plaintiff's and class members' credit reports in violation of FCRA § 1681n.
- d. Fluent and Fortiva have obtained the Plaintiff's and class members' credit reports in violation of FCRA § 1681o.

79. Fluent's conduct, action and inactions were and continue to be willful, rendering it liable for punitive damages to Plaintiff and the class in an amount to be determined by the Court pursuant to 15 U.S.C. §1681n. In the alternative, Fluent has been negligent, entitling Plaintiff and the class to recover under 15 U.S.C. §1681o.

**COUNT III – VIOLATION OF THE TILA
15 U.S.C. § 1642
On behalf of Plaintiff Ms. Stover and the Nationwide TILA Class**

80. Plaintiff incorporates the preceding paragraphs as if stated herein.

81. Defendant Fluent completed a credit card application on behalf of Plaintiff without her request, application, or consent in violation of 15 U.S.C. § 1642.

82. Defendant Fortiva provided Plaintiff with a credit card without her request, application, or consent in violation of 15 U.S.C. § 1642.

**COUNT IV– FRADULENT INDUCEMENT
On behalf of the Plaintiff Ms. Stover**

83. Plaintiff incorporates the preceeding paragraphs as if stated herein.

84. Defendant Fluent’s sales agent induced Plaintiff into a sales contract by making certain representations as to the quality and condition of its security system.

85. Plaintiff relied on Fluent’s sales agent’s representations in making the decision to purchase the security system.

86. Defendants Fluent’s and Fortiva’s agent suppressed the Defendants’ intention to open a credit card account on behalf of the Plaintiff for the purpose of financing the security system.

87. Plaintiff were damaged in that credit was opened on her behalf without her permission, amounts were charged to the credit, and interest was charged on that credit extended.

88. As a result of Plaintiff’s reliance on the Defendants’ omissions, Plaintiff was harmed in that she was charged interest and credit was opened in her name that she did not want or request.

89. As a result of the Defendants’ actions, Plaintiff has suffered emotional distress, out of pocket loss, financial harm, annoyance, inconvenience, bother, upset, anger, and otherwise caused indignation and distress.

**COUNT V – COMMON LAW UNCONCIONABLE INDUCEMENT
On behalf of the Plaintiff Ms. Stover**

90. Plaintiff incorporates the preceeding paragraphs as if stated herein.

91. Plaintiff and Defendants occupy dramatically unequal bargaining positions, including that:

- a. Plaintiff is an elderly and unsophisticated consumer.
 - b. Defendant Fluent is a large corporation in the business of selling, maintaining, and soliciting the sales of security systems.
 - c. The Defendants use door-to-door sales practices.
 - d. The Defendant Fortiva is a bank with reach throughout the United States and which does business lending and soliciting credit in all fifty states.
92. The sales contracts were formed without a true meeting of the minds, caused by circumstances including:
- e. Defendants suppressed the fact that the Defendants intended to open credit for the Plaintiff;
 - f. Defendants used door-to-door sales to solicit their products and credit;
 - g. Defendants had no intention of honoring their representations, including that they had no intention of honoring their “right to cancel;”
 - h. Defendants never reviewed their contracts with the Plaintiff prior to selling them a security system or enrolling them in a credit card;
 - i. The Defendants did not disclose the true cost of the transaction or that the transaction, service, and products would be sold and financed only on credit;
 - j. The Defendants’ agent refused to wait until Plaintiff’s son could arrive and help his 80-year-old mother with the transaction;
 - k. The Defendants’ agent made representations that made the 80-year-old Plaintiff feel concerned for her safety in her home and feel compelled to purchase a product that she already had;

1. The Defendants failed to disclose the existence onerous contract terms or any contract terms at all.

93. Under the specific circumstances alleged, the contract contains substantively unconscionable and commercially unreasonable terms.

94. The contract was unconscionable under all circumstances alleged at the time it was made and/or induced, by unconscionable conduct, and therefore is unenforceable.

95. Plaintiff was financially damaged as a result of Defendants' actions and suffered, and continue to suffer, significant emotional distress, humiliation, fear, concern, worry, indignation, and other harm.

COUNT VI – JOINT VENTURE

On behalf of the Plaintiff Ms. Stover and the Nationwide FCRA Credit Report Pull Class, Nationwide Risk Based Pricing Notice Class, Nationwide TILA Class, and Nationwide Equitable Class

96. Plaintiff incorporates the preceding paragraphs as if stated herein.

97. The Defendants have a common interest; that is, Fluent, through its door-to-door agent, sold the security system, and Fortiva, through Fluent's door-to-door agent, issued financing for the purchase of the security system. Fortiva then paid Fluent for the security system and was able to then begin charging interest to the account.

98. Fortiva did not communicate directly with the Plaintiff or the class throughout the process, but instead relied on Fluent's agent to sell the financing.

99. The point of the enterprise was for all of the Defendants to enrich the other at the expense of the Plaintiff and the class.

100. Both of the Defendants have joint control and venture.

101. Both of the Defendants had a joint proprietary interest in getting the Plaintiff and

the class to purchase the security system.

102. Both of the Defendants shared in the profits of the joint venture.

103. Plaintiff and the class were financially damaged as a result of the Defendants' joint venture and suffered, and continue to suffer, significant emotional distress, humiliation, fear, concern, worry, indignation, out of pocket loss, credit degradation, and other harm.

COUNT VII – UNJUST ENRICHMENT
On behalf of the Plaintiff Ms. Stover and the Nationwide Equitable Class

104. Plaintiff incorporates the preceding paragraphs as if stated herein.

105. Defendant Fluent opened a credit card account in Plaintiff's name and classmembers' names without their request or consent.

106. Defendant Fluent applied the credit card charge to pay itself for the transaction.

107. Defendant Fluent was unjustly enriched by opening a credit card account in Plaintiff's name and class members' names and using the credit card to pay itself over \$1,000.00.

108. Plaintiff and the class were damaged by Defendant Fluent's conduct.

WHEREFORE, Plaintiff respectfully requests the following relief individually and on behalf of the Class:

(a) Certify the proposed Classes pursuant to Rule 23 of the West Virginia Rules of Civil Procedure;

(b) Award of actual damages, including compensatory and exemplary damages, to Plaintiff and the Classes in an amount to be determined at trial;

(c) Punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. §1681n. In the alternative, if Fluent has been negligent, Plaintiff to recovery under 15 U.S.C. §1681o.

(c) Award of punitive damages to the extent allowed by the common law and other claims;

(d) Maximum civil penalties for each separate violation of these statutes, pursuant to 15 U.S.C. §1681n and §1681o;

(e) Statutory damages in the amount of double the finance charge, pursuant to 15 U.S.C. § 1640(a)(2), with a minimum award of \$500 and a maximum award of \$5,000, or such higher amount as may be appropriate in light of the Defendant's pattern or practice of noncompliance;

(f) Award Plaintiff and the Class members their reasonable attorney fees and the costs of this litigation;


(g) Enter an order enjoining Fluent from soliciting in consumers' homes without providing appropriate notices under West Virginia and federal law;

(h) Enter an order enjoining Fluent and Fortiva from enrolling consumers in credit card agreements without the consumers' request, application, and/or consent; and

(i) Such other relief to which Plaintiff and the Class members may be entitled in law or equity.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Hilma Stover,
Plaintiff,
By Counsel



Benjamin Sheridan (WV Bar No. 11296)

Jed Nolan (WV Bar No. 10833)
Klein & Sheridan, PC
3566 Teays Valley Rd.
Hurricane, WV 25526
T: (304) 562-7111
F: (304) 562-7115

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

**HILMA STOVER,
on behalf of herself and a class
of similarly situated persons**

Plaintiff,

vs.

Civil Case No. 21-C-14

**FLUENT HOME, LLC, and
THE BANK OF MISSOURI d/b/a
FORTIVA RETAIL CREDIT,**

Defendants.

SUMMONS

To the above-named DEFENDANT:

**Fluent Home, LLC
Corporation Service Company
209 West Washington St.
Charleston, WV 25302**

IN THE NAME OF THE STATE OF WEST VIRGINIA: you are hereby summoned and are required to serve upon **Benjamin M. Sheridan, Plaintiff's attorney**, whose address is: **Klein & Sheridan, LC, 3566 Teays Valley Road, Hurricane, WV 25526**, an answer, including any related counterclaim, or any other claim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **thirty (30)** days after service of this summons upon you, exclusive of the date of service. If discovery is attached, you are further required to file a response to attached discovery within **forty-five (45)** of the service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim, or any other claim in the above-styled action.

DATED: 2-26, 2021


Clerk of Court

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

HILMA STOVER,
on behalf of herself and a class
of similarly situated persons

Plaintiff,

vs.

Civil Case No. 21-C-14

FLUENT HOME, LLC, and
THE BANK OF MISSOURI d/b/a
FORTIVA RETAIL CREDIT,

Defendants.

SUMMONS

To the above-named DEFENDANT:

The Bank of Missouri
d/b/a Fortiva Retail Credit
916 North Kings Highway
Perryville, MO 63775

IN THE NAME OF THE STATE OF WEST VIRGINIA: you are hereby summoned and are required to serve upon **Benjamin M. Sheridan, Plaintiff's attorney**, whose address is: **Klein & Sheridan, LC, 3566 Teays Valley Road, Hurricane, WV 25526**, an answer, including any related counterclaim, or any other claim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **thirty (30)** days after service of this summons upon you, exclusive of the date of service. If discovery is attached, you are further required to file a response to attached discovery within **forty-five (45)** of the service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim, or any other claim in the above-styled action.

DATED: 2-26, 2021

Michael Stover BT
Clerk of Court

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

FILED

2021 MAR 22 P 5:21

CIRCUIT CLERK OF
WYOMING COUNTY, WV



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

David "Bugs" Stover
Wyoming County Courthouse
P.O. Box 190
Pineville, WV 24874-0190

Control Number: 271931

Defendant: THE BANK OF MISSOURI DBA
FORTIVA RETAIL CREDIT
916 NORTH KING HIGHWAY
PERRYVILLE, MO 63775 US

County: Wyoming

Civil Action: 21-C-14

Certified Number: 92148901125134100003090599

Service Date: 3/4/2021

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in your name and on your behalf.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner
Secretary of State

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

HILMA STOVER,
on behalf of herself and a class
of similarly situated persons

Plaintiff,

vs.

Civil Case No. 21-C-14

FLUENT HOME, LLC, and
THE BANK OF MISSOURI d/b/a
FORTIVA RETAIL CREDIT,

Defendants.

SUMMONS

To the above-named DEFENDANT:

The Bank of Missouri
d/b/a Fortiva Retail Credit
916 North Kings Highway
Perryville, MO 63775

IN THE NAME OF THE STATE OF WEST VIRGINIA: you are hereby summoned and are required to serve upon **Benjamin M. Sheridan, Plaintiff's attorney**, whose address is: **Klein & Sheridan, LC, 3566 Teays Valley Road, Hurricane, WV 25526**, an answer, including any related counterclaim, or any other claim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **thirty (30)** days after service of this summons upon you, exclusive of the date of service. If discovery is attached, you are further required to file a response to attached discovery within **forty-five (45)** of the service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim, or any other claim in the above-styled action.

DATED: 2-26, 2021

Michael Stover BT
Clerk of Court

ACCEPTED FOR SERVICE OF PROCESS
2021 MAR -4 P 2:39
CLERK OF STATE COURT
WYOMING COUNTY
WEST VIRGINIA

ACCEPTED FOR SERVICE OF PROCESS
2021 MAR -2 P 2:28
CLERK OF STATE COURT
WYOMING COUNTY
WEST VIRGINIA

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

HILMA STOVER,
on behalf of herself and a class
of similarly situated persons

Plaintiff,

vs.

FLUENT HOME, LLC, and
THE BANK OF MISSOURI d/b/a
FORTIVA RETAIL CREDIT,

Defendants.

Civil Case No. 21-C-14

SUMMONS

To the above-named DEFENDANT:

The Bank of Missouri
d/b/a Fortiva Retail Credit
916 North Kings Highway
Perryville, MO 63775

IN THE NAME OF THE STATE OF WEST VIRGINIA: you are hereby summoned and are required to serve upon **Benjamin M. Sheridan, Plaintiff's attorney**, whose address is: **Klein & Sheridan, LC, 3566 Teays Valley Road, Hurricane, WV 25526**, an answer, including any related counterclaim, or any other claim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **thirty (30) days** after service of this summons upon you, exclusive of the date of service. If discovery is attached, you are further required to file a response to attached discovery within **forty-five (45)** of the service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim, or any other claim in the above-styled action.

DATED: 2-26, 2021

Michael Stover BT
Clerk of Court

ACCEPTED FOR SERVICE OF PROCESS
2021 MAR -4 P 2:39
CLERK OF WEST VIRGINIA

ACCEPTED FOR SERVICE OF PROCESS
2021 MAR -3 P 2:27
CLERK OF STATE OF WEST VIRGINIA

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

FILED

2021 MAR 22 P 5:23

CIRCUIT CLERK OF
WYOMING COUNTY, WV



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

David "Bugs" Stover
Wyoming County Courthouse
P.O. Box 190
Pineville, WV 24874-0190

Control Number: 271932

Defendant: FLUENT HOME LLC
209 West Washington Street
Charleston, WV 25302 US

Agent: Corporation Service Company

County: Wyoming

Civil Action: 21-C-14

Certified Number: 92148901125134100003090605

Service Date: 3/4/2021

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in your name and on your behalf.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner
Secretary of State

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

HILMA STOVER,
on behalf of herself and a class
of similarly situated persons

Plaintiff,

vs.

FLUENT HOME, LLC, and
THE BANK OF MISSOURI d/b/a
FORTIVA RETAIL CREDIT,

Defendants.

Civil Case No. 21-CV-14

ACCEPTED FOR SERVICE OF PROCESS
2021 MAR -4 P 2:39
CLERK OF COURT
STATE OF WEST VIRGINIA
ACCEPTED FOR SERVICE OF PROCESS
2021 MAR -3 P 2:28
CLERK OF COURT
STATE OF WEST VIRGINIA

SUMMONS

To the above-named DEFENDANT:

Fluent Home, LLC
Corporation Service Company
209 West Washington St.
Charleston, WV 25302

IN THE NAME OF THE STATE OF WEST VIRGINIA: you are hereby summoned and are required to serve upon **Benjamin M. Sheridan, Plaintiff's attorney**, whose address is: **Klein & Sheridan, LC, 3566 Teays Valley Road, Hurricane, WV 25526**, an answer, including any related counterclaim, or any other claim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **thirty (30)** days after service of this summons upon you, exclusive of the date of service. If discovery is attached, you are further required to file a response to attached discovery within **forty-five (45)** of the service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim, or any other claim in the above-styled action.

DATED: 2-26, 2021

Michael Stover
Clerk of Court

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

STOVER,

Plaintiff,

v.

FLUENT HOME, LLC, et al.,

Defendants.

CIVIL ACTION NO. 5:21-cv-00191

NOTICE OF CONSENT TO REMOVAL

Defendant Fluent Home, LLC, hereby gives the Court and the parties to this action Notice of its affirmative consent to the removal of this action from Wyoming County, West Virginia to the United States District Court for the Southern District of West Virginia. Defendant Fluent Home, LLC hereby fully joins in the Notice of Removal filed by Defendant The Bank of Missouri.

DATED: March 26, 2021.

Fluent Home, LLC

/s/Helen Mac Murray

Helen Mac Murray (13015)
Mac Murray & Shuster, LLP
6525 W. Campus Oval, Suite 210
New Albany, OH 43054
Tel: (614) 939-9955; Fax: (614) 939-9954
Email: hmacmurray@msslawgroup.com

Counsel for Fluent Home, LLC

Exhibit C

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

HILMA STOVER,
on behalf of herself and a class of similarly
situated persons,

Plaintiff

v.

Civil Case No. 21-C-14

**FLUENT HOME, LLC, and THE BANK
OF MISSOURI d/b/a FORTIVA RETAIL
CREDIT,**

Defendants.

NOTICE OF FILING OF REMOVAL

PLEASE TAKE NOTICE THAT on March 29, 2021, Defendant The Bank of Missouri (“TBOM”), filed a Notice of Removal of Civil Action pursuant to 28 U.S.C. §1441(b) with the Clerk of the United States District Court for the Southern District of West Virginia. A copy of the Notice of Removal filed by TBOM is attached as **Exhibit A**, and is served and filed herewith.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal with the United States District Court, together with the filing of this Notice of Removal in this Court, effect the removal of the action and this Court shall proceed no further unless and until the case has been remanded.

Date: March 29, 2021

Respectfully submitted,

/s/ Elizabeth M. Thomas

Elizabeth M. Thomas, Esq.

MCGUIREWOODS LLP

W. Va. Bar No. 12320

Tower Two-Sixty

260 Forbes Avenue

Suite 1800
Pittsburgh, PA 15222
Telephone: (412) 667-7921
Fax: (412) 667-7995
ethomas@mcguirewoods.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2021, a true and correct copy of the foregoing Notice of Filing of Notice of Removal was served via electronic mail on the following with their consent:

Benjamin Sheridan, Esq.
Klein & Sheridan, LC
3566 Teays Valley Road
Hurricane, WV 25526
Attorney for Plaintiff

/s/ Elizabeth M. Thomas
Elizabeth M. Thomas, Esq.

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

HILMA STOVER, on behalf of herself and a class of similarly situated persons,

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

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

Benjamin Sheridan / Jed Nolan, Klein & Sheridan, PC 3566 Teays Valley Rd., Hurricane, WV 25526

DEFENDANTS

FLUENT HOME, LLC, and THE BANK OF MISSOURI d/b/a FORTIVA RETAIL CREDIT

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)

Elizabeth M. Thomas, McGuireWoods LLP, Tower Two-Sixty, 260 Forbes Avenue, Suite 1800, Pittsburgh, PA 15222

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)

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

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, 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): FCRA, TILA. Brief description of cause: Plaintiff and putative class allege claims under the FCRA, TILA, and state law.

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: March 29, 2021 SIGNATURE OF ATTORNEY OF RECORD: /s/ Elizabeth M. Thomas

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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Alleges Fluent Home Pulls Credit Scores, Opens Credit Cards Without Customer Authorization](#)
