

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:19-cv-63075

HUBERT WADE,

Plaintiff,

v.

COMPLAINT – CLASS ACTION

MIDLAND CREDIT
MANAGEMENT, INC.,

Defendants.

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

JURY DEMAND

On behalf of the putative class, Plaintiff HUBERT WADE (“Plaintiff”), seeks redress for the unlawful conduct of Defendant, MIDLAND CREDIT MANAGEMENT, INC. (“Defendant”), *to wit*, for violation 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 of multiple provisions 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 letters, Defendant has falsely and deceptively misrepresented the content of such letters to Plaintiff and putative class members. 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, 1367 and 15 U.S.C. § 1692k.

5. 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

6. 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

7. Plaintiff is a natural person, and a citizen of the State of Florida, residing in Broward County, Florida.

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

9. Defendant is a Kansas corporation, with its principal place of business located in San Diego, California.

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

11. 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. 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 November 08, 2019, 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. On the front of the Collection Letter, Defendant embeds the following image:



See “Exhibit A.”

18. Contrary to Defendant's suggestion, the Collection Letter does not contain any legal consumer rights that would justify Defendant's use of the image depicted above.

19. The use of the image depicted above by Defendant is, at a minimum, misleading to the least sophisticated consumer.

20. Defendant, by boldly embedding the image depicted above on the front of the Collection Letter, falsely and deceptively makes the least sophisticated consumer believe that there is content within the Collection Letter that provides disclosures as to his or her *legal consumer rights* when in fact there is nothing that justifies such an impression created by Defendant.

21. Simply put, there is no body of law disclosed by Defendant in the Collection Letter that justifies the use of a large image by that implies that consumers have been provided with their "Consumer Bill of Rights." Such conduct is false, deceptive, unfair and misleading and violates several provisions of the FDCPA.

22. 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

23. This action is brought on behalf of the following class:

(i) all persons in the United States (ii) who were sent a letter (iii) between July 28, 2018 and July 28, 2019 (iv) from Defendant (v) in an attempt to collect a debt incurred for personal, family, or household purposes, (vi) of which Defendant included an embedded image in the letter stating "Consumer Bill of Rights" in violation of 15 U.S.C §§ 1692e, 1692e(2)(a), 1692e(9), 1692e(10) and/or 1692f.

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

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

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

26. With respect to the 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 §§ 1692e, 1692e(2)(a), 1692e(9), 1692e(10) and/or 1692f by including an embedded image in the collection letters stating “Consumer Bill of Rights.”

28. Excluded from the class 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

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

C. ADEQUACY

30. Plaintiff is an adequate representative for the class.

31. Plaintiff will fairly and adequately protect the interests of the class.

32. 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

33. Certification of the class 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.

34. 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 §§ 1692e, 1692e(2)(a), 1692e(9), 1692e(10) and/or 1692f

35. Plaintiff incorporates by reference paragraphs 1-34 of this Complaint as though fully stated herein.

36. Pursuant to § 1692e(2)(a) of the FDCPA, Defendant is prohibited from, *inter alia*, falsely representing the character, amount or legal status of the consumer debt. *See* 15 U.S.C. § 1692e(2)(a). Here, by implying that consumers were in receipt of their "Consumer Bill of Rights" in collection letters sent to members of the class, Defendant falsely represented the character and legal status of the debts it sought to collect.

37. Section 1692e(9) of the FDCPA prohibits “the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.” 15 U.S.C. § 1692e(9). Here, by embedding the image depicted above in letters sent to members of the class, Defendant created false impressions as to the content of the Collection Letter.

38. Section 1692e(10) of the FDCPA prohibits “the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. § 1692e(10). Here, by embedding the image depicted above in letters sent to members of the class, Defendant made false, misleading and/or deceptive representations to members of the class regarding the content of the Collection Letter.

39. Section 1692f of the FDCPA prohibits “unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f. Here, by embedding the image depicted above in letters sent to members of the class, Defendant utilized unfair and/or unconscionable means in collecting and attempting to collect debts from members of the class.

40. WHEREFORE, Plaintiff, individually and on behalf of the Class, requests that the Court enter an order certifying the described Class and judgment in favor of Plaintiff and the 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: December 12, 2019

Respectfully Submitted,

/s/ Jibrael S. Hindi

JIBRAEL S. HINDI, ESQ.

Florida Bar No.: 118259

E-mail: jibrael@jibraellaw.com

THOMAS J. PATTI, ESQ.

Florida Bar No.: 118377

E-mail: tom@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

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)
v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (*Defendant’s name and address*)

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:

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

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

DEFENDANTS

(b) County of Residence of First Listed Plaintiff (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)

(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)

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

Click here for: Nature of Suit Code Descriptions

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

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):

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

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

Welcome, Your account has a new home
11-08-2019

Midland Credit Management
350 California Street, Suite 1000
San Francisco, CA 94111

Hubert Wade
3492 NW 38th Ave
Lauderdale Lakes, FL 33309-5334
P177 010

Account Transfer Details	
Original Creditor	Citibank, N.A.
Original Account Number	6035320770826145
Current Servicer	Midland Credit Management, Inc.
MCM Account Number	8579432211
Current Owner	Midland Funding LLC
Current Balance	\$3,317.95

Save up to 40%
(877) 382-5930

Account at a Glance

Current Balance
\$3,317.95

Save up to 40%

Flexible Payment Options Available

Receive Personalized Service

Reply by
12-23-2019

Call (877) 382-5930
Sun-Th: 5am-9pm PT;
Fri-Sat: 5am-4:30pm PT;

MidlandCredit.com

RE Citibank, N.A. The Home Depot Consumer

Dear Hubert,

Welcome! On 02-21-2018, your Citibank, N.A./The Home Depot Consumer account was sold to Midland Funding LLC, which is now the sole owner of this debt. Midland Credit Management, Inc. ("MCM"), a debt collection company, will be collecting on, and servicing your account, on behalf of Midland Funding LLC.

To welcome you to MCM, we'd like to offer you up to 40% savings by making a single payment of \$1,990.77 by 12-23-2019.

MCM is a different kind of debt collector. Here is what to expect:

- A dedicated Account Manager will be assigned to your account
- We will reach out to you by phone and mail over the months to come.
- Useful tools and resources online at MidlandCredit.com

MCM, a partner you can trust.

We value your experience and understand that managing debt can be a difficult process! That is why we set standards for how you are to be treated while working with us. Visit MidlandCredit.com to learn about our Consumer Bill of Rights or call (877) 382-5930 to experience the difference for yourself.

Sincerely,
Tim Bolin
Tim Bolin, Division Manager

P.S. Any discounts or repayment options do not alter your validation rights as described on the reverse side.



6100 10 - 23 - 2019 \$

61/30/11

no 12/23/2019 11/30/11 - 001 \$

We are not obligated to renew any offers provided.

(877) 382-5930 MidlandCredit.com Midland Credit Management, Inc
P.O. Box 51319
Los Angeles, CA 90051-5619

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURE INFORMATION

M Account Number 8579432211
Current Balance \$3,317.95

Manage Your Account Online
MidlandCredit.com

Amount Enclosed \$.

Important Payment Information

Make checks payable to:
Midland Credit Management
Enter your MCM Account # on all payments
(877) 382-5930

Mail Payments to:
Midland Credit Management, Inc
P.O. Box 51319
Los Angeles, CA 90051-5619

se habla español
(855) 983-6352