

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

	:	X
	:	Civil Action No.
KIMBERLY S. SULLIVAN a/k/a KIMN S.	:	
SULLIVAN, on behalf of herself and others	:	<u>COMPLAINT - - CLASS ACTION</u>
similarly situated,	:	
	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
	:	
MARINOSCI LAW GROUP, P.C., P.A.	:	
	:	
Defendant.	:	
	:	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.*, for the benefit of Florida consumers who have been the subject of debt collection efforts by Marinosci Law Group, P.C., P.A. (“Defendant”).

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.” 15 U.S.C. § 1692(a).

3. As the Consumer Financial Protection Bureau (“CFPB”)—the federal agency tasked with enforcing the FDCPA—explained, “[h]armful debt collection practices remain a

significant concern today. In fact, the CFPB receives more consumer complaints about debt collection practices than about any other issue.”¹

4. And over one-third of those complaints involve debt collectors’ attempts to collect debts that consumers did not owe.²

5. To combat this serious problem in the debt collection industry, the FDCPA requires debt collectors to send consumers “validation notices” containing certain information about their alleged debts and their rights with respect to those debts. 15 U.S.C. § 1692g(a).

6. A debt collector must send this notice “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt,” unless the required information was “contained in the initial communication or the consumer has paid the debt.” *Id.*, § 1692g(a).

7. Pertinent here, the validation notice must advise the consumer of “the amount of the debt.” 15 U.S.C. § 1692g(a)(1).

8. Moreover, the validation notice must advise the consumer of her rights to dispute the debt in writing, and to request, in writing, that the debt collector “obtain verification of the debt or a copy of a judgment against the consumer” and mail “a copy of such verification or judgment” to the consumer. *Id.*, § 1692g(a)(4).

9. If the consumer disputes the debt in writing within thirty days of receiving such a notice, the debt collector must “cease collection of the debt, or any disputed portion thereof, until

¹ See Brief for the CFPB as Amicus Curiae, ECF No. 14 at 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.

² 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/>.

the debt collector obtains verification of the debt” and mail the consumer a copy of that verification. *Id.*, § 1692g(b).

10. Congress adopted “the debt validation provisions of section 1692g” to guarantee that consumers would receive “adequate notice” of their rights under the FDCPA. *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000).

11. As noted by the CFPB and the Federal Trade Commission, the validation notice requirement was a “significant feature” of the law that aimed to “eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.” *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No. 95-382, at 4 (1977)).

12. This case centers on Defendant’s failure to comply with § 1692g(a)(1) by not specifying in a clear, intelligible manner the amount of the debt, and Defendant’s failure to comply with §§ 1692g(a)(4)-(5) by neither providing the consumer with a statement that if she notifies the debt collector *in writing* within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and mail a copy of such verification or judgment to the consumer, nor providing the consumer a statement that upon her *written request* within the thirty-day period, the debt collector will provide her with the name and address of the original creditor, if different from the current creditor.

PARTIES

13. Kimberly S. Sullivan a/k/a Kimn S. Sullivan (“Plaintiff”) is a natural person who at all relevant times resided in Palm Beach County, Florida.

14. Plaintiff is obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, a creditor other than Defendant.

15. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due, arose from a transaction in which the money, property, insurance, or services that are the subject of the transactions were incurred primarily for personal, family, or household purposes—namely, a mortgage loan (the "Debt").

16. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

17. Defendant is a law firm based in Broward County, Florida.

18. Defendant is an entity that at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect the Debt from Plaintiff.

19. Upon information and belief, at the time Defendant attempted to collect the Debt from Plaintiff, the Debt was in default, or Defendant treated the Debt as if it was in default from the time that Defendant acquired the Debt for collection.

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

21. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

JURISDICTION AND VENUE

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

23. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

24. On March 4, 2014, Bank of America filed an amended mortgage foreclosure complaint against a number of parties, including Plaintiff, concerning a property known as 5 Marina Gardens Dr., Palm Beach Gardens, Florida 33410, seeking to collect “675,808.10 that is due on the Mortgage Note and Mortgage, together with interest from November 1, 2010, late charges, and all costs of collection including title search expenses....”

25. On July 3, 2018, an attorney for Plaintiff, pursuant to Fla. Stat. 701.04, requested a payoff for the Debt.

26. Thereafter, on or about July 12, 2018, Defendant sent an initial written communication to Plaintiff, through her counsel, in connection with the collection of the Debt.

27. A true and correct copy of the July 12, 2018 written communication is attached as Exhibit A.

28. Aside from formal pleadings, the July 12, 2018 communication was the first written communication Plaintiff received from Defendant.

29. Plaintiff did not receive any other written communications from Defendant within five days of the initial July 12, 2018 communication.

30. The body of Defendant’s July 12, 2018 communication then opens with the following passage: “We represent ‘**Bank of America**’, the servicer of the loan, concerning the collection of the above referenced loan, and we are sending this letter pursuant to your request for the payoff figures.” *Id.*

31. Defendant’s July 12, 2018 communication continues:

Because additional interest and other charges may vary from day to day, the amount due on the day you pay may be greater. You will also be liable for additional costs and attorney’s fees incurred in the foreclosure action. Listed below is an itemization

of the amounts needed to payoff the above-referenced loan(s), which are good through 'GT DATE'.

Id.

32. On the second page of the July 12, 2018 communication, Defendant provided a box with two columns respectively titled "**Description of Charges**" and "**Payoff Amounts Due As of 'December 1, 2010'.**" *Id.*

33. The July 12, 2018 written communication advised Plaintiff that the total amount due *as of December 1, 2010* was \$952,966.72. *Id.*

34. The third page of the July 12, 2018 written communication included the following language:

* These amounts depend upon the services performed to litigate the foreclosure case and costs incurred during the case. Therefore, these are estimates amounts and are subject to increase depending upon various factors involved in the foreclosure case (see Explanation of Charges below). You must contact this office prior to sending the Payoff Amount for an updated list of itemized amounts.

The payoff Amount may change under certain circumstances (see below). If you have any questions about the amounts listed above, please refer to the **Explanation of Charges** enclosed with this letter. Should you need further explanation, please contact our office.

Changes in the Payoff Amount: The Lender reserves the right to demand amounts in addition to the charges stated above before or after the release of its security interest in the property if there was an error or omission in the above charges that was made in good faith, whether mathematical, clerical, typographical or otherwise. The payoff Amount is also subject to change to reflect services that may be performed on or after the date of this letter.

**PLEASE NOTE – YOU MUST CONTACT THIS OFFICE BEFORE
TENDERING ANY FUNDS TO VERIFY THE TOTAL AMOUNT DUE.**

Id.

35. On the fourth page of the July 12, 2018 written communication, Defendant advised Plaintiff as follows:

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1601, AS AMENDED

- (1) THE AMOUNT OF THE DEBT TO PAYOFF THE LOAN IS SET FORTH IN THIS LETTER AND IS OWED TO THE LENDER.
- (2) THE DEBTOR MAY DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER. IF THE DEBTOR FAILS TO DISPUTE THE DEBT WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER, THE DEBT WILL BE ASSUMED TO BE VALID BY MARINOSCI LAW GROUP, P.C. (THE "FIRM");
- (3) IF THE DEBTOR NOTIFIES THE FIRM WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER THAT THE DEBT, OR ANY PORTION OF THE DEBT, IS DISPUTED, THE FIRM WILL OBTAIN VERIFICATION OF THE JUDGMENT WILL BE MAILED TO THE DEBTOR BY THE FIRM; AND
- (4) UPON THE DEBTOR'S REQUEST WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER, THE FIRM WILL PROVIDE THE DEBTOR WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR IF DIFFERENT FROM THE CURRENT LENDER;
- (5) WRITTEN REQUESTS PURSUANT TO THIS NOTICE SHOULD BE ADDRESSED TO: FAIR DEBT COLLECTION CLERK, MARINOSCI LAW GROUP, P.C. 100 W. CYPRESS CREEK ROAD, SUITE 1045 FORT LAUDERDALE, FL 33309

THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THE INSTRUCTIONS IN THIS LETTER PERTAIN TO YOUR DEALINGS WITH THE FIRM AS A DEBT COLLECTOR. IT DOES NOT AFFECT YOUR DEALINGS WITH THE COURT, AND IN PARTICULAR, IT DOES NOT CHANGE THE TIME AT WHICH YOU MUST ANSWER THE COMPLAINT. THE SUMMONS IS A COMMAND FROM THE COURT, NOT FROM THE FIRM, AND YOU MUST FOLLOW THE INSTRUCTIONS ON THE SUMMONS, EVEN IF YOU DISPUTE THE VALIDITY OR AMOUNT OF THE DEBT. THE INSTRUCTIONS IN THIS LETTER ALSO DO NOT AFFECT THE FIRM'S RELATIONSHIP WITH THE COURT AND THE FIRM MAY FILE PAPERS IN THE LAWSUIT ACCORDING TO THE COURT'S RULES AND THE JUDGE'S INSTRUCTIONS.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following two classes:

The Writing Class

All persons (a) with a Florida address, (b) to whom Marinosci Law Group, PC mailed an initial debt collection communication not returned as undeliverable to Marinosci Law Group, PC, (c) in connection with the collection of a consumer debt, (d) in the one year preceding the date of this complaint, (e) that stated (1) “[i]f the debtor notifies the firm within 30 days after receipt of this letter that the debt, or any portion of the debt, is disputed, the firm will obtain verification of the judgment will be mailed to the debtor by the firm;” or (2) “[u]pon the debtor’s request within 30 days after receipt of this letter, the firm will provide the debtor with the name and address of the original creditor if different from the current creditor;”

The Debt Class

All persons (a) with a Florida address, (b) to whom Marinosci Law Group, PC mailed an initial debt collection communication not returned as undeliverable to Marinosci Law Group, PC, (c) in connection with the collection of a consumer debt, (d) in the one year preceding the date of this complaint, (e) that stated (1) the payoff amounts “are estimates amounts and are subject to increase depending upon various factors involved in the foreclosure case (see Explanation of Charges below);” or (2) the consumer “must contact [Defendant] prior to sending the Payoff Amount for an updated list of itemized amounts;” or (3) “[t]he payoff Amount may change under certain circumstances (see below);” or (4) “[t]he Lender reserves the right to demand amounts in addition to the charges stated above before or after the release of its security interest in the property if there was an error or omission in the above charges that was made in good faith, whether mathematical, clerical, typographical or otherwise.”; or (5) “[t]he payoff Amount is also subject to change to reflect services that may be performed on or after the date of this letter;” or (6) “below is an itemization of the amounts needed to payoff the above-referenced loan(s), which are good through ‘GT DATE’”, without defining the term GT DATE or (7) that provides a payoff amount as of a date at least 45 days prior to the date of the letter.

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

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

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

40. The proposed classes are ascertainable because they are defined by reference to objective criteria.

41. In addition, and upon information and belief, the names and addresses of all members of the proposed classes can be identified in business records maintained by Defendant.

42. The proposed classes satisfy Rules 23(a)(2) and 23(a)(3) because there are questions of law or fact common to the class and Plaintiff's claims are typical of the claims of the members of the classes.

43. To be sure, the claims of Plaintiff and all members of the classes originate from the same conduct, practice, and procedure on the part of Defendant, and Plaintiff possesses the same interests and has suffered the same injuries as each member of the proposed classes.

44. Plaintiff satisfies Rule 23(a)(4) because she will fairly and adequately protect the interests of the members of the classes and has retained counsel experienced and competent in class action litigation.

45. Plaintiff has no interests that are irrevocably contrary to or in conflict with the members of the classes that she seeks to represent.

46. 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.

47. 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 class to individually redress the wrongs done to them.

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

49. Issues of law and fact common to the members of the class predominate over any questions that may affect only individual members, in that Defendant has acted on grounds generally applicable to the classes.

50. Among the issues of law and fact common to the class are:

- a. Defendant's violations of the FDCPA as alleged herein;
- b. Whether Defendant is a debt collector as defined by the FDCPA;
- c. the availability of statutory penalties; and
- d. the availability of attorneys' fees and costs.

COUNT I: VIOLATION OF 15 U.S.C. § 1692g(a)(1)

51. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 50.

52. The FDCPA at 15 U.S.C. § 1692g(a)(1) provides:

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

* * * *

(1) the amount of the debt.

53. The July 12, 2018 communication did not contain the disclosure required by 15 U.S.C. § 1692g(a)(1), nor did Defendant provide such disclosure within five days thereafter.

54. Specifically, the July 12, 2018 communication violated 15 U.S.C. § 1692g(a)(1) by failing to specify in a manner understandable to the least sophisticated consumer the amount necessary to remit in order to pay the Debt in full.

55. This is, in part, because the July 12, 2018 written communication provides Plaintiff with a payoff amount as of December 1, 2010—a date over seven and a half years prior to the July 12, 2018. *See* Ex. A.

56. As well, the July 12, 2018 letter does not provide a good through date for the payoff amount, instead noting that “below is an itemization of the amounts needed to payoff the above-referenced loan(s), which are good through ‘GT DATE’.” *Id.*

57. But the term “GT DATE” is not referred to anywhere else in the July 12, 2018 written communication, and thus there is no way to know what date the payoff is supposedly good through. *Id.*

58. Moreover, the confusion as to the amount due is compounded by the fact that Defendant caveats the total amount due as of December 1, 2010 by noting in the July 12, 2018 letter as follows:

- the payoff amounts “are estimates amounts and are subject to increase depending upon various factors involved in the foreclosure case (see Explanation of Charges below);”
- Plaintiff “must contact [Defendant] prior to sending the Payoff Amount for an updated list of itemized amounts;”
- “The payoff Amount may change under certain circumstances (see below);”
- “The Lender reserves the right to demand amounts in addition to the charges stated above before or after the release of its security interest in the property if there was an

error or omission in the above charges that was made in good faith, whether mathematical, clerical, typographical or otherwise;” and

- “The payoff Amount is also subject to change to reflect services that may be performed on or after the date of this letter.”

59. Given the foregoing, the July 12, 2018 written communication does not set forth the amount of the Debt in a manner in which the least sophisticated consumer could understand. *See, e.g., Gesten v. Phelan Hallinan PLC*, 57 F. Supp. 3d 1381, 1388-89 (S.D. Fla. 2014) (finding that defendant violated the FDCPA because the amount due in the notice was 39-days stale at the time the notice was sent and the notice, while notifying the plaintiff that “interest and other items will continue to accrue,” did not notify the plaintiff of the interest rate or identify the other items).

60. The harm suffered by Plaintiff is particularized in that the violative initial debt collection letter failed to give her statutorily-mandated disclosures to which she was entitled.

61. And Defendant’s actions invaded a specific private right created by Congress, and the invasion of that right creates the risk of real harm. *See Church v. Accretive Health, Inc.*, 654 F. App’x 990, 995 (11th Cir. 2016).

COUNT II: VIOLATION OF 15 U.S.C. § 1692g(a)(4)

62. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 50.

63. The FDCPA at 15 U.S.C. § 1692g(a)(4) provides:

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

64. Defendant's July 12, 2018 communication did not contain the proper disclosures required by 15 U.S.C. § 1692g(a)(4), nor did Defendant provide such disclosures within five days thereafter.

65. Specifically, the July 12, 2018 communication violated 15 U.S.C. § 1692g(a)(4) by failing to inform Plaintiff that Defendant need only mail verification of the Debt to her, or a copy of any judgment, if she notified Defendant that she disputed the Debt, or any portion thereof, *in writing*.

66. As a result, Defendant violated 15 U.S.C. § 1692g(a)(4).

67. The harm suffered by Plaintiff is particularized in that the violative initial debt collection letter failed to give her statutorily-mandated disclosures to which she was entitled.

68. And Defendant's actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm. *See Church*, 654 F. App'x at 995; *Macy v. GC Servs. L.P.*, 897 F.3d 747, 761 (6th Cir. 2018) ("In sum, Plaintiffs have satisfied the concreteness prong of the injury-in-fact requirement of Article III standing by alleging that GC's purported FDCPA violations created a material risk of harm to the interests recognized by Congress in enacting the FDCPA.").

COUNT III: VIOLATION OF 15 U.S.C. § 1692g(a)(5)

69. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 50.

70. The FDCPA at 15 U.S.C. § 1692g(a)(5) provides:

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

71. Defendant's July 12, 2018 communication did not contain the proper disclosures required by 15 U.S.C. § 1692g(a)(5), nor did Defendant provide such disclosures within five days thereafter.

72. Specifically, the July 12, 2018 communication violated 15 U.S.C. § 1692g(a)(5) by failing to inform Plaintiff that Defendant need only provide her the name and address of the original creditor, if different from the current creditor, if she notified Defendant of her request for that information *in writing*.

73. As a result, Defendant violated 15 U.S.C. § 1692g(a)(5).

74. The harm suffered by Plaintiff is particularized in that the violative initial debt collection letter failed to give her statutorily-mandated disclosures to which she was entitled.

75. And Defendant's actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm. *See Church*, 654 F. App'x at 995; *Macy*, 897 F.3d at 761.

COUNT IV: VIOLATION OF 15 U.S.C. § 1692e

76. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 50.

77. The FDCPA at 15 U.S.C. § 1692e provides: “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

78. The July 12, 2018 communication used deceptive and misleading representations in connection with the collection of the Debt.

79. Indeed, based on the wording of the July 12, 2018 written communication, if Plaintiff were to remit the total amount due, “she would not know whether she had paid the debt in full.” *Pimentel v. Nationwide Credit, Inc.*, No. 17-20226, 2017 WL 5633310, at *4 (S.D. Fla. Nov. 13, 2017).

80. This is because the July 12, 2018 written communication provided Plaintiff with a payoff amount as of December 1, 2010—a date over seven and a half years prior to the July 12, 2018. *See* Ex. A.

81. But the July 12, 2018 communication does not provide a good through date for the payoff amount, instead noting that “below is an itemization of the amounts needed to payoff the above-referenced loan(s), which are good through ‘**GT DATE**’.” *Id.*

82. The term “GT Date is not referred to anywhere else in the July 12, 2018 written communication, and thus there is no way to know what date the payoff is supposedly good through. *Id.*

83. Moreover, the confusion as to the amount due is compounded by the fact that Defendant caveated the total amount due as of December 1, 2010 by noting in the July 12, 2018 letter as follows:

- the payoff amounts “are estimates amounts and are subject to increase depending upon various factors involved in the foreclosure case (see Explanation of Charges below).”;
- Plaintiff “must contact [Defendant] prior to sending the Payoff Amount for an updated list of itemized amounts.”;
- “The payoff Amount may change under certain circumstances (see below).”;
- “The Lender reserves the right to demand amounts in addition to the charges stated above before or after the release of its security interest in the property if there was an error or omission in the above charges that was made in good faith, whether mathematical, clerical, typographical or otherwise.”
- “The payoff Amount is also subject to change to reflect services that may be performed on or after the date of this letter.”;

84. Given the foregoing, the July 12, 2018 written communication is deceptive and misleading.

85. The harm suffered by Plaintiff is particularized in that the violative initial debt collection letter failed to give her statutorily-mandated disclosures to which she was entitled.

86. And Defendant’s actions invaded a specific private right created by Congress, and the invasion of said right creates the risk of real harm. *See Church*, 654 F. App’x 990 at 995.

WHEREFORE, Plaintiff respectfully requests 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. Adjudging and declaring that Defendant violated 15 U.S.C. § 1692g(a)(1), 15 U.S.C. § 1692g(a)(4), 15 U.S.C. § 1692g(a)(5), and 15 U.S.C. § 1692e;

- C. Awarding Plaintiff and members of the classes statutory damages pursuant to 15 U.S.C. § 1692k;
- D. Awarding members of the classes any actual damages incurred, as applicable, pursuant to 15 U.S.C. § 1692k;
- E. Awarding Plaintiff and members of the classes their reasonable costs and attorneys' fees incurred in this action, including expert fees, pursuant to 15 U.S.C. § 1692k and Rule 23 of the Federal Rules of Civil Procedure;
- F. Awarding Plaintiff and members of the classes any pre-judgment and post-judgment interest as may be allowed under the law; and
- G. Awarding other and further relief as the Court may deem just and proper.

TRIAL BY JURY

Plaintiff is entitled to and hereby demands a trial by jury.

Dated: October 11, 2018

Respectfully submitted,

/s/ James L. Davidson

James L. Davidson

Jesse S. Johnson

FL Bar No. 723371

Fla. Bar No. 069154

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classes



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7/12/2018

100 W. CYPRESS CREEK ROAD, SUITE 1045
FORT LAUDERDALE, FL 33309
P: (954) 644-8704
F: (954) 772-9601

RE: **Bank of America**
Loan # [REDACTED]
Mortgagor: Anita Mandal
Property Address: 5 Marina Gardens Dr.
Palm Beach Gardens, Florida 33410
Our File No.: 15-07191

We represent '**Bank of America**', the servicer of the loan, concerning the collection of the above referenced loan, and we are sending this letter pursuant to your request for the payoff figures. Because additional interest and other charges may vary from day to day, the amount due on the day you pay may be greater. You will also be liable for additional costs and attorney's fees incurred in the foreclosure action. Listed below is an itemization of the amounts needed to payoff the above-referenced loan(s), which are good through '**GT DATE**'. Please review the enclosed **Explanation of Charges** included with this letter for an explanation of each of the itemized amounts.

Upon our acceptance of the **Payoff Amount** below, if a foreclosure action has been filed with a court, we will advise the court accordingly.

How to Make Payment: Funds must be sent to Marinosci Law Group, P.C. by certified check or money order drawn on a United States bank, and made payable to '**Bank of America**' and escrow checks will not be accepted under any circumstances. Acceptance of funds is subject to final approval by the Lender.

Description of Charges	Payoff Amounts Due As Of 'December 1, 2010':
Unpaid Principal Balance	\$675,808.10
Unpaid Interest Balance	\$174,549.00
Accumulated Late Charges	\$335.20
** Escrow Deficit	\$89,791.71
Suspense Balance	
Non-Sufficient Funds	
* Property Inspections	\$1,112.50
* Property Preservation	
* Broker's Price Opinion/Appraisal	
Title Search	\$240.00
Document Stamps/Tax Deed	\$315.40
Skip Trace Costs	\$96.30
Clerk Filing Fee	\$1,984.00
* Clerk Recording Fee	\$144.60
* Certified Copies Fee	\$12.10
* Mailing Cost	\$17.46
* Service of Process	\$1,662.60
* Publication Costs	\$195.00
* Attorneys' Fees	\$1,910.00
* Litigation Fees	\$4,792.75
	Total Payoff Amount Due: \$952,966.72

* These amounts depend upon the services performed to litigate the foreclosure case and costs incurred during the case. Therefore, these are estimates amounts and are subject to increase depending upon various factors involved in the foreclosure case (see Explanation of Charges below). You must contact this office prior to sending the Payoff Amount for an updated list of itemized amounts.

The payoff Amount may change under certain circumstances (see below). If you have any questions about the amounts listed above, please refer to the **Explanation of Charges** enclosed with this letter. Should you need further explanation, please contact our office.

Changes in the Payoff Amount: The Lender reserves the right to demand amounts in addition to the charges stated above before or after the release of its security interest in the property if there was an error or omission in the above charges that was made in good faith, whether mathematical, clerical, typographical or otherwise. The payoff Amount is also subject to change to reflect services that may be performed on or after the date of this letter.

Notice Regarding Bankruptcy Action: If an action has been filed with a bankruptcy court, the charges states above are subject to change. Accordingly, the Payoff Amount will change if you file for relief under the Bankruptcy Code. Additionally, if this loan is currently subject to a bankruptcy court action, the Payoff Amount will change if additional attorneys' fees and costs are incurred by the Lender concerning the loan.

WE WILL NOT DELAY THE FORECLOSURE ACTION: Please note that we will not delay or dismiss the foreclosure action while we are waiting to receive payoff charges.

PLEASE NOTE – YOU MUST CONTACT THIS OFFICE BEFORE TENDERING ANY FUNDS TO VERIFY THE TOTAL AMOUNT DUE.

If you have any questions, please do not hesitate to contact our office.

Jeff Camarena Jr.
Legal Assistant
Marinosci Law Group, P.C.
(954) 644-8704

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1601, AS AMENDED

- (1) THE AMOUNT OF THE DEBT TO PAYOFF THE LOAN IS SET FORTH IN THIS LETTER AND IS OWED TO THE LENDER.
- (2) THE DEBTOR MAY DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER. IF THE DEBTOR FAILS TO DISPUTE THE DEBT WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER, THE DEBT WILL BE ASSUMED TO BE VALID BY MARINOSCI LAW GROUP, P.C. (THE "FIRM");
- (3) IF THE DEBTOR NOTIFIES THE FIRM WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER THAT THE DEBT, OR ANY PORTION OF THE DEBT, IS DISPUTED, THE FIRM WILL OBTAIN VERIFICATION OF THE JUDGMENT WILL BE MAILED TO THE DEBTOR BY THE FIRM; AND
- (4) UPON THE DEBTOR'S REQUEST WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER, THE FIRM WILL PROVIDE THE DEBTOR WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR IF DIFFERENT FROM THE CURRENT LENDER;
- (5) WRITTEN REQUESTS PURSUANT TO THIS NOTICE SHOULD BE ADDRESSED TO:
FAIR DEBT COLLECTION CLERK, MARINOSCI LAW GROUP, P.C.
100 W. CYPRESS CREEK ROAD, SUITE 1045
FORT LAUDERDALE, FL 33309

THIS FIRM IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THE INSTRUCTIONS IN THIS LETTER PERTAIN TO YOUR DEALINGS WITH THE FIRM AS A DEBT COLLECTOR. IT DOES NOT AFFECT YOUR DEALINGS WITH THE COURT, AND IN PARTICULAR, IT DOES NOT CHANGE THE TIME AT WHICH YOU MUST ANSWER THE COMPLAINT. THE SUMMONS IS A COMMAND FROM THE COURT, NOT FROM THE FIRM, AND YOU MUST FOLLOW THE INSTRUCTIONS ON THE SUMMONS, EVEN IF YOU DISPUTE THE VALIDITY OR AMOUNT OF THE DEBT. THE INSTRUCTIONS IN THIS LETTER ALSO DO NOT AFFECT THE FIRM'S RELATIONSHIP WITH THE COURT AND THE FIRM MAY FILE PAPERS IN THE LAWSUIT ACCORDING TO THE COURT'S RULES AND THE JUDGE'S INSTRUCTIONS.

EXPLANATION OF CHARGES

Unpaid Principal Balance: These are the amounts for the unpaid principal balance of your loan(s) based on information provided to us by the Lender.

Unpaid Interest Balance: These are the amounts for the unpaid interest that has accrued on your loan(s) based on information provided to us by the Lender.

Prepayment Penalty: Interest penalty for prepayment of the debt collectible upon acceleration pursuant to the terms of the loan documents.

Accumulated Late Charges: This is the amount that has accumulated because payment was not timely received by the Lender, based on the information provided to us by the Lender.

Escrow Deficit: This is the amount the Lender has advanced for payment of property taxes, assessments, insurance or other items. This amount does not include any shortage of amounts collected by a borrower and held in an escrow account by the Lender for payment of taxes, assessments, insurance or other items that may be due in the future.

Non-Sufficient Funds: This is the amount of bank charges incurred by the Lender because, prior to acceleration of the loan (s) by the Lender, the Lender received payment for the loan(s) by check or draft for which there was not sufficient funds on deposit at the time the Lender drew upon the check or draft.

Property Inspections: This is the amount incurred by the Lender to have the property periodically inspected once the loan is delinquent. The inspection typically consists of a visual exterior review of the property. The review determines whether the property is occupied and adequately maintained. Expenses for preservation of the property may occur If the property is reported vacant, for securing the property or to perform regular maintenance to protect the Lender's interest in the property.

Property Preservation: This is the amount incurred by the Lender to prevent the property from deteriorating or decreasing in value due to its condition

Broker's Price Opinion/Appraisal: This is the amount for an appraisal. Once a property is referred for a foreclosure, the Lender may order a Broker's Price Opinion or Appraisal to ascertain the market value of the property.

Loan Modification Fees: Fee which may be charged by the plaintiff for processing a modification of the loan terms.

Title Search: This is the amount for performing a title search of the property. A title search is an investigation of the public records on a file in the county where the property is located, which is performed to identify all persons who may have an interest in the property. Immediately upon receipt of a foreclosure referral from the Lender, the Firm orders a title search on the property.

Title Examination: Once a Title Search is complete, a title examiner reviews the information gathered from the Title Search to identify all persons who may have an interest in the property.

Title Update: During the foreclosure process the Lender may have the title search and exam updated.

Pre-suit Occupancy Investigation: An occupancy investigation performed for the purpose of compliance with complaint filing requirements under applicable Administrative Order.

Mediation Charge: Mandatory mediation cost pursuant to Administrative Order.

Disclosure of Related Entity: The Title Search, Title Examination, and Title Update services described above may have been performed by "Liberty Title & Escrow" The Lender and the Law Firm have agreed to the amounts charged by "Liberty Title & Escrow" for its services and that they will be paid by the firm and reimbursed to the Firm by the Lender. The Lender and the Firm have also agreed that the Firm should collect these amounts as costs related to the foreclosures as permitted under your mortgage and note with the Lender.

Clerk Filing Fee: This is the amount paid by the Firm to the Clerk of the Circuit Court in order to file the foreclosure complaint and initiate the foreclosure action.

Clerk Recording Fee: This is the amount paid by the Firm to the Clerk of the Circuit Court to record documents related to the foreclosure action.

Certified Copies Fee: This is the amount paid by the Firm to obtain documents related to the foreclosure action.

Post-Judgment Clerk Filing Fee: This is the amount paid by the Firm to the Clerk of the Court in order to reopen a case after a final judgment has been entered to file papers with the Court.

Service of Process: This is the amount for costs incurred by the Firm to pay process servers to legally serve the complaint and summons on a person. These amounts include a process server's charges to actually serve the complaint, as well as unsuccessful attempts to serve the complaint, upon known and unknown persons who may have an interest in the property. These amounts also include a process server's charges to locate any defendant who cannot be served the complaint and summons at the address on the summons.

The Firm uses Service of Process and attempted Service of Process to identify persons who may have an interest in the property and who may not be identified by the Title Search and Title Examination. Other than Title Search and Title Examination, the Firm does not typically investigate whether other persons have an interest in the property. Therefore, the Firm hires process servers to serve parties with an interest in the property and an "unknown spouse" and "unknown tenants" with a summons and complaint, and the Service of Process amount above includes charges for service and attempted service of those persons, whether or not they actually exist. If such a person is served with a copy of the complaint, that person is identified by name on future filings in the foreclosure action, and is served all subsequent filings in the foreclosure action.

"Unknown spouses" and "unknown tenants", if they exist, may have an interest in the property which is not revealed by the Title Search and Title Examination. Summonses were or will be issued for service on "unknown spouses and tenants", and the charge for service or attempted service of process on the unknown parties is \$45 per summons, which is included in the total amount for Service of Process listed above. The amount shown above for service of process in the Reinstatement Amount also includes an estimate of additional charges not yet incurred for service of process that may be incurred in the future course of the foreclosure.

If a process server cannot locate a defendant to serve the complaint and summons at the address listed on the summons, Florida law requires a plaintiff to diligently attempt to locate the defendant before the plaintiff can serve the defendant by advertising/publishing legal notice of the foreclosure case. The Firm pays process servers to locate defendants by performing a "skip trace" report. If a "skip trace" report is required, the amount charged by a process server will be

included as part of Service of Process costs. In addition, if service by mail is required, an additional charge will be due and included as part of Service of Process costs.

Publication Costs: This is the amount paid by the Firm to a local newspaper to advertise/publish notice of a case when a defendant cannot be located by a process server to personally serve the complaint and summons. This amount may also include the amount paid by the firm to a local newspaper to advertise notice of a scheduled foreclosure sale.

Overnight Document Delivery Costs: This is the amount the Firm has incurred to deliver court documents, correspondence, and other documents to courts, clients, borrowers or others by overnight delivery.

Guardian Ad Litem Fee: If a defendant cannot be located by a process server to serve the summons and complaint, the Court may appoint an attorney to represent the defendant during the foreclosure case. These fees are the amount a Court awards to the attorney appointed by the Court.

Attorneys' Fees: This is the amount of attorneys' fees earned by the Firm as of the Reinstatement Amount good through date. The final amount of the Lender's attorneys' fees is calculated based upon the status of the foreclosure action at the time the Reinstatement Amount is accepted by the Firm. Please note that if additional services are performed by the Firm in the foreclosure action or in a bankruptcy action, the amount for attorneys' fees may increase.

Bankruptcy Fees Paid to Other Counsel: Attorneys' fees that may have been paid to counsel other than Marinosci Law Group, P.C.

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. 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. 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.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



Kimberly S. Sullivan a/k/a Kimn S. Sullivan, on behalf
of herself and others similarly situated,

Plaintiff(s)

v.

Marinosci Law Group, P.C., P.A.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Marinosci Law Group, P.C., P.A.
c/o its registered agent C T Corporation System
100 W. Cypress Creek Road, Suite 1045
Fort Lauderdale, FL 33309

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

James L. Davidson
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, FL 33431

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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: