

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

DENISE BRINKLEY,  
*individually and on behalf of all  
those similarly situated,*

Case No.

Plaintiff,

v.

NATIONAL ENTERPRISE SYSTEMS,  
INC.,

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL**

Defendant, NATIONAL ENTERPRISE SYSTEMS, INC. (hereinafter “Defendant”), hereby gives notice, pursuant to 28 U.S.C. § 1331, and 28 U.S.C. §§ 1441 and 1446, that the case entitled *Denise Brinkley, individually and on behalf of all those similarly situated, v. National Enterprise Systems, Inc.*, Case No. 2023CA001122, is being removed from the Circuit Court of the Fourth Judicial Circuit in and for Clay County, Florida to the United States District Court for the Middle District of Florida. In support of this Notice, Defendant states:

1. On or about June 13, 2023, Plaintiff, DENISE BRINKLEY (hereinafter “Plaintiff”), filed this action against Defendant, in the Circuit Court of the Fourth Judicial Circuit in Clay County, Florida, under the caption *Denise Brinkley, individually and on behalf of all those similarly situated, v. National Enterprise Systems, Inc.*, Case No. 2023CA001122.

2. On or about July 5, 2023, Plaintiff served Defendant with her Complaint. A copy of the state court Complaint is attached hereto as Exhibit 1, and a copy the State Court docket is attached as Exhibit 2; A copy of the complete court file is attached as Exhibit 3. There is no answer to the complaint filed to date.

3. The Complaint asserts two federal law claims against Defendant for alleged violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* (“FDCPA”). The Complaint further alleges that Plaintiff suffered a concrete harm as a result of those alleged violations and seeks the recovery of actual damages.

4. This Notice was filed with the Clerk of the United States District Court within thirty (30) days after service of the Complaint upon Defendant. 28 U.S.C. § 1446(b).

5. This action is a civil action and is one over which this Court has original subject matter jurisdiction under 28 U.S.C. § 1331, and is an action that can be removed to this District Court pursuant to 28 U.S.C. § 1441, as a result of Plaintiff alleging violations of the FDCPA.

6. In the Complaint, Plaintiff alleges that Defendant was acting as a debt collector in attempting to collect a debt from Plaintiff.

7. Plaintiff claims Defendant violated §§ 1692e, 1692f, and 1692g of the FDCPA in its attempted collection of Plaintiff’s debt. Plaintiff seeks recovery of

actual damages, statutory damages, and costs and reasonable attorneys' fees under the FDCPA.

8. Plaintiff's Complaint invokes federal question jurisdiction because the allegations involve claims under the FDCPA, 15 U.S.C. §§ 1692 *et seq.*

9. Promptly after the filing of this Notice of Removal, Defendant will file a notice of filing notice of removal with the Clerk of the Circuit Court, Clay County, Florida, as required by 28 U.S.C. § 1446. Written notice of the filing of this notice of removal is also being served upon counsel for Plaintiff.

10. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any of Defendant's rights to assert any defense or affirmative matter.

WHEREFORE, Defendant respectfully requests that this case proceed in this Court as an action properly removed to it.

*s/ Barbara Fernandez*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and a copy was served via e-mail upon the following:

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# **EXHIBIT 1**

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR CLAY COUNTY, FLORIDA

Case No.

DENISE BRINKLEY,  
*individually and on behalf of all  
those similarly situated,*

Plaintiff,

v.

**JURY TRIAL DEMANDED**

NATIONAL ENTERPRISE SYSTEMS INC,

Defendant.

\_\_\_\_\_ /

COMPLAINT

Plaintiff Denise Brinkley (“Plaintiff”) sues Defendant National Enterprise Systems Inc (“Defendant”) for violations of the Fair Debt Collection Practices Act.

**NATURE OF ACTION**

1. The Consumer Financial Protection Bureau (“CFPB”) is the administrative agency authorized to exercise its authority under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law. *See* 12 U.S.C. § 5512; 15 U.S.C. § 1692l(d); *see also* 12 C.F.R. § 1006.1(a).

2. On November 30, 2020, the CFPB issued their final rule to revise Regulation F (“Reg F”) which contains, among other things, the CFPB’s most recent interpretation of the Fair Debt Collection Practices Act (“FDCPA”).

3. Reg F addresses, among other things, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection. *See generally* 85 FR 76734.

4. With respect to the purpose of Reg F, it is stated “[Reg F] carries out the purposes of the FDCPA, which include eliminating abusive debt collection practices by debt collectors, ensuring that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and promoting consistent State action to protect consumers against debt collection abuses. 12 C.F.R. § 1006.1(b). Moreover, Reg F, “prescribes requirements to ensure that certain features of debt collection are disclosed fully, accurately, and effectively to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with debt collection, in light of the facts and circumstances.” *Id.* (emphasis added).

5. This is a lawsuit under the FDCPA arising from Defendant’s violations of the FDCPA pursuant to Reg F.

#### JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over Plaintiff and Defendant (collectively, the “Parties”), because the cause of action arises within the jurisdiction of this Court and, thus, venue and jurisdiction are proper.

7. This Court has personal jurisdiction over Defendant because Defendant is operating, present, and/or doing business within this jurisdiction and because the complained of conduct of Defendant occurred within Clay County, Florida.

8. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The amount in controversy exceeds \$50,000 exclusive of costs, interest, and attorneys’ fees, and is otherwise within this Court’s jurisdiction.

9. Venue of this action is proper in this Court because, pursuant to Fla. Stat. § 47.011, *et seq.*, the cause of action alleged below arose in Clay County, Florida.

### PARTIES

10. Plaintiff is a natural person, and a citizen of the State of Florida, residing in Palm Beach County, Florida.

11. Defendant is a Ohio Corporation, with its principal place of business located in Solon, Ohio.

### DEMAND FOR JURY TRIAL

12. Plaintiff, respectfully, demands a trial by jury on all counts and issues so triable.

### ALLEGATIONS

13. On a date better known by Defendant, Defendant began attempting to collect a debt (the "Consumer Debt") from Plaintiff.

14. The Consumer Debt is a "consumer financial product or service" within the meaning of 12 U.S.C. § 5481(5).

15. The Consumer Debt is an obligation allegedly had by Plaintiff to pay money arising from an unsecured line of credit between the original creditor of the Consumer Debt, Upstart Network Inc., and Plaintiff (the "Subject Service").

16. The Subject Service was primarily for personal, family, or household purposes.

17. The Consumer Debt is a debt related to a consumer financial product and/or service because the Consumer Debt arises from the unsecured line of credit the original creditor extended to Plaintiff, whereby said unsecured line of credit was for the personal benefit of Plaintiff, Plaintiff's family, and/or members of Plaintiff's household.

18. The Consumer Debt is a consumer financial product pursuant to 12 U.S.C. § 5481(15)(A)(i).



19. Defendant is a business entity engaged in the business of soliciting consumer debts for collection.

20. Defendant is a business entity engaged in the business of collecting consumer debts.

21. Defendant regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

22. Defendant is registered with the Florida Office of Financial Regulation as a “Consumer Collection Agency.”

23. Defendant’s “Consumer Collection Agency” license number is CCA0900266.

24. Defendant maintains all the records specified in Rule 69V-180.080, Florida Administrative Code.

25. The records specified by Rule 69V-180.080, Florida Administrative Code, which Defendant does maintain, are current to within one week of the current date.

26. Defendant maintains and keeps updated within seven (7) days the records required by Florida Administrative Code Rule 180.080(1), (3), (6), (7), (9), (10), and (11).

27. Defendant has written policies and procedures for the secure handling of all consumer documents and information received in the course of collecting a debt from a consumer as required by Rule 69V-180.090(2).

28. Defendant is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6).

29. Defendant is a “person” within the meaning of Fla. Stat. § 559.72.

30. On or about January 5, 2023, 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.”

31. The Collection Letter represents Defendant's initial communication with Plaintiff in connection with the collection of the Consumer Debt.

32. The Upstart Network Inc. is the original creditor of the Consumer Debt.

33. Velocity Investments LLC is the current creditor of the Consumer Debt.

34. Defendant was required to provide "validation information" in the Collection Letter. *See* 12 C.F.R. § 1006.34(c).

35. The "validation information" that Defendant was required to provide in the Collection Letter includes, but is not limited to, "information about the debt." *See* 12 C.F.R. § 1006.34(c)(2).

36. The "information about the debt" that Defendant was required to provide in the Collection Letter includes, but is not limited to, "the name of the creditor to whom the debt was owed on the itemization date," *see* 12 C.F.R. § 1006.34(c)(2)(iii), and "[t]he itemization date," *see* 12 C.F.R. § 1006.34(c)(2)(vi).

37. The term "**itemization date**" is defined by C.F.R. § 1006.34(b)(3) to mean one of five specific dates, namely: (1) "[t]he last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor," (the "**Last Statement Date**"), *see* C.F.R. § 1006.34(b)(3)(i); (2) "[t]he charge-off date, which is the date the debt was charged off, (the "**Charge Off Date**"), *see* C.F.R. § 1006.34(b)(3)(ii); (3) "[t]he last payment date, which is the date the last payment was applied to the debt, (the "**Last Payment Date**"), *see* C.F.R. § 1006.34(b)(3)(iii); (4) "[t]he transaction date, which is the date of the transaction that gave rise to the debt," (the "**Transaction Date**"), *see* C.F.R. § 1006.34(b)(3)(iv); or (5) "[t]he judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer," (the "**Judgment Date**"), *see* C.F.R. § 1006.34(b)(3)(v).

38. Defendant identifies May 20, 2022, as the itemization date of the Consumer Debt in the Collection Letter (the “Represented Itemization Date”). *See* Exhibit “A.”

39. The Represented Itemization Date is not the Last Statement Date associated with the Consumer Debt.

40. The Represented Itemization Date is not the Charge Off Date associated with the Consumer Debt.

41. The Represented Itemization Date is not the Last Payment Date associated with the Consumer Debt.

42. The Represented Itemization Date is the Transaction Date associated with the Consumer Debt.

43. The Represented Itemization Date is not the Judgment Date associated with the Consumer Debt.

44. The Represented Itemization Date falsely represents the amount of the Consumer Debt because the Represented Itemization Date is not an itemization date permitted by C.F.R. § 1006.34(b)(3).

45. The Represented Itemization Date falsely represents the character of the Consumer Debt because the Represented Itemization Date is not an itemization date permitted by C.F.R. § 1006.34(b)(3), whereby the use of the Represented Itemization Date wrongfully causes the least sophisticated consumer to falsely believe that the Represented Itemization Date is the Last Statement Date, the Charge Off Date, the Last Payment Date, the Transaction Date, or the Judgment Date.

46. The Collection Letter fails to identify the Represented Itemization Date as the Last Statement Date, the Charge Off Date, the Last Payment Date, the Transaction Date, or the Judgment Date.

47. Additionally, Defendant was required to identify the name of the creditor to whom the Consumer debt was owed on the itemization date in the Collection Letter.

48. The Collection Letter fails to identify the name of the creditor to whom the Consumer Debt was owed on the Represented Itemization Date.

49. The Collection Letter fails to identify the name of the creditor on the Last Statement Date.

50. The Collection Letter fails to identify the name of the creditor on the Charge Off Date.

51. The Collection Letter fails to identify the name of the creditor on the Last Payment Date.

52. The Collection Letter fails to identify the name of the creditor on the Transaction Date.

53. The Collection Letter fails to identify the name of the creditor on the Judgment Date.

54. The Collection Letter fails to identify the name of the creditor to whom the Consumer Debt was owed on the Represented Itemization Date of May 20, 2022.

55. After receiving the Collection Letter, Plaintiff consulted with an attorney to help her regarding the Consumer Debt.

56. The time and money spent in evaluating the legal ramifications of disputing the Consumer Debt was a concrete harm suffered by Plaintiff. *See Toste v. Beach Club at*

Fontainebleau Park Condo. Ass'n., Aventura, P.A., 2022 U.S. App. LEXIS 25076 (11th Cir. Sep. 7, 2022).

57. Additionally, Plaintiff has been damaged because of Defendant's behavior. Plaintiff has suffered mental and emotional distress, worry, and aggravation as a result of evaluating the legal ramifications of disputing the Consumer Debt and receiving a Collection Letter from Defendant that does not accurately identify the itemization date and the creditor on the date of the itemization date.

### CLASS ALLEGATIONS

#### PROPOSED CLASSES

58. Plaintiff brings this lawsuit as a class action on behalf of Plaintiff, individually and on behalf of all other similarly situated persons as a class action. Plaintiff seeks to represent the below defined classes, the "**Itemization Creditor Class**" and the "**Itemization Date Class**."

59. The "**Itemization Creditor Class**" consists of [1] all persons with Florida addresses [2] that were sent a letter [3] from and/or by Defendant, or someone on Defendant's behalf [4] in an attempt to collect a debt [5] during the twelve (12) months preceding the filing of this Class Action Complaint [6] whereby said letter is required to provide the name of the creditor on the identified itemization date pursuant to 12 C.F.R. § 1006.34(c)(2)(iii) [7] and the letter fails to provide the name of the creditor on the identified itemization date.

60. The "**Itemization Date Class**" consists of: [1] all persons with Florida addresses [2] that were sent a letter [3] from and/or by Defendant, or someone on Defendant's behalf [4] in an attempt to collect a debt [5] during the twelve [12] months preceding the filing of this Class Action Complaint [6] whereby said letter is required to provide an "itemization date" required by C.F.R. § 1006.34(b)(3) [7] and the "itemization date" provided is not Last Statement Date, the

Charge Off Date, the Last Payment Date, the Transaction Date, or the Judgment Date associated with the underlying debt.

61. Defendant and its employees or agents are excluded from the Itemization Creditor Class and the Itemization Date Class (collectively, the “Classes”).

62. Plaintiff does not know the number of members in the Classes but believes the members of each class to be in the several thousands, if not more.

NUMEROSITY

63. Upon information and belief, Defendant has sent thousands of debt collection letters to thousands of consumers throughout the United States that are required to identify the name of the creditor on the itemization date pursuant to 12 C.F.R. § 1006.34(c)(2)(iii), but which fail to identify the same of such creditor on the itemization date. The members of the Itemization Creditor Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

64. Upon information and belief, Defendant has sent thousands of debt collection letters to thousands of consumers throughout the United States that are required to identify the name of the creditor on the itemization date pursuant to 12 C.F.R. § 1006.34(b)(3), but which the itemization date provided is not Last Statement Date, the Charge Off Date, the Last Payment Date, the Transaction Date, or the Judgment Date associated with the underlying debt. The members of the Itemization Date Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

65. The exact number and identities of members of the Classes are unknown at this time and can be ascertained only through discovery. Identification of each member of the Classes is a matter capable of ministerial determination from Defendant’s records.

#### COMMON QUESTIONS OF LAW AND FACT

66. There are numerous questions of law and fact common to the Classes which predominate over any questions affecting only individual members of the Classes. Among the questions of law and fact common to each of the Classes are: [1] whether Defendant sent a letter to Plaintiff and members of each of the Class in an attempt to collect a debt; [2] whether said letter was Defendant's initial communication with Plaintiff and members of each of the Class; [3] whether Defendant is a debt collector; [4] Whether Defendant's conduct was knowing and willful; and [5] Whether Defendant is liable for damages and the amount of such damages.

67. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely sends debt collection letters to consumers that violate 12 C.F.R. § 1006.34(c)(2)(iii) and 12 C.F.R. § 1006.34(b)(3) is accurate, Plaintiff and members of the Classes will have identical claims capable of being efficiently adjudicated and administered in this case.

#### TYPICALITY

68. Plaintiff's claims are typical of the claims of the members of the Classes as they are all based on the same factual and legal theories.

#### PROTECTING THE INTERESTS OF THE CLASS MEMBERS

69. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Classes and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

#### SUPERIORITY

70. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Classes

is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by members of the Classes are in the millions of dollars, the individual damages incurred by each member of the Classes resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual members of the Classes prosecuting their own separate claims is remote, and, even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation.

71. The prosecution of separate actions by members of the Classes would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Classes, although certain class members are not parties to such actions.

COUNT 1

**VIOLATION OF 12 C.F.R. § 1006.34(c)(2)(iii) and 15 U.S.C. §§ 1692e, 1692f, and 1692g**  
***(On Behalf of the Plaintiff and the Itemization Creditor Class)***

72. Plaintiff incorporates by reference ¶¶ 13-36, 47-59, 61-63, and 65-71 of this Complaint.

73. Pursuant to § 1006.34 of Reg F, a debt collector must provide a consumer with the validation information required by § 1006.34(c) of Reg F.

74. Pursuant to § 1006.34(c) of Reg F, a debt collector *must* provide certain validation information, of which includes, but is not limited to: (1) "debt collector communication disclosure;" (2) "information about the debt;" (3) "information about consumer protections;" and (4) "consumer-response information."



75. Section 1006.34(c)(2) of Reg F, of which requires “information about the debt” to be disclosed, provides an explicit list of information, which includes, but is not limited to, “the name of the creditor to whom the debt was owed on the itemization date.”

76. As set forth above, Defendant was required to provide “the name of the creditor to whom the debt was owed on the itemization date” in the Collection Letter. The itemization date identified in the Collection Letter was May 20, 2022. The Collection Letter *does not* identify the name of the creditor to whom the debt was owed on May 20, 2022.

77. Section 1692e of the FDCPA prohibits, among other things, “any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e.

78. Section 1692e(2)(A) of the FDCPA explicitly prohibits “[t]he false representation of the character, amount, or legal status of any debt.” 15 U.S.C. § 1692e(2).

79. Section 1692f of the FDCPA prohibits, among other things, “unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.

80. Section 1692g of the FDCPA requires debt collectors to make certain disclosures, provide consumers with certain information, and to make such disclosures and provide such information within a specific timeframe. *See* 15 U.S.C. § 1692g(a)(1)-(5).

81. Here, Defendant was required to identify the name of the creditor to whom the Consumer Debt was owed on May 20, 2022, pursuant to 12 C.F.R. § 1006.34(c)(2)(iii). The Collection Letter, however, fails to identify the name of the creditor to whom the Consumer debt was owed on May 20, 2022, in violation of 12 C.F.R. § 1006.34(c)(2)(iii).

82. Defendant violated § 1692e of the FDCPA by failing to identify in the Collection Letter the name of the creditor to whom the Consumer debt was owed on May 20, 2022, because

Defendant is *required* by 12 C.F.R. § 1006.34(c)(2)(iii) to make such an identification in the Collection Letter and failing to do so is false, deceptive, and/or otherwise misleading to the least sophisticated consumer.

83. Defendant violated § 1692f of the FDCPA by failing to identify in the Collection Letter the name of the creditor to whom the Consumer debt was owed on May 20, 2022, because Defendant is required by 12 C.F.R. § 1006.34(c)(2)(iii) to make such an identification in the Collection Letter and failing to do so constitutes unfair and/or otherwise unconscionable means to collect the Consumer Debt.

84. Defendant violated § 1692g of the FDCPA by failing to identify in the Collection Letter the name of the creditor to whom the Consumer debt was owed on May 20, 2022, because Defendant is required by 12 C.F.R. § 1006.34(c)(2)(iii) to make such an identification in the Collection Letter.

85. As such, by failing to identify in the Collection Letter the name of the creditor to whom the Consumer debt was owed on May 20, 2022, Defendant violated § 1006.34(c) of Reg F, § 1692e of the FDCPA, § 1692f of the FDCPA, and § 1692g of the FDCPA.

86. WHEREFORE, Plaintiff requests this Court to enter a judgment against Defendant, awarding the following relief:

- (a) Statutory and actual damages as provided by 15 U.S.C. § 1692k.
- (b) Costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- (c) Any other relief that this Court deems appropriate under the circumstances.

**COUNT 2**  
**VIOLATION OF 12 C.F.R. § 1006.34(b)(3) and 15 U.S.C. §§ 1692e, 1692f, and 1692g**  
***(On Behalf of the Plaintiff and the Itemization Date Class)***

87. Plaintiff incorporates by reference ¶¶ 7-47, 56-58, 60-62, 64-71 of this Complaint.

88. The Bureau of Consumer Financial Protection the administrative agency authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law. *See* 12 U.S.C. § 5512; 15 U.S.C. § 1692l(d); *see also* 12 C.F.R. § 1006.1(a).

89. On November 30, 2020, the CFPB issued their final rule to revise Regulation F (“Reg F”) of which contains, among other things, the CFPB’s most recent interpretation of the FDCPA. Reg F addresses, among other things, communications in connection with debt collection and prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection. *See generally* 85 FR 76734.

90. With respect to the purpose of Reg F, it is stated “[Reg F] carries out the purposes of the FDCPA, which include eliminating abusive debt collection practices by debt collectors, ensuring that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and promoting consistent State action to protect consumers against debt collection abuses. 12 C.F.R. § 1006.1(b). Moreover, Reg F, **“prescribes requirements to ensure that certain features of debt collection are disclosed fully, accurately, and effectively to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with debt collection, in light of the facts and circumstances.”** *Id.* (emphasis added).

91. Pursuant to § 1006.34 of Reg F, a debt collector must provide a consumer with the validation information required by § 1006.34(c) of Reg F.

92. Pursuant to § 1006.34(c) of Reg F, a debt collector *must* provide certain validation information, of which includes, but is not limited to: (1) “debt collector communication disclosure;” (2) “information about the debt;” (3) “information about consumer protections;” and (4) “consumer-response information.”

93. Section 1006.34(c)(2) of Reg F, of which requires “information about the debt” to be disclosed, provides an explicit list information, of which includes: (i) “[t]he debt collector’s name and the mailing address at which the debt collector accepts disputes and requests for original-creditor information;” (ii) “[t]he consumer’s name and mailing address;” (iii) “the name of the creditor to whom the debt was owed on the itemization date;” (iv) “[t]he account number, if any, associated with the debt on the itemization date, or a truncated version of that number;” (v) “[t]he name of the creditor to whom the debt currently is owed;” (vi) “[t]he itemization date;” (vii) “[t]he amount of the debt on the itemization date;” (viii) “[a]n itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date;” and (iv) “[t]he current amount of the debt.”

94. Section 1006.34(b)(3) of Reg F defines the term “**itemization date**” to mean one of five specific dates, *namely*: (1) “[t]he last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor,” (the “**Last Statement Date**”), *see* C.F.R. § 1006.34(b)(3)(i); (2) “[t]he charge-off date, which is the date the debt was charged off, (the “**Charge Off Date**”), *see* C.F.R. § 1006.34(b)(3)(ii); (3) “[t]he last payment date, which is the date the last payment was applied to the debt, (the “**Last Payment Date**”), *see* C.F.R. § 1006.34(b)(3)(iii); (4) “[t]he transaction date, which is the date of the transaction that gave rise to the debt,” (the “**Transaction Date**”), *see* C.F.R. § 1006.34(b)(3)(iv); *or* (5) “[t]he judgment date, which is the date of a final court judgment that determines the amount of the debt owed by the consumer,” (the “**Judgment Date**”), *see* C.F.R. § 1006.34(b)(3)(v).

95. Section 1692e of the FDCPA prohibits, among other things, “any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e.

96. Section 1692e(2)(A) of the FDCPA explicitly prohibits “[t]he false representation of the character, amount, or legal status of any debt.” 15 U.S.C. § 1692e(2).

97. Section 1692f of the FDCPA prohibits, among other things, “unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.

98. Section 1692g of the FDCPA requires debt collectors to make certain disclosures, provide consumers with certain information, and to make such disclosures and provide such information within a specific timeframe. *See* 15 U.S.C. § 1692g(a)(1)-(5).

99. Here, as set forth above, the Collection Letter was a communication required to use of the five “itemization dates” set forth under § 1006.34(b)(3) of Reg F. The date used and/or otherwise represented in the Collection Letter as the “itemization date,” *namely*, the Represented Itemization Date: [1] is not the Last Statement Date associated with the Consumer Debt; [2] is not the Charge Off Date associated with the Consumer Debt; [3] is not the Last Payment Date associated with the Consumer Debt; [4] is not the Transaction Date associated with the Consumer Debt; and [5] is not the Judgment Date associated with the Consumer Debt.

100. Defendant violated § 1692e of the FDCPA by using the Represented Itemization Date in the Collection Letter because the Represented Itemization Date is not one of the five dates permitted by § 1006.34(b)(3) of Reg F and using the Represented Itemization Date as though it was one of the five dates permitted by § 1006.34(b)(3) of Reg F is false, deceptive, and/or otherwise misleading to the least sophisticated consumer.

101. Defendant violated § 1692e of the FDCPA by using the Represented Itemization Date in the Collection Letter because the Represented Itemization Date is not one of the five dates permitted by § 1006.34(b)(3) of Reg F and using the Represented Itemization Date as though it

was one of the five dates permitted by § 1006.34(b)(3) of Reg F is false, deceptive, and/or otherwise misleading to the least sophisticated consumer.

102. Defendant violated § 1692e(2)(A) of the FDCPA with respect to the character and/or amount of the Consumer Debt by using the Represented Itemization Date in the Collection Letter because the Represented Itemization Date is not one of the five dates permitted by § 1006.34(b)(3) of Reg F. Here, using the Represented Itemization Date as though it was one of the five dates permitted by § 1006.34(b)(3) of Reg F wrongfully causes the least sophisticated consumer to falsely believe that the Represented Itemization Date is the Last Statement Date, the Charge Off Date, the Last Payment Date, the Transaction Date, or the Judgment Date.

103. Defendant violated § 1692f of the FDCPA by using the Represented Itemization Date in the Collection Letter because the Represented Itemization Date is not one of the five dates permitted by § 1006.34(b)(3) of Reg F and using the Represented Itemization Date as though it was one of the five dates permitted by § 1006.34(b)(3) of Reg F constitutes unfair and/or otherwise unconscionable means to collect the Consumer Debt.

104. Defendant violated § 1692g of the FDCPA and § 1006.34(b)(3) of Reg F by failing to use one of the five itemization dates permitted by § 1006.34(b)(3) of Reg F in the Collection Letter, as Defendant was required to use one of the five itemization dates set forth under § 1006.34(b)(3) in the Collection Letter, but instead, used the Represented Itemization Date in the Collection Letter, whereby the Represented Itemization Date is not one of the five dates permitted by § 1006.34(b)(3) of Reg F.

105. WHEREFORE, Plaintiff requests this Court to enter a judgment against Defendant, awarding Plaintiff the following relief:

(d) Statutory and actual damages as provided by 15 U.S.C. § 1692k;

- (e) Costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- (f) Any other relief that this Court deems appropriate under the circumstances.

DATED: June 13, 2023

Respectfully Submitted,

/s/ Jennifer G. Simil  
**JIBRAEL S. HINDI, ESQ.**  
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E-mail: jibrael@jibraellaw.com  
**JENNIFER G. SIMIL, ESQ.**  
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E-mail: jen@jibraellaw.com  
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110 SE 6th Street, Suite 1744  
Fort Lauderdale, Florida 33301  
Phone: 954-907-1136

*COUNSEL FOR PLAINTIFF*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 13, 2023, the foregoing was electronically filed with the Clerk of the Court using the Florida E-Filing Portal which will send a notice of electronic filing to all counsel of record.

/s/ Jennifer G. Simil .  
**JENNIFER G. SIMIL, ESQ.**  
Florida Bar No.: 1018195

# EXHIBIT “A”



National Enterprise Systems  
2479 Edison Blvd., Unit A  
Twinsburg, OH 44087-2340  
Ph. 877-603-7164 ext. 2064  
[www.nes1.com](http://www.nes1.com)

To: Denise Brinkley  
365 Cherry Ridge Dr  
Orange Park FL 32065-3221

Reference: [REDACTED]

January 5, 2023

National Enterprise Systems is a debt collector. We are trying to collect a debt that you owe to Velocity Investments LLC. We will use any information you give us to help collect the debt.

**Our information shows:**

You had a Upstart Funding Grantor Trust 2021-4 Account with Upstart Network Inc. account with account number XXXX1890.

As of May 20, 2022, you owed:		\$4,378.31
Between May 20, 2022 and today:		
You were charged this amount in interest:	+	\$ 0.00
You were charged this amount in fees:	+	\$ 0.00
You paid or were credited this amount toward the debt:	-	\$ 0.00
<b>Total amount of the debt now:</b>		<b>\$4,378.31</b>

**How can you dispute the debt?**

- Call or write to us by February 19, 2023, to dispute all or part of the debt. If you do not, we will assume that our information is correct.
- If you write to us by February 19, 2023, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write us without the form. You may also include supporting documents. We accept disputes electronically at [www.nes1.com](http://www.nes1.com).

**What else can you do?**

- Write to ask for the name and address of the original creditor, if different from the current creditor. If you write by February 19, 2023, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at [www.nes1.com](http://www.nes1.com).
- Go to [www.cfpb.gov/debt-collection](http://www.cfpb.gov/debt-collection) to learn more about your rights under the federal law. For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.

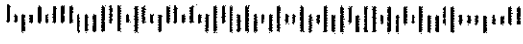
**How do you want to respond?**

- Check all that apply:*
- I want to dispute the debt because I think:
    - This is not my debt.
    - The amount is wrong.
    - Other (please describe on reverse or attach additional information).
  - I want you to send me the name and address of the original creditor.
  - I enclosed this amount: \$ [REDACTED]

Make your check payable to *National Enterprise Systems*. Include your reference number 33548289.

Mail this form to:

National Enterprise Systems  
2479 Edison Blvd., Unit A  
Twinsburg OH 44087-2340



2479 Edison Blvd. Unit A  
Twinsburg, OH 44087

Denise Brinkley  
365 Cherry Ridge Dr  
Orange Park FL 32065-3221

