

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 9:18cv80776

DENA WITT, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

COMPLAINT – CLASS ACTION

VALENTINE & KEBARTAS, LLC,

Defendants.

**CLASS ACTION COMPLAINT SEEKING
INJUNCTIVE RELIEF AND STATUTORY DAMAGES**

JURY DEMAND

On behalf of the putative classes, Plaintiff DENA WITT (“Plaintiff”), seeks redress for the unlawful conduct of Defendant, VALENTINE & KEBARTAS, LLC. (“Defendant”), *to wit*, for violations of 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act (“FDCPA”). Simply put, Defendant has dispatched thousands unlawful collection letters to Florida consumers, whereby each such letter contains identical violations § 1692g(a)(1), § 1692g(a)(2), §1692(e)(2) and/or §1692(10) of the FDCPA.

INTRODUCTION

1. The FDCPA “is a consumer protection statute that ‘imposes open-ended prohibitions on, *inter alia*, false, deceptive, or unfair” debt-collection practices. Crawford v. LVNV Funding, LLC, 758 F.3d 1254, 1257 (11th Cir. 2014) (*quoting Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 587 (2010)).

2. “Congress enacted the FDCPA after noting abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” Brown v. Card Serv. Ctr., 464 F.3d 450 (3rd Cir. 2006) (internal quotations omitted); *see, e.g., Id.* at 453 (quoting 15 U.S.C. §1692(a)) (“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.”).

3. As set forth in more detail below, Defendant has dispatched thousands of unlawful collection letters to consumers in an attempt to collect a debt, and in each such letter, Defendant has failed to clearly and adequately disclose the name of the current creditor the debt is owed, in violation of § 1692g(a)(2). Defendant is also liable to Plaintiff and class members for violating several provisions under § 1692g and § 1692e of the FDCPA by falsely and deceptively misrepresenting the amount if the debt due. Accordingly, Plaintiff, on behalf of the putative class, seeks statutory damages under the FDCPA.

JURISDICTION AND VENUE

4. This Court has jurisdiction for all counts under 28 U.S.C. §§ 1331, 1337 and 15 U.S.C. § 1692k.

5. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d), 28 U.S.C §1331, and 28 U.S.C §1337.

6. Venue in this District is proper because Plaintiff resides here, Defendant transacts business here, and the complained of conduct occurred within the venue.

DEMAND FOR JURY TRIAL

7. Plaintiff is entitled to, and hereby respectfully demands, a trial by jury on all counts alleged and on any issues so triable. *See Sibley v. Fulton DeKalb Collection Service*, 677 F.2d 830 (11th Cir.1982) (wherein the Eleventh Circuit held that, “a plaintiff, upon timely demand, is entitled to a trial by jury in a claim for damages under the FDCPA.”).

PARTIES

8. Plaintiff is a natural person, and a citizen of the State of Florida, residing in Martin county, Florida.

9. Plaintiff is a “consumer” within the meaning of the FDCPA. *See* 15 U.S.C §1692a.

10. Defendant is a Massachusetts limited liability company, with its principal place of business located in Lawrence, Massachusetts.

11. Defendant engages in interstate commerce by regularly using telephone and mail in a business whose principal purpose is the collection of debts.

12. At all times material hereto, Defendant was acting as a debt collector in respect to the collection of Plaintiff’s debts.

FACTUAL ALLEGATIONS

13. The debt at issue (the “Consumer Debt”) is a financial obligation Plaintiff incurred primarily for personal, family, or household purposes.

14. The Consumer Debt is a “debt” governed by the FDCPA. *See* 15 U.S.C §1692a(5).

15. On a date better known by Defendant, Defendant began attempting collect the Consumer Debts from Plaintiff.

16. On or about October 14, 2017, Defendant sent a collection letter to Plaintiff (the “Collection Letter”) in an attempt to collect the Consumer Debt. A copy of the Collection Letter is attached hereto as Exhibit “A.”

17. The Collection Letter was Defendant’s first and/or initial communication with Plaintiff in connection with the Consumer Debt.

18. The Collection Letter fails to inform Plaintiff and members of the class that the alleged debt is subject to change due to accruing interest and/or fees pursuant to the agreement that formed the underlying debt in violation of 15 U.S.C §1692g(a)(1).

19. The Collection Letter also fails to clearly and adequately state who exactly is the *current creditor* of the debt as it is required to do under 15 U.S.C §1692g(a)(2) of the FDCPA.

20. Although the Collection Letter states that the that the *original creditor* is Capital One, N.A., nowhere in the Collection Letter does it state who the *current creditor* of the debt is as Defendant is required to clearly and effectively convey pursuant to 15 U.S.C §1692g(a)(2) of the FDCPA.

21. Defendant's letter merely states, "Owner Name: LVNV Funding LLC."

22. Mere allusions to the creditor's identity are insufficient. The Collection Letter must specifically and clearly identify the creditor of the Consumer Debt.

23. However, Defendant's Collection Letter letter fails to identify any entity or party as "*current creditor*" to whom the debt is owed.

24. This confusion is magnified by the fact that Plaintiff received a letter from Capital One, N.A. *less than a month before receiving the Collection Letter* stating that the Consumer Debt was sold to and now owned by "*Sherman Originator III, LLC.*" A copy of the Capital One N.A. letter is attached as "Exhibit B." Nowhere is *Sherman Originator III, LLC* identified in the Collection Letter as the *current creditor*.

25. As such, not only would the least sophisticated consumer be confused as to who the current creditor of the debt is, but Plaintiff still, in fact, has no idea as to who is the current creditor of the Consumer Debt.

26. Any potential *bona fide* error defense which relies upon Defendant's mistaken interpretation of the legal duties imposed upon them by the FDCPA would fail as a matter of law. Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A., 130 S.Ct. 1605 (2010).

CLASS ACTION ALLEGATIONS

20. This action is brought on behalf of the following two classes:

The Failure to Name Creditor Class:

(i) all persons in the State of Florida (ii) who were sent a letter (iii) between June 14, 2017 and June 14, 2018 (iv) from Defendant (v) in an attempt to collect a debt incurred for personal, family, or household purposes, (vi) of which Defendant failed to properly disclose the name of the creditor to whom the debt is owed pursuant to 15 U.S.C §1692g(a)(2).

and

The Failure to Inform of Accruing Interest and Fees Class:

(i) all persons in the State of Florida (ii) who were sent a letter (iii) between June 14, 2017 and June 14, 2018 (iv) from Defendant (v) in an attempt to collect a debt incurred for personal, family, or household purposes, (vi) of which Defendant failed to inform consumers of the fact that the alleged debt it sought to collect was legally accruing interest and/or fees pursuant to the underlying credit agreement with the original creditor in violation of 15 U.S.C. §1692g(a)(1), §1692e, 1692e(2) and/or (10).

21. Plaintiff alleges on information and belief that the classes are so numerous that joinder of all members is impracticable because Defendant has dispatched thousands of identical dunning letters to members of the classes attempting to collect consumer debts.

A. **EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF LAW & FACT**

22. Common questions of law and fact exist to the classes and predominate over any issues involving only individual class members.

23. With respect to the Failure to Name Creditor Class:

(a) The *factual issues common* to the class is whether members received a collection letter from Defendant, in an attempt to collect a consumer debt, within the class period; and

- (b) The *principal legal issue* of the Class is whether Defendant violated 15 U.S.C. § 1692g(a)(2) by failing to clearly, adequately, and effectively name of the creditor to whom the debt is owed.

24. With respect to the Failure to Inform of Accruing Interest and Fees Class:

- (c) The *factual issues common* to the class is whether members received a collection letter from Defendant, in an attempt to collect a consumer debt, within the class period; and
- (d) The *principal legal issue* of the Class is whether Defendant violated 15 U.S.C. § 1692g(a)(1) and/or §§ 1692e, 1692e(2) and (10) by failing to inform consumers of the fact that the alleged debt it sought to collect was legally accruing interest and/or fees pursuant to the underlying credit agreement with the original creditor.

24. Excluded from the Classes are Defendant's agents and employees, Plaintiff's attorneys and their employees, the Judge to whom this action is assigned, and any member of the Judge's staff and immediate family.

B. TYPICALITY

25. Plaintiff's claims are typical of the claims of each class member and are based on the same facts and legal theories.

C. ADEQUACY

26. Plaintiff is an adequate representative for the Classes.

27. Plaintiff will fairly and adequately protect the interests of the Classes.

28. Plaintiff has retained counsel experienced in handling actions involving unlawful practices under the FDCPA and consumer-based class actions. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them to not vigorously pursue this action.

D. PREDOMINANCE AND SUPERIORITY

29. Certification of the classes under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:

- (a) The questions of law or fact common to the members of the class predominate over any questions affecting an individual member.
- (b) A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Certification of a classes under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate, in that, Defendant has acted on grounds generally applicable to the class thereby making appropriate declaratory relief with respect to the class as a whole. Plaintiff requests certification of a hybrid class under Rule 23(b)(3) for monetary damages and to Rule 23(b)(2) for injunctive and equitable relief.

COUNT I.
VIOLATION OF 15 U.S.C. § 1692g(a)(2)

31. Defendant violated §1692g(a)(2) of the FDCPA by failing to send Plaintiff a written notice that, in light of the least sophisticated consumer standard, sufficiently advises of the name of the creditor to whom the Consumer Debt is owed, in that, the Collection Letter fails to identify any entity as being the “current creditor.” See Pardo v. Allied Interstate, L.L.C., 2015 WL 5607646 (S.D. Ind. Sept. 21, 2015) (where collection letter’s body referred to “Resurgent Capital Services LP” as Allied Interstate’s “Client,” and offered no explanation of the relationship between LVNV and Resurgent Capital or why/how Resurgent Capital was involved with debt, consumer stated valid §1692g(a)(2) claim).

32. Here, in the Collection Letter, Defendant fails to clearly identify any entity as the *current creditor* of the debt. No person or entity is identified as the current creditor as §1692g(a)(2) requires debt collectors to disclose.

33. Courts have consistently held that “[m]erely including the current creditor's name in a debt collection letter, without more, is insufficient to satisfy 15 U.S.C. § 1692g(a)(2).” McGinty v. Professional Claims Bureau, Inc., Case No. 15-cv-4356 (SJF) (ARL), 2016 WL 6069180, at *4 (E.D.N.Y. Oct. 17, 2016); *see also*, Suellen v. Mercantile Adjustment Bureau, LLC, Case No. 12-cv-00916 NC, 2012 WL 2849651, at *6 (N.D. Cal. June 12, 2012) (observing that courts have held that “[m]erely naming the creditor without identifying it as the current creditor” is not sufficient for purposes of section 1692g(a)(2)); Sparkman v. Zwicker & Assocs., P.C., 374 F. Supp. 2d 293, 300-01 (E.D.N.Y. 2005) (holding that a debt collector violated 15 U.S.C. § 1692g where “[t]he name of the creditor . . . appear[ed] in the subject line of the Collection Letter, but [was] not identified as a creditor”); Dix v. Natl. Credit Sys., Inc., 2:16-CV-3257-HRH, 2017 WL 4865259, at *2 (D. Ariz. Oct. 27, 2017) (“[a]ll defendant did was name the current creditor. Defendant did nothing to identify ‘Metro on 19th’ as the current creditor. Thus, plaintiff is entitled to summary judgment on his section 1692g(a)(2) claim”); Datiz v. International Recovery Associates, Inc., Case No. 15-CV-3549 (ADS) (AKT), 2016 WL 4148330 (E.D.N.Y. Aug. 4, 2016) (because collection letter “did not make it *explicit* that [the hospital] was the current creditor to whom the plaintiff owed a debt” summary judgement was granted in favor of Plaintiff’s §1692g(a)(2) claim).

WHEREFORE, Plaintiff, individually and on behalf of the Failure to Name Creditor Class, request that the Court enter an order certifying the described Class and judgment in favor of Plaintiff and Class and against Defendant for:

- (1) Statutory damages, as provided under 15 U.S.C. § 1692k(a)(2)(B);
- (2) Attorney’s fees, litigation expenses and costs of the instant suit, as provided under 15 U.S.C. § 1692k(a)(3); and
- (3) Such other or further relief as the Court deems proper.

COUNT II.
VIOLATION OF 15 U.S.C. § 1692g(a)(1) and § 1692e et seq.

34. Defendant violated § 1692(g)(a)(1) and § 1692e *et seq.* of the FDCPA by failing to adequately inform Plaintiff and class members of the true amount owed to the current creditor, by falsely representing the character and/or amount of the debt, and by utilizing false representations and/or deceptive means in collecting and/or attempting to collect the consumer debt from Plaintiff and class members. In short, Defendant failed to provide an explicit disclosure of accruing interest and or fees for which the current creditor can recover.

35. Section 1692g(a)(1) of the FDCPA requires that a debt collector send the consumer a written notice containing “the amount of the debt.” *See* 15 U.S.C. §1692g(a)(1). That notice must be contained in either the initial communication regarding the debt, or in another communication “[w]ithin five days after the initial communication.” *Id.* Critically, however, “[s]imply stating the amount due is not enough.” Melillo v. Shendell & Assocs., P.A., 2012 WL 253205, at *4 (S.D. Fla. Jan. 26, 2012) (citing Chuway v. Nat’l Action Fin. Servs., Inc., 362 F.3d 944, 948 (7th Cir.2004)). The collection letter “must state the amount of the debt ‘clearly enough that the recipient is likely to understand it.’” Melillo, 2012 WL 253205 at *4 (quoting Williams v. OSI Educ. Servs., Inc., 505 F.3d 675, 677 (7th Cir.2007)); *see also* Russell v. Equifax A.R.S., 74 F.3d 30, 35 (2d Cir.1996) (“It is not enough for a debt collection agency simply to include the proper debt validation notice in a mailing to a consumer – Congress intended that such notice be clearly conveyed”); Weiss v. Zwicker & Assocs. ., P.C., 664 F.Supp.2d 214, 217 (E.D.N.Y.2009) (finding letter failed to state amount of debt where a consumer reading it could reasonably interpret the amount of debt in two ways); Fuller v. Becker & Poliakoff, P.A., 192 F.Supp.2d 1361, 1370 (M.D.Fla.2002) (finding letter failed to state amount of debt where it listed different amounts consumers may owe depending on when payments began, and did not indicate whether consumers owed the full amount stated or when payments began).

36. Similarly, §1692e of the FDCPA generally prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. §1692e.

37. In particular, §1692e(2)(A) and §1692e(10) explicitly prohibit “[t]he false representation of the character, amount, or legal status of any debt” and “use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer,” respectively. 15 U.S.C. §§1692e(2)(A) and (10). *See, e.g., Dragon v. I.C. System, Inc.*, 483 F.Supp.2d 198, 201–03 (D.Conn.2007) (finding that a collection letter violated §1692g(a)(1) and §§1692e(2) and (10) by not “specifically indicat[ing] the date as of which the ‘BALANCE DUE’ amount was the full amount of the debt,” and was “potentially misleading for the least sophisticated consumer who could readily conclude that the total amount stated as due . . . was due *at any time* when in fact it was not and was subject to adjustment . . . on a periodic basis.” (emphasis in original)); *Hepsen v. J.C. Christensen & Associates, Inc.*, 2009 WL 3064865, at *4–5 (M.D. Fla. Sept. 22, 2009) (“A dunning letter must state the exact and correct amount of the debt in order to comply with § 1692g(a)(1) [and] [w]hen a debt collector demands an incorrect amount of money in a dunning letter, it makes a false and misleading representation in violation of § 1692e(2)(A).”).

38. Here, the Consumer Debt is to be calculated as the sum of the principal portion of the original debt and, *inter alia*, the interest and fees which may be added to said principal pursuant to underlying agreement between Plaintiff and the original creditor. Critically, however, the amount that the current creditor (whomever it may be) is entitled to recover from Plaintiff goes much further.

39. “In diversity cases, federal courts should follow state law governing the award of prejudgment interest.” *Chalfonte Condo. Apartment Ass’n, Inc. v. QBE Ins. Corp.*, 526 F. Supp. 2d 1251, 1261 (S.D. Fla. 2007) (citing *Seb S.A. v. Sunbeam Corp.*, 476 F.3d 1317, 1320 (11th

Cir.2007)). “Under Florida law, ‘when a verdict liquidates damages on a plaintiff’s out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss.’” Chalfonte, 526 F. Supp. 2d 1251, 1261 (S.D. Fla. 2007) (quoting Argonaut Ins. Co. v. May Plumbing Co., 474 So.2d 212, 215 (Fla.1985); *See also* Aker v. Americollect, Inc., 2017 WL 1352089 (7th Cir. Apr. 13, 2017) (holding that a debt collector’s inclusion of statutory interest in the amount of the debt, without having first secured a judgment, was an accurate representation of the amount of the debt, and otherwise in conformity with the FDCPA, because under [state] law, statutory interest accrued from the moment of breach).

40. “[T]he Florida Supreme Court has said prejudgment interest is allowable after a demand of payment of an unsettled claim, for goods supplied or services rendered, from the time of the demand; and where the demand sued for is a money debt, from the time the debt became legally due and payable.” Diversified Commercial Developers, Inc. v. Formrite, Inc., 450 So. 2d 533, 535–36 (Fla. Dist. Ct. App. 1984) (citing Brite v. Orange Belt Securities Company, 133 Fla. 266, 275–76 (1938); *see also* English and American Insurance Company v. Swain Groves Inc., 218 So.2d 453 (Fla. 4th DCA 1969) (“In actions *ex contractu* it is proper to allow interest at the legal rate from the date the debt was due. The fact that there is an honest and bona fide dispute as to whether the debt is actually due has no bearing on the question. If it is finally determined that the debt was due, the person to whom it was due is entitled not only to the payment of the principal of the debt but also to the interest at the lawful rate from the date due thereof.”)).

41. Here, Defendant failed to provide an explicit disclosure of accrued and accruing contractual interest and/or fees per agreement with the original creditor which the current creditor can legally recover, and as a result, the least sophisticated consumer can easily be misled or confused as to the amount of the Consumer Debt. *See* Wilson v. Quadramed Corp., 225 F.3d 350, 354 (3d Cir. 2000)) (“A debt collection letter is deceptive if “it can be reasonably read to have two or more different meanings, one of which is inaccurate.” (quoting Russell v. Equifax A.R.S., 74

F.3d 30, 35 (2d Cir. 1996)). For example, the least sophisticated consumer may believe that he or she can pay the Consumer Debt, in-full, by remitting the principal and interest stated in the Collection Letter to the current creditor, regardless of how much time has passed. This is, of course, legally false.

42. The necessity of information which Defendant omitted from the Collection Letter was an issue Judge Kathleen M. Williams recently addressed in Anselmi v. Shendell & Associates, P.A., stating, in relevant part:

The Seventh Circuit has offered some guidance regarding a debt collector's obligations under 15 U.S.C. §1692g(a). *See Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 876 (7th Cir. 2000). With regard to specifying the amount of the debt owed, the Seventh Circuit has held that the following statement would satisfy the debt collector's duty to state the amount of the debt where the amount may vary day to day: *As of the date of this letter, you owe \$___ [the exact amount due]. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-800-[phone number].* *See Id.* at 876. Although a debt collector need not use this exact language, using the aforementioned or similar language will preclude a debt collector from being accused of violating §1692g(a). *Id.*

2014 WL 5471111 at *3 (S.D. Fla. 2014) (emphasis added).

43. Yet, despite Judge Kathleen M. Williams' clear articulation of safe-harbor language capable of insulating Defendant from liability, Defendant still chose to wrongfully conceal necessary and pivotal information from Plaintiff – for example – Defendant did not inform the least sophisticated consumer that the Consumer Debt was accruing interest; Defendant did not provide a breakdown of the accrued interest or other fees and instead mislead the least sophisticated consumer by stating the amount owed as a single sum; Defendant did not state whether the Consumer Debt was subject to the accrual of interest or other charges; Defendant did

not state whether the Consumer Debt had accrued interest or other charges; Defendant did not state the amount of interest and other charges that had accrued on the principal portion of the Consumer Debt; Defendant did not state how or when the purported amount owed by Plaintiff had been calculated; and Defendant failed to advise of the *added* prejudgment interest which the current creditor could *also* recover from Plaintiff upon securing a judgment against Plaintiff. *See Carlin v. Davidson Fink LLP*, 852 F.3d 207 (2d Cir. 2017) (finding that the amount provided did not satisfy § 1692g(a)(1) because the collection letter “omit[ed] information allowing the least sophisticated consumer to determine the minimum amount she owes at the time of the notice, what she will need to pay to resolve the debt at any given moment in the future, and an explanation of any fees and interest that will cause the balance to increase.” (emphasis added)); *Avila v. Riexinger & Associates, LLC*, 817 F.3d 72 (2d Cir. 2016) ([b]ecause the statement of an amount due, without notice that the amount is already increasing due to accruing interest or other charges, can mislead the least sophisticated consumer into believing that payment of the amount stated will clear her account, we hold that the FDCPA requires debt collectors, when they notify consumers of their account balance, to disclose that the balance may increase due to interest and fees. We think that requiring such disclosure best achieves the Congressional purpose of full and fair disclosure to consumers that is embodied in Section 1692e.); *Anselmi v. Shendell & Assocs., P.A.*, 2014 WL 5471111, at *2 (S.D. Fla. Oct. 29, 2014) (“A debt collector is [] required to inform a debtor if the debt is subject to adjustment by the creditor on a periodic basis.” (citing *Miller*, 214 F.3d 872 at 876)).

44. Late last year, this Court adopted the 2nd Circuit’s reasoning in *Avila*. In *Pimentel v. Nationwide Credit, Inc.*, this Court, in addressing this very matter, held that:

It appears that defendant’s collection letters create the very issue about which the *Avila* court was concerned. Based on the wording of the collection letters, if plaintiff were to remit the “account balance” shown on the letters, she would not know whether she had paid the debt in full. Thus, plaintiff has adequately alleged a violation of § 1692e.

17-20226, 2017 WL 5633310, at *2 (S.D. Fla. Nov. 13, 2017)

45. Thus, in light of the forgoing, Defendant violated §1692g(a)(1) and §§1692e, 1692e(2) and (10) of the FDCPA by failing inform the least sophisticated consumer of the interest, and/or fees which the Consumer Debt *was and is* subject to collection by the current creditor.

WHEREFORE, Plaintiff, individually and on behalf of the Failure to Inform of Accruing Interest and Fees Class, request that the Court enter an order certifying the described Class and judgment in favor of Plaintiff and Class and against Defendant for:

- (1) Statutory damages, as provided under 15 U.S.C. § 1692k(a)(2)(B);
- (2) Attorney's fees, litigation expenses and costs of the instant suit, as provided under 15 U.S.C. § 1692k(a)(3); and
- (3) Such other or further relief as the Court deems proper.

DATED: June 14, 2018

Respectfully Submitted,

/s/ Jibrael S. Hindi

JIBRAEL S. HINDI, ESQ.

Florida Bar No.: 118259

E-mail: jibrael@jibraellaw.com

THE LAW OFFICES OF JIBRAEL S. HINDI

110 SE 6th Street, Suite 1744

Fort Lauderdale, Florida 33301

Phone: 954-907-1136

Fax: 855-529-9540

COUNSEL FOR PLAINTIFF

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS DENA WITT, individually
and on behalf of all others similarly situated.

DEFENDANTS VALENTINE & KEBARTAS, LLC

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

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.

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

Attorneys (If Known)

The Law Office of Jibrael S. Hindi, PLLC, 610 SE 6th St., Suite 1744
Fort Lauderdale FL, 33301. (954)628-5793.

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☒ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF |
|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 |
| Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 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 type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" 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

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions):

a) Re-filed Case ☐ YES ☒ NO

b) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692, et seq.

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. 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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

June 14, 2018

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

Save As...

Print

Reset

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.C.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; 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. 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

VIII. 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 dollar amount (in thousands of dollars) 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.

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

Southern District of Florida

Civil Action No. 9:18cv80776

Signature of Clerk or Deputy Clerk

Civil Action No. 9:18cv80776

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

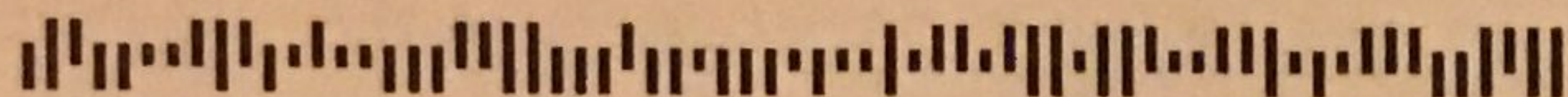
Save As...

Reset

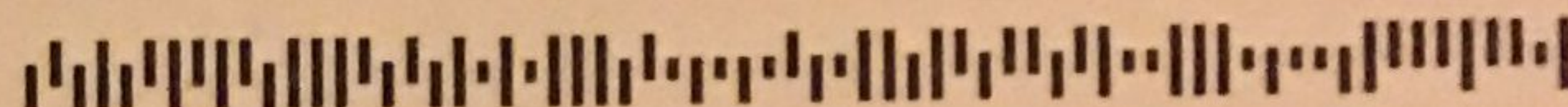
P.O. BOX 5804
TROY MI 48007-5804
RETURN SERVICE REQUESTED



Valentine & Kebartas, LLC
P.O. Box 325
Lawrence, MA 01842
(978) 975-0799
(800) 731-7766
Office Hours
Monday - Thursday: 8am - 8pm
Friday: 8am - 5pm
Saturday: 8am - Noon



S-OTVAKI10 L-105
P7I4XU00301163 -529666743 I03481
DENA WITT
12647 SE OLD CYPRESS DR
HOBE SOUND FL 33455-7923



VALENTINE & KEBARTAS, LLC.
P.O. BOX 325
LAWRENCE MA 01842-0325



October 14, 2017

Account No:
013843508-01-0000

Total Due:
\$ 580.61

OWNER NAME: LVNV FUNDING LLC

✂ Detach Upper Portion And Return With Payment ✂

VKI ACCT#: 013843508-01-0000
ORIGINAL CREDITOR: CAPITAL ONE N.A.
OWNER NAME: LVNV FUNDING LLC
TOTAL DUE : \$ 580.61

Dear DENA WITT,

WE HAVE BEEN ASKED TO CONTACT YOU TO ARRANGE A RESOLUTION OF YOUR DELINQUENT ACCOUNT.

ACCORDING TO OUR RECORDS, FULL PAYMENT OF YOUR ACCOUNT IS LONG OVERDUE. PLEASE CONTACT OUR OFFICE AT (800) 731-7766.

USE THE ENCLOSED ENVELOPE TO REMIT PAYMENT OF THE OUTSTANDING BALANCE.

***** IMPORTANT *****

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 THIS 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.

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.

Please note that a negative credit bureau report reflecting on your credit record may be submitted to a credit reporting agency by the current account owner if you fail to fulfill the terms of your credit obligations. This notice in no way affects any rights you may have.

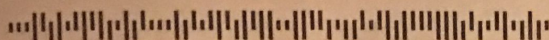
PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION



**Sherman Originator III, LLC
now owns your account**

Capital One Services, LLC
P.O. Box 30285
Salt Lake City, UT 84130-0285

September 21, 2017



DENA WITT
12647 SE OLD CYPRESS DR
HOBE SOUND, FL 33455

41016

C209

Re: Account Number : 5178058487497482
Capital One

Dear DENA WITT,

We wanted to let you know about a change to your credit card account referenced above. Your credit card account with a balance of \$580.61 was acquired by Sherman Originator III, LLC on or about September 20, 2017. Sherman Originator III, LLC now owns your account and may contact you either directly or through an affiliate or third party.

If you have any questions about your account, please contact Sherman Originator III, LLC at:

Sherman Originator III, LLC
1-888-665-0374
PO BOX 10497

Greenville, SC 29603

Sincerely,
Capital One®

THIS LETTER IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO COLLECT A DEBT.

© 2017 Capital One. Capital One is a federally registered service mark. All rights reserved.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Valentine & Kebartas Failed to Properly Identify Consumer's Creditor, According to Lawsuit](#)
