

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

	X	
	:	Civil Action No.:
ANIA COSTA, MABEL RUANO, and	:	
ROGER RUANO, on behalf of themselves and	:	<u>COMPLAINT - - CLASS ACTION</u>
others similarly situated,	:	
	:	
Plaintiffs,	:	JURY TRIAL DEMANDED
	:	
v.	:	
	:	
ACCOUNT RECOVERY SOLUTIONS LLC,	:	
PAYMENT MANAGEMENT SERVICES	:	
USA, LLC, and PERFECTION	:	
COLLECTION, LLC,	:	
	:	
Defendants.	:	
	X	

NATURE OF ACTION

1. This is a class action brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

2. Congress enacted the FDCPA in 1977 to “eliminate abusive debt collection practices by debt collectors,” 15 U.S.C. § 1692(e), and in response to “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,” which Congress found to have contributed “to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *Id.*, § 1692(a).

3. Recently, the Consumer Financial Protection Bureau (“CFPB”)—the federal agency tasked with enforcing the FDCPA—explained: “Harmful debt collection practices remain a significant concern today. The Bureau receives more consumer complaints about debt collection practices than about any other issue.” *See* Brief for the CFPB as Amicus Curiae, ECF No. 14, p. 2, *Hernandez v. Williams, Zinman, & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20,

2014), http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf.

4. Of these complaints about debt collection practices, over one-third relate to debt collectors' attempts to collect debts that consumers do not owe. *See* Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act—CFPB Annual Report 2018* at 15 (2018), <https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2018/>.

5. To help combat this problem, the FDCPA requires in all initial communications with consumers—whether made orally or in writing—a clear disclosure that the communication is from a debt collector attempting to collect a debt, and that any information obtained will be used for that purpose. 15 U.S.C. § 1692e(11).

6. And for all subsequent communications, the FDCPA additionally requires that the debt collector so identify itself as a debt collector. *Id.*

7. This case centers on the failures of Account Recovery Solutions LLC (“ARS”), Payment Management Services USA, LLC (“PMS”), and Perfection Collection, LLC (“Perfection Collection”) (collectively, “Defendants”) to properly provide these disclosures during telephone calls and in voice messages left for consumers in the state of Florida.

8. This case also concerns similar efforts by Defendants to create a false sense of urgency and otherwise intimidate Florida consumers in those same telephone calls and voice messages.

PARTIES

9. Ania Costa is a natural person who resides in Miami-Dade County, Florida.

10. Ms. Costa is a “consumer” as defined by 15 U.S.C. § 1692a(3).

11. Mabel Ruano is a natural person who resides in Miami-Dade County, Florida.

12. Roger Ruano is a natural person who resides in Miami-Dade County, Florida.

13. Mr. and Mrs. Ruano are husband and wife.

14. Mr. and Mrs. Ruano are obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, a creditor other than Defendants.

15. Mr. and Mrs. Ruano's obligation, or alleged obligation, owed or due, or asserted to be owed or due, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, home security alarm services (the “Debt”).

16. Mr. and Mrs. Ruano both are “consumers” as defined by 15 U.S.C. § 1692a(3).

17. Ms. Costa is Mrs. Ruano's sister.

18. Ms. Costa, Mrs. Ruano, and Mr. Ruano will collectively be referred to as “Plaintiffs.”

19. ARS is a limited liability company with its registration and principal place of business located in New York.

20. ARS describes itself “as a third party Account Receivables Company” that “has proven to be a leader.”¹

21. ARS touts its collection business as follows:

Files placed for recovery are managed by the business' top collectors, and supported with modern technology. Through our network of asset recovery, debtors are proficiently communicated for repayment by our dedicated teams. Our assets in collection software includes modern call centers, online payment systems, and direct reporting. Our constant market breakdown and monitoring of

¹ <https://www.accountrecoverysolution.com/about-us> (last visited April 3, 2018).

the up-to-date business regulation, guarantees that our consumers are the best assisted in our network.²

22. Notably, the “online payment systems” advertised by ARS are actually operated by PMS, as when visitors click “Online Payment Portal” on ARS’s website, it then redirects to PMS’s website.³

23. ARS is an entity that at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).

24. At the time ARS attempted to collect the alleged Debt from Plaintiffs, the alleged Debt was in default.

25. ARS uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or to regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

26. ARS is a “debt collector” as defined by the FDCPA at 15 U.S.C. § 1692a(6).

27. PMS is a limited liability company with its registration and principal place of business located in New York.

28. PMS describes itself as “a National Debt Collection Agency based out of Buffalo, New York. We are dedicated to be a full service debt collection solution by increasing the percentage of bad debt recovery for our clients in a professional manner, and preserving our client’s image and our reputation in our Industry.”⁴

29. Describing its “Collector Responsibility,” PMS assures:

² <https://www.accountrecoverysolution.com/about-us> (last visited April 3, 2018).

³ <https://paypmsusallc.123fastpay.com/MasterPayment.aspx> (last visited April 3, 2018).

⁴ <https://paypmsusallc.123fastpay.com/AboutUs.aspx> (last visited April 3, 2018).

Our approach to collecting accounts is positive and professional. PMSUSA takes great care in the hiring and training of all personnel to assure that professionalism is maintained on all levels. All of our account managers have been trained according to the Fair Debt Collection Practices Act and in proper, professional telephone collection techniques. While our primary objective is to collect the monies, we are also concerned with maintaining the continued goodwill of our clients. We have a strict code of ethics in force which we constantly monitor in order to protect the best interests of our clients and their consumers.⁵

30. PMS is an entity that at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).

31. At the time PMS attempted to collect the alleged Debt from Plaintiffs, the alleged Debt was in default.

32. PMS uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or to regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

33. PMS is a “debt collector” as defined by the FDCPA at 15 U.S.C. § 1692a(6).

34. Perfection Collection is a limited liability company registered in New York but with its principal place of business located in Utah.

35. According to Perfection Collection’s website:

Our mission is to get you paid as quickly & efficiently as possible. Perfection Collection will help you focus on running your business and ease your worries about getting paid. Image is everything! We know that we are an extension of your business and we will do everything to maintain a working relationship with your debtors. It is our mission to optimize returns, face the daily challenges that we enjoy so, and increase our client’s returns through our efforts.

We are committed to recovering your funds. We believe that every debtor has the ability to pay if motivated correctly. We DO NOT alienate the debtors; we

⁵ <https://paypmsusallc.123fastpay.com/AboutUs.aspx> (last visited April 3, 2018).

attempt to align with them and offer a number of ways to resolve not only your debt but all their debts.⁶

36. Perfection Collection touts its “specializ[ation] in alarm contracts: We understand that the alarm industry is growing and will continue to grow which causes attrition to rise. The founders of our company have worked and specialized in many different fields within the alarm industry. With their knowledge of the sales, installation and collection process, companies benefit with a maximum recovery.”⁷

37. Among its service offerings: “1st Party Collections, 3rd Party Collections, Reinstatement of Services, Billing Invoices and Litigation.”⁸

38. Perfection Collection is an entity that at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).

39. At the time Perfection Collection attempted to collect the alleged Debt from Plaintiffs, the alleged Debt was in default.

40. Perfection Collection uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or to regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

41. Perfection Collection is a “debt collector” as defined by the FDCPA at 15 U.S.C. § 1692a(6).

⁶ <https://www.perfectioncollection.com/> (last visited April 3, 2018).

⁷ <https://www.perfectioncollection.com/> (last visited April 3, 2018).

⁸ <https://www.perfectioncollection.com/> (last visited April 3, 2018).

42. Indeed, Perfection Collection is licensed or otherwise registered as a debt collection agency in several states throughout the country, including in Florida and Texas.

JURISDICTION AND VENUE

43. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

44. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), as the acts and transactions giving rise to Plaintiffs' action occurred in this district, and as Defendants transact business in this district.

FACTUAL ALLEGATIONS

45. In connection with the collection of the alleged Debt, on or about October 26, 2017, "Emily Stevenson," a representative acting on behalf of ARS, placed a telephone call to Ms. Costa's telephone number and left the following voice message:

This message is for Roger and Mabel Ruano. My name is Emily Stevenson; I'm a private courier in the area. Calling to notify you of sealed documents that need to be delivered to you today and it does require your signature. I am scheduled to stop by your residence this afternoon, so you need to make yourself available with photo identification. I'll be at [ADDRESS REDACTED]. If you have any questions or concerns, contact the filing office prior to delivery: 800-321-9820. Consider yourself notified. I'll see you soon.

46. Also in connection with the collection of the alleged Debt, and also on or about October 26, 2017, Ms. Stevenson placed a telephone call to Mr. Ruano's telephone number and left a nearly identical voice message:

Roger Ruano and Mabel Ruano, this is Emily Stevenson, private courier in the area. I'm calling to notify you of sealed documents that need to be delivered to you today. It does require your signature. I'm scheduled to stop by your home shortly, so you need to make yourself available with proper photo identification. If you have any further questions or concerns, you do need to call the filing office immediately before delivery. You can reach them directly at 800-321-9820. Otherwise, consider yourself notified, and I will see you soon.

47. The telephone number provided by Ms. Stevenson to both Ms. Costa and Mr. Ruano, 800-321-9820, is, upon information and belief, associated with ARS.

48. As well, also on or about October 26, 2017, and also in connection with the collection of the alleged Debt, one of ARS's representatives placed a telephone call to Mrs. Ruano's telephone number and spoke with her directly.

49. Mrs. Ruano does not recall that representative's name, though she remembers it was a woman with a stern voice.

50. This representative relayed to Mrs. Ruano the same warnings included in the voice messages left for her husband and sister.

51. That is, ARS's representative told Mrs. Ruano that she had important papers to serve, and that she would be visiting Mrs. Ruano's home at 3 p.m. that day.

52. When Mrs. Ruano inquired about the nature of the papers, the representative told Mrs. Ruano that she was being sued by "I.R.S."

53. When Mrs. Ruano then pressed for more details about the supposed lawsuit, the representative would not provide any further explanation but instead instructed Mrs. Ruano to call a different telephone number, 800-321-9820, to obtain that information.

54. That other telephone number, 800-321-9820, is the same that was provided in the voice messages to Ms. Costa and Mr. Ruano and is associated with ARS.

55. As was the case with the voice messages left for Ms. Costa and Mr. Ruano, the ARS representative on this initial call with Mrs. Ruano did not disclose that she was calling on behalf of a debt collector attempting to collect a debt, or that any information obtained would be used for that purpose.

56. This left Mrs. Ruano confused and frightened as to a possible lawsuit against she and her husband by what she understood to be the “I.R.S.”

57. It was only after Mrs. Ruano called ARS at the new telephone number provided by the representative (800-321-9820), and then spoke with a new representative (a woman named “Brooke”), that Mrs. Ruano finally learned the purpose of ARS’s initial telephone call: an attempt to collect the alleged Debt.

58. In other words, information Mrs. Ruano obtained from “Brooke” at ARS during this second telephone call eventually made clear the true purpose of not only ARS’s initial call to her, but also ARS’s similar voice messages to Ms. Costa and Mr. Ruano.

59. Yet, those voice messages make no mention of the alleged Debt, and they fail to explain that ARS is a debt collector calling to collect a debt, and that any information obtained as a result of ARS’s calls would be used for the purpose of collecting that debt.

60. Instead, ARS’s representative, “Emily Stevenson,” professed to be a courier with “sealed documents” requiring Mr. and Mrs. Ruano’s signatures.

61. Through Ms. Stevenson, ARS created a false sense of urgency to intimidate Plaintiffs, and to prompt them to respond “immediately” by threatening to visit the Ruanos’ residence that same day, at which time they would be required to “make [themselves] available with photo identification.”

62. And as further means of intimidation, in her voice message for Ms. Costa, Ms. Stevenson even states the Ruanos’ home address as the location she will be visiting that day.

63. Plus, each of Ms. Stevenson’s voice messages for Ms. Costa and Mr. Ruano closes with an ominous warning that they should consider themselves “notified,” and that she will “see [them] soon.”

64. Also noteworthy, this same false sense of urgency pervaded Mrs. Ruano's conversation with the ARS representative who first called her, as described above.

65. Upon information and good-faith belief, it is ARS's practice to place, or cause to be placed, telephone calls—as well as leave voice messages—for consumers wherein ARS (i) fails to meaningfully disclose its identity or the purpose of its calls, as required by the FDCPA; and (ii) conveys a false sense of urgency to prompt immediate responses to their calls.

66. These misleading and deceptive tactics on the part of Ms. Stevenson and ARS are designed and implemented to obtain the immediate attention of unwitting consumers like Plaintiffs without revealing the true purpose of ARS's telephone calls—debt collection.

67. Though ARS's representative initially told Mrs. Ruano that she had important papers to serve related to a lawsuit, no such lawsuit was ever filed.

68. To Mr. and Mrs. Ruano's knowledge, they have never been sued concerning the alleged Debt.

69. The FDCPA was enacted to guard against these very examples of anonymous, underhanded debt collection devices.

70. What's more, by virtue of their status as “debt collectors” under the FDCPA, PMS and Perfection Collection are liable for the conduct of ARS—the debt collector they retained to collect on their behalf. *See, e.g., Freeman v. ABC Legal Servs. Inc.*, 827 F. Supp. 2d 1065, 1076 (N.D. Cal. 2011) (“The rationale behind vicarious liability in this context is that if an entity is a debt collector and hence subject to the FDCPA, it should bear the burden of monitoring the activities of those it enlists to collect debts on its behalf.”).

71. Indeed, following her initial telephone calls with ARS, Mrs. Ruano received written correspondence from ARS and PMS, dated October 26, 2017, identifying both ARS and PMS as the debt collectors collecting on behalf of Perfection Collection, the “Current Creditor.”

72. In this same October 26, 2017 written correspondence, ARS and PMS identify the “Original Creditor” as “Apx Alarm aka Vivient Alarm.”

73. The return address for the October 26, 2017 written correspondence is as follows:

Payment Management Services, LLC
C/O Account Recovery Solutions
PO Box 606, Amherst, NY 14226

74. The October 26, 2017 written correspondence also includes a footer identifying ARS as follows:

Account Recovery Solutions
Phone: (800) 321-9820
Mon-Fr 9:00am – 6:00pm EST

75. Finally, ARS and PMS’s October 26, 2017 written correspondence concludes with the following disclosure: “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.”

CLASS ACTION ALLEGATIONS

76. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of six classes:

Call Disclosure Class

All persons (1) with a Florida address, (2) to whom Account Recovery Solution, LLC placed, or caused to be placed, a telephone call, (3) in connection with collection of a consumer debt, (4) within the year preceding this complaint, (5) wherein the caller failed to state that: (a) she/he was a debt collector; or (b) she/he was calling to collect a debt; or (c) any information obtained would be used for the purpose of collecting a debt.

Voice Message Disclosure Class

All persons (1) with a Florida address, (2) for whom Account Recovery Solution, LLC left, or caused to be left, a voice message, (3) in connection with collection of a consumer debt, (4) within the year preceding this complaint, (5) wherein the caller failed to state that: (a) she/he was a debt collector; or (b) she/he was calling to collect a debt; or (c) any information obtained would be used for the purpose of collecting a debt.

Call False Urgency Class

All persons (1) with a Florida address, (2) to whom Account Recovery Solution, LLC placed, or caused to be placed, a telephone call, (3) in connection with collection of a consumer debt, (4) within the year preceding this complaint, (5) wherein the caller stated that she/he would make a delivery at the recipient's residence that same day for which the recipient would be required to provide a signature and photo identification.

Voice Message False Urgency Class

All persons (1) with a Florida address, (2) for whom Account Recovery Solution, LLC left, or caused to be left, a voice message, (3) in connection with collection of a consumer debt, (4) within the year preceding this complaint, (5) wherein the caller stated that she/he would make a delivery at the recipient's residence that same day for which the recipient would be required to provide a signature and photo identification.

Call Fake Lawsuit Class

All persons (1) with a Florida address, (2) to whom Account Recovery Solution, LLC placed, or caused to be placed, a telephone call, (3) in connection with collection of a consumer debt, (4) within the year preceding this complaint, (5) wherein the caller stated she/he would be delivering paperwork in connection with a lawsuit, where a lawsuit had not been filed.

Voice Message Fake Lawsuit Class

All persons (1) with a Florida address, (2) to whom Account Recovery Solution, LLC left, or caused to be left, a voice message, (3) in connection with collection of a consumer debt, (4) within the year preceding this complaint, (5) wherein the caller stated she/he would be delivering paperwork in connection with a lawsuit, where a lawsuit had not been filed.

77. Excluded from the classes are Defendants, their officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which any defendant has or had controlling interests.

78. The proposed classes satisfy Rule 23(a)(1) because, upon information and belief, they are so numerous that joinder of all members is impracticable.

79. The exact number of class members is unknown to Plaintiffs at this time and can only be determined through appropriate discovery.

80. The proposed classes are ascertainable in that, upon information and belief, the names and addresses of all class members can be identified in business records maintained by Defendants.

81. The proposed classes satisfy Rule 23(a)(2) and (3) because Plaintiffs' claims are typical of the claims of the members of the classes. To be sure, the claims of Plaintiffs and all class members originate from the same conduct, practice, and procedure on the part of Defendants, and Plaintiffs possess the same interests and have suffered the same injuries as each member of the proposed classes.

82. Plaintiffs satisfy Rule 23(a)(4) because they will fairly and adequately protect the interests of the members of the classes, and they have retained counsel experienced and competent in class action litigation. Plaintiffs have no interests that are contrary to or in conflict with the members of the classes that they seek to represent.

83. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

84. Furthermore, as the damages suffered by individual members of the classes may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the classes to individually redress the wrongs done to them.

85. There will be no difficulty in the management of this action as a class action.

86. Issues of law and fact common to the members of the classes predominate over any questions that may affect only individual members, in that Defendants have acted on grounds generally applicable to the classes.

87. Among the issues of law and fact common to the classes are:

- a) Defendants' violations of the FDCPA as alleged herein;
- b) the existence of Defendants' identical conduct particular to the matters at issue;
- c) the availability of statutory penalties; and
- d) the availability of attorneys' fees and costs.

**COUNT I: VIOLATIONS OF THE FAIR DEBT COLLECTION
PRACTICES ACT, 15 U.S.C. § 1692d(6)**

88. Plaintiffs repeat and re-allege each and every factual allegation contained in paragraphs 1 through 87.

89. The FDCPA at 15 U.S.C. § 1692d(6) provides:

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(6) except as provided in 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

90. On or about October 26, 2017, in connection with the collection of the alleged Debt, ARS placed, or caused to be placed, telephone calls to each of Ms. Costa, Mrs. Ruano, and Mr. Ruano.

91. ARS's telephone calls resulted in a direct conversation with Mrs. Ruano and voice messages left for Ms. Costa and Mr. Ruano.

92. During the call with Mrs. Ruano and each related voice message for Ms. Costa and Mr. Ruano, ARS's representatives failed to disclose that they were calling on behalf of ARS—a debt collector—for the purpose of collecting a debt, or that information obtained as a result of the calls would be used for that purpose.

93. As such, ARS violated 15 U.S.C. § 1692d(6).

94. Additionally, by virtue of their status as “debt collectors” under the FDCPA, PMS and Perfection Collection also are liable for the conduct of ARS—the debt collector they retained to collect on their behalf.

95. The harm suffered by Plaintiffs is particularized in that the violative communications at issue were provided to them personally and failed to give them statutorily-mandated disclosures to which they were entitled.

96. Defendants' actions created a concrete harm in that they constituted a debt collection practice that Congress specifically prohibited because such practice is likely to mislead and deceive consumers. *See Church v. Accretive Health, Inc.*, 654 F. App'x 990, 995 (11th Cir. 2016).

97. Moreover, Defendants' actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm. *See, e.g., Zirotiannis v. Seterus, Inc.*, No. 17-140, 2017 WL 4005008, at *2 (2d Cir. Sep. 12, 2017) (concluding “that the specific procedural violation alleged in the amended complaint presents a material risk of harm to the underlying concrete interest Congress sought to protect with the FDCPA”).

**COUNT II: VIOLATIONS OF THE FAIR DEBT COLLECTION
PRACTICES ACT, 15 U.S.C. § 1692e(10)**

98. Plaintiffs repeat and re-allege each and every factual allegation contained in paragraphs 1 through 87.

99. The FDCPA at 15 U.S.C. § 1692e(10) provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

100. In its October 26, 2017 telephone call and voice messages to Plaintiffs, ARS failed to disclose that it is a debt collector calling to collect a debt.

101. Instead, ARS's representatives misleadingly and deceptively posed as couriers with "sealed documents" to be served on Mr. and Mrs. Ruano.

102. What's more, in her telephone conversation with Mrs. Ruano, ARS's representative stated that these documents to be served concerned a supposed lawsuit against Mr. and Mrs. Ruano that, in reality, had never been filed.

103. ARS's representative thus falsely represented the existence of a lawsuit against Mr. and Mrs. Ruano.

104. Staff commentary to the FDCPA by the Federal Trade Commission states that "[i]t is a violation to send any communication that conveys to the consumer a false sense of urgency." 53 Fed. Reg. 50097-02 (1988).

105. In the October 26, 2017 telephone call and related voice messages, ARS's representatives advised each plaintiff that they had documents to serve on Mr. and Mrs. Ruano; that they would be visiting the Ruanos' residence that same day; that a signature and photo identification would be required upon visit; and that each plaintiff should immediately contact Defendants to discuss the matter further before the representatives arrived at the Ruanos' residence.

106. ARS accordingly communicated with Plaintiffs in a manner that conveyed a false sense of urgency.

107. For each and every of the above reasons, ARS violated 15 U.S.C. § 1692e(10).

108. Additionally, by virtue of their status as “debt collectors” under the FDCPA, PMS and Perfection Collection also are liable for the conduct of ARS—the debt collector they retained to collect on their behalf.

109. The harm suffered by Plaintiffs is particularized in that the violative communications at issue were provided to them personally, conveyed to them personally a false sense of urgency, and misled and deceived them personally regarding the nature and purpose of the communications.

110. Defendants’ actions created a concrete harm in that they constituted a debt collection practice that Congress specifically prohibited because such practice is likely to mislead and deceive consumers. *See Church*, 654 F. App’x at 995.

111. In addition, Defendants’ actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm. *See, e.g., Zirogiannis*, 2017 WL 4005008, at *2.

**COUNT III: VIOLATIONS OF THE FAIR DEBT COLLECTION
PRACTICES ACT, 15 U.S.C. § 1692e(11)**

112. Plaintiffs repeat and re-allege each and every factual allegation contained in paragraphs 1 through 87.

113. The FDCPA at 15 U.S.C. § 1692e(11) provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

114. In its October 26, 2017 telephone call and related voice messages to Plaintiffs, ARS failed to make these requisite disclosures.

115. That is, in the voice messages to Ms. Costa and Mr. Ruano transcribed above, ARS's representative, "Emily Stevenson," identifies herself as a courier with "sealed documents" to deliver.

116. Likewise, the representative who initially spoke with Mrs. Ruano that same day—who may or may not have been "Emily Stevenson"—similarly described having documents to serve on Mrs. Ruano in connection with a lawsuit by "I.R.S."

117. But, importantly, none of ARS's representatives indicated in these initial communications with Plaintiffs that ARS is a debt collector attempting to collect a debt, or that any information obtained as a result of its calls would be used for that purpose.

118. As such, ARS violated 15 U.S.C. § 1692e(11).

119. Additionally, by virtue of their status as "debt collectors" under the FDCPA, PMS and Perfection Collection also are liable for the conduct of ARS—the debt collector they retained to collect on their behalf.

120. The harm suffered by Plaintiffs is particularized in that the violative communications at issue were provided to them personally, failed to give them statutorily-mandated disclosures to which they were entitled, and misled and deceived them personally regarding the true nature and purpose of the communications.

121. Defendants' actions created a concrete harm in that they constituted a debt collection practice that Congress specifically prohibited because such practice is likely to mislead and deceive consumers. *See Church*, 654 F. App'x at 995.

122. In addition, Defendants' actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm. *See, e.g., Ziropiannis*, 2017 WL 4005008, at *2.

WHEREFORE, Plaintiffs respectfully request relief and judgment as follows:

- A. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- B. Certifying Plaintiffs as class representatives;
- C. Appointing Plaintiffs' counsel as class counsel;
- D. Adjudging and declaring that Defendants violated 15 U.S.C. §§ 1692d(6), 1692e(10), and 1692e(11);
- E. Enjoining Defendants from future violations of 15 U.S.C. §§ 1692d(6), 1692e(10), and 1692e(11) with respect to Plaintiffs and the classes;
- F. Awarding Plaintiffs and members of the classes statutory damages pursuant to 15 U.S.C. § 1692k;
- G. Awarding members of the proposed classes actual damages, as necessary, pursuant to 15 U.S.C. § 1692k;
- H. Awarding Plaintiffs and members of the classes reasonable attorneys' fees, costs, and expenses incurred in this action, including expert fees, pursuant to 15 U.S.C. § 1692k and Rule 23 of the Federal Rules of Civil Procedure;

- I. Awarding Plaintiffs and members of the classes any pre-judgment and post-judgment interest as may be allowed under the law; and
- J. Awarding other and further relief as this Court may deem just and proper.

TRIAL BY JURY

Plaintiffs are entitled to and hereby demand a trial by jury.

DATED: April 5, 2018

Respectfully submitted,

/s/ Jesse S. Johnson

James L. Davidson

Florida Bar No. 723371

Jesse S. Johnson

Florida Bar No. 0069154

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