

KARIN L. POSSER, ESQ.  
(904) 224-4494  
Fax (904) 212-1465  
kposser@mcglinchey.com

ALABAMA • CALIFORNIA • FLORIDA • LOUISIANA • MISSISSIPPI • NEW YORK • OHIO • TEXAS • WASHINGTON, DC

October 25, 2017

**VIA FED EX**

Honorable Lisa Davidson  
Brevard County Courthouse  
Moore Justice Center  
2825 Judge Fran Jamieson Way  
Viera, FL 32940

Re: *Flagstar Bank, FSB v. Jacqueline V. Lettman, et al.*  
Brevard County Case No. 2015-CA-016515

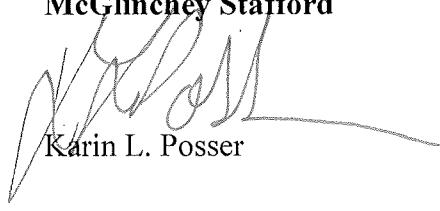
Dear Judge Davidson:

The undersigned represents the interests of the Plaintiff, Flagstar Bank, in the above-referenced matter. A hearing is currently scheduled before Your Honor for next Tuesday, October 31, 2017 at 8:30 a.m. on my client's Motion to Dismiss Defendant, Jacqueline Lettman's, Counterclaim. In anticipation of the hearing, I am enclosing a binder for your review which includes Plaintiff's Motion, supporting authority, and additional materials for your consideration.

Should you have any questions or require additional information, please do not hesitate to contact me.

Respectfully submitted,

**McGlinchey Stafford**



Karin L. Posser

KLP/nts  
Enclosures  
cc: All parties w/ encls.

1315742.1

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA  
BREVARD COUNTY

Case Number: 05-2015-CA-016515

Flagstar Bank FSB

Plaintiff

VS

Jacqueline V. Lehman, et al.

Defendant

CASE MANAGEMENT ORDER

This action is taken by the Court after a scheduled case management conference held on this date. It is ORDERED:

- Non-jury trial is scheduled on \_\_\_\_\_, 201\_\_\_\_, at \_\_\_\_\_ a.m./p.m. crtrm \_\_\_\_\_.  
 Case management conference is reset to \_\_\_\_\_, 201\_\_\_\_, at \_\_\_\_\_ a.m./p.m. crtrm \_\_\_\_\_.  
 Plaintiff failed to appear. This action is dismissed without prejudice.  
 Defendant(s) failed to appear. The answer of \_\_\_\_\_ is stricken and default entered.  
 Defendant(s) failed to appear. All pending defense motions are stricken.  
 All outstanding motions shall be heard on \_\_\_\_\_, 201\_\_\_\_, at \_\_\_\_\_ a.m./p.m. crtrm \_\_\_\_\_.  
Any pending motion not noticed for that date will be deemed abandoned.  
 Motion for Summary Judgment shall be heard on \_\_\_\_\_, 201\_\_\_\_, at \_\_\_\_\_ a.m./p.m. crtrm \_\_\_\_\_.  
 Other: Plaintiff's Motion to Dismiss is set to be heard on Oct 31, 2017 at 8:30am

mcr 2B

ORDERED at Viera, Brevard County, Florida this 10 day of Oct, 20117.

Lisa Davidson

CIRCUIT JUDGE

Copy furnished to counsel or parties present:

- Plaintiff's counsel  
 Defense counsel  
 Defendant(s), pro se



## eFACTS

### Register of Actions Activity

05-2015-CA-016515-XXXX-XX - FLAGSTAR VS JACQUELINE LETTMAN

Prty	Event Date	Doc	Seq	Img	Description	Amount	Writ Doc	Deputy
	02/20/2015	1	1		COVER SHEET			1078
	02/20/2015	2	2		COMPLAINT/PETITION			1078
	02/20/2015	3	3		ER: LIS PENDENS			1078
	02/20/2015	4	4		MORTGAGE CLAIM AMOUNT WKSHT			1078
	02/20/2015	5	5		CERTIFICATE OF NOTE POSSESSION			1078
	02/20/2015		6		PROPOSED SUMMONS TO BE ISSUED			1078
	02/20/2015		7		PROPOSED SUMMONS TO BE ISSUED			1078
	02/20/2015		8		PROPOSED SUMMONS TO BE ISSUED			1078
P 1	02/20/2015		9		ASM:FCL >50,000 < 250,000	\$906.00		63
P 1	02/20/2015		10		ASM: LIS PENDENS TWO PAGES	\$9.00		63
P 1	02/20/2015		11		ASM: ISSUE CIRCUIT SUMMONS	\$30.00		63
	02/20/2015		12		ORIGINAL FILING UPDATED			63
D 1	02/23/2015		1		20 DAY SUMMONS ISS ATTY/E-MAIL			63
D 2	02/23/2015		2		20 DAY SUMMONS ISS ATTY/E-MAIL			63
D 3	02/23/2015		3		20 DAY SUMMONS ISS ATTY/E-MAIL			63
D 4	02/23/2015		4		20 DAY SUMMONS ISS ATTY/E-MAIL			63
D 5	02/23/2015		5		20 DAY SUMMONS ISS ATTY/E-MAIL			63

03/03/2015	6	1		ANSWER	1078
03/11/2015	7	1		20 DAY SUMMONS RETD SERVED	1078
03/11/2015	8	2		20 DAY SUMMONS RETD SERVED	1078
03/11/2015	9	3		20 DAY SUMMONS RETD UNSERVED	1078
03/18/2015	10	1		NTC APPEARANCE DESIGN EMAIL AD	1078
03/18/2015	11	2		MOTION TO QUASH	1078
06/22/2015	12	1		NOTICE SUBSTITUTE COUNSEL	1078
06/29/2015		1		RSGN: CASELOAD REASSIGNMENT	60
08/26/2015	13	1		NOTICE WITHDRAW MOTION	1078
08/26/2015	14	2		ANSWER & AFFIRM DEFENSE(S)	1078
10/08/2015	15	1		MOTION TO STRIKE	1078
10/29/2015	16	1		NOTICE OF HEARING	1078
11/17/2015	17	1		NOTICE OF SERVICE OF INTERROG	1078
11/17/2015	18	2		REQUEST FOR ADMISSIONS	1078
11/17/2015	19	3		NOTICE OF SERVICE OF INTERROG	1078
11/17/2015	20	4		INTERROGATORIES	1078
12/14/2015		1		CAL:HEARING	1083
12/14/2015	21	2		ORD TO STRIKE/GRANT MOT STRIKE	1013
12/14/2015		3		CR: HEARING HEARD	1013
12/15/2015	22	1		RESPONSE TO REQUEST ADMISSIONS	1078
12/15/2015	23	2		MOTION TO EXTEND TIME	1078
01/07/2016	24	1		ORDER EXTENDING TIME	1078

01/15/2016	25	1		REQUEST TO PRODUCE	1078
01/26/2016	26	1		NOTICE SERVICE ANSWER INTERROG	1078
01/26/2016	27	2		AMENDED ANSWER	1078
P 1	02/09/2016	1		ASM: RECORDING TWO PAGES	\$18.50
	02/09/2016	28		ER: NOTICE DROPPING PARTY	1078
P 1	02/09/2016	3		ASM: RECORDING TWO PAGES	\$18.50
	02/09/2016	29		ER: NOTICE DROPPING PARTY	1078
	02/09/2016	30		MOTION FOR EXTENSION	1078
	03/11/2016	31		NOTICE OF NON JURY TRIAL	1078
	04/07/2016	32		RESPONSE REQUEST TO PRODUCE	1078
	04/07/2016	33		NOTICE OF FILING	1078
	04/18/2016	34		ORDER N/J TRIAL/PRETRIAL COMPL	1078
	05/03/2016	36		NOTICE OF MEDIATION	1078
	05/04/2016	35		WITNESS & EXHIBIT LIST	1078
	05/10/2016	37		MOTION APPEAR BY TELEPHONE	1078
	05/16/2016	38		ORD DENY APPEARANCE BY PHONE	1078
	05/16/2016	39		NOTICE TAKING DEPO DUCES TECUM	1078
	05/17/2016	1		CAL:MEDIATION FORECLOSURE	517
	05/17/2016	2		CR: MEDIATION HEARD	818
	05/19/2016	40		REPORT OF MEDIATION	818
	06/16/2016	41		NOTICE OF HEARING	1078
	06/16/2016	42		MOTION FOR CONTINUANCE	1078
	06/16/2016	45	3	MOTION FOR LEAVE	1078

					
06/17/2016	44	1		NOTICE SUBSTITUTE COUNSEL	1078
06/20/2016		1		CAL:NON JURY TRIAL	517
06/20/2016	43	2		ORDER GRANTING CONTINUANCE	394
06/20/2016		3		CR: NON JURY TRIAL CONT BY CT	394
06/28/2016	46	1		NTC APPEARANCE DESIGN EMAIL AD	1078
08/19/2016		1		CAL:CASE MGMNT CONFERENCE	394
08/19/2016	47	2		ORD CASE MGMT CONF/SET TRIAL	1013
08/19/2016		3		CR: HEARD	1013
08/31/2016	48	1		WITNESS & EXHIBIT LIST	1078
08/31/2016	49	2		CERTIFICATE OF SERVICE	1078
11/02/2016	50	1		MOTION FOR CONTINUANCE	1078
11/04/2016	51	1		NOTICE FILING AFFIDAVIT	1078
11/04/2016	52	2		AFFIDAVIT ATTORNEY FEES	1078
11/04/2016	53	3		AFFIDAVIT ATTY TIME & COSTS	1078
11/10/2016	54	1		WITNESS & EXHIBIT LIST	1078
11/10/2016	55	2		ORDER CONTINUING TRIAL	1078
11/14/2016		1		CAL:NON JURY TRIAL	1013
11/14/2016		2		CR: NON JURY TRIAL CONT BY CT	209
01/04/2017	56	1		CERTIFICATE OF SERVICE	1078
02/14/2017	57	1		NOTICE OF FILING	1078
02/14/2017	58	2		AFFIDAVIT ATTY TIME & COSTS	1078
02/14/2017	59	3		AFFIDAVIT ATTY FEES & COSTS	1078
02/17/2017	60	1		MOTION TO STRIKE	1078

					
02/17/2017	62	2		MOTION FOR DEFAULT BY COURT	1078
02/17/2017	63	3		WITNESS & EXHIBIT LIST	1078
02/20/2017		1		CAL:NON JURY TRIAL	209
02/20/2017	61	2		NOTICE FILING ORIG NOTE & MTG	394
02/20/2017		3		CR: NON JURY TRIAL CONT BY CT	1015
02/20/2017	64	4		ORDER TO VACATE	1015
02/28/2017	65	1		CV-APP FOR INDIGENT STATUS	1078
03/01/2017		1		CIR CIVIL ORIG-INDIGENT NO FEE	818
03/01/2017	66	2		NTC OF FINDINGS INDIGENT	818
03/03/2017	67	1		CERTIFICATE OF SERVICE	1078
03/13/2017		1		CAL:CASE MGMT CONFERENCE	1015
03/13/2017	68	2		ORDER GRANTING MOTION/PETITION	947
03/13/2017		3		CR: HEARD	
03/15/2017	69	1		CERTIFICATE OF SERVICE	1078
06/12/2017	70	1		ORDER SET CASE MGMT CONFERENCE	1078
06/21/2017	71	1		CERTIFICATE OF SERVICE	1078
06/23/2017	72	1		NTC APPEARANCE DESIGN EMAIL AD	1078
06/27/2017	73	1		MOTION FOR EXTENSION	1078
07/13/2017	74	1		NOTICE OF HEARING	1078
07/13/2017	75	2		MOTION FOR DEFAULT BY COURT	1078
07/13/2017	76	3		NOTICE WITHDRAW MOTION	1078
07/17/2017		1		CAL:CASE MGMT CONFERENCE	
07/17/2017		2		CAL:HEARING	

07/17/2017	3	CR: CASE MGMNT CONF CONT BY CT	
07/17/2017	4	CR: HEARING HEARD	
07/17/2017	77	 CASE MANAGEMENT CONF ORDER	947
07/17/2017	78	 ORDER EXTENDING TIME	394
07/21/2017	79	 MOTION TO DISMISS	1078
07/25/2017	80	 MEMORANDUM OF LAW	1078
10/10/2017	1	CAL:CASE MGMNT CONFERENCE	
10/10/2017	2	CR: HEARD	
10/10/2017	81	 CASE MANAGEMENT CONF ORDER	947
10/31/2017	1	CAL:HEARING	

 [Back](#) [Return to Case Information](#)

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA  
CIVIL DIVISION**

**FLAGSTAR BANK, FSB,  
Plaintiff,**

**CASE NO: 05-2015-CA-016515**

**vs.**

**JACQUELINE V. LETTMAN, et al.,  
Defendants.**

/

**MOTION FOR LEAVE TO AMEND PLEADING AND CONTINUE TRIAL**

**COMES NOW** Defendant, JACQUELINE LETTMAN (herein after "Ms. Lettman"), by and through her undersigned attorney, files this Motion for Leave to File an Amended Answer in the above styled case, a copy of which is attached hereto pursuant to Florida Rules of Civil Procedure Rule 1.190(a) and 1.170(e) which adds additional claims, and Defendants move to cancel the trial under Fla. R. Civ. P. 1.440 and in support thereof states:

1. Defendant desires to amend her pleading to supplement defenses. Because an order granting the Defendants leave to amend will render this case no longer "at issue," this Court should remove this case from the previously scheduled trial docket.
2. Fla. R. Civ. P. 1.190(a) provides:

[A] party may amend a pleading only by leave of court or by written consent of the adverse party. If a party files a motion to amend a pleading, the party shall attach the proposed amended pleading to the motion. Leave of court shall be given freely when justice so requires.

3. Fla. R. Civ. P. 1.170(e) Provides:

A claim which matured or was acquired by the pleader after serving the pleading may be presented as a counterclaim by supplemental pleading with the permission of the court.

4. A case may not be set for trial when it is "at issue." Fla. R. Civ. P. 1.440(a) states:

An action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading. The party entitled to

serve motions directed to the last pleading may waive the right to do so by filing a notice for trial at any time after the last pleading is served. The existence of crossclaims among the parties shall not prevent the court from setting the action for trial on the issues raised by the complaint, answer, and any answer to a counterclaim.

5. Justice requires this court to provide leave to amend the pleading. Defendant's amended pleading includes a new claim, additional defenses of HUD conditions precedent, demand for attorney's fees, and deceleration which should, in the interest of justice, be adjudicated at trial with the full merits in this cause.
6. A copy of the amended pleading is attached to this motion as "Exhibit I."
7. Counsel was just hired by Brevard County Legal Aid, Inc.
8. Defendant has not abused her right to amend. This is the Defendant's first request for leave to amend.
9. Plaintiff will not be prejudiced if Defendants' request is granted.
10. As a matter of law, a party has a right to amend at least once. *See Soloneko v. Vogue Properties LLC*, No 4D12-2065 (May 25, 2016) (Not yet final until time for rehearing has expired); *Unrue v. Wells Fargo Bank, NA*, 161 So. 3d 536 (Fla. 5<sup>th</sup> DCA 2014). Leave to amend should be granted liberally. *Bill Williams Air Conditioning & Heating, Inc. v. Haymarket Cooperative Bank*, 592 So.2d 302.

WHEREFORE, Defendant respectfully request the Court grant Defendants leave to amend and remove this case from the previously scheduled trial docket.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the Amended Answer to Verified Complaint for Foreclosure of Mortgage has been furnished via email to [mail@raslaw.com](mailto:mail@raslaw.com) on June 16, 2016.

RESPECTFULLY SUBMITTED,

By s/ Michelle Meulke  
Michelle Meulke, ESQUIRE  
Attorney for the Defendant  
Florida Bar No. 93253  
Brevard County Legal Aid, Inc.  
1038 Harvin Way, Suite 100  
Rockledge, FL 32955  
(321) 631-2500, Ext. 513  
[eservice@brevardlegalaid.org](mailto:eservice@brevardlegalaid.org)  
[michelle.meulke@brevardlegalaid.org](mailto:michelle.meulke@brevardlegalaid.org)

# EXHIBIT I

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA CIVIL DIVISION

FLAGSTAR BANK, FSB,  
Plaintiff,

vs.

JACQUELINE V. LETTMAN,  
Defendants.

CASE NO: 05-2015-CA-016515

AMENDED ANSWER AND AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS

ANSWER

COMES NOW, the Defendant/Homeowner, JACQUELINE V. LETTMAN (herein referred to as "Ms. Lettman") and hereby files this Amended Answer to Verified Complaint for Foreclosure of Mortgage filed against her and states:

1. Ms. Lettman admits the allegations contained in paragraphs 1 and 2 of the Plaintiff's Verified Complaint for Foreclosure of Mortgage for jurisdictional purposes only.
2. Ms. Lettman admits the allegations contained in paragraphs 10 of the Plaintiff's Verified Complaint for Foreclosure.
3. Ms. Lettman is without knowledge as to the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16 of the Plaintiff's Verified Complaint for Foreclosure of Mortgage. Therefore, Ms. Lettman denies these allegations, and demands strict proof thereof.

FIRST AFFIRMATIVE DEFENSE  
FAILURE TO PERFORM CONDITIONS PRECEDENT

Plaintiff has failed to comply with the conditions precedent set forth in paragraph(s) 6 and 8 of the Note, and paragraph(s) 9 and 13 of the Mortgage, 24 CFR 203.604, and 24 CFR 203.605.

Paragraph 6 of the Note and paragraph 9 of the Mortgage disallow acceleration if the lender fails to comply with HUD regulations. Plaintiff has an office located at 2500 North Military Trial, Boca Raton, FL 33431. The subject property is located at 1383 Eldron Boulevard SE, Palm Bay, Florida 32909. The aerial distance between these two addresses is 116.48 miles. Accordingly Plaintiff is required to have a face-to-face meeting with the Defendant prior to accelerating the

debt under the Note and Mortgage as required by 24 CFR 203.604. Plaintiff has failed to conduct a face – to – face as required by 24 CFR 203.604. Plaintiff has also failed to comply with paragraph 8 of the Note and paragraph 13 of the Mortgage requiring the notice of default to be sent by first class mail.

**SECOND AFFIRMATIVE DEFENSE**  
**DECELERATION**

Plaintiff, if having properly accelerated the debt, has waived such acceleration or is estopped from relying upon such acceleration, because Plaintiff took actions inconsistent with acceleration after it filed this foreclosure action. Plaintiff has made written demand for monthly payments rather than the accelerated debt, and added late fees to Defendants' account as reflected by attached "Exhibit A."

**NOTICE OF DEMAND FOR ATTORNEY'S FEES**

Defendant hereby gives notice of the intent to seek an award of attorney's fees in this action. Defendant has required the services of the undersigned attorneys to defend this action, and are obligated to pay a reasonable fee therefor. Defendant seeks fees under paragraph 6(c0 of the Note, paragraph 18, and 20 of the Mortgage, and Fla. Stat. 57.105(7).

**COUNTERCLAIM**

4. Counter-Plaintiff, Jacqueline Lettman (herein after "the Consumer"), sues Counter-Defendant FLAGSTAR BANK FSB (herein after "the Bank").
5. This is an action for damages that exceed \$1000.
6. The Bank is a Michigan corporation which has its principal place of business located at 5151 Corporate Drive, Troy, MI 48098.
7. The consumer took out a loan to purchase a home located at 1383 Eldron BLVD SE, Palm Bay, Florida 32909 (herein after "the Property").
8. The Bank provided funds to the Consumer to purchase the property and the Consumer signed a Note and Mortgage to the Bank in exchange for this financing. Copies of the Note and Mortgage are attached as Exhibit "B."
9. The Bank knew that the Consumer intended the property to be homestead property at the time the Consumer signed the Note and Mortgage.

10. At all times material hereto, the property has been the Consumer's only residence and the homestead property of the Consumer.
11. The alleged obligation of the Consumer to pay amounts claimed to be owed under the Note and Mortgage is a "debt" or "consumer debt" as that term is defined in Fla. Stat. 559.55 and 15 USC § 1692a(5).
12. Jacqueline Lettman is a natural person who is obligated to pay a consumer debt under the Note and Mortgage and is therefore a "consumer" as that term is defined in Fla. Stat. 559.55(8) and 15 USC § 1692a(3).
13. The Consumer encountered financial hardship and defaulted on the Note and Mortgage by failing to make the payment due on June 1, 2013.
14. The Bank filed a foreclosure Complaint on February 20, 2015 in the above styled case. The foreclosure Complaint sought enforcement of the Note and Mortgage, sought to ascertain the amount "due to Plaintiff for principal and interest on the Mortgage and Note and for late charges, abstracting, taxes, expenses and costs, including attorney's fees, plus interest thereon" and that if said sum is not paid immediately that "the Court foreclose the Mortgage and the Clerk of the Court sell the Property securing the indebtedness to satisfy the Plaintiff's mortgage lien" as well as retain jurisdiction for a deficiency judgment, when and if it is proper. Accordingly, the foreclosure action was an activity connected to the collection of the Homeowner's debt under their defaulted loan.
15. On March 18, 2015, Brevard County Legal Aid appeared for the Consumer and filed a notice of appearance in the above styled case.
16. The notice informed the Bank that Consumer was represented with regard to the Note and Mortgage.
17. Despite the Bank's knowledge that the Consumer was represented by an attorney, it sent monthly mortgage statements addressed to the Consumer at the property rather than to the attorney. Three such statements were sent on or about December 16, 2015, January 19, 2016, and March 16, 2016, attached as "Exhibit A."
18. The December, January, and March statements are connected to the collection of the Consumer's debt under the Note and Mortgage.
19. The statements claimed amounts due under the Note and Mortgage, included coupon

slips so that the Consumer could remit payment to the Bank, and included instructions as to how the Consumer could make payments.

## COUNT I

### **VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT**

20. Counter-Plaintiff, Jacqueline Lettman realleges paragraphs 4 through 19 above and fully incorporates them by reference herein.
21. The Bank violated Fla. Stat. 559.72(18) by sending the Consumer the December 16, 2015, January 19, 2016, and March 16, 2016 mortgage statements after it knew that the Consumer was represented by an attorney with respect to the Note and Mortgage in the foreclosure case, or after the Bank could readily ascertain the Consumer's attorney's name and address.
22. At no time did the Bank request permission from the Consumer's attorney to communicate with the Consumer.
23. The Consumer's attorney never failed to respond to any communication from the Bank.
24. The Consumer never initiated a communication with the Bank which would require them to send the letter to the Homeowners.
25. Jacqueline Lettman is entitled to statutory damages up to \$1,000.00 under Fla. Stat. 559.77.
26. The Consumer has required the services of the undersigned attorneys to prosecute this action, and is obligated to pay them a reasonable fee. The Consumer is entitled to reasonable attorney's fees under Fla. Stat. § 559.77.

WHEREFORE JACQUALINE LETTMAN demand judgment against Flagstar Bank FSB for statutory damages, attorney's fees, costs, and any other relief as is equitable and just.

## COUNT II

### **VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT**

27. Counter-Plaintiff, Jacqueline Lettman realleges paragraphs 4 through 19 above and fully incorporates them by reference herein.

28. The Bank violated Fla. Stat. 559.72(9) by claiming that the Consumer owed the Bank late fees after the Bank had already instituted a foreclosure action. The Bank knew the late fees were not a legitimate debt, and the Bank asserted the existence of the other legal right to collect the late fees when it knew that right did not exist.
29. Jacqueline Lettman is entitled to statutory damages up to \$1,000.00 under Fla. Stat. 559.77.
30. The Consumer has required the services of the undersigned attorneys to prosecute this action, and is obligated to pay them a reasonable fee. The Consumer is entitled to reasonable attorney's fees under Fla. Stat. § 559.77.

WHEREFORE JACQUALINE LETTMAN demands judgment against Flagstar Bank FSB for statutory damages, attorney's fees, costs, and any other relief as is equitable and just

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the Amended Answer to Verified Complaint for Foreclosure of Mortgage has been furnished via email to mail@rasflaw.com on June 16, 2016.

RESPECTFULLY SUBMITTED,  
By s/ Michelle Meulke \_\_\_\_\_  
Michelle Meulke, ESQUIRE  
Attorney for the Defendant  
Florida Bar No. 93253  
Brevard County Legal Aid, Inc.  
1038 Harvin Way, Suite 100  
Rockledge, FL 32955  
(321) 631-2500, Ext. 513  
[eservice@brevardlegalaid.org](mailto:eservice@brevardlegalaid.org)  
[michelle.meulke@brevardlegalaid.org](mailto:michelle.meulke@brevardlegalaid.org)

# EXHIBIT A



Pay by mail:  
Flagstar Bank • Box 371891  
Pittsburgh, PA 15250-7891

» MORTGAGE STATEMENT

STATEMENT CREATION DATE: 03/16/16

4-655-65571-0006464-002-1-000-010-000-006



JACQUELINE LETTMAN  
1383 ELDRON BLVD SE  
PALM BAY FL 32909-8518

File # 12877782

Loan Number: [REDACTED]

Payment Due Date: 07/01/13

Amount Due \$40,396.60

\$37.83 late fee will be charged after 04/16/16



Pay by website:  
[flagstar.com/myloans](http://flagstar.com/myloans)



Pay by phone:  
(866) 837-4539



Customer service:  
(800) 968-7700  
Monday-Friday 7:30 a.m.-8 p.m., ET  
Saturday 7:30 a.m.-4 p.m., ET

## Important Account Messages

### Review Your Home Loan Activity

#### Account Information

Property Address	1383 ELDRON BLVD SE
Outstanding Principal <sup>1</sup>	\$122,327.00
Escrow Balance	(\$6,737.37)
Interest Rate	5.50000%
Prepayment Penalty	No

<sup>1</sup>The Outstanding Principal above is not the total amount required to pay your loan in full. For a payoff quote, please call customer service (800) 968-7700.

#### Delinquency Notice

**You are late on your mortgage payments.** Failure to bring your loan current may result in fees and foreclosure - the loss of your home. As of 03/16/16 you are 989 days delinquent on your mortgage loan.

#### Recent Account History

- Payment due 05/01/15 — Unpaid balance of \$945.74
- Payment due 06/01/15 — Unpaid balance of \$945.74
- Payment due 07/01/15 — Unpaid balance of \$945.74
- Payment due 08/01/15 — Unpaid balance of \$945.74
- Payment due 09/01/15 — Unpaid balance of \$945.74
- Payment due 10/01/15 — Unpaid balance of \$945.74
- Payment due 11/01/15 — Unpaid balance of \$945.74
- Payment due 12/01/15 — Unpaid balance of \$945.74
- Payment due 01/01/16 — Unpaid balance of \$945.74
- Payment due 02/01/16 — Unpaid balance of \$945.74
- Payment due 03/01/16 — Unpaid balance of \$945.74

Total Fees &amp; Advances: \$7,319.94

**Total Due - \$40,396.60:** You must pay this amount to bring your loan current. Detail does not include current Regular Monthly Payment due.

#### Explanation of Amount Due

Principal	\$208.49
Interest	\$531.46
Escrow	
Taxes	\$61.96
Insurance	\$143.83
Regular Monthly Payment	\$945.74
Total Fees (includes late charges)	\$477.24
Total Advances	\$6,842.70
Overdue Payment	\$32,130.92
<b>Total</b>	<b>\$40,396.60</b>

#### Your Payment Breakdown

	Last Payment	Paid year to date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>

## Review Your Transaction Activity(02/17/16 - 03/16/16)

Date	Description	Principal	Interest	Escrow	Fees	Advances	Other	Total
3/2/16	Occupancy Insp					(\$12.00)		
3/2/16	Deed Recording					(\$19.05)		
3/2/16	Deed Recording					(\$19.05)		

## Important Repayment Information

Loss Mitigation Action Status: Active

Your loan was referred to foreclosure counsel on: 02/20/15

## Contact Information

Please include your name, loan number, and sufficient detail to inform Flagstar of the basis of your inquiry, qualified written request, notice of error, or request for information.

### General Correspondence/Inquiries

Flagstar Bank  
Mail Stop E115-3  
5151 Corporate Drive  
Troy, MI 48098-2639

### Qualified Written Request,

### Notice of Error, or Request for Information

Flagstar Bank, Attn: QWR/NOE/RFI  
Mail Stop 2 B-116  
5151 Corporate Drive  
Troy, MI 48098-2639

## Payment Information

- Protect your credit – We may report information about your account to the credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.
- \* Unapplied/Partial Payments – Any partial monthly payment that you make is not applied to your loan, but instead is held in a separate suspense account until enough funds are received to equal a full payment, at which time, the funds will then be applied to your loan.
- Check Processing – When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic funds transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.
- Past Due Payment(s) – We reserve the right to return any payment tendered if the payment status is delinquent. Payments are not considered accepted until credited to your loan.
- Overnight Payment Address – Flagstar Bank, Attention: Cash Processing, Retail Lockbox 371891, 500 Ross Street, Room 154-470, Pittsburgh, PA 15262

## Financial Hardship

If you are experiencing difficulties making your mortgage payment, call us today at (800) 393-4887 or visit flagstar.com/relief.

For help exploring your options, the federal government provides contact information for housing counselors. You can search for a counselor near you at consumerfinance.gov/mortgagehelp/ or HUD at hud.gov/offices/hsg/stf/hcc/hcs.cfm or you can call HUD at (800) 569-4287. For personal/consumer loan counseling, please call (888) 454-4629.

Unless otherwise provided by state law or your loan documents, we are providing this additional detail relating to your loan for information purposes only.

## BANKRUPTCY (if applicable)

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, creditor retains rights under its security instrument, including the right to foreclose its lien.



Pay by mail:  
Flagstar Bank • Box 371891  
Pittsburgh, PA 15250-7891

» MORTGAGE STATEMENT

STATEMENT CREATION DATE: 12/16/15

6-655-64223-0008117-002-1-000-110-000-000



JACQUELINE LETTMAN  
1383 ELDRON BLVD SE  
PALM BAY FL 32909-8518

Loan Number: [REDACTED]

Payment Due Date: 07/01/13

**Amount Due \$36,560.53**

\$37.83 late fee will be charged after 01/16/16



Pay by website:  
[flagstar.com/myloans](http://flagstar.com/myloans)



Pay by phone:  
(866) 837-4539



Customer service:  
(800) 968-7700  
Monday-Friday 7:30 a.m.-8 p.m., ET  
Saturday 7:30 a.m.-4 p.m., ET

## Important Account Messages

Your 2015 Annual Tax and Interest Statement will be mailed by January 31, 2016. Please look for an envelope that states "Important Tax Information Enclosed". You will also be able to view your Annual Tax and Interest Statement at [Flagstar.com/MyLoans](http://Flagstar.com/MyLoans) once it has been generated.

## Review Your Home Loan Activity

### Account Information

Property Address	1383 ELDRON BLVD SE
Outstanding Principal <sup>1</sup>	\$122,327.00
Escrow Balance	(\$4,980.37)
Interest Rate	5.50000%
Prepayment Penalty	No

<sup>1</sup>The Outstanding Principal above is not the total amount required to pay your loan in full. For a payoff quote, please call customer service (800) 968-7700.

### Delinquency Notice

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure - the loss of your home. As of 12/16/15 you are 898 days delinquent on your mortgage loan.

### Recent Account History

- Payment due 02/01/15 — Unpaid balance of \$945.74
- Payment due 03/01/15 — Unpaid balance of \$945.74
- Payment due 04/01/15 — Unpaid balance of \$945.74
- Payment due 05/01/15 — Unpaid balance of \$945.74
- Payment due 06/01/15 — Unpaid balance of \$945.74
- Payment due 07/01/15 — Unpaid balance of \$945.74
- Payment due 08/01/15 — Unpaid balance of \$945.74
- Payment due 09/01/15 — Unpaid balance of \$945.74
- Payment due 10/01/15 — Unpaid balance of \$945.74
- Payment due 11/01/15 — Unpaid balance of \$945.74
- Payment due 12/01/15 — Unpaid balance of \$945.74

Total Fees & Advances: \$6,321.09

**Total Due - \$36,560.53:** You must pay this amount to bring your loan current. Detail does not include current Regular Monthly Payment due.

### Explanation of Amount Due

Principal	\$205.65
Interest	\$534.30
Escrow	
Taxes	\$61.96
Insurance	\$143.83
Regular Monthly Payment	\$945.74
Total Fees (includes late charges)	\$477.24
Total Advances	\$5,843.85
Overdue Payment	\$29,293.70

**Total** \$36,560.53

### Your Payment Breakdown

	Last Payment	Paid year to date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow		
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>
Taxes		\$737.27
Insurance		\$2,400.00
<b>Total</b>		<b>\$3,137.27</b>

## Review Your Transaction Activity(11/17/15 - 12/16/15)

Date	Description	Principal	Interest	Escrow	Fees	Advances	Other	Total
12/1/15	F/C Attorney Fee					(\$306.25)		
12/1/15	F/C Attorney Fee					(\$306.25)		
12/1/15	F/C Attorney Fee					(\$306.25)		
12/4/15	Occupancy Insp					(\$15.00)		

## Important Repayment Information

Your loan was referred to foreclosure counsel on: 02/20/15

## Contact Information

Please include your name, loan number, and sufficient detail to inform Flagstar of the basis of your inquiry, qualified written request, notice of error, or request for information.

### General Correspondence/Inquiries

Flagstar Bank  
Mail Stop E115-3  
5151 Corporate Drive  
Troy, MI 48098-2639

### Qualified Written Request,

### Notice of Error, or Request for Information.

Flagstar Bank, Attn: QWR/NOE/RFI  
Mail Stop 2 B-116  
5151 Corporate Drive  
Troy, MI 48098-2639

## Payment Information

- **Protect your credit** – We may report information about your account to the credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.
- \* **Unapplied/Partial Payments** – Any partial monthly payment that you make is not applied to your loan, but instead is held in a separate suspense account until enough funds are received to equal a full payment, at which time, the funds will then be applied to your loan.
- **Check Processing** – When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic funds transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.
- **Past Due Payment(s)** – We reserve the right to return any payment tendered if the payment status is delinquent. Payments are not considered accepted until credited to your loan.
- **Overnight Payment Address** – Flagstar Bank, Attention: Cash Processing, Retail Lockbox 371891, 500 Ross Street, Room 154-470, Pittsburgh, PA 15262

## Financial Hardship

If you are experiencing difficulties making your mortgage payment, call us today at (800) 393-4887 or visit flagstar.com/relief.

For help exploring your options, the federal government provides contact information for housing counselors. You can search for a counselor near you at consumerfinance.gov/mortgagehelp/ or HUD at hud.gov/offices/hsg/sfh/hcc.cfm or you can call HUD at (800) 569-4287. For personal/consumer loan counseling, please call (888) 454-4629.

Unless otherwise provided by state law or your loan documents, we are providing this additional detail relating to your loan for information purposes only.

## BANKRUPTCY (if applicable)

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, creditor retains rights under its security instrument, including the right to foreclose its lien.



Pay by mail:  
Flagstar Bank • Box 371891  
Pittsburgh, PA 15250-7891

» MORTGAGE STATEMENT

STATEMENT CREATION DATE: 01/19/16

4-655-64880-0001559-001-1-000-010-000-000



JACQUELINE LETTMAN  
1383 ELDRON BLVD SE  
PALM BAY FL 32999-8518

Loan Number: [REDACTED]

Payment Due Date: 07/01/13

Amount Due: \$38,090.02

\$37.83 late fee will be charged after 02/16/16



Pay by website:  
[flagstar.com/myloans](http://flagstar.com/myloans)



Pay by phone:  
(866) 837-4539



Customer service:  
(800) 968-7700  
Monday-Friday 7:30 a.m.-8 p.m., ET  
Saturday 7:30 a.m.-4 p.m., ET

## Important Account Messages

### Review Your Home Loan Activity

#### Account Information

Property Address	1383 ELDRON BLVD SE
Outstanding Principal <sup>1</sup>	\$122,327.00
Escrow Balance	(\$6,737.37)
Interest Rate	5.50000%
Prepayment Penalty	No

<sup>1</sup>The Outstanding Principal above is not the total amount required to pay your loan in full. For a payoff quote, please call customer service (800) 968-7700.

#### Delinquency Notice

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure - the loss of your home. As of 01/19/16 you are 932 days delinquent on your mortgage loan.

#### Recent Account History

- Payment due 03/01/15 — Unpaid balance of \$945.74
- Payment due 04/01/15 — Unpaid balance of \$945.74
- Payment due 05/01/15 — Unpaid balance of \$945.74
- Payment due 06/01/15 — Unpaid balance of \$945.74
- Payment due 07/01/15 — Unpaid balance of \$945.74
- Payment due 08/01/15 — Unpaid balance of \$945.74
- Payment due 09/01/15 — Unpaid balance of \$945.74
- Payment due 10/01/15 — Unpaid balance of \$945.74
- Payment due 11/01/15 — Unpaid balance of \$945.74
- Payment due 12/01/15 — Unpaid balance of \$945.74
- Payment due 01/01/16 — Unpaid balance of \$945.74

Total Fees & Advances: \$6,904.84

**Total Due - \$38,090.02:** You must pay this amount to bring your loan current. Detail does not include current Regular Monthly Payment due.

#### Explanation of Amount Due

Principal	\$206.59
Interest	\$533.36
Escrow	
Taxes	\$61.96
Insurance	\$143.83
Regular Monthly Payment	\$945.74
Total Fees (includes late charges)	\$477.24
Total Advances	\$6,427.60
Overdue Payment	\$30,239.44
<b>Total</b>	<b>\$38,090.02</b>

#### Your Payment Breakdown

	Last Payment	Paid year to date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>

## Review Your Transaction Activity (12/17/15 - 01/19/16)

Date	Description	Principal	Interest	Escrow	Fees	Advances	Other	Total
12/21/15	Insurance			(\$1,757.00)				
12/30/15	F/C Attorney Fee					(\$131.25)		
12/30/15	F/C Attorney Fee					(\$87.50)		
12/30/15	F/C Attorney Fee					(\$350.00)		
1/5/16	Occupancy Insp					(\$15.00)		

## Important Repayment Information

Your loan was referred to foreclosure counsel on: 02/20/15

## Contact Information

Please include your name, loan number, and sufficient detail to inform Flagstar of the basis of your inquiry, qualified written request, notice of error, or request for information.

### General Correspondence/Inquiries

Flagstar Bank  
Mail Stop E115-3  
5151 Corporate Drive  
Troy, MI 48098-2639

### Qualified Written Request

### Notice of Error, or Request for Information

Flagstar Bank, Attn: QWR/NOE/RFI  
Mail Stop 2 B-116  
5151 Corporate Drive  
Troy, MI 48098-2639

## Payment Information

- **Protect your credit** – We may report information about your account to the credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.
- **\*Unapplied/Partial Payments** – Any partial monthly payment that you make is not applied to your loan, but instead is held in a separate suspense account until enough funds are received to equal a full payment, at which time, the funds will then be applied to your loan.
- **Check Processing** – When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic funds transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.
- **Past Due Payment(s)** – We reserve the right to return any payment tendered if the payment status is delinquent. Payments are not considered accepted until credited to your loan.
- **Overnight Payment Address** – Flagstar Bank, Attention: Cash Processing, Retail Lockbox 371891, 500 Ross Street, Room 154-470, Pittsburgh, PA 15262

## Financial Hardship

If you are experiencing difficulties making your mortgage payment, call us today at (800) 393-4887 or visit flagstar.com/relief.

For help exploring your options, the federal government provides contact information for housing counselors. You can search for a counselor near you at consumerfinance.gov/mortgagehelp/ or HUD at hud.gov/offices/hsg/sfh/hcc/hcs.cfm or you can call HUD at (800) 569-4287. For personal/consumer loan counseling, please call (888) 454-4629.

Unless otherwise provided by state law or your loan documents, we are providing this additional detail relating to your loan for information purposes only.

### BANKRUPTCY (if applicable)

To the extent your original obligation was discharged; or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this statement is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, creditor retains rights under its security instrument, including the right to foreclose its lien.

# EXHIBIT B

FHA Case No. [REDACTED]

MIN: [REDACTED]

Florida

## NOTE

THE STATE DOCUMENTARY TAX DUE ON THIS NOTE HAS BEEN PAID ON THE MORTGAGE SECURING THIS INDEBTEDNESS.

MARCH 26, 2009  
[Date]PALM BAY,  
[City]FLORIDA  
[State]1383 ELDRON BLVD SE, PALM BAY, FL 32909-8518  
[Property Address]

## 1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means FLAGSTAR BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK

and its successors and assigns.

## 2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of \*\*\*\*\*ONE HUNDRED THIRTY THOUSAND THREE HUNDRED TWENTY TWO AND NO/100\*\*\*\*\* Dollars (U.S. \$130,322.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of FIVE AND ONE-HALF percent ( 5.500% ) per year until the full amount of principal has been paid.

## 3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

## 4. MANNER OF PAYMENT

## (A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on MAY 1, 2009. Any principal and interest remaining on the 1ST day of APRIL, 2039 will be due on that date, which is called the "Maturity Date."

## (B) Place

Payment shall be made at  
5151 CORPORATE DR  
TROY, MI 48098-2639

or at such place as Lender may designate in writing by notice to Borrower.

## (C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$739.55. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

## (D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note.

[Check applicable box]  Graduated Payment Allonge  Growing Equity Allonge  
 Other [specify]

## 5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

## 6. BORROWER'S FAILURE TO PAY

## (A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR percent ( 4.000% ) of the overdue amount of each payment.

## (B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment.

FHA Florida Fixed Rate Note - 10/05  
Online Documents, Inc.

Page 1 of 2

Initials: JL  
H.B700NT 0804  
03-26-2009 14:42

ORIGINAL NOTE 1

EXHIBIT 2

In full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

**(C) Payment of Costs and Expenses**

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

**7. WAIVERS**

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

*Jacqueline Lettmann* (Seal)  
JACQUELINE LETTMAN

PAY TO THE ORDER OF  
WITHOUT RE COURSE  
FLAGSTAR BANK, FSB

BY: *Frank Land* ✓  
FRANK J. LAND, SENIOR VICE PRESIDENT

BY: *John P. Marek*  
JOHN P. MAREK, FIRST VICE PRESIDENT

AR

*Rec'd*  
RETURN TO  
FIRST AMERICAN TITLE  
BEVERLY BOGGS  
2233 LEE ROAD #101  
WINTER PARK, FL 32789

After Recording *Agreement*:  
FLAGSTAR BANK  
5151 CORPORATE DRIVE  
TROY, MI 48098  
FINAL DOCUMENTS, MAIL STOP W-531-1

This instrument was prepared by:  
ERIKA SIQUEIROS

565 4TH AVE  
TUMM AZ, 85364

V2 WBCD LOAN [REDACTED]

[Space Above This Line For Recording Data]

State of Florida

MORTGAGE

FHA Case No. [REDACTED]

MIN: [REDACTED]

THIS MORTGAGE ("Security Instrument") is given on MARCH 26, 2009.  
JACQUELINE V. LETTMAN, AS HER SOLE AND SEPARATE PROPERTY

The Mortgagor is

whose address is 1383 ELDROW BLVD SE  
PALM BAY, FL 32909-8518

("Borrower").  
"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (868) 678-MERS.

FLAGSTAR BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK

("Lender") is organized and  
existing under the laws of UNITED STATES OF AMERICA,  
and has an address of 5151 CORPORATE DR, TROY, MI 48098-2639.

Borrower owes Lender the principal sum of \*ONE HUNDRED THIRTY THOUSAND THREE HUNDRED TWENTY TWO AND NO/100\*\*\*\*\* Dollars (U.S. \$130,322.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on APRIL 1, 2039. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and

FHA Florida Mortgage - 4/86  
Online Documents, Inc.

Page 1 of 5

Initials: JL  
FLEPHADE 0801  
03-26-2009 14:42

**EXHIBIT B**

assigns of MERS, the following described property located in **BREVARD**  
County, Florida;

**LOT 3, BLOCK 2689, PORT MALIBAR UNIT FIFTEEN, ACCORDING TO THE PLAT THEREOF, AS RECORDED  
IN PLAT BOOK 23, PAGES 4 THROUGH 21, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.**

Tax ID #: 29-37-18-JR-02689.0-0003.

which has the address of **1383 ELDROW BLVD SE, PALM BAY**

(Street, City),

**Florida 32909-8518 ("Property Address");**  
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property". Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

**UNIFORM COVENANTS.**

**1. Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

**2. Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds".

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq., and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

**3. Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

**First**, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

**Second**, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

**Third**, to interest due under the Note;

**Fourth**, to amortization of the principal of the Note; and

**Fifth**, to late charges due under the Note.

**4. Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against

FHA Florida Mortgage - 4/98  
Online Documents, Inc.

Page 2 of 5

Initials: JL

FILED DATE 06/01  
03-26-2009 14:42

loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

**5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

**6. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

**7. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment if failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**8. Fees.** Lender may collect fees and charges authorized by the Secretary.

**9. Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does not occupy the Property but this or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligible. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

**10. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding; (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

**11. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

**13. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

**14. Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**15. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**16. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

#### NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**17. Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

V2 WSCD LOAN # [REDACTED]

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If the Lender's Interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. **Attorneys' Fees.** As used in this Security Instrument and the Note, "attorneys' fees" shall include any attorneys' fees awarded by an appellate court.

21. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

(Check applicable box(es))

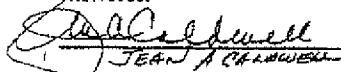
Condominium Rider  
 Graduated Payment Rider

Growing Equity Rider  
 Other(s) [specify]

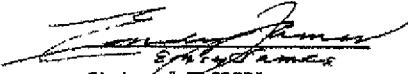
Planned Unit Development Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

  
JEAN A CALDWELL

  
JACQUELINE LETTMAN (Seal)

  
State of FLORIDA,

County of BREVARD

The foregoing instrument was acknowledged before me this MARCH 26, 2007 by  
JACQUELINE LETTMAN, who is personally known to me or who has produced FLORIDA  
DRIVERS LICENSE as identification.

  
Signature JEAN A CALDWELL

  
NOTARY PUBLIC STATE OF FLORIDA  
Title or Rank  
# D0827984  
Serial Number, (if any)

IN THE CIRCUIT COURT OF THE  
18th JUDICIAL CIRCUIT, IN AND  
FOR BREVARD COUNTY, FLORIDA

CASE NO.: 2015-CA-016515

FLAGSTAR BANK, FSB.

Plaintiff,

v.

JACQUELINE V. LETTMAN A/K/A  
JACQUELINE LETTMAN, et al.,

Defendants.

/

**PLAINTIFF'S MOTION TO DISMISS  
DEFENDANT/COUNTER-PLAINTIFF'S COUNTERCLAIM**

Plaintiff, FLAGSTAR BANK, FSB (“FSB” or “Plaintiff”), by and through the undersigned counsel, hereby moves to dismiss Defendant/Counter-Plaintiff, JACQUELINE V. LETTMAN’S (“Defendant”) Counterclaim for failure to state a claim pursuant to Rule 1.140(b) of the Florida Rules of Civil Procedure, and states the following in support thereof:

**PRELIMINARY STATEMENT**

In her Counterclaim, Defendant brings two counts against FSB alleging violations of the Florida Consumer Collection Protection Act (“FCCPA”). At the Case Management Conference held before this Court on July 17, 2017, Defendant voluntarily dismissed the second count of her Counterclaim.<sup>1</sup> The remaining claim, Count I, alleges FSB violated the FCCPA by sending Plaintiff monthly mortgage statements while FSB was on notice that the Defendant was represented by counsel in the foreclosure matter. This Count fails as a matter of law.

---

<sup>1</sup> A copy of the Case Management Order referencing Defendant’s voluntary dismissal of Count II of the Counterclaim is attached hereto as Exhibit “A.” Notably, although the Order references Count II was brought under the “FDCPA,” this statement was made in error as the Counterclaim clearly states it was brought under Florida Statutes, section 559.72(9).

Count I rests on FSB's alleged improper action of sending monthly mortgage statements which are categorically permitted even if a Notice of Appearance has been filed by an attorney in a foreclosure action. In fact, FSB was required by the Truth in Lending Act ("TILA") to send these mortgage statements, a statute that expressly preempts conflicting state laws such as the FCCPA.

### **STANDARD OF REVIEW**

Florida Rule of Civil Procedure 1.140(b) allows a complaint to be dismissed for failure to state a claim upon which relief can be granted. "It is a fundamental principle of pleading that the complaint, to be sufficient, must allege ultimate facts as distinguished from legal conclusions which, if proved, would establish a cause of action for which relief may be granted." *Maiden v. Carter*, 234 So. 2d 168, 170 (Fla. 1st DCA 1970). Further, every requisite element of the cause of action must be shown by pleading sufficient facts; conclusions of law and unsupported deductions from the facts will be ignored by a court in determining whether a complaint states a cause of action. *Goldberg v. Merrill Lynch Credit Corp.*, 35 So. 3d 905, 907 (Fla. 2010); *Ellison v. City of Fort Lauderdale*, 175 So. 2d 198, 200 (Fla. 1965).

In ruling on a motion to dismiss, a trial court is limited to the four corners of the complaint and its incorporated attachments. *U.S. Project Mgmt., Inc. v. Parc Royale E. Dev., Inc.*, 861 So. 2d 74, 76 (Fla. 4th DCA 2003). "Exhibits attached to a pleading become a part of the pleading for all purposes." *Madell v. Patin Beach Cnty. Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000) (citing FLA. R. Civ. P. 1.130(b)). "Exhibits attached to the complaint are controlling, where the allegations of the complaint are contradicted by the exhibits, the plain meaning of the exhibits will control." *Ginsberg v. Leitrim. Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994); *accord Fladell*, 772 So. 2d at 1242.

## ARGUMENT

Defendant's Counterclaim fails as a matter of law. The only count remaining in Defendant's Counterclaim rests upon an allegation that three monthly mortgage statements were sent in violation of the FCCPA. However, mortgage statements are not debt collection, and therefore they do not give rise to FCCPA liability. Furthermore, the FCCPA is preempted by federal law with respect to sending mortgage statements. In addition to these legal deficiencies, there are factual deficiencies in the pleadings. The Complaint fails to adequately allege that FSB was on notice of representation sufficient to trigger FCCPA liability. Specifically, Defendant failed to allege that she was represented by counsel with relation to the debt; Defendant only claims she was represented with respect to the Note and Mortgage. *See* paragraph 21 of the Counterclaim. She further failed to attach a copy of the Notice of Representation at issue. The Counterclaim also fails to adequately allege that the communications sought amounts that were not legitimate, or that FSB had knowledge that these amounts were not legitimate.

### **A. Mortgage Statements are not Debt Collection**

The Mortgage Statements sent by FSB did not constitute "debt collection." In a bulletin issued by the Consumer Financial Protection Bureau ("CFPB") on October 15, 2013, titled "Implementation Guidance for Certain Mortgage Servicing Rules" (the "Bulletin")<sup>2</sup>, the CFPB explicitly states that periodic statements conforming to federal regulations, which are sent by a loan servicer to a borrower, are not violations of the FDCPA. It follows that such periodic statements could not constitute violations of the FCCPA either, as it is well settled that all elucidations of the FCCPA should be in line with the FDCPA and the rules governing the FDCPA are crucial in applying the FCCPA. FLA. STAT. §§ 559.552 and 559.77(5); *Kelliher v. Nat'l Target Bank*, 826 F. Supp. 2d 1324, 1327-28 (M.D. Fla. 2011).

---

<sup>2</sup> A copy of the Bulletin is attached as Exhibit "B."

The Bulletin goes further and says, “[This] disclosure is specifically mandated by the [Dodd-Frank Act]. . . and the CFPB believes that [this] notice provides useful information to consumers regardless of their collections status.” Exhibit A at 7. In other words, monthly mortgage statements simply do not constitute attempts to collect a debt for purposes of the FDCPA and the FCCPA. *See Vanecek v. Discover Financial Services LLC*, No. COCE14023621, 2015 WL 6775633 (Fla. 17th Cir. Ct. 2015) (granting summary judgment in favor of debt collector, finding that “the monthly billing statement was not an attempt to collect a debt as a matter of law”); *Havey v. Discover Financial Services, LLC*, No. 2015-SC-18, 2015 WL 6965138 (Fla. 12th Cir. Ct. 2015) (granting summary judgment in favor of debt collector, finding that the periodic statements “were not attempts to collect a debt in violation of the FCCPA as a matter of law”).

Here, Defendant attempts to allege that the mortgage statements sent by FSB were debt collection. Said allegations fly in the face of the Bulletin issued by the CFPB interpreting the FDCPA, as periodic statements are expressly excluded as debt collection under the Bulletin. To find that the same statements would constitute debt collection under the FCCPA requires a complete disregard of Florida law saying elucidations of the FCCPA should be in line with the FDCPA. *See FLA. STAT. §§ 559.552 and 559.77(5); Kelliher*, 826 F. Supp. 2d at 1327-28. Nowhere in Defendant’s Counterclaim does she allege that the mortgage statements sent by FSB contains language or content outside of what is required by federal law, as no such added content is included. As such, the Mortgage Statements are not debt collection and cannot violate the FCCPA.

Accordingly, this Court should rule consistent with *Vanecek* and *Havey*, and find that the mortgage statements at issue did not constitute “debt collection,” and as a result, Defendant’s

Counterclaim fails as a matter of law. Accordingly, the Counterclaim should be dismissed with prejudice and without leave to amend.

**B. The FCCPA is Preempted by Federal Law with Respect to Sending Mortgage Statements.**

FSB cannot be liable under the FCCPA for sending Plaintiffs mortgage statements because FSB is required to do so by the federal Truth in Lending Act (“TILA”). Under TILA, 15 U.S.C. § 1601 *et seq.*, mortgage servicers must send periodic monthly statements directly to borrowers. Pursuant to TILA, the mortgage statement must include “any payment amount past due,” and “[t]he total sum of any fees or charges imposed since the last statement,” among other things. *See* 12 C.F.R. § 1026.41(d).

TILA also contains an express preemption provision that preempts state laws inconsistent with TILA. 15 U.S.C. § 1610. As such, the FCCPA is preempted by TILA to the extent it prevents a loan servicer from sending mortgage statements directly to borrowers. *See Vanecek v. Discover Financial Services LLC*, No. COCE14023621, 2015 WL 6775633 (Fla. 17th Cir. Ct. 2015) (“the FCCPA cannot preclude the delivery of a monthly statement to the consumer which is required by federal law. Any application of the FCCPA which contradicts these requirements of federal law is preempted by [TILA]’s preemption clause”); *Leahy-Fernandez v. Bayview Loan Servicing, LLC*, \_\_ F. Supp. 3d \_\_, 2016 WL 409633 at \*5 (M.D. Fla. Feb. 3rd, 2016) (reasoning that when the mortgage loan was discharged in bankruptcy, TILA no longer compelled mortgage statements to be sent to the plaintiff and compliance with both TILA and the FCCPA would be possible, meaning the FCCPA would not be preempted in said limited circumstance); *see also Marcotte v. General Electric Capital Services, Inc.*, 709 F. Supp. 2d 994, 999-1000 (S.D. Cal. 2010) (granting judgment on the pleadings in favor of debt collector in part because the

consumer protection statute was preempted by TILA as it related to sending monthly billing statements).

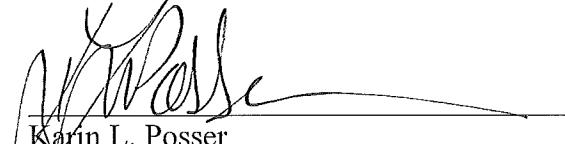
In the present case, FSB is compelled to send periodic mortgage statements to the Defendant under TILA. Nowhere in Defendant's Counterclaim is it alleged that the subject property was discharged in bankruptcy, similar to the plaintiff in *Leahy-Fernandez*, as to relieve FSB of its obligations under TILA. Therefore, as applied in this case, the FCCPA is directly inconsistent with TILA; FSB cannot comply with TILA by directly providing mortgage statements to the Defendant and also cease all communication with Defendant under the FCCPA. Compare 12 CFR § 1026.41; FLA. STAT. § 559.72(18). As such, the FCCPA is preempted under TILA to the extent FSB would be liable for sending periodic mortgage statements to the Defendant and the Counterclaim should be dismissed with prejudice and without leave to amend.

### **CONCLUSION**

WHEREFORE, for the above cited reasons, Flagstar Bank, FSB, requests that the Court dismiss Defendant's Counterclaim with prejudice, and without leave to amend, and Order any further relief the Court deems just and proper.

Respectfully submitted,

McGLINCHEY STAFFORD



Karin L. Posser  
Florida Bar No. 747041  
10407 Centurion Parkway North  
Suite 200  
Jacksonville, Florida 32256  
Tel: (904) 224-4494  
Fax: (904) 212-1465  
Email: [kposser@mcglinchey.com](mailto:kposser@mcglinchey.com)  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished, via the E-portal and via the following manner on this 21 day of July, 2017, to the parties listed below:

**VIA E-PORTAL**

Robertson, Anschutz & Schneid, P.L.  
6409 Congress Ave., Suite 100  
Boca Raton, FL 33487  
[mail@rasflaw.com](mailto:mail@rasflaw.com)

Brevard County Legal Aid  
Michelle Meulke  
1038 Harvin Way, Ste 100  
Rockledge, FL 32955-3254  
[Eservice@brevardlegalaid.org](mailto:Eservice@brevardlegalaid.org)  
[michelle.meulke@brevardlegalaid.org](mailto:michelle.meulke@brevardlegalaid.org)  
Counsel for Jacqueline V. Lettman

Florida House Financing Corporation  
Matthew A. Sirmans  
227 N. Bronough Street  
Ste 5000  
Tallahassee, FL, 32301  
[efiling@floridahousing.org](mailto:efiling@floridahousing.org)  
Counsel for Florida Housing Finance Corp.



A handwritten signature in black ink, appearing to read "W. Ross". Below the signature, the word "Attorney" is printed in a smaller, sans-serif font.

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
OF FLORIDA, BREVARD COUNTY

Flagstar

Plaintiff,  
v.

SCOTT ELLIS

Case No. 2015-CA-016515  
2017 JUL 17 AM 11:20

Leffman  
Defendant

FILED IN VIERA  
CLERK OF CIR. CT.  
BREVARD CO., FL

**CASE MANAGEMENT ORDER**

This action is taken by the court after a scheduled case management conference held on this date.

ORDERED as follows:

- Non-jury trial is set on \_\_\_\_\_, 201\_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Crtrm \_\_\_\_\_.  
 Case management conference is reset on October 10, 2017, at 8:30 a.m./p.m., Crtrm 2B.  
 Plaintiff failed to appear. This action is dismissed without prejudice.  
 Plaintiff announced a voluntary dismissal. This action is dismissed without prejudice.  
 Defendant(s) failed to appear. The answer of \_\_\_\_\_ is stricken and default is entered.  
 Defendant(s) failed to appear. All pending defense motions are stricken.  
 Parties shall mediate in accordance with the mediation order entered this date.  
 All outstanding motions shall be heard on \_\_\_\_\_, 201\_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Crtrm \_\_\_\_\_.  
Any pending motion that is not noticed for hearing on that date shall be deemed abandoned.  
 Motion for summary judgment shall be heard on \_\_\_\_\_, 201\_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Crtrm \_\_\_\_\_.  
 Other Defendant voluntarily dismisses its FDCPA claims (Count II)  
against Plaintiff. See Santander. The FCCPA claims remain  
(Count I).

ORDERED at Viera, Brevard County, Florida this 17 day of July, 2017.

Case # 05-2015-CA-016515-XXXX-XX  
Document Page # 77



\*27588621\*

Copy furnished to counsel or parties present:

- Plaintiff's counsel  
 Defense counsel  
 Defendant(s) pro se

Lisa Davidson  
Circuit Judge



1700 G Street, N.W., Washington, DC 20552

## CFPB Bulletin 2013-12

**Date:** October 15, 2013

**Subject:** Implementation Guidance for Certain Mortgage Servicing Rules

The Consumer Financial Protection Bureau (CFPB) is issuing this bulletin to provide guidance in implementing certain of the 2013 Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) Servicing Final Rules.<sup>1</sup> The CFPB issued the 2013 RESPA and TILA Final Rules in January 2013 and they take effect on January 10, 2014.

This bulletin provides guidance regarding:

1. Policies and procedures servicers must maintain regarding the identification of and communication with any successor in interest of a deceased borrower with respect to the property secured by the deceased borrower's mortgage loan.<sup>2</sup>
  2. Communication with borrowers under the Early Intervention Rule.<sup>3</sup>
  3. Servicers' obligation to provide certain notices/communications to borrowers who have exercised their right under the Fair Debt Collection Practices Act (FDCPA)<sup>4</sup> barring debt collectors from communicating with them.<sup>5</sup>
1. Policies and Procedures Regarding Successors in Interest to the Property of a Deceased Borrower

In response to inquiries it has received, the CFPB is issuing guidance regarding the policies and procedures servicers of mortgage loans must have in place to comply with requirements

---

<sup>1</sup> 78 FR 10695 (Feb. 14, 2013) (RESPA Servicing Final Rule); 78 FR 10901 (Feb. 14, 2013) (TILA Servicing Final Rule), collectively the 2013 RESPA and TILA Servicing Final Rules. Regulations X and Z implement RESPA and TILA, respectively. RESPA and Regulation X generally refer to "borrowers" and TILA and Regulation Z to "consumers;" for simplicity those terms are used interchangeably in this bulletin.

<sup>2</sup> 12 CFR 1024.38(b)(1)(vi), as published in 78 FR 10695 (Feb. 14, 2013).

<sup>3</sup> 12 CFR 1024.39, as published in 78 FR 10695 (Feb. 14, 2013).

<sup>4</sup> 15 U.S.C. 1692 *et seq.*

<sup>5</sup> Section 805(c) of the FDCPA prohibits a debt collector from most communications with a consumer regarding the debt at issue, if the consumer has sent a "cease communication" request. 15 U.S.C. 1692c(c).

in the Policies and Procedures Rule regarding successors in interest.<sup>6</sup> Starting on January 10, 2014, a servicer must have policies and procedures reasonably designed to ensure that, upon notification of the death of a borrower, the servicer promptly identifies and facilitates communication with a successor in interest<sup>7</sup> of the deceased borrower with respect to the property that secures the deceased borrower's mortgage loan. In issuing this guidance, the CFPB seeks both to assist servicers in implementing these policies and procedures and to promote home retention whenever possible for successors in interest faced with the loss of their homes due to the death of a borrower.

The CFPB adopted the successor in interest provision of the Policies and Procedures Rule after learning about difficulties that some surviving spouses, children, or other successors in interest experienced in attempting to communicate with servicers.<sup>8</sup> The CFPB has received reports of servicers either outright refusing to speak to a successor in interest or demanding documents to prove the successor in interest's claim to the property that either do not exist (e.g., probate court documents for an estate that is not required to go through probate) or are not reasonably available. These practices often prevent a successor in interest from pursuing assumption of the mortgage loan and, if applicable, loss mitigation options—potentially resulting in the avoidable loss of the home. In applying the Policies and Procedures Rule, the CFPB seeks to reduce the number of unnecessary defaults and foreclosures, including those following the death of a borrower.

The following are examples of servicer practices the CFPB would consider to be components of policies and procedures that are reasonably designed to achieve the objectives of the successor in interest provision:

- Promptly providing to any party claiming to be a successor in interest a list of all documents or other evidence the servicer requires, which should be reasonable in light of the laws of the relevant jurisdiction, for the party to establish (1) the death of the borrower and (2) the identity and legal interest of the successor in interest. Such documents might include, for example, a death certificate, an executed will, or a court order determining a succession to real property.
- Upon notification of the death of a borrower, promptly identifying and evaluating any issues that the servicer must consider in reviewing the rights and obligations of successors in interest with respect to the property and mortgage loan, including, for example:
  - Receipt of acceptable proof of the successor in interest's identity and legal interest in the property.<sup>9</sup>

---

<sup>6</sup> 12 CFR 1024.38(b)(1)(vi), as published in 78 FR 10695 (Feb. 14, 2013).

<sup>7</sup> A successor in interest is the spouse, child, or heir of a deceased borrower or other party with an interest in the property.

<sup>8</sup> While the CFPB recognizes that some of these experiences involved reverse mortgages, which are exempt from the requirements of the Policies and Procedures Rule, others involved mortgage loans that will be subject to the rule when it goes into effect. *See* 12 CFR 1024.30(b)(2), as published in 78 FR 10695 (Feb. 14, 2013).

<sup>9</sup> The servicer may be subject to specific investor requirements with respect to the successor in interest's rights and obligations. For example, a February 2013 bulletin from Freddie Mac requires servicers to refer to it any case "where the servicer is unsure as to whether a purported transferee has a legal or beneficial interest in the

- Standing of the mortgage loan as current or delinquent.
  - Eligibility of the successor in interest to continue making payments on the mortgage loan.
  - Whether a trial modification or other loss mitigation option was in place at the time of the borrower's death.
  - Whether there is a pending or planned foreclosure proceeding.
  - Eligibility of the successor in interest for loss mitigation options.
  - Eligibility of the successor in interest to assume the mortgage loan, with or without a simultaneous loan modification or other loss mitigation option.
- Promptly providing successors in interest with information about the above issues, including any servicer prerequisites for the successor in interest to: continue payment on the mortgage loan, assume the mortgage loan, and, where appropriate, qualify for available loss mitigation options.
- Promptly providing successors in interest with any documents, forms, or other materials the servicer requires for the successor in interest to continue making payments and to apply and be evaluated for an assumption and, where appropriate, loss mitigation options.
- Upon receipt from the successor in interest of required documents, forms or other materials, promptly evaluating the successor in interest for and, where appropriate, implementing options set forth above.
- Providing employees with information and training regarding the effect of laws and investor and other requirements on the servicer's obligations following the death of a borrower, and complying with those laws and requirements, including:
  - Servicing guidelines, such as those published by Fannie Mae and Freddie Mac,<sup>10</sup>

---

property, but that person is willing to assume the Mortgage obligation.” Freddie Mac Bulletin No. 2013-3 (Feb. 15, 2013), available at <http://www.freddiemac.com/sell/guide/bulletins/pdf/bl11303.pdf> (“Freddie Mac Bulletin”).

<sup>10</sup> For example, in February 2013, Fannie Mae published guidance requiring servicers to “to allow the new owner to continue making mortgage payments and pursue an assumption of the mortgage loan as well as a foreclosure prevention alternative, if applicable.” Where a successor in interest cannot bring the loan current without a foreclosure prevention alternative, including a loan modification, the guidance states that “the servicer must collect a Borrower Response Package from the new property owner and evaluate the request as if they were a borrower.” Fannie Mae, Lender Letter LL-2013-04 (Feb. 27, 2013), available at <https://www.fanniemae.com/content/announcement/l11304.pdf>. See also Fannie Mae, Servicing Guide Announcement SVC-2013-17 (Aug. 28, 2013) available at <https://www.fanniemae.com/content/announcement/svc1317.pdf>. Also in February 2013, Freddie Mac published guidance requiring servicers to follow similar procedures regarding assumptions and loss mitigation options for successors in interest. See n.27. Both Fannie Mae and Freddie Mac require servicers to submit recommendations to them for approval of a simultaneous mortgage assumption and loss mitigation option.

- The Garn-St. Germain Act of 1982,<sup>11</sup> which imposes certain limits on the application of due-on-sale clauses when real property is transferred as a result of the death of a borrower, and
- Federal or State law restricting the disclosure of the deceased borrower's non-public personal information.

In addition to the above, servicers should consider whether best practices with regard to their policies and procedures regarding successors in interest would include the following:

- Upon notification of the death of a borrower, promptly evaluating whether to postpone or withdraw any pending or planned foreclosure proceeding to provide a successor in interest with reasonable time to establish ownership rights and pursue assumption and, if applicable, loss mitigation options.
- Promptly providing a successor in interest with information about the possible consequences of assuming the mortgage loan, such as any costs and the fact that a later loss mitigation option is not guaranteed if the successor in interest assumes the loan without a loss mitigation option already in place or arranged to commence simultaneous with the assumption.

## 2. Communications with Borrowers under the Early Intervention Rule

The CFPB is issuing guidance to clarify how a servicer may comply with the requirements in the Early Intervention Rule to make good faith efforts to establish live contact with a borrower.<sup>12</sup> For purposes of the Early Intervention Rule, “[d]elinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid.”<sup>13</sup> Thus, once the rule goes into effect, for each billing cycle for which a borrower is delinquent for at least 36 days, servicers are required to make good faith efforts to establish live contact with the borrower by the 36<sup>th</sup> day and, if appropriate, to inform the borrower about the availability of loss mitigation options.<sup>14</sup>

Commentary to the Early Intervention Rule states that good faith efforts to establish live contact consist of “reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer.”<sup>15</sup> The CFPB emphasizes that the rule is specifically designed to give servicers significant flexibility in tailoring their contact methods to particular circumstances. For delinquencies that begin

---

<sup>11</sup> 12 U.S.C. 1701j-3(d)(3).

<sup>12</sup> 12 CFR 1024.39, as published in 78 FR 10695 (Feb. 14, 2013).

<sup>13</sup> 12 CFR 1024.39, Supplement I to Part 1024—Official Bureau Interpretations, Comment 39(a)-1, as published in 78 FR 10695 (Feb. 14, 2013). Note that this interpretation of delinquency is particular to the Early Intervention Rule and the Continuity of Contact Rule. *Id.* at 1024.40 and Comment 1024.40(a)-3.

<sup>14</sup> The Early Intervention Rule also requires that a written notice be sent to the borrower not later than the 45<sup>th</sup> day of delinquency, unless the borrower has submitted payment in the meantime. However, in contrast to the live contact rule, the written notice is required no more than once during any 180-day period. Thus, written notice provided to a borrower pursuant to the rule need not be provided again for 180 days, even if another delinquency occurs and the 45th day after that delinquency falls within the 180-day timeframe.

<sup>15</sup> 12 CFR 1024.39, Supplement I to Part 1024—Official Bureau Interpretations, Comment 39(a)-2, as published in 78 FR 10695 (Feb. 14, 2013).

on or after January 10, 2014,<sup>16</sup> the CFPB would consider the following communications reasonable steps under the circumstances to establish live contact:

Borrower working with servicer to obtain loss mitigation: The live contact requirement is satisfied with regard to cases in which a borrower is delinquent in consecutive billing cycles if the servicer has established and is maintaining ongoing contact with the borrower with regard to the borrower's completion of a loss mitigation application and the servicer's evaluation of that borrower for loss mitigation options.

Borrower stops paying under a loss mitigation plan or becomes delinquent after curing a prior default: As specified in the commentary to the final rule, a borrower is not delinquent under the rule if "performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment . . ."<sup>17</sup> This includes forbearance plans and trial modifications. However, if the borrower fails to make a loss mitigation payment, a new delinquency begins and the servicer has an obligation to make good faith efforts to contact the borrower within 36 days of the start of the delinquency—and for each of any subsequent billing periods for which the borrower's obligation is due and unpaid. Similarly, if a borrower successfully cures a prior default but becomes delinquent again, the servicer has an obligation to make good faith efforts to contact the borrower within 36 days for each of the subsequent billing periods for which the borrower's obligation is due and unpaid.

Communication in conjunction with other contact: A servicer may, but need not, rely on live contact established at the borrower's initiative to satisfy the live contact requirement. Servicers may also combine contacts made pursuant to the Early Intervention Rule with contacts made with borrowers for other reasons, for instance by adding a brief script to collection calls to inform consumers that loss mitigation options may be available in accordance with the rule.

Unresponsive borrower: The CFPB believes that a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to the Early Intervention Rule is a relevant circumstance to consider. For example, "good faith efforts" to establish live contact with regard to delinquencies occurring after six or more consecutive delinquencies might require no more than making a single telephone call or including a sentence requesting the borrower to contact the servicer with regard to the delinquencies in the periodic statement<sup>18</sup> or in an electronic communication. Such

---

<sup>16</sup> Servicers are not required to comply with the Early Intervention Rule and the Continuity of Contact Rule with regard to a billing period prior to January 10, 2014, for which a borrower is delinquent. For example, for a borrower whose payment is due and unpaid on January 9, 2014 for that particular billing cycle, compliance is not required under either rule unless and until the borrower is delinquent again for a later billing cycle.

<sup>17</sup> 12 CFR 1024.39, Supplement I to Part 1024—Official Bureau Interpretations, Comment 39(a)-1.ii, as published in 78 FR 10695 (Feb. 14, 2013).

<sup>18</sup> 12 CFR 1024.41, as published in 78 FR 10695 (Feb. 14, 2013) and amended by the final rule issued on September 13, 2013, available at [http://files.consumerfinance.gov/f/201309\\_cfpb\\_titlexiv\\_updates.pdf](http://files.consumerfinance.gov/f/201309_cfpb_titlexiv_updates.pdf). For example, this statement could appear at the bottom of the delinquency box or in a section reserved for messages from the servicer. 12 CFR 1026.41(d)(8) and 1026.41(c)-2, respectively, as published in 78 FR 10901 (Feb. 14, 2013). Placement of the statement at the bottom of the delinquency box would not conflict with the "close proximity" requirement applicable to delinquency information." *Id.* at 1026.41(d)(8).

efforts might be appropriate where there is little or no hope of home retention, such as when all applicable loss mitigation possibilities have been exhausted (including a short sale or deed in lieu of foreclosure), as may occur in the later stages of foreclosure.

3. Servicing Rule Requirements with Regard to Borrowers Prohibiting Debt Collectors from Communicating with Them.

The CFPB is issuing guidance regarding the interplay between certain of the 2013 RESPA and TILA Servicing Final Rules and the Fair Debt Collection Practices Act (FDCPA).<sup>19</sup> The CFPB is providing this bulletin as an advisory opinion interpreting the FDCPA “cease communication” requirement in relation to the 2013 Mortgage Servicing Final Rules discussed below, under FDCPA section 813(e), 15 U.S.C. 1692k(e). As provided in that section, no liability arises under the FDCPA for an act done or omitted in good faith in conformity with an advisory opinion of the CFPB while that advisory opinion is in effect.

The FDCPA grants debtors the right generally to bar debt collectors from communicating with them.<sup>20</sup> To the extent the FDCPA applies to a servicer’s activities regarding a borrower, the “cease communication” provision of the FDCPA may make such a servicer uncertain whether it will be liable under the FDCPA for carrying out certain communications required by the servicing rules. This bulletin addresses such a servicer’s obligation with regard to certain provisions of the servicing rules requiring disclosures to and communications with borrowers who have defaulted on the payments of their mortgage loans when they have instructed the servicer to cease communicating with them.

The CFPB concludes that the FDCPA “cease communication” option does not generally make servicers that are debt collectors liable under the FDCPA if they comply with certain provisions of Regulation X (12 CFR 1024.35 (error resolution), 1024.36 (requests for information), 1024.37 (force-placed insurance), and 1024.41 (loss mitigation)) and Regulation Z (12 CFR 1026.20(d) (adjustable-rate mortgage (ARM) initial interest rate adjustment) and 1026.41 (periodic statement)). For the reasons discussed below, the CFPB concludes that a servicer that is considered a debt collector under the FDCPA with respect to a borrower that provides disclosures to and communicates with the borrower pursuant to the provisions listed above, notwithstanding a “cease communication” instruction sent by the borrower, is not liable under the FDCPA. This conclusion does not extend to the notices/communications required by 12 CFR 1024.39 (Early Intervention Rule) and 12 CFR 1026.20(c) (ARM Interest Rate Adjustment with Corresponding Payment Change Rule). *See Interim Final Rule, available at <http://www.consumerfinance.gov/regulations>.*

Error Resolution, Information Requests, and Loss Mitigation Rules<sup>21</sup>

---

<sup>19</sup> 15 U.S.C. 1692 *et seq.*

<sup>20</sup> Section 805(c) of the FDCPA generally prohibits debt collectors from communicating with consumers regarding a debt after having received a written “cease communication” request. 15 U.S.C. 1692c(c).

<sup>21</sup> 12 CFR 1024.35 and 1024.36, as published in 78 FR 10695 (Feb. 14, 2013), and 12 CFR 1024.41, as published in 78 FR 10695 (Feb. 14, 2013) and amended by the final rule issued on September 13, 2013, available at [http://files.consumerfinance.gov/f/201309\\_cfpb\\_titlexiv\\_updates.pdf](http://files.consumerfinance.gov/f/201309_cfpb_titlexiv_updates.pdf).

These servicing rule provisions, respectively, require servicers to (1) investigate and resolve certain borrower-reported errors relating to the servicing of the borrower’s mortgage loan, (2) respond appropriately to borrower requests for information with respect to a borrower’s mortgage loan, and (3) consider appropriately a borrower’s loss mitigation application. The CFPB believes that a borrower’s “cease communications” request pursuant to the FDCPA should ordinarily be understood to exclude these categories of communication, because the borrower has specifically requested the communication at issue. Even if the borrower sends a “cease communications” request while a specific action the borrower requested of the servicer is in process, the borrower usually should be understood to have excluded the specific action from the general request to cease communication. Thus, only if the borrower sends a communication to the servicer specifically withdrawing the request for such action may a servicer cease to carry out the requirements of these provisions.

Force-Placed Insurance, ARM Initial Interest Rate Adjustment, and Periodic Statement Rules<sup>22</sup>

These servicing rule provisions, respectively, require the servicer to provide borrowers with (1) disclosures regarding the forced placement of hazard insurance, (2) a disclosure regarding an ARM’s initial interest rate adjustment, and (3) a periodic statement for each billing cycle. The CFPB has determined that a servicer acting as a debt collector would not be liable under the FDCPA for complying with these requirements despite a consumer’s “cease communication” request. These disclosures are specifically mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>23</sup> which makes no mention of their potential cessation under the FDCPA and presents a more recent and specific statement of legislative intent regarding these disclosures than does the FDCPA. Moreover, the CFPB believes that these notices provide useful information to consumers regardless of their collections status.

For more information about the implementation of the 2013 RESPA and TILA Servicing Final Rules and other new mortgage rules issued by the CFPB, visit <http://www.consumerfinance.gov/regulatory-implementation>. Guidance inquiries may be directed to [CFPB\\_reginquiries@cfpb.gov](mailto:CFPB_reginquiries@cfpb.gov) or (202) 435-7700.

---

<sup>22</sup> 12 CFR 1024.37, as published in 78 FR 10695 (Feb. 14, 2013); 12 CFR 1026.20(d), as revised by 78 FR 10901 (Feb. 14, 2013) and 12 CFR 1026.41, as published in 78 FR 10901 (Feb. 14, 2013), respectively.

<sup>23</sup> Public Law 111-203, secs. 1418, 1420, 1463, 124 Stat. 1376 (2010). Dodd-Frank Act sections 1418 (ARM initial interest rate adjustment), 1420 (periodic statements), and 1463 (force-placed insurance). Servicers are not required to provide periodic statements to borrowers in bankruptcy. See Interim Final Rule, available at <http://www.consumerfinance.gov/regulations>.

IN THE 18<sup>TH</sup> JUDICIAL CIRCUIT COURT  
IN AND FOR BREVARD COUNTY, FLORIDA

Case No. 05-2015-CA-016515

FLAGSTAR BANK, FSB,

Plaintiff,

vs.

JACQUELINE V. LETTMAN A/K/A  
JACQUELINE LETTMAN, et al,

Defendants.

/

**CONSOLIDATED PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION  
TO CONSOLIDATED DEFENDANT'S MOTION TO DISMISS**

Counter-Plaintiff, JACQUELINE V. LETTMAN, files this memorandum of law in response to FLAGSTAR BANK, FSB's motion to dismiss the counterclaims.

**FACTUAL BACKGROUND**

FLAGSTAR BANK, FSB ("the Bank") instituted this foreclosure action against JACQUELINE V. LETTMAN ("the Homeowner"). The Homeowner filed counterclaims against the Trust for violations of the Florida Consumer Collection Practices Act ("FCCPA"). These counterclaims are attached to the Homeowner's motion for leave to amend (docket entry 42, 06/16/2016). The Court granted the Homeowner leave to file the counterclaims, and the Bank did not file a response until 7/21/2017. The Bank responded by filing a motion to dismiss.

Count I of the counterclaims alleges that the Bank sent mortgage statements to the Homeowner which should have been sent to the Homeowner's attorney once the Bank was aware that the Homeowner was represented by an attorney with regard to the debt– a violation of Fla.

Stat. 559.72(18). Count II alleges that the Bank’s mortgage statements claimed that the Homeowner owed late fees following its initiation of acceleration and foreclosure. Florida law holds that a bank cannot recover late fees following its initiation of foreclosure and acceleration. *Fowler v. First Federal Sav. & Loan*, 643 So. 2d 30, 33 (Fla. 1<sup>st</sup> DCA 1994) (“The bank is only entitled to late charges that accrued up until the day the note was accelerated. Thus, we vacate the award of late charges and remand for an evidentiary hearing to determine the correct amount of late charges owed.”); *Security Mut. Life Ins. Co. v. Contemporary Real Estate Ass’n*, 979 F. 2d 329, 330-331 (3d. Cir. 1992). Under Florida law, “all citizens are presumed to know the law.” *Hart v. Hart*, 377 So. 2d 51, 52 (Fla. 2d. DCA 1979). Hence, the Bank’s mortgage statements, which made illegal assertions of a right to collect late fees during the foreclosure action, is a violation of Fla. State. 559.72(9), which broadly prohibits the assertion of the right to collect illegal amounts.

#### **BACKGROUND OF THE FDCPA AND FCCPA**

The FDCPA and FCCPA are remedial consumer protection statutes. Remedial consumer protection statutes “should be construed liberally in favor of the consumer.” *See Johnson v. Riddle*, 305 F.3d 1107, 1117 (10th Cir. 2002) *citing in part Ellis v. General Motors Acceptance Corp.*, 160 F.3d 703, 707 (11th Cir.1998) (Discussing the FDCPA). The FCCPA “was enacted as a means of regulating the activities of consumer collection agencies within the state” and “is a laudable legislative attempt to curb what the legislature evidently found to be a series of abuses in the area of debtor-creditor relations.” *LeBlanc v. Unifund CCR Partners*, 601 F. 3d 1185, 1190 (11<sup>th</sup> Cir. 2010). The FCCPA is a cousin to the federal Fair Debt Collection Practices Act (“FDCPA”). When construing the provisions of the FCCPA, that statute requires that “due consideration and great weight shall be given to the interpretations of the Federal Trade

Commission and the federal courts relating to the federal Fair Debt Collection Practices Act.” Fla. Stat. § 559.77(5). *Read v. MFP, Inc.*, 85 So.3d 1151 (Fla. 2d DCA 2012). Therefore this Court should “apply the rulings from the Eleventh Circuit and Middle District of Florida regarding the FDCPA to its analysis of the FCCPA.” *Schaefer v. Seattle Service Bureau, Inc.*, Case No. 2:15-cv-444-FtM-38CM (MD Fla. 2015). Of course, this Court should also give great weight to the Supreme Court’s interpretation of the FDCPA, and due weight to other federal approaches to issues common to both the FDCPA and FCCPA.

“The FCCPA unequivocally states its goal — to provide the consumer with the most protection possible under either the state or federal statute.” *LeBlanc v. Unifund CCR Partners*, 601 F. 3d 1185, 1192 (11<sup>th</sup> Cir. 2010). “In considering FCCPA claims, the Court must view such claims ‘from the perspective of a consumer whose circumstances makes him relatively more susceptible to harassment, oppression, or abuse.’” *In re Runyan*, 530 BR 801, 805 (M.D. Fla. 2015) *citing Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1179 (11th Cir.1985). “The FDCPA establishes a strict liability standard; a consumer need not show an intentional violation of the Act by a debt collector to be entitled to damages.” *Drossin v. Nat’l Action Fin. Servs.*, 641 F.Supp.2d 1314 (S.D. Fla. 2009). “A single violation of the Act is sufficient to subject a debt collector to liability under the Act.” *Id.* at 1316. The Eleventh Circuit adopted the “least-sophisticated consumer” standard in reviewing alleged violations of the FDCPA. *See Beeders v. Gulf Coast Collection Bureau*, 796 F.Supp.2d 1335, 1338; *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir. 1985). The purpose of the least-sophisticated consumer standard is to ensure the protection of the gullible as well as the shrewd. *See LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185 (11th Cir. 2010) “A court applies this objective standard. . . to protect

consumers against deceptive debt collection practices and to protect debt collectors from unreasonable constructions of their communications.” *Green v. Douglas, Knight & Assocs. (In re Cheaves)*, 439 B.R. 220 (Bankr. M.D. Fla. 2010). Under this standard, a trier of fact reviews whether the least sophisticated consumer would find a communication false or misleading.

The FCCPA predates the FDCPA. When congress enacted the FDCPA, it adopted Florida’s “private attorney general” structure. *See In re Jones*, 494 BR 569 (MD Fla. 2013) (Adopting the view that the consumer acts as a “private attorney general” under the statute) *See also Dish Network Service LLC v. Myers*, 87 So. 3d 72, 76-77 (Fla. 2d DCA 2012) (Referring to the FCCPA structure as one where the consumer acts as a private attorney general). Under that structure, violations of the FCCPA are privately enforced. The rationale behind such a structure is pragmatic. The legislature contemplated that it would never had the resources to enforce every violation of the FCCPA. With a private attorney general structure, the legislature could leave the brunt of FCCPA enforcement to private individuals, and forego the need to dedicate a wealth of resources to fund a large enforcement agency.

A claimant need not prove actual damages due to an FCCPA or FDCPA violation. Each time a person violates the statute, it contemplates an award of up to \$1000 in statutory damages per claim, per party. Fla. Stat. 559.77(2); 15 USC 1692k.. This is akin to a finder’s fee to incentivize enforcement, and a penalty to the person found to violate the statute’s provisions.

To state a cause of action under the FCCPA, the claimant needs to sufficiently allege that defendant violated the statute. The Plaintiff filed a claim under Fla. Stat. 529.72(7)&(9). Those provisions provide as follows:

**559.72 Prohibited practices generally.**—In collecting consumer debts, no person shall:

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.

This statute requires an element of knowledge on behalf of the FCCPA defendant.

However, a failure to know the law is not a defense to the FCCPA. *Jerman v. Carlisle*,

*McNellie, Rini, Kramer*, 130 S. Ct. 1605 (2010).

I. The Bank's argument that it did not know the Homeowner was represented rings hollow

In a three-sentence argument, the Bank argues ignorance. (motion to dismiss p3). It claims, without any legal analysis, that the Homeowner has not sufficiently alleged that Bank knew that the Homeowner retained counsel. A reading of the counterclaim and an application of the law shows that the Bank is mistaken. Fla. Stat. 559.72(18) of the FCCPA is identical to 15 USC 1692c(a)(2) of the FDCPA. A violation of Fla. Stat. 559.72(18) and 15 USC 1692c(a)(2) occurs where the defendant communicates with a represented party when the defendant "knows that the debtor is represented" or if the defendant "can readily ascertain, such attorney's name and address." Paragraphs 15, 16, 17, and 21 set forth allegations that the Homewner's attorney filed a notice of appearance, that this notice informed the Bank that the Homeowner was represented, and that the Bank nonetheless ignored the notice and continued to send periodic statements demanding payment to the Homeowner rather than the Homeowner's attorney. In this case, the Homeowner has pled his cause of action consistent the statutory elements. When the

Homeowner's attorney appeared in this case, the Bank's attorneys were made aware of that fact. It is settled law that "knowledge of, or notice to, an agent is imputed to the principal when it is received by the agent while acting within the course and scope of his employment." *Anderson v. Waltham*, 468 So. 2d 291, 294 (Fla. 1st DCA 1985).

The appearance of the Homeowner's counsel was sufficient to notify the Bank of the fact that the Homeowner was represented. One of the first cases to address this issue is *Harvey v. United Adjusters*, 509 F.Supp. 1218 (D. Or. 1981). There a debt collector instituted a collection action against a consumer. *Id.* at 1220. Northwestern Legal Clinic appeared in that case as counsel for the consumer. *Id.* After that appearance, the debt collector proceeded to make phone calls to the consumer and send the consumer collection correspondence. The court found liability under the FDCPA because "collection notices were sent to [the consumer when] she was represented by counsel from the Northwestern Legal Clinic."

Similarly, in *McDermott v. Marcus, Enrico, Emmer & Brooks, P.C.*, 911 F.Supp.2d 1 (D. Mass. 2012), a court found FDCPA liability against a law firm where a consumer's attorney appeared in a lien foreclosure action and the law firm continued to send delinquency notices to the consumer. In *Goins v. JBC & Associates, P.C.*, 352 F.Supp.2d 262 (D. Conn. 2005), the consumer filed previous FDCPA claims, and the court found that the consumer's previous FDCPA action against the debt collector sufficiently notified it that the consumer was represented. A court found FDCPA liability where a debt collector sent letters to a consumer after the debt collector received a bankruptcy petition filed by the consumer's attorney. *Bacelli v. MFP, Inc.*, 729 F.Supp.2d 1328 (MD Fla. 2010).

In fact, the Federal Trade Commission commentary on the Fla. Stat. 559.72(18)'s federal

counterpart in the FDCPA states “[i]f a debt collector learns that a consumer is represented by an attorney in connection with the debt, *even if not formally notified of this fact*, the debt collector must contact only the attorney and must not contact the debtor.” Federal Trade Commission, Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed.Reg. 50097, 50104 (1988). This interpretation is incorporated into the FCCPA because “In applying and construing [the FCCPA], due consideration and great weight shall be given to the interpretations of the Federal Trade Commission...” Fla. Stat. 559.77(5). Accordingly, under the FCCPA and FDCPA, the formal appearance of counsel in the Homeowner’s foreclosure case was sufficient as a matter of law to inform the Bank that the Homeowner was represented.

As the Bank would have it, it is a bumbling idiot that does not know how to interpret a notice of appearance, rather than a sophisticated multi-billion dollar financial institution. The Bank may develop its bumbling idiot theory in an answer, but at this point, the Homeowner has sufficiently alleged that the Bank knew that the Homeowner was represented.

## II. Mortgage statements are related to debt collection

The Bank argues that mortgage statements are not debt collection. It reaches this conclusion by (a) ignoring the text of the statements, and (b) conducting a mistaken reading of a CFPB bulletin which addresses FDCPA rights that find no analog in the FCCPA. Because a common sense reading of the mortgage statements shows that they are related to debt collection, and because the bulletin is irrelevant to FDCPA and FCCPA regulations concerning the communication with represented individuals, the Bank’s motion fails.

The Eleventh Circuit has established general parameters to test whether a communication

is related to debt collection. It stated “we agree that the definition of communication is very broad. As noted above, it is defined as ‘the conveying of information regarding a debt directly or indirectly to any person through any medium.’” *Caceres v. McCalla Raymer, LLC*, 755 F. 3d 1299, 1302 (11<sup>th</sup> Cir. 2014). It also stated, “if a communication conveys information about a debt and its aim is at least in part to induce the debtor to pay, it falls within the scope of the Act.” *Id.* Indicia that the communication is connected to debt collection includes: (1) a demand for payment; (2) “it states the amount of the debt”; (3) provides information as to how to make payment; and (4) a statement that the communication is from a debt collector. *Id* at 1302-1303; also *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211, 1218 (11th Cir.2012).

In *Pinson v. Albertelli Law Partners LLC*, Unpublished Opinion No. 14-13900, (11th Cir. 2015), the Court stated: “courts should look to the language of the letters in question, specifically to statements that demand payment, discuss additional fees if payment is not tendered, and disclose that the [debt collector] was attempting to collect a debt and was acting as a debt collector.” *Id.* It also stated: “A demand for payment need not be express; there may be an implicit demand for payment where the letter states the amount of the debt, describes how the debt may be paid, provides the phone number and address to send payment, and expressly states that the letter is for the purpose of collecting a debt.” *Id.* In *Pinson*, the Court found letters to be regulated by the FDCPA because they “[e]ach contained an implicit demand for payment, because they stated the amount of the debt, described how the debt could be paid, and informed [the debtor] how he could tender payment” and “[o]ne letter stated that fees and costs would continue to be assessed until the loan delinquency was cured.” *Id.*

Here, the mortgage statements attached to the complaint bear the hallmarks of debt

collection. The following lists of facts about the mortgage statements show that they are related to debt collection:

- i. they state an amount due
- ii. they state a due date
- iii. they state "late fee will be charged" if payment is not made by the due date
- iv. they contain a return address where payment can be sent
- v. they contain payment coupons that can be returned with the payment
- vi. they state that partial payments may be held in a suspense account
- vii. they included information as to how the Homeowner could pay by phone or online
- viii. The payment coupon was not fully scanned into the document, but could show further demands and instructions for payment.

This list of facts demonstrates that the mortgage statements seek payment, that they are related to debt collection under the Eleventh Circuit's analysis, and that the statements are regulated by the FCCPA and FDCPA.

Under similar facts, the Court in *Burdick v. Bank of America*, 140 F. Supp. 3d 1325 (SD Fla. 2015) found that a monthly mortgage statement was related to debt collection, thereby falling under the purview of the FDCPA. It stated:

Finally, the Court rejects Green Tree's argument that the Monthly Information Statement is not made in connection with its efforts to collect a debt. Despite the "Information Statement" label, the letter explicitly asks Plaintiff to make good on its obligations and "pay the bankruptcy trustee or Green Tree directly, according to the terms of [his] Bankruptcy Plan." [DE 85-9 at 1.] This is, of course, consistent with a mortgage servicer's reason for being—to collect an obligor's money on behalf of a creditor bank.

*Id.* at 1331

Many other federal courts have found monthly mortgage statements to be regulated by the FDCPA. *Roth v. Nationstar Mortgage, LLC*, Case No. 2:15-cv-783-FtM-29MRM (MD Fla. Dec. 6, 2016); *Matmanivong v. Nat. Creditors Connection, Inc.*, 79 F. Supp. 3d 864 (ND Ill. 2015); *Goodin v. Bank of America*, NA, 114 F. Supp. 3d 1197, 1206 (MD Fla. 2015) (Finding FDCPA

liability where “Each of the statements misstated the balance of the loan, falsely representing the amount of the debt in connection with collection activity, in violation of the FDCPA.”); *Galle v. Nationstar Mortgage, LLC*, Case No. 2:16-cv-00407-FtM-38CM (MD Fla. Jul. 28, 2016); *Prindle v. Carrington Mortgage Services, LLC*, Case No. 3:13-cv-1349-J-34PDB (MD Fla. Aug 16, 2016) (Finding “a reasonable fact finder could conclude that the ‘animating purpose’ of the June 2013 Statement was the same as any other automatically sent mortgage statement, that is, to seek payment.”); *Kelliher v. Target Nat. Bank*, 826 F. Supp. 2d 1324 (MD Fla. 2011) (Denying a bank’s motion to dismiss a claim alleging that it sent mortgage statements to a represented party).

While not binding on this Court, the Circuit Court for the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, acting in its appellate role, affirmed a county court’s determination that FCCPA liability accrues where a loan servicer makes false representations of fact in its mortgage statements. *Murray v. Nationstar Mortg. LLC*, FLW Supp 2408 (15<sup>th</sup> J. Cir. Ct., Palm Beach Cty., October 25, 2016). The understanding that mortgage statements can be related to debt collection is inherent in the court’s decision to affirm. Unsatisfied with the affirmance, the lender pursued a second teir of appellate review at the Fourth District Court of Appeal where the parties fully briefed the issues that the previous appellate panel had considered. Following briefing, the Fourth District essentially affirmed first appellate panel’s decision by denying the lender’s petition for certiorari. *Nationstar Mortg. LLC v. Murray*, 4D17-44 (Fla. 4<sup>th</sup> DCA, April 19, 2017).

Because the Bank’s monthly mortgage statements fit the hallmarks of activity related to debt collection as set forth in *Reese*, *Caceres*, *Pinson*, and *Murray*, and because courts consistently find mortgage statements to be related to debt collection under those parameters, this

Court should find that the mortgage statements are regulated by the FCCPA and FDCPA.

The Court should reach this result notwithstanding the Bank's mistaken reading of the CFPB Bulletin 2013-12 (dated 10/15/2013). The CFPB bulletin does not address communications sent following a party's knowledge that the party is represented by an attorney, which is the cause of action currently plead by the Homeowner. The Homeowner's cause of action under Fla. Stat. 559.72(18) finds its federal analog in 15 USC 1692c(b)(2). The FCCPA provision predates the FDCPA analog, and both provisions contain identical language. Hence, the FDCPA's prohibition on sending collection letters directly to a represented party finds its roots in the FCCPA.

The FDCPA contains some additional rights concerning debt collection communication that are not present in the FCCPA. Relevant here are the rights found in 15 USC 1692c(c). That section requires debt collectors to respect a consumer's wishes that the collector cease further communication regarding debt collection. This separate right is the topic of the CFPB bulletin, and the bulletin makes no analysis of the strictures on debt collection communication with a represented party under 15 USC 1692c(b)(2). The Bank is arguing against a ghost. It applies an analysis to rights and obligations under a different section of the statute that is unrelated to the action brought by the Homeowner.

The Bank's mistakes are not limited to applying an analysis to the wrong statutory section. It also places words into the CFPB Bulletin that are not there. As the Bank would have it, "periodic statements are expressly excluded as debt collection under the Bulletin" and any periodic statement sent to a borrower cannot violate the FDCPA or FCCPA. (Motion to dismiss p3-4). Under the Bank's theory, any false or harassing language in a mortgage statement is

afforded absolute immunity from FDCPA and FCCPA claims simply because it is in a mortgage statement. The Bank’s misreading cannot be reconciled with the text of the CFPB Bulletin. The portion of the bulletin that addresses the FDCPA is on page 6. It is three paragraphs long and makes up about a seventh of the bulletin’s total content. That portion makes clear that it is “an advisory opinion interpreting the FDCPA ‘cease communication’ requirement in relation to the 2013 Mortgage Servicing Rules,” which require that banks send out periodic statements under federal regulations. The CFPB concludes that “the FDCPA ‘cease communication’ option does not make servicers that are debt collectors liable under the FDCPA if they comply with certain [federal regulations].”<sup>1</sup> In other words, to the extent that the FDCPA’s cease communication provision in 15 USC 1692c(c) conflicts with any other federal regulations, then the other federal regulations will govern. As set forth below, the Homeowner’s separate rights in Fla. Stat. 559.72(18) and 15 USC 1692c(b)(2) do not contradict federal regulations, because a lender can simultaneously comply with the FCCPA and the regulations by sending them to the borrower’s attorney. Accordingly, the text of the mortgage statements controls the analysis as to whether they are communications related to debt collection. Contrary to the Bank’s belief, the CFBP Bulletin does not address the Homeowner’s rights as set forth in this case. The Bank’s argument is without merit.

### III. There is no TILA preemption

12 CFR 1026.41 of Regulation Z promulgated under the Truth in Lending Act (TILA)

---

<sup>1</sup>The bulletin permits the following communications to be sent notwithstanding the receipt of a borrower’s demand to cease communication under the FDCPA: Regulation X (12 CFR 1024.35 (error resolution), 1024.36 (requests for information), 1024.37 (force-placed insurance), and 1024.41 (loss mitigation)) and Regulation Z (12 CFR 1026.20(d) (adjustable-rate mortgage (ARM) initial interest rate adjustment) and 1026.41 (periodic statement)).

requires that mortgage servicers send mortgage statements to a borrower. This requirement is compatible with regulations under Fla. Stat. 559.72(18) of the FCCPA and 15 USC 1692c(a)(1) of the FDCPA, which requires a lender to send communications in the course of debt collection to the borrower’s attorney rather than the borrower. TILA regulations are compatible with the FCCPA and FDCPA because compliance with both occurs where the mortgage servicer sends the mortgage statements to the borrower’s attorney rather than directly to the borrower.

In order to find federal preemption of state law, there must be an “identification of ‘actual conflict’” between state and federal law. *Geier v. American Honda Motor Co.*, 529 US 861, 884 (2000). This only occurs “where it is impossible for a private party to comply with both state and federal requirements.” *English v. General Elec. Co.*, 496 US 72, 79 (1990). In other words, preemption requires an “irreconcilable conflict” between the two laws. See *Johnson v. Midland Funding, LLC*, 823 F. 3d 1334, 1340 (11th Cir. 2016). “Pre-emption of state law by federal statute or regulation is not favored.” *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 US 311, 317 (1981). Hence, “a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal act.” *Graham v. R.J. Reynolds Tobacco Co.*, 782 F.3d 1261, 1275 (11th Cir.2015). Moreover, when evaluating preemption arguments, a trial court must start with a “presumption against preemption” which means the court must assume “that the historic police powers of the States were not to be superseded by federal law unless that was the clear and manifest purpose of Congress.” *Id.*

Here, nothing in Regulation Z prohibited the Trust from sending mortgage statements to the Homeowner’s attorney. A mortgage statement sent to the Homeowner’s attorney is the same as sending it to the Homeowner, since the attorney is his agent. The Bank is looking for an

irreconcilable conflict where none exists because compliance is possible with the FCCPA, FDCPA, and TILA. It should be noted that lenders have frequently sought federal court determinations that the FCCPA's federal counterpart conflicts with TILA or some other federal law. Federal courts have consistently declined to find such a conflict. See *LeahyFernandez v. Bayview Loan Servicing, LLC*, 159 F. Supp. 3d 1294, 1303 (M.D. Fla. 2016) (Finding no conflict between TILA and the FDCPA); *Roth v. Nationstar Mortgage*, Case No. 2:15-cv-783-FtM-29MRM (M.D. Fla. July 1, 2016) (Finding no conflict between TILA and the FDCPA); *Johnson v. Midland Funding, LLC*, 823 F. 3d 1334, 1340-42 (11th Cir. 2016) (Finding no conflict between the bankruptcy code and the FDCPA.); *Kelliher v. Target Nat. Bank*, 826 F. Supp. 2d 1324, 1329 (MD Fla. 2011) ("While TILA requires certain disclosures, the FCCPA prohibits communications that attempt to collect consumer debts. Creditors can comply with both laws by disclosing what is required under TILA and Regulation Z while stopping short of debt collection.").

The Bank does not find relief in *Marcotte v. General Elec. Capital Services, Inc.*, 709 F. Supp. 2d 994 (S.D. Cal. 2010). In that case the borrower sued under California's consumer protection statute. The trial court found that the statute "carves out billing statements from the list of prohibited communications and explicitly permits debt collectors to send 'statements of account.'" *Id.* at 997. It further found that the FDCPA did not prohibit creditors from sending out such statements. *Id.* Hence, the consumer had no cause of action under either statue, and neither statute fell within the territory under TILA's purview.

In refusing to apply *Marcotte*, one federal court in Florida found the FCCPA's difference with the California statute to be dispositive: "California's consumer debt collection law includes

a ‘carve-out’ provision for periodic statements, and the FCCPA has no such carve out.... Furthermore,... the *Marcotte* court suggests that language beyond that required by TILA could transform periodic statements into demand letters.” *Kelliher v. Target Nat. Bank*, 826 F. Supp. 2d 1324, 1329 (MD Fla. 2011). The *Kelliher* case correctly points out that the FCCPA is too different from the California statute to warrant the type of analysis produced in the *Marcotte* opinion.

After the *Marcotte* court found that its consumer claimant had no cause of action under the federal and state statutes, it continued in dicta to provide an advisory opinion as to what legal analysis would follow in a hypothetical situation where a state statute might conflict with rights under TILA. *Marcotte* at 999-1002. Obviously the dicta is not binding, and the judge’s erroneous decision to render an advisory opinion punctuates the court’s erroneous in dicta analysis of its hypothetical.

The *Marcotte* court’s hypothetical assumes that a state statute would require that a creditor “refrain from sending” a periodic statement. *Id.* at 1000. This juncture of the analysis reveals an obvious divergence from the FCCPA. Unlike *Marcotte*’s hypothetical statute, the FCCPA does not prohibit a creditor from sending a periodic statement.

The *Marcotte* hypothetical also involves an open-ended credit agreement for a credit card, which the *Marcotte* court unconvincingly thinks is a key to its hypothetical’s analysis. Under a open-ended credit agreement, 12 C.F.R. § 226.7 of TILA, Regulation Z requires that credit card companies provide a periodic statement. This contrasts with the mortgage involved in this case,

which is not an open-ended credit agreement.<sup>2</sup> The *Marcotte* court continues with a hyper-technical analysis. It makes the rather silly argument that it is impossible for an attorney to represent a debtor for all debt under a credit card because the federal regulations under TILA preempt the scope of the attorney's representation and limit it to "a particular transaction" under the open-ended credit agreement. *Id.* at 1001. *citing* 12 .CFR. Part 226, Supp. I, OSC, 226.2(a)(22)-2. Even if this point was sufficient to pass the smell test, it is clear that this analysis depends upon a creditor and debtor relationship that is very different than the mortgage relationship here. The *Marcotte* court explains, "the distinguishing feature of open-ended credit plans like the one at issue here are repeated transactions — not a single transaction" and "billing statements from credit-card companies generally contain several transactions." *Id.* Grounded in this legal framing, the court makes a leap in its legal analysis based upon a policy consideration: multi-billion dollar credit card companies are too dumb to read a document that explains the scope of the attorney's representation. *Id.* As the court puts it: "A credit-card company should not have to determine whether the consumer is represented with respect to all, some, or none of those transactions and issue separate billing statements to the lawyer and to the consumer." *Id.* The *Marcotte* court's analysis that an attorney cannot represent a consumer for "repeated transactions" is not applicable to mortgages. Mortgages are not a series of credit transactions like credit cards. Instead, mortgages are a single transaction: a bank loans money in exchange for a security interest and a repayment agreement. The *Marcotte* analysis for credit cards finds

---

<sup>2</sup>The hypothetical applies 12 CFR. § 226.7's requirement for periodic statements in a credit card situation. The obligation to sent a mortgagor monthly statements flows from a different regulation, 12 CFR 1026.41

infertile ground in the mortgage context.

Equally concerning is the *Marcotte* court's opinion that an attorney cannot be a natural person. *Id.* The error in this analysis is obvious.

The *Marcotte* court also ignores issues of federalism, states rights, and separation of powers. The central question ignored in *Marcotte* hypothetical is: Can a court adopt an interpretation of a regulation that repeals statutes adopted by state and federal legislatures where such regulation was promulgated by an agency under the federal executive branch? The answer to that question would likely be no. The rules of interpretation advise against invalidating laws. The statutes empowering agencies to adopt regulations would likely be narrowly construed so that it would not override state and federal consumer protection statutes. An agency operating under the executive branch could not rewrite a legislatively adopted federal statute such as 15 USC 1692c(a)(1) of the FDCPA, which is identical to Fla. Stat. 559.72(18) of the FCCPA. And the analysis would need to address how much leash to give federal agencies to contradict rights that currently are on the state law books, especially where the enabling act fails to expressly provide the agency with the directive to take away state consumer protections. Given the current make up of the federal Supreme Court, that leash is likely very short.

The Court can resolve this issue without getting stuck in a briar patch of issues that involve the divide between state and federal powers, or agency and legislative powers. This Court can also avoid the legal gymnastics employed by the *Marcotte* hypothetical in a credit card context. It should follow the common-sense analysis in *Kelliher*: "Creditors can comply with both laws." *Kelliher*, 826 F. Supp. 2d at 1329. In the mortgage lending context, lenders can simultaneously comply with TILA and the FCCPA by sending the periodic statements to the

borrowers attorney. They can also comply with both by following the advice given by the *Kelliher* court: narrowly tailor the periodic statements to the information required by TILA and remove any debt-collection language that permits the statement to fall within the purview of the FCCPA. Because the FCCPA and TILA can be harmonized, no preemption occurs.

### **CONCLUSION**

The Bank's motion to dismiss lacks merit and this court should deny the motion and provide the Bank with 30 days to file an answer.

### **CERTIFICATE OF SERVICE**

**I CERTIFY** that on this day of July 25, 2017, a copy of the foregoing was furnished by eservice to Karin L. Posser, Esq., McGlinchey Stafford at [kposser@mcglichey.com](mailto:kposser@mcglichey.com), Robertson, Anshutz & Schneid, P.L. at [mail@rasflaw.com](mailto:mail@rasflaw.com), Michelle Meulke, Esq., Brevard County Legal Aid at [eservice@brevardlegalaid.org](mailto:eservice@brevardlegalaid.org), and Matthew A. Sirmans, Esq., Florida House Financing Corp. at [efiling@floridahousing.org](mailto:efiling@floridahousing.org).

/s/ Nick Vidoni  
Nicholas A. Vidoni, Esquire  
WATSON, SOILEAU, DeLEO & BURGETT, P.A.  
3490 North U.S. Highway 1  
Cocoa, Florida 32926  
(321)631-1550; Fax (321)631-1567  
Attorneys for Defendants  
Florida Bar No.: 0095776  
E-mail: [vidoni@brevardlawgroup.com](mailto:vidoni@brevardlawgroup.com)

IN THE CIRCUIT COURT OF THE  
18th JUDICIAL CIRCUIT, IN AND  
FOR BREVARD COUNTY, FLORIDA

CASE NO.: 2015-CA-016515

FLAGSTAR BANK, FSB.

Plaintiff,

v.

JACQUELINE V. LETTMAN A/K/A  
JACQUELINE LETTMAN, et al.,

Defendants.

/

**PLAINTIFF'S NOTICE OF FILING SUPPLEMENTAL  
AUTHORITY IN SUPPORT OF MOTION TO DISMISS COUNTERCLAIM**

Plaintiff, FLAGSTAR BANK, FSB (“FSB” or “Plaintiff”), by and through the undersigned counsel, hereby files its Supplemental Authority in Support of Motion to Dismiss Defendant/Counter-Plaintiff, JACQUELINE V. LETTMAN’S (“Defendant”) Counterclaim and gives notice of the following, copies of which are attached hereto:

1. *Havey v. Discover Financial Services LLC*, 2015 WL 6965138 (2015) (finding periodic credit statements were not attempts to collect a debt in violation of the FCCPA as a matter of law);
2. *Hurtubise v. PNC Bank, N.A.*, 2015 WL 3948192 (2015) (holding that “communications which are informational in nature are outside the application of the debt collection statutes”);
3. *Vanecek v. Discover Fin. Serv.*, slip op., No. COCE14023621 (Fla. Broward Ctny. Ct. Apr. 28, 2015) (holding “monthly billing statement was not an attempt to collect a debt as a matter of law, but rather an informational disclosure”);

4. *Robinson v. Wells Fargo Bank, N.A.*, slip op., No. 05-2014-SC-017653 (Fla. Brevard Cnty. Ct. Oct. 9, 2014) (ruling in favor of defendant as to informational communications, holding plaintiff failed to state a claim for violation of the FCCPA);

5. *Schuepfer v. Discover Fin. Servs.*, slip op., No. 2014-SC-10480-O (Fla. Orange Cnty. Ct. Mar. 6, 2015) (finding that letter sent for information and loss mitigation purposes does not violate the FCCPA);

6. *Sigh v. Bank of Am. Corp.*, slip op., No. 2012-SC-007105 (Fla. Orange Cnty. Ct. Mar. 6, 2015)

7. *Henry v. Bank of Am. Corp.*, slip op., No. 2012-SC-007101 (Fla. Orange Cnty. Ct. Feb. 17, 2013)

8. *Sosa v. Bank of Am. Corp.*, slip op., No. 2013-SC-007776 (Fla. Pinellas Cnty. Ct. Feb. 6, 2014) (granting summary disposition in favor of defendant, holding specifically that the communications attached to the statement of claim were not attempts to collect a debt and were therefore not violations of the FCCPA);

9. *Nelson v. Bank of Am. Corp.*, slip op., No. 2013-SC-014771 (Fla. Hillsborough Cnty. Ct. Mar. 11, 2014)

10. *Gianos v. Wells Fargo Bank*, slip op., No. 12-01099 COCE 56, 2013 WL 875770 (Fla. Broward Cnty. Ct. Mar. 1, 2013) (granting defendant's motion for summary judgment and holding communications from defendant was not an attempt to collect a debt);

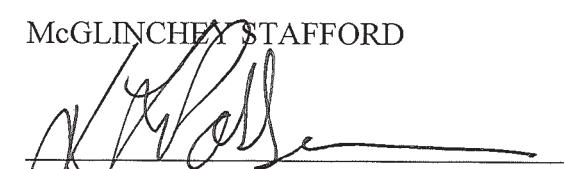
11. *Remante v. Bank of Am. Corp.*, slip op., No. slip op., No. 2014-SC-004132 (Fla. Hillsborough Cnty. Ct. Oct. 14, 2014) (granting summary disposition in favor of defendant, holding communications involved loss mitigation and were not debt collection);

12. *Pineiro v. Bank of Amer.*, slip op. No. 2013-SC-000159 (Fla. Pinellas Cnty. Ct. Apr. 22, 2013) (granting summary disposition in favor of defendant, holding communications involved loss mitigation and were not debt collection);

13. *Morales v. Discover Fin. Servs.*, slip op., No. 2014-SC-000660 (Fla. Citrus Cnty. Ct. Feb. 11, 2015) (granting summary disposition in favor of Discover and holding communication from defendant was not an attempt to collect a debt).

Respectfully submitted,

McGLINCHEY STAFFORD



Karin L. Posser  
Florida Bar No. 747041  
10407 Centurion Parkway North  
Suite 200  
Jacksonville, Florida 32256  
Tel: (904) 224-4494  
Fax: (904) 212-1465  
Email: [kposser@mcglinchey.com](mailto:kposser@mcglinchey.com)  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished, via the E-portal and via the following manner on this 25th day of October, 2017, to the parties listed below:

**VIA E-PORTAL**

Robertson, Anschutz & Schneid, P.L.  
6409 Congress Ave., Suite 100  
Boca Raton, FL 33487  
[mail@rasflaw.com](mailto:mail@rasflaw.com)

Brevard County Legal Aid  
Michelle Meulke  
1038 Harvin Way, Ste 100  
Rockledge, FL 32955-3254  
[Eservice@brevardlegalaid.org](mailto:Eservice@brevardlegalaid.org)  
[michelle.meulke@brevardlegalaid.org](mailto:michelle.meulke@brevardlegalaid.org)  
Counsel for Jacqueline V. Lettman

Florida House Financing Corporation  
Matthew A. Sirmans  
227 N. Bronough Street  
Ste 5000  
Tallahassee, FL, 32301  
[efiling@floridahousing.org](mailto:efiling@floridahousing.org)  
Counsel for Florida Housing Finance Corp.



A handwritten signature in black ink, appearing to read "M. Meulke". Below the signature, the word "Attorney" is printed in a smaller, sans-serif font.

EXHIBIT

1

2015 WL 6965138 (Fla.Cir.Ct.) (Trial Order)  
Circuit Court of Florida.  
Twelfth Judicial Circuit  
Small Claims Division  
Manatee County

Barbara HAVEY, Plaintiff/Counter-Defendant,

v.

DISCOVER FINANCIAL SERVICES LLC, Defendant/Counter-Plaintiff.

No. 2015-SC-18.

October 22, 2015.

**Final Judgment in Favor of Discover Bank on Plaintiff's Statement of Claim and Discover Bank's Counterclaim**

Trenton Leigh, Esq., Kaufman, Englett & Lynd, PLLC, 150 N. Orange Avenue, Suite 100, Orlando, Florida 32801, tlegh@kelattorneys.com, lmurhy @kelattorneys.com.

Laura Westerman Tanner, Esq., Burr & Forman LLP, 201 North Franklin Street, Suite 3200, Tampa, Florida 33602, ltanner@burr.com, cgregory@burr.com.

Mark D. Singer, Judge.

\*1 THIS CAUSE came for hearing on Defendant's, DISCOVER BANK, ("Discover Bank"), Motion for Summary Disposition before this Court on October 5, 2015, with respect to the Claims of Plaintiff, Barbara Havey ("Plaintiff") and Discover Bank's Counterclaim against Plaintiff. The Court having reviewed the pleadings and evidence on file, hearing argument of counsel, and having been otherwise duly advised in the premises, it is hereby **ORDERED AND ADJUDGED:**

1. This Court has jurisdiction of the subject matter and the parties.

***PLAINTIFF'S STATEMENT OF CLAIM***

2. The Florida Consumer Collection Practices Act ("PCCPA") and its federal counterpart, the Fair Debt Collection Practices Act, explicitly prohibit parties from engaging in abusive, deceptive, and/or unfair debt collection practices.

3. Plaintiff alleges that her lawyers sent a notice of attorney representation to Discover Bank on July 25, 2014 and that Discover violated the FCCPA by mailing Plaintiff periodic credit card statements on October 5, 2014 and November 5, 2014 when it had actual knowledge she was represented by an attorney.

4. The periodic credit card statements were not attempts to collect a debt in violation of the FCCPA as a matter of law. Instead, the periodic credit card statements were informational disclosures required to be delivered directly to the consumer by the federal Truth in Lending Act. *See* 15 U.S.C. § 1637(b). Furthermore, as a state law, the FCCPA cannot preclude the delivery of a periodic credit card statement to the consumer that is required to be sent by federal law. Any application of the FCCPA which contradicts these requirements of federal law is preempted by the Truth in Lending Act's preemption clause. *See* 15 U.S.C. § 1610(a)(1); *see also Vanecek v. Discover Fin. Sews., LLC*, Case No. COCE 14023621, ¶ 4 (Fla. Broward County Ct. April 28, 2015).

5. While the periodic credit card statements include additional language not specifically required by the Truth in Lending Act, the additional language is informational and does not violate the FCCPA.

6. The Court hereby enters Judgment in favor of Defendant, Discover Bank, a Corporation, against Plaintiff, Barbara Havey, with respect to her claims raised in her Statement of Claim.

#### ***DISCOVER BANKS'S COUNTERCLAIM***

7. Final Judgment is also hereby entered in favor of Discover Bank and against Plaintiff on Discover Bank's Counterclaim in the amount of \$6,647.00. Discover Bank, located at 2500 Lake Cook Road, Riverwoods, IL 60015, shall recover from Plaintiff, Barbara Havey, whose address is 3615 101<sup>st</sup> Avenue East, Parrish, Florida 34219, and whose social security number ends in [Text redacted in copy.] the sum of § 6,647.00, plus attorneys' fees and interest accruing at the statutory rate of 4.75%, all for which let execution issue forthwith.

8. It is further ordered and adjudged that Barbara Havey shall complete Florida Small Claims Rules Form 7.343 (Fact Information Sheet) and return it to Discover Bank's attorney within 45 days from the date of this final judgment, unless the final judgment is satisfied or a motion for new trial or notice of appeal is filed. **The defendant should NOT file the completed form 7.343 with the court.**

#### ***ATTORNEYS' FEES***

\*2 9. The Court reserves ruling on attorneys' fees for this action and hereby retains jurisdiction of this case to determine entitlement and amount of attorney's fees, costs, and any other damages owed to Discover Bank, and to enter any further orders that are proper, including, but not limited to, orders in aid of execution of the judgment and to compel Plaintiff to complete form 7.343 and return it to Discover Bank's attorney or as otherwise may be just and necessary.

Entered in Manatee County, Bradenton, Florida this \_\_\_\_\_ day of October, 2015.

Honorable Judge Mark D. Singer

*Copies provided to:* See Attached Service List

#### ***SERVICE***

Trenton Leigh, Esq.

Kaufman, Englett & Lynd, PLLC

150 N. Orange Avenue, Suite 100

Orlando, Florida 32801

tleg@kelattorneys.com

lmurphy@kelattorneys.com

Laura Westerman Tanner, Esq.

Burr & Forman LLP

201 North Franklin Street, Suite 3200

Tampa, Florida 33602

ltanner@burr.com

cgregory@burr.com

10-22-15

<<signature>>

Judicial Assistant

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

BARBARA HAVEY, )  
                        )  
Plaintiff/Counter-Defendant, )  
                        )  
v. )  
                        )  
DISCOVER FINANCIAL SERVICES LLC, )  
                        )  
Defendant/Counter-Plaintiff. )  
                        )  
                        )

CASE NO. 2015-SC-18

**DISCOVER BANK'S DECLARATION IN SUPPORT OF ITS**  
**MOTION FOR SUMMARY DISPOSITION**

I make this declaration on personal knowledge which is based on my professional responsibilities and duties. I am authorized to sign the declaration on behalf of Discover Bank ("Discover") with which Barbara Havey ("Havey") has a credit card account ending in # [REDACTED] (the "Account").

1. Discover maintains records for the Account in the course of Discover's regularly conducted business activity. As part of my job responsibilities for Discover, I am familiar with the type of records maintained by Discover in connection with the Account.

2. The information in this declaration is taken from Discover's business records. I have personal knowledge of Discover's procedures for creating these records. They are made at or near the time of occurrence of the matters recorded by persons with personal knowledge of the information in the business records, or from information transmitted by persons with personal knowledge. They are also kept in the course of Discover's regularly conducted business activities, and it is the regular practice of Discover to make such records.

3. On or about October 17, 2008, Havey opened the Account.

4. As a condition for opening of the Account with Discover, Havey agreed to the terms outlined in the Cardmember Agreement. A true and correct copy of the Cardmember Agreement for Havey's Account is attached as a business record of Discover as **EXHIBIT 1**.

5. The Cardmember Agreement is the agreement between Discover and Havey applicable to the Account and Havey accepted the terms of the Cardmember Agreement by failing to cancel his card and/or by using his card within 30 days of his receipt of his Discover card. *See EXHIBIT 1, p. 1.*

6. Havey defaulted under the terms of the Cardmember Agreement by failing to make the required minimum payment in May 2014, and all subsequent minimum payments due

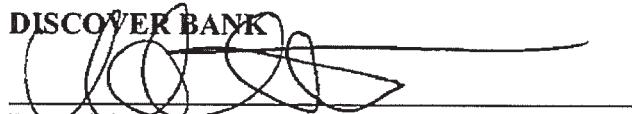
for the Account. A statement for the Account was sent on December 2, 2014 and provides a breakdown of the amounts due and owing to Discover. A true and correct copy is attached as a business record of Discover as **EXHIBIT 2**.

7. The attached business records of Discover show Havey defaulted, the default has not been cured, and Discover is owed \$6,647.00. *See EXHIBIT 2.*

8. Discover has retained Burr and Forman, LLP to prosecute this action to collect on the Account and Havey is obligated to pay a reasonable fee and reimburse costs incurred in connection with the firm's services. This declaration does not testify to the attorney's fees and costs incurred in this action.

**Verification**

Under penalties of perjury, I declare that I have read the foregoing Declaration in Support of Discover Bank's Motion for Summary Disposition and that the facts stated in it are true.

DISCOVER BANK  
  
By: Michael Stack  
Title: Manager  
Date: July 7, 2015



## CARDMEMBER AGREEMENT

Thank you for choosing Discover® card. This Agreement explains the current terms and conditions of your Account. The enclosed Pricing Schedule is part of this Agreement. Please read this Agreement, including the Pricing Schedule, carefully. Keep them for your records. Contact us if you have any questions. We have included a "Definitions" section for your reference on page 4.

### ACCEPTANCE OF AGREEMENT

You accept this Agreement if you do not cancel your Account within 30 days after receiving a Card. You also accept this Agreement if you or an Authorized User use the Account. You may, however, reject the "Arbitration of Disputes" section as explained in that section.

### CHANGES TO YOUR AGREEMENT

The rates, fees and terms of this Agreement may change from time to time. We may add or delete any term to this Agreement. If required by law, we will give you advance written notice of the change(s) and a right to reject the change(s). We will not charge any fee or interest charge prohibited by law.

### USING YOUR ACCOUNT

<b>Permitted Uses</b>	You may use your Account for Purchases, Balance Transfers and Cash Advances. You may not use it for illegal transactions.	
<b>Authorized Users</b>	You may request additional Cards for Authorized Users. You must notify us if you wish to cancel the authority of an Authorized User to use your Account.	
<b>Joint Accounts</b>	If your Account is a joint Account: <ul style="list-style-type: none"> <li>• each of you agrees to be liable individually and jointly for the entire amount owed on the Account; and</li> <li>• any notice we mail to an address provided by either of you for the Account will serve as notice to both of you.</li> </ul>	
<b>Checks</b>	If we provide you with Checks, we will tell you whether we will treat the Check as a Purchase, Balance Transfer or Cash Advance. You may not use these Checks to pay any amount you owe us.	
<b>Credit Authorizations</b>	We may not authorize a transaction for security or other reasons. We will not be liable to you if we decline to authorize a transaction or if anyone refuses your Card, Check or Account number.	
<b>Credit Lines</b>	We will tell you what your Account credit line is. You must keep your Account balance below your Account credit line. If you do not, we may request immediate payment of the amount by which you exceed it. We may establish a lower credit line for Cash Advances.	We may increase or decrease your Account credit line or your Cash Advance credit line without notice. We may delay increasing your available credit by the amount of any payment that we receive for up to 10 business days.

### FEES (See your Pricing Schedule for Additional Fees)

<b>Late Fee</b>	If you do not pay the Minimum Payment Due by the Payment Due Date, we will charge you a Late Fee. The fee is \$25 if you were not charged a Late Fee during any of the prior six billing periods.	Otherwise, the fee is \$35. This fee will never exceed the Minimum Payment Due that was due immediately prior to the date on which the fee was assessed.
<b>Returned Payment Fee</b>	If you make a payment that is not honored by your financial institution, we will charge you a Returned Payment Fee even if the payment is honored after we re-submit it. The fee is \$25 if you were not charged a Returned Payment Fee during any of the prior six	billing periods. Otherwise, the fee is \$35. This fee will never exceed the Minimum Payment Due that was due immediately prior to the date on which the payment was returned to us.
<b>Returned Check Fee</b>	We will charge you a Returned Check Fee each time we decline to honor a Check. The fee is \$25 if you were not charged a Returned	Check Fee during any of the prior six billing periods. Otherwise, the fee is \$35. This fee will never exceed the amount of the Check.
<b>Research Fee</b>	We may charge you a Research Fee of \$5 for each copy of a billing statement or sales slip that you request. We will not charge this fee if you request copies in connection with a billing dispute.	

## **ANNUAL PERCENTAGE RATES ("APRs") (See your Pricing Schedule for the APRs, including Penalty APRs, that apply to your Account)**

<b>Variable APRs</b>	Your Pricing Schedule may include variable APRs. These APRs are determined by adding the number of percentage points that we specify to the Prime Rate. Variable APRs will increase or decrease when the Prime Rate changes. The APR change will take effect	on the first day of the billing period that begins during the same calendar month that the Prime Rate changes. An increase in the APR will increase your interest charges and may increase your Minimum Payment Due.
<b>Penalty APR</b>	<b>When It Applies</b> Each time that you do not pay the Minimum Payment Due by the Payment Due Date we may: <ul style="list-style-type: none"><li>• terminate any promotional APRs on new transactions; and</li><li>• increase your APRs for new transactions to Penalty APRs.</li></ul> We will not apply a Penalty APR to Cash Advances. <b>How It Affects Your Account</b> To determine the variable Penalty APR for a new transaction: <ul style="list-style-type: none"><li>• We add up to 5 additional percentage points to the otherwise applicable APR.</li><li>• We set your Penalty APR based on your creditworthiness and other factors. These factors include your current APRs and Account history.</li><li>• When we first determine the Penalty APR, we use the Prime</li></ul>	Rate that is in effect for the billing period in which you did not pay the Minimum Payment Due by the Payment Due Date.  <b>EXAMPLE:</b> Assume the promotional rate for Purchases is 2.99% and the standard rate for Purchases is 15.99%. If you pay late, the rate for all new Purchases could increase up to a variable rate of 20.99%.  <b>We Will Notify You</b> We will notify you of the date a Penalty APR will take effect. The Penalty APR will only apply to new transactions with a Transaction Date more than 14 days after we provide the notice to you.  <b>We May Reduce It</b> We will review your Account from time to time as required by law to determine if any Penalty APR should be reduced.

## **MAKING PAYMENTS** your Account

<b>Payment Instructions</b>	<ul style="list-style-type: none"><li>• You must pay us in U.S. dollars. All checks must be drawn on funds on deposit in the U.S.</li><li>• You must pay us for all amounts due on your Account. This includes charges made by Authorized Users.</li><li>• We may refuse to accept a payment in a foreign currency. If we do accept it, we will charge your Account our cost to convert it to U.S. dollars.</li></ul>	<ul style="list-style-type: none"><li>• We can accept late payments, partial payments or payments marked "payment in full" or with any other restrictive endorsement without losing any of our rights under this Agreement.</li><li>• We credit your payments in accordance with the terms contained on your billing statement.</li><li>• If you mail your payment to an address other than the address designated on your billing statement, there may be a delay in processing and crediting the payment to your Account.</li></ul>
<b>Minimum Payment Due</b>	You may pay the entire New Balance shown on your billing statement at any time. Each billing period you must pay at least the Minimum Payment Due by the Payment Due Date shown on your billing statement. The Minimum Payment Due will be any amount past due plus the greater of: <ul style="list-style-type: none"><li>• \$40;</li><li>• 2% of the New Balance shown on your billing statement (plus \$40 if the New Balance includes a Balance Transfer balance); or</li></ul>	<ul style="list-style-type: none"><li>• any Interest Charges and Late Fee shown on your billing statement, plus \$20.</li></ul> <p>The Minimum Payment Due may also include amounts by which you exceed your Account credit line. However, it will never exceed the New Balance. When we calculate the Minimum Payment Due, we may subtract from the New Balance certain fees added to your Account during the billing period. The Minimum Payment Due is rounded up to the nearest dollar.</p>
<b>How We Apply Payments</b>	We apply payments and credits at our discretion, including in a manner most favorable or convenient for us. In all cases, we will apply payments and credits as required by applicable law. Each	billing period, we will generally apply amounts you pay that exceed the Minimum Payment Due to balances with higher APRs before balances with lower APRs as of the date we credit your payment.

## **INTEREST CHARGES** Account

<b>How We Calculate Interest Charges—Daily Balance Method (including current transactions)</b>	We calculate interest charges each billing period by first figuring the "daily balance" for each Transaction Category. Transaction Categories include standard Purchases, standard Cash Advances and different promotional balances, such as Balance Transfers.  <b>How We Figure the Daily Balance for Each Transaction Category</b> <ul style="list-style-type: none"><li>• We start with the beginning balance for each day. The beginning balance for the first day of the billing period is your balance on the last day of your previous billing period.</li><li>• We add any interest charges accrued on the previous day's daily balance and any new transactions and fees. We add any new transactions or fees as of the later of the Transaction Date or the first day of the billing period in which the transaction or fee posted to your Account.</li><li>• We subtract any new credits and payments.</li></ul>	<ul style="list-style-type: none"><li>• We make other adjustments (including those adjustments required in the "Paying Interest" section).</li></ul> <b>How We Figure Your Total Interest Charges</b> <ul style="list-style-type: none"><li>• We multiply the daily balance for each Transaction Category by its daily periodic rate. We do this for each day in the billing period. This gives us the interest charges for each Transaction Category. To get a daily periodic rate, we divide the APR that applies to the Transaction Category by 365.</li><li>• We add up all the daily interest charges. The sum is the total interest charge for the billing period.</li></ul> <b>How We Include Fees</b> <p>We add Balance Transfer Fees to the applicable Balance Transfer Transaction Category. We add Cash Advance Fees to the applicable Cash Advance Transaction Category. We add all other fees to the standard Purchase Transaction Category.</p>
--	--	---

## INTEREST CHARGES

<b>Paying Interest</b>	<p><b>When Interest Charges Begin</b> We begin to impose interest charges on a transaction, fee or interest charge from the day we add it to the daily balance. We continue to impose interest charges until you pay the total amount you owe us. You can avoid paying interest on Purchases as described below. However, you cannot avoid paying interest on Balance Transfers or Cash Advances.</p> <p><b>How to Avoid Paying Interest on Purchases ("Grace Period")</b> If you paid the New Balance on your previous billing statement by</p>	<p>the Payment Due Date shown on that billing statement, we will not impose interest charges on new Purchases, or any portion of a new Purchase, paid by the Payment Due Date on your current billing statement. New Purchases are Purchases that first appear on the current billing statement.</p> <p><b>How We Apply Payments May Impact Your Grace Period</b> If you do not pay your New Balance in full each month, then, depending on the balance to which we apply your payment, you may not get a grace period on new Purchases.</p>
------------------------	--	--

## OTHER IMPORTANT INFORMATION

<b>Default</b>	<p>You are in default if:</p> <ul style="list-style-type: none"><li>• you file bankruptcy or another insolvency proceeding is filed by you or against you;</li><li>• we have a reasonable belief that you are unable or unwilling to repay your obligations to us;</li><li>• you die or are legally declared incompetent or incapacitated;</li></ul>	<p>• you fail to comply with the terms of this Agreement or any Agreement with us or an Affiliate, including failing to make a required payment when due, exceeding your Account credit line or using your Card or Account for an illegal transaction.</p> <p>If you are in default, we may declare the entire balance of your Account immediately due and payable without notice.</p>
<b>Collection Costs</b>	<p>If we use an attorney to collect your Account, we may charge you our legal costs as permitted by law. These include reasonable attorneys' fees, court or other collection costs, and fees and costs of any appeal.</p>	
<b>Merchant Disputes</b>	<p>If you have a dispute with a merchant, you may request a credit to your Account. If we resolve the dispute in your favor, we will issue a credit to your Account. You assign to us your claim for the credited amount against the merchant and/or any third party. At our request, you agree to provide this assignment in writing.</p>	
<b>Automatic Billing Arrangements</b>	<p>You may set up automatic billing with a merchant. If your Account number or Card expiration date changes, you authorize us to provide this updated information to any such merchant at our discretion. You must contact the merchant directly if you wish to stop automatic billing.</p>	
<b>Our Privacy Policy</b>	<p>We send you our Privacy Policy when you open your Account and annually. Contact us or visit Discover.com if you would like a copy. Please read it carefully. It summarizes:</p> <ul style="list-style-type: none"><li>• the personal information we collect;</li></ul>	<ul style="list-style-type: none"><li>• how we safeguard its confidentiality and security;</li><li>• when it may be shared with others; and</li><li>• how you can limit our sharing of this information.</li></ul>
<b>Reporting to Credit Reporting Agencies</b>	<p>We may from time to time review your credit, employment and income records. We may report the status and payment history of your Account to credit reporting agencies and other creditors. We normally report to credit reporting agencies each month.</p>	<p>If you believe that information we reported is inaccurate or incomplete, please write us at Discover, PO Box 15316, Wilmington, DE 19850-5316. Please include your name, address, home phone number and Account number.</p>
<b>Our Communications with You</b>	<p>You agree that our personnel may listen to or record phone calls between you and our representatives without additional notice to you including calls we make to collect debts. We may use any medium permitted by law including mail, live telephone calls, automated telephone equipment, prerecorded telephone calls, e-mail, text messages and calls to your cell phone (which may be</p>	<p>at your expense) to contact you about your Account or to offer you products or services that may be of value to you. If you prefer not to be contacted in one or more of these ways, you must either call us at 1-800-DISCOVER (1-800-347-2683) or write to us at Discover, PO Box 30961, Salt Lake City, UT 84130-0961. Please include your name, address and Account number.</p>
<b>Unauthorized Use</b>	<p>You must notify us immediately if:</p> <ul style="list-style-type: none"><li>• your Card is lost or stolen; or</li><li>• you believe someone is using your Account or a Card without your permission.</li></ul>	
<b>Cancellation of Your Account</b>	<ul style="list-style-type: none"><li>• You may cancel your Account. You will remain responsible for any amount you owe us under this Agreement.</li><li>• Any joint Accountholder may cancel a joint Account. However,</li></ul>	<p>both of you will remain responsible for paying all amounts owed.</p> <ul style="list-style-type: none"><li>• We may cancel, suspend or not renew your Account at any time without notice.</li></ul>

<b>Purchases and Cash Advances in Foreign Currencies</b>	If you make a Purchase or Cash Advance in a foreign currency, we will convert it to U.S. dollars using a rate we choose. This rate will either be a government-mandated rate, a government-published rate or the interbank exchange rate, depending on the country	and currency in which the transaction is made. We use the rate in effect on the conversion date for the transaction. This rate may be different than the rate in effect on the Transaction Date for the transaction.
<b>Governing Law</b>	<b>This Agreement is governed by applicable federal law and by Delaware law.</b>	
<b>Severability</b>	If any part of this Agreement is found to be invalid, the rest of it will still remain in effect. However, if the Class Action Waiver in the "Arbitration of Disputes" section is invalidated in any proceeding in which you and we are involved, then the "Arbitration of Disputes" section will be void with respect to that proceeding.	
<b>Enforcing this Agreement</b>	We may delay enforcing or not enforce any of our rights under this Agreement without losing or waiving any of them.	
<b>Assignment of Account</b>	We may sell, assign or transfer your Account or any portion of it without notice to you. You may not sell, assign or transfer your Account without first obtaining our prior written consent.	

## CONTACT US

Unless we tell you otherwise, you can notify us:

- by phone at 1-800 DISCOVER (1-800-347-2683) or
- in writing to Discover, PO Box 30943, Salt Lake City, UT 84130-0943.

When writing, please include your name, address, home phone number and Account number. You must contact us within 15 days after changing your e-mail address, mailing address or phone number.

## DEFINITIONS

"Account" means your Discover card account.

"Affiliate" means our parent corporations, subsidiaries and affiliates.

"Authorized User" means any person you authorize to use your Account or a Card, whether you notify us or not.

"Balance Transfer" means a balance transferred from another creditor to your Account.

"Card" means any one or more Discover cards issued to you or someone else with your authorization.

"Cash Advance" means the use of your Account to:

- obtain cash from participating automated teller machines, financial institutions or other locations;
- purchase lottery tickets, money orders, casino chips, foreign currency or similar items.

"Check" means any check we send to you to access your Account.

"Pricing Schedule" means the document entitled, "Pricing Schedule," which lists the APRs that apply to your Account and other important information.

"Prime Rate" means the highest rate of interest listed as the U.S. Prime rate in the Money Rates section of *The Wall Street Journal* on the last business day of the month.

"Purchase" means the use of your Account to purchase or lease goods or services at participating merchants.

"We," "us" and "our" refer to Discover Bank, the issuer of your Card.

"You," "your" or "yours" refer to you and any other person(s) who are also contractually liable under this Agreement.

"Transaction Date" means the date shown on your billing statement for a transaction or fee.

## ARBITRATION

**Agreement to arbitrate.** If a dispute arises between you and us, either may choose to resolve the dispute by binding arbitration, as described below, instead of in court. Any claim (except for a claim challenging the validity or enforceability of this arbitration agreement, including the Class Action Waiver) may be resolved by binding arbitration if either side requests it. This includes claims and disputes relating to any other Account or agreement you have or had with us. **THIS MEANS IF EITHER YOU OR WE CHOOSE ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL. ALSO DISCOVERY AND APPEAL RIGHTS ARE LIMITED IN ARBITRATION.**

**CLASS ACTION WAIVER.** ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. THIS MEANS NEITHER YOU NOR WE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CARDMEMBERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

Only a court, and not an arbitrator, shall determine the validity and effect of the Class Action Waiver. Even if all parties have opted to litigate a claim in court, you or we may elect arbitration with respect to any claim made by a new party or any new claims later asserted in that lawsuit.

**Your Right to Go To Small Claims Court.** We will not choose to arbitrate any claim you bring in small claims court. However, if such a claim is transferred, removed or appealed to a different court, we may then choose to arbitrate.

**Governing Law and Rules.** This arbitration agreement is governed by the Federal Arbitration Act (FAA). Arbitration must proceed only with the American Arbitration Association (AAA) or JAMS. The rules for the arbitration will be those in this arbitration agreement and the procedures of the chosen arbitration organization, but the rules in this arbitration agreement will be followed if there is disagreement

## **ARBITRATION**

---

between the agreement and the organization's procedures. If the organization's procedures change after the claim is filed, the procedures in effect when the claim was filed will apply. For a copy of each organization's procedures, to file a claim or for other information, please contact:

- AAA at 335 Madison Ave., Floor 10, New York, NY 10017-5905, [www.adr.org](http://www.adr.org) (phone 1-800-778-7879) or
- JAMS at 620 Eighth Ave., Floor 34, New York, NY 10018, [www.jamsadr.com](http://www.jamsadr.com) (phone 1-800-352-5267).

If both AAA and JAMS are completely unavailable, and if you and we cannot agree on a substitute, then either you or we may request that a court appoint a substitute.

**Fees and Costs.** If you wish to begin an arbitration against us but you cannot afford to pay the organization's or arbitrator's costs, we will pay those costs if you ask us in writing. Any request like this should be sent to Discover, PO Box 30421, Salt Lake City, UT 84130-0421. If you lose the arbitration, the arbitrator will decide whether you must reimburse us for money we advanced for you for the arbitration. If you win the arbitration, we will not ask for reimbursement of money we advanced. Additionally, if you win the arbitration, the arbitrator may decide that you are entitled to be reimbursed your reasonable attorneys' fees and costs (if actually paid by you).

**Hearings and Decisions.** Arbitration hearings will take place in the federal judicial district where you live.

A single arbitrator will be appointed. The arbitrator must:

- Follow all applicable substantive law, except when contradicted by the FAA;
- Follow applicable statutes of limitations;
- Honor valid claims of privilege;
- issue a written decision including the reasons for the award.

The arbitrator's decision will be final and binding except for any review allowed by the FAA. However, if more than \$100,000 was genuinely in dispute, then either you or we may choose to appeal to a new panel of three arbitrators. The appellate panel is completely free to accept or reject the entire original award or any part of it. The appeal must be filed with the arbitration organization not later than 30 days after the original award issues. The appealing party pays all appellate costs. The appellate panel may order that the loser of the appeal pay the winner's costs and attorneys' fees.

Any arbitration award may be enforced (such as through a judgment) in any court with jurisdiction.

**Other Beneficiaries of this Provision.** In addition to you and us, the rights and duties described in this arbitration agreement apply to: our Affiliates and our and their officers, directors and employees; any third party co-defendant of a claim subject to this arbitration provision; and all joint Accountholders and Authorized Users of your Account(s).

**Survival of this Provision.** This arbitration provision shall survive:

- closing of your Account;
- voluntary payment of your Account or any part of it;
- any legal proceedings to collect money you owe;
- any bankruptcy by you; and
- any sale by us of your Account.

### **You May Have the Right to Reject Arbitration.**

**You may reject the Arbitration of Disputes section but only if we receive from you a written notice of rejection within 30 days of your receipt of the Card. You must send the notice of rejection to: Discover, PO Box 30938, Salt Lake City, UT 84130-0938.** Your rejection notice must include your name, address, phone number, Account number and personal signature. No one else may sign the rejection notice for you. Your rejection notice also must not be sent with any other correspondence. However, if you previously had the chance to reject an arbitration agreement with us but did not, you may not reject it now. Rejection of arbitration will not affect your other rights or responsibilities under this Agreement or your obligation to arbitrate disputes under any other account as to which you and we have agreed to arbitrate disputes. If you once sent us a rejection notice on a different account or card, you must send us a new rejection notice or else this arbitration agreement will apply to any disputes with us relating to your other accounts or cards.

## Your Billing Rights:

### Keep This Document For Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

#### What To Do If You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

Discover  
PO Box 30421  
Salt Lake City, UT 84130-0421.

In your letter, give us the following information:

- **Account information:** Your name and account number.
- **Dollar amount:** The dollar amount of the suspected error.
- **Description of problem:** If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

#### What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- **If we made a mistake:** You will not have to pay the amount in question or any interest or other fees related to that amount.
- **If we do not believe there was a mistake:** You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

#### Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at:

Discover  
PO Box 30945  
Salt Lake City, UT 84130-0945

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

## DESCRIPTION OF COVERAGE

### SCHEDULED AIR TRAVEL ACCIDENT INSURANCE

Discover® Cardmembers are provided with \$500,000 Scheduled Air Travel Accident Insurance against Accidental Loss of Life arising from and occurring on a Covered Trip while you, your Spouse, Domestic Partner or eligible Dependent Children for whom a ticket was purchased with your Discover card are riding as a passenger in or entering, exiting or being struck by a Scheduled Aircraft.

### SECONDARY RENTAL CAR COLLISION COVERAGE

Discover® Cardmembers can benefit from the security and safety offered through Excess Collision Damage Waiver. If you rent a vehicle for 31 consecutive days or less (or 45 days under certain circumstances) with your Discover card, you may be eligible for benefits under this coverage.

### 24/7 TRAVEL ASSISTANCE

24/7 Travel Assistance provides Cardmembers and their families a wide range of free travel assistance benefits.

For more information and a description of these plans, features, benefits, definitions, exclusions, and information on how to file a claim, please go to [Discover.com/mybenefits](http://Discover.com/mybenefits) or call 1-800-DISCOVER (1-800-347-2683).



Discover® More® Card

Account number ending in [REDACTED]

Open Date: Nov 3, 2014- Close Date: Dec 2, 2014

Cardmember Since 2008

Page 1 of 4

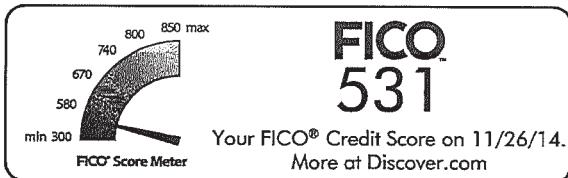
## ACCOUNT SUMMARY

Previous Balance	\$6,520.34
Payments and Credits	+\$0.00
Purchases	+\$0.00
Balance Transfers	+\$0.00
Cash Advances	+\$0.00
Fees Charged	+\$35.00
Interest Charged	+\$91.66
New Balance	\$6,647.00

See Interest Charge Calculation section following the Transactions section for detailed APR information

Credit Line	\$6,000
Credit Line Available	\$0
Cash Advance Credit Line	\$3,100
Cash Advance Credit Line Available	\$0

You may be able to avoid interest on Purchases.  
See reverse for details.



Please make check payable to Discover. You are overlimit.  
Pay the sum of the Minimum Payment Due plus the remaining  
overlimit amount of \$647.00.

Make Check payable to Discover.  
Please fold on the perforation below, detach and return with your payment.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

## Payment Coupon

Please do not fold, clip or staple.

Pay Online  
Discover.comPay by Phone  
1-800-347-2683

BARBARA HAVEY  
3615 101ST AVE E  
PARRISH FL 34219-2005



Account number ending in	[REDACTED]
Minimum Payment Due	\$1,101.00
New Balance	\$6,647.00
Payment Due Date	December 28, 2014
Amount enclosed	\$

PO BOX 71084  
CHARLOTTE NC 28272-1084



Phone and Internet payments must be received by 5PM ET to be credited as of the same day.  
Address, e-mail or telephone changed? Note changes on reverse side.

000001986456573559556066470000075000110100

**Important Information**

**See your Cardmember Agreement.** Your Cardmember Agreement contains all the terms of your Account.

**Lost or stolen cards.** Report immediately! Call **1-800-347-2683**.

**What To Do If You Think You Find A Mistake On Your Statement**

If you think there is an error on your statement, write to us at: Discover, PO Box 30421, Salt Lake City, UT 84130-0421. You must write to us within 60 days after the error appeared on your statement. You may call us, but if you do we are not required to investigate any potential errors, and you may have to pay the amount in question. The Billing Rights Notice further explains your rights. Please see your Cardmember Agreement or visit <https://discover.com/billingrights> for a copy of this notice.

**Payments.** You may pay all or part of your Account balance at any time. However, you must pay at least the Minimum Payment Due by the Payment Due Date. Send only your payment and the bottom portion of this statement in the envelope provided after affixing postage. Payments sent without proper postage will be returned to the sender. Do not send cash. If you pay by check, you authorize us to use information on your check to make an electronic fund transfer from your account at the financial institution indicated on your check or to process the payment as a check transaction. If a payment is processed as an electronic fund transfer, the transfer will be for the amount of the check. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

The processing of your payment may be delayed if you send cash, correspondence or other items with your payments, if you send the payment to any other address, or if you use an envelope other than the one provided. Payments received in proper form at our processing facility by 5PM local time on any day will be credited to your Account as of that day. Payments received at our processing facility after 5PM local time will be credited to your Account as of the next day. If you have misplaced your envelope, send your payment to Discover, PO Box 6103, Carol Stream, IL 60197-6103. Please allow 7-10 days for delivery. If your payment is returned unpaid, we reserve the right to resubmit it as an electronic debit. Payments made online or by phone will be credited as of the day of receipt if made by 5 PM Eastern time.

You can pay your monthly Minimum Payment Due, or a greater amount that does not exceed your current Account balance, over the telephone or you can setup automatic payments through a customer service representative by calling 1-800-347-2683. Automatic payments for the billing period shown on your statement will be deducted on the Payment Due Date shown on that statement, or the next automatic payment date referred to on your statement, unless you request a recurring payment date (e.g., the 15<sup>th</sup> day of the month) that occurs before your Payment Due Date or Close Date. If your scheduled payment date falls on a weekend or bank holiday, your payment will be processed the business day prior to the weekend or bank holiday. In order to schedule monthly payments by telephone, you will need this statement and your bank account information. You will be asked to provide the last four (4) digits of the social security number of the primary borrower. By providing those numbers as your electronic signature, you will be agreeing to this authorization to allow us and your bank to deduct each payment you authorize, in the amount selected by you, from your bank account. You also authorize us to initiate debit or credit entries to your bank account, as applicable, to correct an error in the processing of such payment. You can cancel a scheduled payment by phone at 1-800-347-2683 or by mail at Discover, PO Box 30421, Salt Lake City, UT 84130-0421; however, we must receive notice at least three business days in advance of the scheduled payment. If your payments may vary in amount, we will tell you on each monthly billing statement when your payment will be made and how much it will be.

You must ensure that sufficient funds are available in your bank account, and all transactions must comply with U.S. law.

You can set automatic payments for: (i) statement New Balance, (ii) statement Minimum Payment Due, (iii) statement Minimum Payment Due plus a fixed dollar amount, or (iv) Other dollar amount. If your scheduled "Other dollar amount" payment is not enough to cover the Minimum Payment Due as listed on your monthly billing statement, your scheduled payment for that month will be increased to cover the Minimum Payment Due. If the scheduled payment is greater than the Minimum Payment Due, any excess will be applied in accordance with your Cardmember Agreement. If your scheduled payment is greater than the New Balance on your billing statement, that payment will be processed only for the amount of your New Balance. Your automatic payment amount may be less than the amount indicated on the billing statement based on credits or payments after the Close Date.

If you enroll by phone in our automatic payment service, please fill-in the following blanks below and retain the authorization for your records.

Amount:  Full Pay \_\_\_\_\_  Min Pay \_\_\_\_\_  Min Pay+ \$ \_\_\_\_\_;

Other Amount\$ \_\_\_\_\_ ; Bank Routing #: \_\_\_\_\_;

Bank Account # \_\_\_\_\_;

Monthly on the  Payment Due Date  Close Date

\_\_\_\_\_ Day of month (insert date)

**Credit Reporting.** We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report. We normally report the status and payment history of your Account to credit reporting agencies each month. If you believe that our report is inaccurate or incomplete, please write us at this address: Discover, PO Box 15316, Wilmington, DE 19850-5316. Please include your name, address, home telephone number and Account number.

**Paying Interest.** Your due date is at least 25 days after the close of each billing period (at least 23 days for billing periods that begin in February). We will not charge you any interest on Purchases if you pay your entire balance by the due date each month. We will begin charging interest on Cash Advances and Balance Transfers as of the later of the Transaction Date or the first day of the billing period in which the transaction posted to your Account.

**How We Calculate Interest Charges.** We Use the Daily Balance Method (including current transactions) to calculate the Balance Subject to Interest Rate. For more information, please call us at 1-800-347-2683.

**Balance Subject to Interest Rate.** Your statement shows a Balance Subject to Interest Rate. It shows this for each transaction category. The Balance Subject to Interest Rate is the average of the daily balances during the billing period.

**Credit Balances.** If your Account has a credit balance, the amount is shown on the front of your billing statement. A credit balance is money that is owed to you. You may make charges against this amount if your Account is open. We will send you a refund of any remaining balance of \$1.00 or more after 6 months, or as otherwise required by applicable law, or upon request made to the address in the Contact Us section on page 3 of your billing statement.

**Balance Transfers.** Balance Transfers are offered at our discretion and accrue interest at the standard purchase rate unless we tell you otherwise.

Discover may monitor and/or record telephone calls between you and Discover representatives for quality assurance purposes.

The Discover® card is issued by Discover Bank, Member FDIC. TL23N

## CHANGE OF ADDRESS

If correct on front, do not use. Please print clearly in blue or black ink, in the space provided.

Street Address

Home Phone

City

Work Phone

State, Zip

Email

To make changes to your address, email or telephone number, visit [Discover.com](http://Discover.com)

Continued on next page



## Discover® More® Card

Account number ending in [REDACTED]

Open Date: Nov 3, 2014 - Close Date: Dec 2, 2014

Page 3 of 4

## CONTACT US

Web Access your account securely at Discover.com	Mobile Manage your account anytime, anywhere at m.Discover.com	Phone 1-800-DISCOVER (1-800-347-2683) TDD 1-800-347-7449	Inquiry Discover PO Box 30943 Salt Lake City UT 84130	Mail Payments Discover PO Box 6103 Carol Stream IL 60197-6103
---	---	---	---	---

## Transactions

	Trans. Date	Post Date			
Fees	Nov 28	Nov 28	LATE FEE	\$	35.00
			<b>TOTAL FEES FOR THIS PERIOD</b>		<b>35.00</b>
Interest Charged			INTEREST CHARGE ON PURCHASES	\$	91.66
			INTEREST CHARGE ON CASH ADVANCES		0.00
			INTEREST CHARGE ON BALANCE TRANSFERS		0.00
			<b>TOTAL INTEREST FOR THIS PERIOD</b>		<b>91.66</b>

## 2014 Totals Year-to-Date

	<b>TOTAL FEES CHARGED IN 2014</b>	\$	292.05
	<b>TOTAL INTEREST CHARGED IN 2014</b>	\$	965.90

## Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Current Billing Period: 30 days

TYPE OF BALANCE	ANNUAL PERCENTAGE RATE (APR)	BALANCE SUBJECT TO INTEREST RATE	INTEREST CHARGE
Purchases	16.99% V	\$6,564.52	\$91.66
Cash Advances	23.99%	\$0.00	\$0.00

V=Variable Rate

## Information For You

For more information about how interest charges are calculated see your Cardmember Agreement or go to [www.discover.com/interestcharges](http://www.discover.com/interestcharges)

## FICO® Credit Score Terms

Your FICO® Credit Score is based on data from TransUnion and may be different from other credit scores. This information is intended for and provided to the Primary cardmembers only that have an available score and is provided on the statement for individual accounts and on Discover.com for individual and joint accounts. See [Discover.com/FICO](http://Discover.com/FICO) about the availability of your score. Discover and other lenders may use different inputs like a FICO® Credit Score, other credit scores and more information in credit decisions. This benefit may change or end in the future. FICO is a registered trademark of the Fair Isaac Corporation in the United States and other countries.

If you prefer not to receive your FICO® Credit Score on your statement, just call us at 1-800-347-7996. Please give us two billing cycles to process your request. To learn more, visit [Discover.com](http://Discover.com)

## Availability of FICO® Credit Score

As an active cardmember, you may see your FICO® Credit Score on your monthly statement or online. Reasons why you may not see your FICO® Credit Score include: if you have a joint account; if you opt out; if you have key information that is mismatched or missing, as one example, an address change that has not been updated with Discover or TransUnion; if your credit history is too new; if your account status is abandoned, bankrupt, fraud, lost or stolen, closed, revoked, or charged off; if you have a foreign address; or if you have no account activity such as no purchase transactions, fees, interest, or payments for approximately 30 days.

BARBARA HAVEY

Account number ending [REDACTED]

Open Date: Nov 3, 2014 - Close Date: Dec 2, 2014

Page 4 of 4

EXHIBIT

2

2015 WL 3948192

Only the Westlaw citation is currently available.  
Florida Circuit Court.

James A. HURTUBISE, Appellant,

v.

P.N.C. BANK, N.A., Appellee.

No. 512013AP000015APAXWS.

|

Jan. 5, 2015.

On appeal from County Court, Honorable Paul Firmani.

#### Attorneys and Law Firms

Carl J. Hognefelt, Esq., Barry M. Elkin, Esq. for Appellant.

Suzanne Youmans Labrit, Esq., Ryan C. Reinert, Esq., for Appellee.

#### ORDER AND OPINION

\*1 We find the communications received by Appellant did not constitute attempts to collect a debt in violation of § 559.72(18), Fla. Stat., as a matter of law, and therefore affirm the order of the trial court granting Appellee's motion for summary judgment. The award of attorney's fees is also affirmed and Appellee's motion for appellate attorney's fees is granted.

#### STATEMENT OF THE CASE AND FACTS

This case is before the Court on appeal of an order granting Appellee's motion for summary judgment. On June 23, 2010, Appellee instituted an action seeking to foreclose on a mortgage executed by Appellant, after which Appellant obtained counsel, who did not file a notice of appearance in the foreclosure action. Counsel for Appellant sent two letters to counsel representing Appellee in the foreclosure action, Ben-Ezra & Katz ("Ben-Ezra"), informing them Appellant had retained him for representation in the foreclosure action. Appellee maintains it did not receive these letters or acquire actual knowledge that Appellant had obtained counsel in the foreclosure action at any time prior to the proceedings

in this case. Appellee maintains the foreclosure action is distinct from any activity to collect the debt owed by Appellant, and Ben-Ezra was only authorized to act as Appellee's agent regarding the foreclosure action and not debt collection matters, therefore even if notice received by Ben-Ezra could be imputed to Appellee, Appellee did not have actual notice as required by the Statute.

On August 31, 2011, Appellant received what Appellee characterizes as an advertisement for a locally sponsored workshop to assist homeowners in preservation of their property. The communication was addressed to "PNC Mortgage Customer," rather than Appellant personally, did not contain any information to identify Appellant, such as an address, account number, or balance, and did not include a request for payment.

On September 7, 2011, Appellee sent Appellant a letter providing contact information at PNC for questions relating to loss mitigation, which also did not request payment from Appellant. Appellee contends this notice was required to be sent by directive of the Department of Treasury, authorized by Congress as part of the Emergency Stabilization Act of 2008, 12 U.S.C.A. § 519(a), which requires a creditor assign a relationship manager to be a single point of contact for the debtor during delinquency and the default resolution process.

Appellant filed an action alleging violation of § 559.72(18), Fla. Stat., claiming Appellee attempted to collect a consumer debt after having actual knowledge of Appellant's representation by counsel. Appellee responded with affirmative defenses, including that the communications complained of did not attempt to collect consumer debt, and that Appellee lacked the required actual knowledge of Appellant's representation by counsel. Appellee moved for summary judgment, which motion included a request for attorney's fees. After hearing on the motion, the trial court granted summary judgment in favor of Appellee, and awarded Appellee attorney's fees and costs.

#### STANDARD OF REVIEW

\*2 Summary judgment should only be granted when there is no genuine issue of material fact and one party has demonstrated entitlement to relief as a matter of law. *Shaw v. Tampa Elec. Co.*, 949 So.2d 1066 (Fla. 2d DCA 2007).

All inferences should be drawn in favor of the non-moving party. *Id.* When “reviewing the trial court's interpretation and application of Florida law, the standard of review on appeal is de novo.” *Pichowski v. Florida Gas. Transmission Co.*, 857 So.2d 219, 220 (Fla. 2d DCA 2003). We review the trial court's award of attorney's fees pursuant to an abuse of discretion standard. *D'Alusio v. Gould & Lamb, LLC*, 36 So.3d 842 (Fla. 2d DCA 2010). Although questions of law are reviewed de novo, “findings of fact on the issue of attorney's fees are presumed correct.” *See Grapski v. City of Alachua*, 134 So.3d 987, 989 (Fla. 1st DCA 2012).

#### LAW AND ANALYSIS

Appellant first contends the trial court erred by applying federal law when granting summary judgment, rather than the standard provided by Fla. R. Civ. P. 1.520, based on the citation in the trial court's order to federal case law which is not applicable to motions for summary judgment in Florida.<sup>1</sup> The summary judgment standard in Florida differs from the more stringent federal standard and is more favorable to the non-moving party. *See Shaw*, 949 So.2d at 1069. Although it appears the trial court may have relied in part on federal law when granting the Motion, the court also referenced the appropriate standard in Florida, and we find that pursuant to Florida law summary judgment was appropriate, and find no error on this basis.

Appellant contends the trial court's findings that the two communications were not for the purpose of collecting payment on a debt were in error, citing *Gburek v. Litton Loan Servicing, LP*, 614 F.3d 380, 386 (7th Cir.2010). In *Gburek*, the Court found the communications sent were prohibited by the FDCPA where they stated plaintiff was in default on her loans, offered to discuss foreclosure alternatives, and asked for financial information to initiate that process. *See id.* In this case, the first communication sent advertises a seminar for a “home rescue event” and provides that should a debtor choose to attend one of the seminars, certain financial information should be provided at that time. The Advertisement contained no personal identifying information.

Section 559.72(18), Fla. Stat. provides:

In collecting consumer debts, no person shall:

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.

“The Fair Debt Collection Practices Act generally prohibits ‘debt collectors’ from engaging in abusive, deceptive, or unfair debt-collection practices.” *Gburek*, 614 F.3d at 384 (citing 15 U.S.C. § 1692 *et seq.*). “Among other things, the FDCPA regulates when and where a debt collector may communicate with a debtor, restricts whom a debt collector may contact regarding a debt, prohibits the use of harassing, oppressive, or abusive measures to collect a debt, and bans the use of false, deceptive, misleading, unfair, or unconscionable means of collecting a debt.” *Id.* (citing 15 U.S.C. § 1692(c)-(f)). “For the FDCPA to apply, two threshold criteria must be met: (1) the defendant must qualify as a debt collector; and (2) the communication must have been made in connection with the collection of any debt.” *Parker v. Midland Credit Mgmt., Inc.*, 874 F.Supp.2d 1353, 1355 (M.D.Fla.2012).

\*3 Appellee does not dispute that is a “debt collector” pursuant to the statute, but claims the communications were not attempts to collect consumer debt. “In Florida, consumer debt collection practices are regulated by both the FCCPA and the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p (FDCPA).” *Read v. MFP, Inc.*, 85 So.3d 1151, 1153 (Fla. 2d DCA 2012). “Both acts generally apply to the same types of conduct, and Florida courts must give ‘great weight’ to federal interpretations of the FDCPA when interpreting and applying the FCCPA.” *Id.* (citing § 559.77(5), Fla. Stat.).

Appellant relies on language in both communications which states: “This is an attempt to collect a debt. Any information obtained will be used for that purpose....” The trial court held that this language is required to be included in such communications by federal law, and this language alone did not constitute a basis for a violation

of § 559.72(18), Fla. Stat. *See Gburek*, 614 F.3d at n. 3 (including a disclaimer that a communication is “an attempt to collect a debt ... does not automatically trigger the protections of the FDCPA, just as the absence of such language does not have dispositive significance.”) (citing *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 400 (6th Cir.1998)). We find no error with the trial court’s findings on this issue.

In order “for a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor.” *Grden v. Leikin Ingber & Winters, PC*, 643 F.3d 169, 173 (6th Cir.2011). In the event “the FDCPA does apply, then it is for the fact-finder to decide whether the correspondence constituted a collection not permitted by law.” *Lara v. Specialized Loan Servicing, LLC*, not reported in F.Supp.2d, 2013 WL 703854 at \*2 (S.D.Fla.2013). Appellant alleges a genuine dispute of material fact as to the animating purpose of the communications, and that the question should have been submitted to a jury. In *Lara*, the court concluded that communications including statements that “this communication is from a debt collector ... please be advised that we are attempting to collect a debt,” and “this is an attempt to collect a debt and any information obtained will be used for that purpose,” presented a possible jury question of whether the communications constituted violations of the FDCPA pursuant to the “least sophisticated consumer standard” set forth in *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir.1985). *Id.* at \*3.

Appellant relies on a deposition of Appellee’s corporate representative to demonstrate an issue of material fact, in which it was acknowledged that the purpose of the Advertisement was to provide an opportunity to work on “loss mitigation or homeowner preservation” to help “borrowers keep their properties.” The representative acknowledged that “one of the purposes” of the loan modification encouraged by the letter was repayment of the debt. The trial court properly determined the testimony that one goal of loan modification is payment of a debt, does not support the contention that the “animating purpose” of the communication advertising a loan modification seminar was to collect the debt owed by Appellant.

\*4 The trial court may determine whether a communication is sent in connection with collection of an existing debt as a matter of law pursuant to the FCCPA and FDCPA. *See Read*, 85 So.3d at 1153; *Parker*, 874 F.Supp.2d 1353. The trial court correctly found Appellant failed to demonstrate a genuine fact issue as to the nature of the communications, and therefore summary judgment was appropriate. *See Schauer v. Morse Operations, Inc.*, 5 So.3d 2, 5–6 (Fla. 4th DCA 2009).

Federal courts have held that not all communications between a debt collector and a debtor are covered by the statutes, and communications which are informational in nature are outside the application of the debt collection statutes. *See Parker*, 874 F.Supp.2d at 1356–57; *Grden*, 643 F.3d at 173; § 559.72, Fla. Stat. The trial court correctly concluded the Advertisement was informational only and not an attempt to collect a debt. The cases relied on by Appellant are distinguishable from this case. In *Gburek*, the communications were directed to the homeowner individually and made specific demands for financial information, stating that “ongoing legal action on your home” will not be delayed “until your financial information has been received and processed.” 614 F.3d at 382. The communications requested the debtor explain the reason for defaulting on the loan and propose ways to resolve the delinquent status. *See id.* at 382–83. The Advertisement in this case contained no similar language. The trial court also correctly rejected the argument that language in the Advertisement required to be included by the FDCPA created an issue of fact in this case. *See Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389 (6th Cir.1998) (including such language “does not transform the letter into an unlawful demand for payment,” rather, “such a statement is required by the FDCPA”) (citing 15 U.S.C. § 1692e(11) (1987)).

Appellee claims the second communication, the “HAMP” letter, was issued in order to comply with the Home Affordable Modification Program, requiring that borrowers be assigned a manager to serve as a single point of contact for the borrower throughout the delinquency or default resolution process. The trial court correctly found no violation of § 559.72, Fla. Stat., where the communication was required by federal law, and that the Letter was not an attempt to collect a consumer debt.

Even if either communication could be construed as an attempt to collect a debt, Appellee claims it had no actual

knowledge Appellant had obtained representation in the underlying foreclosure action, or the collection of the underlying debt, as required to demonstrate violation of § 559.72(18), Fla. Stat. *See Bacelli v. MFP, Inc.*, 729 F.Supp.2d 1328, 1334–36 (M.D.Fla.2010) (courts may not impute knowledge when actual knowledge is required by statute). The trial court found this issue was moot based on the finding that neither communication constituted an attempt to collect a debt, but nevertheless held that Appellant failed to demonstrate Appellee had actual knowledge of representation. Although Appellant contends notice was provided to Ben–Ezra that Appellant had retained counsel, Appellee contends it never received such notice, and that any such notice would be insufficient because Appellant was notified by letter to contact Ben–Ezra regarding the foreclosure action, but to contact PNC directly regarding any debt collection matters, and Ben–Ezra had no authority to act as Appellee's agent for matters related to debt collection. *See Trent v. Mortgage Electronic Registration Systems, Inc.*, 618 F.Supp.2d 1356, 1360 (M.D.Fla.2007) (“foreclosing on a mortgage is distinct from the collection of the obligation to pay money,” and the “FDCPA is intended to curtail objectionable acts occurring in the process of collecting funds from a debtor,” and not foreclosure actions). The trial court correctly found Appellant failed to demonstrate a fact issue as to the notice requirement.

#### ATTORNEY'S FEES

\*5 We find the order awarding attorney's fees is supported by the record. Although the order does not reference the specific statute, the order states that Appellant's pleadings were “bare legal conclusions or naked assertions,” and the record was “devoid of facts” which would substantiate Appellant's claims. Appellee requested attorney's fees pursuant to § 559.77(2) in the Motion for Summary Judgment, for a failure to raise any justiciable issue of law or fact. Appellant correctly states that Appellee failed to request attorney's fees in a pleading, as is required. *See Sardon Found. V. New Horizons Serv. Dogs, Inc.*, 852 So.2d 416 (Fla. 5th DCA 2003). However, Appellant waived this issue by failing to give the trial court an opportunity to correct any error below by filing a post-judgment motion pursuant

to Fla. R. Civ. P. 1.530. *See Pensacola Beach Pier*, 66 So.3d 321, 325 (Fla. 1st DCA 2011); *D.T. v. Fla. Dept of Children and Families*, 54 So.3d 632, 633 (Fla. 1st DCA 2011). Based on the facts in this case the award of fees did not amount to fundamental error. *See Stockman v. Downs*, 573 So.2d 835, 838 (Fla.1991) (when “a party has notice that an opponent claims entitlement to attorney's fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement,” any objection based on “failure to plead a claim for attorney's fees” is waived). Based on this finding, we grant Appellee's motion for appellate attorney's fees pursuant to § 59.46, Fla. Stat., and pursuant to Fla. R.App. P. 9.400(b), the cause is remanded to the trial court for a determination of a reasonable award of appellate attorney's fees.

#### CONCLUSION

We find that the communications at issue in this case were not attempts to collect a debt in violation of the Statute, as a matter of law. We therefore affirm the order granting summary judgment. The trial court's award of attorney's fees is also affirmed, and Appellee's motion for appellate attorney's fees is granted.

It is ORDERED AND ADJUDGED that the order of the trial court is AFFIRMED.

It is further ORDERED that Appellee's Motion for Appellate Attorney's Fees is GRANTED and the cause is remanded to the trial court for a determination of reasonable fees.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 5th day of January, 2015.

Original order entered on January 5, 2015, by Circuit Judges Stanley R. Mills, Daniel D. Diskey and Linda Babb.

#### All Citations

Not Reported in So.3d, 2015 WL 3948192

Footnotes

- 1 We note that Appellant failed to file a post-judgment motion pursuant to Fla. R. Civ. P. 1.530, challenging the trial court's citation to federal summary judgment law, which would have given the trial court the opportunity to correct any alleged error. See *Pensacola Beach Pier*, 66 So.3d 321, 325 (Fla. 1st DCA 2011); *D.T. v. Fla. Dep't of Children and Families*, 54 So.3d 632, 633 (Fla. 1st DCA 2011).

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT

3

IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

GLORIA VANECEK, )  
Plaintiff, )  
v. )  
DISCOVER FINANCIAL SERVICES LLC, )  
Defendant. )  
)  
)

CASE NO. COCE14023621

FINAL JUDGMENT IN FAVOR OF DEFENDANT ON PLAINTIFF'S STATEMENT OF  
CLAIM

THIS CAUSE came for hearing on Defendant/Counter-Plaintiff's, DISCOVER BANK, incorrectly named in the Statement of Claim as Discover Financial Services LLC ("Discover Bank"), Motion for Summary Judgment before this Court on April 28, 2015, with respect to the Claims of Vanecek. The Court having reviewed the pleadings and evidence on file, hearing argument of counsel, and having been otherwise duly advised in the premises, it is hereby:

**ORDERED AND ADJUDGED:**

1. This Court has jurisdiction of the subject matter and the parties. The Court finds in favor of Discover Bank as to the Claims raised by Plaintiff/Counter Defendant Glorida Vanecek ("Vanecek") in her Statement of Claim.
2. Vanecek alleges that her lawyers sent a notice of attorney representation to Discover Bank on September 25, 2014 and that Discover violated the Florida Consumer Collection Practices Act ("FCCPA") by mailing Vanecek her monthly account statement on November 11, 2014 with actual knowledge she was represented by an attorney.
3. First, the Court finds no triable issue exists that Discover Bank did not receive the attorney notification. This was set forth in the sworn statement of Discover Bank and not

controverted by any evidence submitted by Vanecek. Any presumption created by the fax notice submitted by Vanecek has been rebutted by Discover's sworn testimony of non-receipt, for which Vanecek presented no competing evidence.

4. Second, the Court finds that even if the notice of attorney representation was received by Discover Bank, the monthly billing statement was not an attempt to collect a debt as a matter of law, but rather an informational disclosure whose delivery to the consumer is required by the federal Truth in Lending Act. *See* 15 U.S.C. § 1637(b). Furthermore, as a state law, the FCCPA cannot preclude the delivery of a monthly ~~mortgage~~ statement to the consumer which is required by federal law. Any application of the FCCPA which contradicts these requirements of federal law is preempted by the Truth in Lending Act's preemption clause. *See* 15 U.S.C. § 1610(a)(1).

4. The Court hereby enters Judgment in favor of Defendant/Counter-Plaintiff, DISCOVER BANK, a Corporation against Plaintiff/Counter-Defendant, Gloria Vanecek with respect to Vanecek's claims raised in her Statement of Claim.

5. Under Vanecek's agreement with Discover Bank, Discover Bank is also entitled to its attorney's fees and costs incurred in defense of this action, in an amount to be determined at a later date.

DONE AND ORDERED, in Palm Beach County, Florida, this 28<sup>th</sup> day of April, 2015.

PETER B. SKOLNIK

APR 28 2015 \_\_\_\_\_  
County Court Judge

A TRUE COPY

Copies to:

Kristine Callaghy, Esq.  
Kauffman Englett & Lynd  
150 N. Orange Ave, Suite 100  
Orlando, FL 32801

Nicholas S. Agnello, Esq.  
Burr & Forman, LLP  
350 E. Las Olas Blvd., Ste 1420  
Ft. Lauderdale, FL 33301

DISCOVER®

## Discover® More® Card

Account number ending in [REDACTED]

Open Date: Oct 12, 2014 Close Date: Nov 11, 2014  
Cardmember Since 2012

Page 1 of 4

## ACCOUNT SUMMARY

Previous Balance	\$1,094.92
Payments and Credits	\$0.00
Purchases	\$0.00
Balance Transfers	\$0.00
Cash Advances	\$0.00
Fees Charged	\$35.00
Interest Charged	\$21.58
New Balance	\$1,151.50

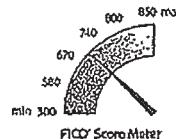
See Interest Charge Calculation section following the Transactions section for detailed APR information.

Credit Line \$1,000

Credit Line Available \$0

Cash Advance Credit Line \$300

Cash Advance Credit Line Available \$0

You may be able to avoid interest on Purchases.  
See reverse for details.FICO®  
694Your FICO® Credit Score on 10/5/14.  
More at Discover.comPlease make check payable to Discover. You are overlimit.  
Pay the sum of the Minimum Payment Due plus the remaining  
overlimit amount of \$151.50.

## PAYMENT INFORMATION

## New Balance

\$1,151.50

\$142.00

## Payment Due Date

December 6, 2014

\* Includes past due amount of:

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to \$35.00 and your purchase and balance transfer APRs for new transactions may be increased up to the Penalty APR of 27.99% variable.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	6 years	\$1,909

If you would like information about credit counseling services, call 1-800-347-1121.

## REWARDS

## Cashback Bonus®

Anniversary Month  
September

Opening Balance	\$	0.00
New Cashback Bonus This Period	+\$	0.00
Redeemed This Period	-\$	0.00

## Cashback Bonus Balance

\$ 0.00

To learn more, log in at Discover.com

Make Check payable to Discover.  
Please fold on the perforation below, detach and return with your payment.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

## Payment Coupon

Please do not fold, clip or staple.

Pay Online  
Discover.comPay by Phone  
1-800-347-2683

[REDACTED]

000151101 01 AT 0403 T3 12 SDS3RA07 553

GLORIA VANECEK  
746 N 19TH AVE # 117A  
HOLLYWOOD FL 33020-4034

Account number ending in [REDACTED]

Minimum Payment Due [REDACTED]

\$142.00

New Balance [REDACTED]

\$1,151.50

Payment Due Date [REDACTED]

December 6, 2014

Amount enclosed [REDACTED]

\$ [REDACTED]

PO BOX 71084  
CHARLOTTE NC 28272-1084Phone and Internet payments must be received by 5PM ET to be credited as of the same day.  
Address, e-mail or telephone changed? Note changes on reverse side.

000001986457061879951011515000078250014200

**DISCOVER®****Discover® More® Card**

Account number ending in [REDACTED]

Open Date: Oct 12, 2014 - Close Date: Nov 11, 2014

Page 3 of 4

**CONTACT US**

**Web**  
Access your  
account securely  
of Discover.com



**Mobile**  
Manage your  
account anytime,  
anywhere at  
[m.Discover.com](http://m.Discover.com)



**Phone**  
1-800-DISCOVER  
(1-800-347-2683)  
TDD 1-800-347-7449



**Inquiry**  
Discover  
PO Box 30943  
Salt Lake City  
UT 84130



**Mail Payments**  
Discover  
PO Box 6103  
Carol Stream  
IL 60197-6103

**Transactions**

	Trans. Date	Post Date			
Fees	Nov 6	Nov 6	LATE FEE	\$	35.00
			<b>TOTAL FEES FOR THIS PERIOD</b>		<b>35.00</b>
Interest Charged			INTEREST CHARGE ON PURCHASES	\$	21.58
			INTEREST CHARGE ON CASH ADVANCES		0.00
			INTEREST CHARGE ON BALANCE TRANSFERS		0.00
			<b>TOTAL INTEREST FOR THIS PERIOD</b>		<b>21.58</b>
<b>2014 Totals Year-to-Date</b>					
			<b>TOTAL FEES CHARGED IN 2014</b>	\$	95.00
			<b>TOTAL INTEREST CHARGED IN 2014</b>	\$	<b>188.60</b>

**Interest Charge Calculation**

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Current Billing Period: 31 days

TYPE OF BALANCE	ANNUAL PERCENTAGE RATE (APR)	BALANCE SUBJECT TO INTEREST RATE	INTEREST CHARGE
Purchases	22.99% V	\$1,105.33	\$21.58
Cash Advances	24.99% V	\$0.00	\$0.00

V=Variable Rate

**Information For You**For more information about how interest charges are calculated see your Cardmember Agreement or go to [www.discover.com/interestcharges](http://www.discover.com/interestcharges)**FICO® Credit Score Terms**

Your FICO® Credit Score is based on data from TransUnion and may be different from other credit scores. This information is intended for and provided to the Primary cardmembers only that have an available score and is provided on the statement for individual accounts and on Discover.com for individual and joint accounts. See Discover.com/FICO about the availability of your score. Discover and other lenders may use different inputs like a FICO® Credit Score, other credit scores and more information in credit decisions. This benefit may change or end in the future. FICO is a registered trademark of the Fair Isaac Corporation in the United States and other countries.

If you prefer not to receive your FICO® Credit Score on your statement, just call us at 1-800-347-7996. Please give us two billing cycles to process your request. To learn more, visit [Discover.com](http://Discover.com)

**Availability of FICO® Credit Score**

As an active cardmember, you may see your FICO® Credit Score on your monthly statement or online. Reasons why you may not see your FICO® Credit Score include: if you have a joint account; if you opt out; if you have key information that is mismatched or missing, as one example, an address change that has not been updated with Discover or TransUnion; if your credit history is too new; if your account status is abandoned, bankrupt, fraud, lost or stolen, closed, revoked, or charged off; if you have a foreign address; or if you have no account activity such as no purchase transactions, fees, interest, or payments for approximately 30 days.

---

EXHIBIT

4

18<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY

JUSTIN K. ROBINSON,

Plaintiff, v.

WELLS FARGO BANK, N.A., Defendant.

County Court, Case No. 05-2014-SC-017653.

October 9, 2014.

Kristine Callagy, for Plaintiff.

Adam J. Hardman, for Defendant.

John C. Murphy, Judge.

FINAL JUDGMENT FOR DEFENDANT

THIS CAUSE came on for Non-Jury Trial on Wednesday, September 24, 2014 present were attorney for the Plaintiff, Kristine Callagy, Esquire and attorney for the Defendant, Adam Hardman, Esquire. The Court heard sworn testimony, argument of counsel, and being otherwise fully informed in the premises, the Court finds as a matter of fact and concludes as a matter of law, as follows:

The purpose and intent of the Florida Consumer Collection Practices Act (hereinafter FCCPA) is to eliminate abusive and harassing tactics in the collection of debts. The FCCPA is a remedial statute, and accordingly "is to be construed in a manner that is protective of the consumer." *Laughlin v. Household Bank, Ltd.*, 969 So.2d 509, 512 (Fla. 1st DCA, 2007) [32 Fla. L. Weekly D2761c].

This case involves two (2) sections of the FCCPA. First is section 559.55 (5) which states, "Communication means the conveying of information regarding a debt directly or indirectly to any person through any medium. Second is section 559.72 which lists prohibited acts generally. "In collecting consumer debts, no person shall: Subsection (18), "Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication."

Plaintiff, Mr. Justin Robinson, filed suit against Defendant, Wells Fargo Bank, N.A. (hereinafter Wells Fargo), for an alleged violation of the FCCPA. Mr. Robinson alleges Wells Fargo directly communicated with him knowing he was represented by an attorney attempting to collect a debt in violation of §559.72(18). Mr. Robinson claims he suffered statutory damages as a result of Wells Fargo contacting him in violation of §559.72(18) when it had notice he had retained counsel for the foreclosure action.

On June 27, 2013, Wells Fargo contacted Mr. Robinson directly via mail. The letter that allegedly violated the FCCPA was admitted into evidence as Plaintiff's Exhibit 3 (hereinafter Ex. 3).

On or about November 16, 2012, Mr. Robinson retained the law firm of Kaufman, Englett & Lynd, PLLC (hereinafter KEL), to represent him in a mortgage foreclosure. On November 28, 2012, KEL faxed a document to Wells Fargo titled, Borrower Signature Authorization and Notice of Representation. The fax confirmation and document were admitted into evidence as Plaintiff's Exhibit 1. (hereinafter Ex. 1). On December 3, 2012, KEL emailed their Notice of Appearance to Wells Fargo's foreclosure attorneys. The Notice of Appearance was admitted into evidence as Plaintiff's Exhibit 2. (hereinafter Ex. 2).

Plaintiff's Exhibit 4 (hereinafter Ex. 4) was a large composite document consisting of discovery responses from Wells Fargo. In Ex. 4 were the "Letter Log", various letters, copy of the Mortgage and Mortgage Note and "System Notes" for Mr. Robinson's account. Ex. 4 in both the Letter Log and the System Notes indicate receipt of Ex. 1. The System Notes indicate a Cease and Desist on all calls/mail. The Letter Log and the System Notes indicate letters requesting confirmation of representation on January 8, 2013 with no response and again on March 4, 2013 again with no response. Wells Fargo then sent a letter confirming removal of the cease and desist request to Mr. Robinson. Wells Fargo admits the wrong form letter was sent and it was not due to a recent written request but due to no response from KEL. Wells Fargo did not receive any objection from Mr. Robinson. After a lack of response from KEL and no objection from Mr. Robinson, Wells Fargo sent Ex. 3, the subject of this lawsuit.

Whether the June 27, 2013 letter from Wells Fargo Bank, N.A. to Mr. Robinson was a prohibited communication in violation of §559.72(18)?

The subject letter, Ex. 3, did communicate with the debtor. Ex. 3's subject was "Funds applied to your loan account." The letter discussed the funds, Ex. 3 continued, "Your loan is 13 payments past due, with a total amount due of \$13,804.66." The letter continues that the loan is neither in a loss mitigation plan nor being considered and remains in foreclosure status. Ex. 3 concludes, "We urge you to contact us at the

phone number in the account information box above to confirm the amount to reinstate your loan. If you'd like to request assistance with your payments or have any other questions, please contact us." Ex. 3 was signed by a "Home Preservation Specialist." The Court finds Ex. 3 was not a prohibited communication in violation of §559.72(18). Ex. 3 was informational and not an attempt to collect a debt.

IT IS THEREUPON ORDERED AND ADJUDGED as follows:

*The Plaintiff, JUSTIN K. ROBINSON, shall recover nothing from the Defendant, WELLS FARGO BANK, N.A., and the Defendant shall go hence without day.*

EXHIBIT

5

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

KWAN L. SCHUEPFER, )  
Plaintiff/Counter-Defendant, )  
v. ) CASE NO. 2014-SC-10480-O  
DISCOVER FINANCIAL SERVICES LLC, ) DIVISION 72  
Defendant/Counter-Plaintiff. )

**ORDER ON DISCOVER BANK'S MOTION FOR SUMMARY DISPOSITION**

THIS CAUSE came before the Court on February 27, 2015 on Defendant/Counter-Plaintiff, Discover Bank's (incorrectly named as Discover Financial Services LLC in the Statement of Claim) Motion for Summary Disposition ("Motion"). The Court, having reviewed the Motion and the Court file, and having heard argument of counsel and being otherwise fully advised in the matter, The Court finds as follows:

- A. On or about July 1, 2007, Plaintiff, Kyle Schuepfer opened a credit card account with Defendant, Discover.
- B. The Cardmember Agreement provides that by using the Discover card, a cardmember accepts the terms of the agreement.
- C. The Cardmember Agreement also includes a promise to pay in full for all purchases, cash advances and balance transfers incurred or authorized to be incurred on an account, as well as all fees and interest that accrue.
- D. The Defendant used his Discover card, thereby accepting the term and conditions of the Cardmember Agreement.

- E. The Defendant failed to make his minimum monthly payment due in August 2011 and all minimum monthly payments thereafter.
- F. The Defendant's failure to make those payments is a default under the Cardmember Agreement.
- G. The Defendant's failure to make those payments resulted in a breach of contract by the Defendant and unjust enrichment for the Defendant.
- H. As of June 25, 2014, the amount due on the account was \$7,167.54.
- I. Aware of the collection activities being undertaken by the Defendant, the Plaintiff hired the Kaufman, Englett and Lynd law firm to represent him.
- J. On November 16, 2013, Plaintiff's attorney sent a Borrower Signature Authorization and Notice of Representation to Defendant.
- K. On or about May 15, 2014, Plaintiff received a letter from FMS Inc. The body of the letter read as follows:

"Leading Edge Recovery Solutions has been given approval to settle your account at 30%. That's right, if you pay just \$2,150.26 of the \$7,167.54 you currently owe, we will consider the account settled for less than the balance in full! In return, we will notify our client that the account has been settled for less than the balance in full. Call before the end of the month to take advantage of this offer. We are not obligated to renew this offer.

In order to discuss this debt, please contact one of our representatives at (855) 749-6874.

Sincerely, Collections Department.

- L. The Plaintiff filed this action alleging a violation of the Florida Consumer Collection Practices Act. (Florida Statutes Sec 559.55(1))(FCCPA).
- M. The FCCPA is modeled after the federal Fair Debt Collection Practices Act (FDCPA). Both seek to prevent abusive debt collections activity.
- N. Fla. Statute Sec. 559.72(18) of the FCCPA provides:

In collecting consumer debts, no person shall:

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such a debt and has knowledge of, or can readily ascertain the attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates a communication.

- O. There is no dispute that the May 15, 2014 letter from FMS Inc. was unsolicited by the Plaintiff or his attorneys. The Plaintiff alleges that sole communication from an agent of the Defendant was an attempt to collect a debt and therefore a violation of the FCCPA .
- P. The Courts have differentiated between communications involving loss mitigation or offers of settlement and attempts at debt collection.
- Q. Only debt collection activity can form the basis of a FCCPA violation action.
- R. While the FCDPA and FCCPA do not define the term "collection of debt", the Courts have consistently looked at three factors to determine the nature of a communication. First, does the communication demand payment from the debtor; Second, Does the communication discuss the specifics of the debtor's underlying debt. Third, the purpose of the communication. *Parker v. Midland Credit Mgmt., Inc.*, 874 F. Supp. 2d 1353(M.D. Fla. Jun 15, 2012)
- S. First, the May 15, 2014 letter from FMS Inc., did not in any way *demand* payment.
- T. Second, the May 15, 2014 from FMS Inc. contained the account number, the name of the creditor and the balance due. Therefore, it did contain the specifics of the debt.

- U. Third, the purpose of the May 15, 2014 letter from FMS Inc. was to offer the Plaintiff a way to mitigate the debt owed. There were no threats or any indication of repercussions for failure to accept the offer. It was merely an offer of payment options.
- V. "To hold a debt collector cannot offer payment options as part of an effort to resolve an outstanding debt, possibly without litigation, would force honest debt collectors seeking a peaceful resolution of the debt to file suit in order to advance efforts to resolve the debt-something clearly at odds with the language and purpose of the FDCPA." *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389 (6th Cir.1998).
- W. The May 15, 2014 letter of FCM Inc. did not communicate with the Plaintiff in an attempt to collect a debt. It was informational and only offered a loss mitigation opportunity. Therefore, it did not violate the FCCPA.
- X. In Florida, it is well-settled that summary judgment should be granted when "the facts are so crystallized that all that remain are issues of law." *Bamboo Garden of Orlando, Inc. V. Oakbrook Prop. & Cas. Co.*, 773 So.2d 81, 83 (Fla. 5th DCA 2000).
- Y. A movant for a summary judgment has the burden of demonstrating that there is no genuine issue on any material fact. Rule 1.36(c), F.R.C.P., 30 F.S.A. All doubts regarding the existence of an issue are resolved against the movant, and the evidence presented at the hearing plus favorable inferences reasonably justified thereby are liberally construed in favor of the opponent. A summary judgment motion will be defeated if the evidence by affidavit or otherwise demonstrates the existence of a material factual issue. To defeat a motion which is supported by evidence which reveals no genuine issue, it is not sufficient for the opposing party merely to assert

that an issue does exist. If the moving party presents evidence to support the claimed non-existence of a material issue, he will be entitled to a summary judgment unless the opposing party comes forward with some evidence which will change the result—that is, evidence sufficient to generate an issue on a material fact. *Connolly v. Sebeco, Inc., Fla.*, 89 So.2d 482(Fla.1956).

Therefore the Court hereby,

**ORDERS and ADJUDGES:**

1. Discover Bank's Motion for Summary Disposition on Discover's Counter Claim is **GRANTED**.

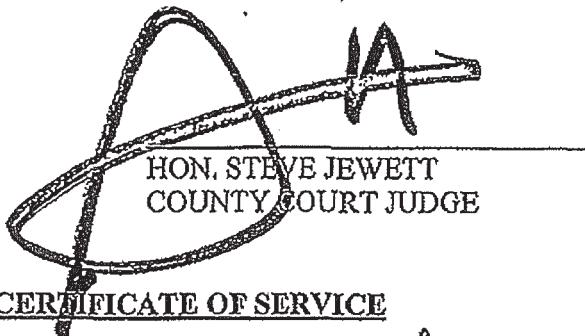
2. A judgment of summary disposition is hereby entered in favor of Discover Bank, whose address is 2500 Lake Cook Road, Riverwoods, Illinois 60015, and against Plaintiff/Counter-Defendant, Kwan L. Schuepfer ("Schuepfer"), whose address is 5845 La Costa Drive #203, Orlando, Florida 32807, on Discover Bank's Counterclaim for breach of contract in the amount of \$7,167.54, plus reasonable attorneys' fees and costs.

3. Discover Bank's Motion for Summary Disposition as to Plaintiff's Claim of FCCPA violation is **GRANTED**.

4. Plaintiff/Counter-Defendant, Kwan L. Schuepfer, shall take nothing by this action and the Court hereby enters Judgment in favor of the Counter-Plaintiff, Discover Bank.

5. The Court hereby retains jurisdiction to enter any further orders or judgments that may be necessary, including, but not limited to, an order determining the reasonable amount of attorneys' fees and costs, and orders in aid of execution of the judgment on Discover Bank's Counterclaim.

Entered in Orlando, Orange County, Florida this 6 day of March, 2015.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6 day of March, 2015, I served a true and correct copy of the foregoing via U.S. Mail to the following counsel of record:

Faudia Bacchus, Esq.  
Kaufman, Englett & Lynd, PLLC  
150 N. Orange Avenue, Suite 100  
Orlando, Florida 32801  
fbacchus@kelattorneys.com  
smorris@kelattorneys.com

Gennifer L. Bridges, Esq.  
Burr & Forman LLP  
200 S. Orange Avenue, Suite 800  
Orlando, Florida 32801  
gbridges@burr.com  
jnelson@burr.com

Darlene Waleff  
Judicial Assistant

EXHIBIT

6

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

HARDAT SINGH,

Plaintiff,

CASE NO. 2012-SC-007105

v.

BANK OF AMERICA CORPORATION, N.A.

Defendant,

ORDER GRANTING DIRECTED VERDICT IN FAVOR OF DEFENDANT

THIS CAUSE having come before the Court at a Trial held on February 7, 2013, and the Court having heard Plaintiff's case and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. Plaintiff has failed to prove his claim for violation of the Florida Consumer Collections Practices Act.
2. Defendant is granted a directed verdict in its favor.
3. A final judgment will be entered in favor of Defendant.

DONE and ORDERED in Chambers at Orange County, Florida this \_\_\_\_\_ day of  
\_\_\_\_\_, 2013.

Original Signed

FEB 17 2013

Honorable Wilfredo Matlloz  
County Court Judge **WILFREDO MARTINEZ**  
County Judge

cc: Dalya Santos, Esq.  
Jacqueline A. Simms-Petredis, Esq.

IN THE COUNTY COURT IN THE NINETH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

HARDAT SINGH,

Plaintiff,

Case No.:

vs.

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

---

STATEMENT OF CLAIM

The Plaintiff, HARDAT SINGH, (hereinafter referred to as "Plaintiff") by and through undersigned counsel, sues the Defendant BANK OF AMERICA CORPORATION, N.A., (hereinafter referred to as "Defendant"), and in support thereof respectfully alleges the following:

JURISDICTION AND VENUE

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Florida Consumer Collection Practices Act, Fla. Stat. §559.55-559.785, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.
2. This is an action for damages not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) exclusive of attorney fees and costs.
3. Jurisdiction and venue for purposes of this action are appropriate and conferred by Florida Statutes.
4. Pursuant to §559.77(1), Fla. Stat., a debtor may bring a civil action against a person violating the provisions of §559.72, Fla. Stat., in the county in which the alleged violator

resides or has his or her principal place of business or in the county where the alleged violation occurred.

5. The alleged violations and all acts giving rise to the claim described in the Complaint occurred in Orange County, Florida.
6. Venue is proper in this Court, as all acts giving rise to this claim occurred in Orange County, Florida.
7. Defendant is subject to personal jurisdiction in Orange County.

FACTS COMMON TO ALL COUNTS

8. Plaintiff, HARDAT SINGH, is an individual who resides in Orange County, at 20469 Quinlan Street, Orlando, Florida 32833.
9. Plaintiff is a debtor or consumer as defined by §559.55(2), Fla. Stat.
10. Defendant BANK OF AMERICA CORPORATION, N.A., is a registered Florida foreign corporation, engaged in collecting debts in this state with its principal place of business located at 100 North Tryon Street Charlotte, North Carolina 28255.
11. Defendant is a person as defined in §1.01(3), Fla. Stat.
12. Defendant consents of and has knowledge and control of the collection activities of its agents and representatives, including but not limited to supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors, and/or contractors for the alleged debt of Loan Number ending in 7524.
13. On or about December 8, 2011, Plaintiff's attorney sent a notice of representation to Defendant. Attached hereto as Exhibit "A" is a true and accurate copy of "Laura Garber's" affidavit and the notice of representation sent to defendant.

14. On or about December 14, 2011, Plaintiff received mailed correspondence from Defendant confirming receipt of Plaintiff's notice of representation. Attached hereto Exhibit "B" is a true and accurate copy of the Plaintiff's affidavit and the correspondence received.
15. On or about December 19, 2011 Plaintiff received mailed correspondence from Defendant in an attempt to collect a debt, despite knowledge that Plaintiff was represented by an attorney. See aforementioned Exhibit "B."
16. Defendant's statements and actions as well as that of its representative(s), employee(s) and/or agent(s) were attempts to threaten, harass and abuse the Plaintiff into paying the alleged debt.
17. The tactics employed by Defendant have caused Plaintiff considerable worry, embarrassment, frustration, anger, distress, and concern that this organization would go to this extent to collect a debt.
18. The emotional distress has strained Plaintiff's relationships with family and friends.
19. Plaintiff's damages pursuant to Florida Statutes including §559.77 have continued and are continuing as of the filing of this complaint.
20. All conditions precedent to the filing of this action have occurred.

CLAIM FOR RELIEF  
VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT

21. Plaintiff repeats and re-alleges and incorporates by reference Paragraphs 1 through 20 above.
22. Plaintiff is a consumer and the obligation between the parties which is the debt owed pursuant to the subject note is a consumer debt as defined in Fla. Stat. §559.55(1).
23. Fla. Stat. §559.72(18) provides:

In collecting consumer debts, no person shall:

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;

24. Defendant has violated Fla. Stat. §559.72(18) by communicating with the Plaintiff after the Defendant received notification that the Plaintiff was represented by legal counsel, when Defendant did not have prior consent from Plaintiff's attorney to contact Plaintiff directly, Plaintiff did not initiate the communication with Defendant, and Plaintiff's attorney did not fail to respond to a communication from the Defendant within the proscribed timeframe.

25. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

26. As a result of the above violation of the Florida Consumer Collection Practices Act, the Defendant is liable to the Plaintiff for injunctive and declaratory relief and actual damages, statutory damages, and attorneys' fees and costs.

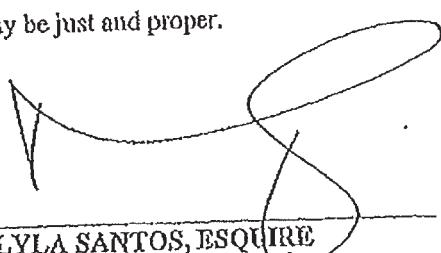
27. Defendant's actions have directly and proximately resulted in Plaintiff's prior and continuous sustaining of damages as described by Fla. Stat. §559.77.

28. Plaintiff is entitled to damages under Fla. Stat. §559.77.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

A. Declaratory judgment that Defendant's conduct violated the Florida Consumer Collection Practices Act and declaratory and injunctive relief for the Defendants' violations of the FCCPA.

- B. That Defendant be enjoined from any and all further illegal collection practice.
- C. Actual damages pursuant to Fla. Stat. §559.77(2).
- D. Statutory damages pursuant to Fla. Stat. §559.77(2).
- E. Costs and reasonable attorney's fees pursuant to Fla. Stat. §559.77(2).
- F. For such other and further relief as may be just and proper.



DALYLA SANTOS, ESQUIRE  
Florida Bar No. 064455  
TAMARA WASSERMAN, ESQUIRE  
Florida Bar No. 0095073  
KAUFMAN, ENGLETT & LYND, PLLC  
111 N. Magnolia Avenue, Suite 1500  
Orlando, Florida 32801  
Telephone: (407) 513-1900  
Facsimile: (407) 513-1988  
[dsantos@kelattorneys.com](mailto:dsantos@kelattorneys.com)  
[twasserman@kelattorneys.com](mailto:twasserman@kelattorneys.com)  
Counsel for Plaintiff  
HARDAT SINGH

**Exhibit A**

IN THE COUNTY COURT IN THE NINETH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

HARDAT SINGH,

Plaintiff,

Case No.:

vs.

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ORANGE

Before me, the undersigned authority, personally appeared, Laura Garber, who upon being first duly sworn swears to the following statement of facts:

1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am the Manager of the Intake/Production Team within Kaufman, Englett & Lynd, PLLC.
3. The Intake/Production Team is responsible for sending out the "Borrower Signature Authorization and Notice of Representation" to the Lender/Service/Debt Collector in a given file.
4. It is the regular course of business and standard operating procedure for an intake specialist within my department to fax a copy of the "Borrower Signature Authorization and Notice of Representation" to the Lender/Service/Debt Collector.

5. After faxing the "Borrower Signature Authorization and Notice of Representation" to the Lender/Servicer/Debt Collector it is the regular course of business and standard operating procedure for an intake specialist within my department to obtain the fax confirmation and scan a copy of the "Borrower Signature Authorization and Notice of Representation" and fax confirmation into the ProLaw event file for the client.
6. I have personally reviewed the ProLaw event file for Hardat Singh, and have found the scanned in "Borrower Signature Authorization and Notice of Representation" and fax confirmation sent to Bank of America Corporation, N.A.
7. The "Borrower Signature Authorization and Notice of Representation" was sent by facsimile transmission to fax number (805) 520-5019 on December 8, 2011, and the fax confirmation shows that the fax was successfully sent on December 8, 2011.

---

*{Intentionally left blank}*

8. I have attached a true and accurate copy of the "Borrower Signature Authorization and Notice of Representation" and fax confirmation to this Affidavit as Composite Exhibit "A."

FURTHER Affiant sayeth naught.

Laura Garber  
Laura Garber  
4/21/2012  
Dated

STATE OF FLORIDA  
COUNTY OF ORANGE

SWORN TO AND SUBSCRIBED before me, the undersigned, on this 21<sup>st</sup> day of June, 2012, appeared Laura Garber, who is/are personally known to me, or who produced Personally Known as identification, and does solemnly swear that they are the person(s) named in the foregoing and that they have read same and know the contents to be true and correct.



Brian  
Notary Public  
State of Florida, at Large  
My Commission Expires: May 26, 2015

**Exhibit A**

FROM:

TO:

Name: Ashley Kessler

18055205019@fax.com

Phone: Fox: 4073095956

10055205019

E-mail: akessler@keltonlawyers.com

Sent: 12/8/11

at: 11:33:48 AM

2 page(s) (including cover)

Subject: BORROWERS AUTHORIZATION-111AW23303

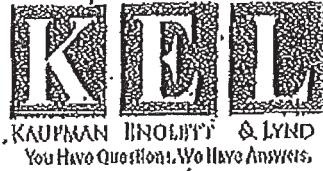
Comments:



Ashley Kessler

Date Entry Clerk

P. 407.513.1900 Ext. 7258  
F. 407.389.6141  
111 N. Magnolia Ave., Suite 1000  
Orlando, FL 32801  
[www.keltonlawyers.com](http://www.keltonlawyers.com)



## BORROWER SIGNATURE AUTHORIZATION AND NOTICE OF REPRESENTATION FOR FIRST MORTGAGE

### Part I - General Information

1. Borrower(s) Name(s): MANDAT SINGH
2. Subject Property Address: 20469 ORNLIN ST., OLLWOOD, PL, 32485-2
3. Borrower(s) SSN(s): [REDACTED]
4. First Lender Name: Bank of America
5. First Loan Number: [REDACTED] 7524

### Part II - Borrower Authorization

I hereby authorize Kaufman, Inglett and Lynd, PLLC to act as my legal counsel for purposes of loss mitigation. Kaufman, Inglett and Lynd, PLLC is authorized to negotiate with my lender(s), obtain all information requested including but not limited to payoff requests, payment history, CMA's and any all information that may be relevant to the loss mitigation process.

Furthermore, Kaufman, Inglett and Lynd, PLLC and any employee, attorney or agent of the Firm is hereby authorized to negotiate on my behalf with the lender regarding any proposed short sale, refinance, loan modification, deed in lieu or other disposition of the property or any matter as it relates to foreclosure, if any, regarding this property. This authorization is binding and continuing and shall be in effect until such time as I revoke it writing. As such I expect that you, my lender, cooperate fully with my attorney, Kaufman, Inglett and Lynd, PLLC as though you were dealing with me with respect to any requests for information regarding my account or loan with you.

Authorized Paralegals: Melissa Lombard, Samuel Justino, Frank Quinn, Olga Bonza, Barbara Dupley, Erin Spoko, Ezra Williamz, Dana Russell, Natasha Ramos, Jonas Wonder, Jason Soell, Courtney Crossland, Kimberly Thomas, Chad Brunz, Mike Ruggieri, Molly Fish, Luis Canuel, Coly Gallo, Emilio Davallo, Ellen Gullen, Jim Waskom, Horsey Gilliam, Ammarito Rodriguez, Corilla Wilson

### PASSWORD: MITIGATION

KBL Matter ID: 110W23883  
(Initials on back)

### Part III - Notice of Representation

I hereby request that my attorney, Kaufman, Inglett and Lynd, PLLC be contacted from this point forward regarding my loan modification efforts. Please forward all mitigation related documents (if any), emails and faxes to them directly. I further request that any phone calls be made directly to the Firm as well. You may continue to send account statements directly to me.

Mark A. Inglett  
Signature

12-7-2011  
Date

Ramona M. Singh  
Signature

12-7-2011  
Date

IN THE COUNTY COURT IN THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

Harbat Singh,

Plaintiff,

vs.

Case No.:

Bank of America,

Defendant.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ORANGE

Before me, the undersigned authority, personally appeared, Harbat Singh, who upon being first duly sworn, swears to the following statement of facts:

1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am over the age of 18 and have personal knowledge of the events stated herein.
3. I currently live in Orange County, Florida.
4. On or about December 19, 2011, I received communications from Defendant, despite knowledge that I am represented by my attorney. Specifically, Defendant contacted me by letter urging to contact Defendant. Attached hereto as Exhibit "A" which is a true and accurate copy of the letter I received from Defendant.

Harbat Singh  
e-Signed 2012-02-13 07:07PM EST  
vonilasingh@yahoo.com

Document Integrity Verified

EduSign Transaction Number: RSIU11XK637MII

5. The tactics employed by Defendant have caused me considerable worry, embarrassment, distress, and concern that this organization would go to this extent to collect a debt.

FURTHER AFFIANT SAYETH NAUGHT.

Hardat Singh  
[Signature] (Feb 13, 2012)

Dated: Feb 13, 2012

This document, as executed, complies with all requirements set forth by Title 15 U.S. Code, Chapter 96 and Section 668.50 of the Florida Statutes. As such, it may not be denied legal effect based solely upon its form as an electronically executed document.

Hardat Singh  
e-Signed 2012-02-13 07:07PM EST  
venitesingh@yahoo.com

# Exhibit B

IN THE COUNTY COURT IN THE NINETH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

HARDAT SINGH,

Plaintiff,

vs.

Case No.:

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ORANGE

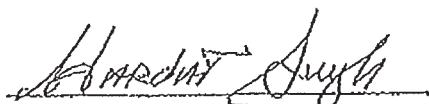
Before me, the undersigned authority, personally appeared, HARDAT SINGH, who upon being first duly sworn swears to the following statement of facts:

1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am over the age of 18 and have personal knowledge of the events stated herein.
3. I currently live in Orange County, Florida.
4. On or about December 14, 2011, I received mailed correspondence from Defendant confirming receipt of my notice of representation. Attached hereto Exhibit "B" is a true and accurate copy of the my affidavit and the correspondence received.
5. On or about December 19, 2011, I received mailed correspondence from Defendant in an attempt to collect a debt, despite knowledge that I was represented by my attorney. See attached hereto Exhibit "B" is a true and accurate copy of the correspondence I

received.

6. Despite receipt of the notice of representation sent by my attorney, Defendant continued to contact me.
7. The tactics employed by Defendant have caused considerable worry, embarrassment, distress, and concern that this organization would go to this extent to collect a debt.

FURTHER AFFIANT SAYETH NAUGHT.



HARDAT SINGH

6 - 23 - 2012

Dated

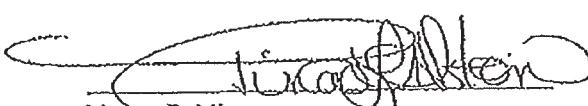
STATE OF FLORIDA

COUNTY OF Orange

SWORN TO AND SUBSCRIBED before me, the undersigned, on this 23 day of June, 2012, appeared HARDAT SINGH, who is/are personally known to me, or who produced FL Drivers Lic as identification, and does solemnly swear that they are the person(s) named in the foregoing and that they have read same and know the contents to be true and correct.



TINA L. ALSTON  
NOTARY PUBLIC  
STATE OF FLORIDA  
Commission #071033  
Expires 3/02/2016

  
Notary-Public  
State of Florida  
My Commission Expires: 03-08-15

# Exhibit A



CA6-910-01-61  
P.O. Box 5170  
Sun Valley, CA 93062-5170

Hardeep Singh  
20468 Quinlan St  
Orlando, FL 32833

Notice Date: December 14, 2011

Account No.: ~~86647824~~

Property Address:  
20468 Quinlan St  
Orlando, FL 32833

**[REDACTED] INFORMATION ABOUT YOUR HOME LOAN**

We have completed your request to add Kaufman Englell and Lynd as an authorized party on the above captioned home loan account. This authorization will remain in effect until you notify us in writing that you wish to revoke it.

Your authorization permits us to release the above loan to Mr. Kaufman Englell and Lynd; however, only the borrower(s) on this loan are authorized to make changes to the above captioned loan.

**[REDACTED] THANK YOU FOR YOUR BUSINESS**

If you have questions, or if you did not provide this authorization and believe you have received this letter in error, please contact our Customer Services Department at (800) 888-8807, Monday-Friday 7a.m. - 7p.m. Local Time. We appreciate the opportunity to serve your home loan needs.

This communication is from Bank of America, N.A., the servicer of your home loan.

Please write your account number on all correspondence.

311 03/02/2007 13007 46647824

# **Exhibit B**

Please review this notice to your attorney.

Bank of America, N.A., Member FDIC, Bank of America, N.A., is a division of Bank of America Corporation. All rights reserved.  
41591000000000000000000000000000

ORACOM03 18040 02/0/2011

112095  
Hardat Singh  
20409 Quillian St.  
Orlando, FL 32833

Loan Number Ending In: 7824

December 10, 2011

Dear Hardat Singh:

We value your relationship with Bank of America and understand that you may be experiencing difficulty making your mortgage payments. Let us help.

We would like to invite you to our Orlando Homeowner Assistance Center to have a personalized discussion with a home loan specialist about your financial situation. They will explain the details of foreclosure alternatives such as loan modification, Short Sale, or a Deed-In-Lieu and will evaluate which options are available for you.

8929 Millenia Lakes Blvd., Suite 100  
Orlando, FL 32830

Schedule an appointment:

Please call us at 407.369.7376 Monday through Friday from 9 a.m. to 6 p.m. or Saturday from 9 a.m. to 2 p.m. to schedule an appointment. To provide you with dedicated assistance, meetings with our specialists are by appointment only.

What you will need to bring:

In order for our specialists to determine all available options for you, each borrower listed on the loan must bring all of the required documents as outlined in the attached Document Checklist.

Please remember to bring:

- 1) Updated financial documents. Be sure that your items are dated according to the checklist. We must have the most current picture of your financial situation.
- 2) Completed documents. Make sure that your forms are filled out completely, signed and that all pages are provided (specifically tax returns and bank statements).

We hope you are able to take advantage of this opportunity. You may also visit [www.bankofamerica.com/homeequityhelp](http://www.bankofamerica.com/homeequityhelp) for more information on home loan modification.

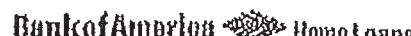
Home Loan Team  
Bank of America, N.A.

Enclosure: Document Checklist  
Code: IP121911

Bank of America, N.A. is regulated by law to inform you that this communication is from a debt collector. The purpose of this communication is to let you know about your potential eligibility for a loan modification program to help you avoid foreclosure.

This is not funded and administered by an equal housing lender.  
To receive your personal loan documents, please do not reply to this email.

To: Hardat Singh  
Stn: Valley, FL 32833-8170

Bank of America Home Loans

EXHIBIT

IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

NORMA HENRY,

Plaintiff,

CASE NO. 2012-SC-007101

v.

BANK OF AMERICA CORPORATION, N.A.

Defendant,

ORDER GRANTING DIRECTED VERDICT IN FAVOR OF DEFENDANT

THIS CAUSE having come before the Court at a Trial held on February 7, 2013, and the Court having heard Plaintiff's case and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. Plaintiff has failed to prove her claim for violation of the Florida Consumer Collection Practices Act.
2. Defendant is granted a directed verdict in its favor.
3. A final judgment will be entered in favor of Defendant.

DONE and ORDERED in Chambers at Orange County, Florida this \_\_\_\_\_ day of  
2013.

Original Signed

FEB 17 2013

Honorable William Martinez  
County Court Judge, County Judge

cc: Dalyia Santos, Esq.  
Jacqueline A. Stamps-Petredis, Esq.

(83797361;1)

EXHIBIT B-6

IN THE COUNTY COURT IN THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

NORMA HENRY,

Plaintiff,

Case No. 1

vs.

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

STATEMENT OF CLAIM

The Plaintiff, NORMA HENRY, (hereinafter referred to as "Plaintiff") by and through undersigned counsel, sues the Defendant BANK OF AMERICA CORPORATION, N.A., et al., (hereinafter referred to as "Defendant"), and in support thereof respectfully alleges the following:

JURISDICTION AND VENUE

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Florida Consumer Collection Practices Act, Fla. Stat. §§559.55-559.785, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.
2. This is an action for damages not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) exclusive of attorney fees and costs.
3. Jurisdiction and venue for purposes of this action are appropriate and conferred by Florida Statutes.
4. Pursuant to §559.77(1), Fla. Stat., a debtor may bring a civil action against a person violating the provisions of §559.72, Fla. Stat., in the county in which the alleged violator

resides or has his or her principal place of business or in the county where the alleged violation occurred.

5. The alleged violations and all acts giving rise to the claim described in the Complaint occurred in Orange County, Florida.
6. Venue is proper in this Court, as all acts giving rise to this claim occurred in Orange County, Florida.
7. Defendant is subject to personal jurisdiction in Orange County.

FACTS COMMON TO ALL COUNTS

8. Plaintiff, NORMA HENRY, is an individual who resides in Orange County, at 1225 Epson Oaks Way Orlando, Florida 32837.
9. Plaintiff is a debtor or consumer as defined by §559.55(2), Fla. Stat.
10. Defendant BANK OF AMERICA CORPORATION, N.A., et al. is a registered Florida foreign corporation, engaged in collecting debts in this state with its principal place of business located at 100 N Tryon St, Charlotte, North Carolina 28255.
11. Defendant is a person as defined in §1.01(3), Fla. Stat.
12. Defendant consents of and has knowledge and control of the collection activities of its agents and representatives, including but not limited to supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors, and/or contractors for the alleged debt of Account Number ending in 6071.
13. On or about November 1, 2011, Plaintiff's attorney sent a notice of representation to Defendant. Attached hereto as Exhibit "A" is a true and accurate copy of "Laura Garber's" affidavit and the notice of representation with the fax confirmation sent to

defendant.

14. On or about January 18, 2012 through July 18, 2012, Plaintiff received approximately three (3) mailed communications from defendant in an attempt to collect a debt. Attached hereto as Exhibit "B" is a true and accurate copy of the Plaintiff's affidavit, the letters Plaintiff received from Defendant, and the call log drafted contemporaneously with the communications received.
15. On or about January 30, 2012 through March 10, 2012, Plaintiff received approximately four (4) communications from Defendant in an attempt to collect a debt, despite knowledge that Plaintiff was represented by an attorney. See aforementioned Exhibit "B".
16. Defendant's statements and actions as well as that of its representative(s), employee(s) and/or agent(s) were attempts to frighten, harass and abuse the Plaintiff into paying the alleged debt.
17. The tactics employed by Defendant have caused Plaintiff considerable worry, embarrassment, frustration, anger, distress, and concern that this organization would go to this extent to collect a debt.
18. Plaintiff's damages pursuant to Florida Statutes including §559.77 have continued and are continuing as of the filing of this complaint.
19. All conditions precedent to the filing of this action have occurred.

CLAIM FOR RELIEF  
VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT

20. Plaintiff repeats and re-alleges and incorporates by reference Paragraphs 1 through 19 above.

21. Plaintiff is a consumer and the obligation between the parties which is the debt owed

pursuant to the subject note is a consumer debt as defined in Fla. Stat. §559.55(1).

22. Fla. Stat. §559.72(18) provides:

In collecting consumer debts, no person shall:

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;

23. Defendant has violated Fla. Stat. §559.72(18) by communicating with the Plaintiff after the Defendant received notification that the Plaintiff was represented by legal counsel, when Defendant did not have prior consent from Plaintiff's attorney to contact Plaintiff directly, Plaintiff did not initiate the communication with Defendant, and Plaintiff's attorney did not fail to respond to a communication from the Defendant within the proscribed timeframe.

24. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

25. As a result of the above violation of the Florida Consumer Collection Practices Act, the Defendant is liable to the Plaintiff for injunctive and declaratory relief and actual damages, statutory damages, and attorneys' fees and costs.

26. Defendant's actions have directly and proximately resulted in Plaintiff's prior and continuous sustaining of damages as described by Fla. Stat. §559.77.

27. Plaintiff is entitled to damages under Fla. Stat. §559.77.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the Florida Consumer Collection Practices Act and declaratory and injunctive relief for the Defendants' violations of the FCPA.
- B. That Defendant be enjoined from any and all further illegal collection practice.
- C. Actual damages pursuant to Fla. Stat. §559.77(2).
- D. Statutory damages pursuant to Fla. Stat. §559.77(2).
- E. Costs and reasonable attorney's fees pursuant to Fla. Stat. §559.77(2).
- F. For such other and further relief as may be just and proper.

---

DALYLA SANTOS, ESQUIRE  
Florida Bar No, 064455  
TAMARA WASSERMAN, ESQUIRE  
Florida Bar No, 0095073  
KAUPMAN, ENGLETT & LYND, PLLC  
111 N, Magnolia Avenue, Suite 1500  
Orlando, Florida 32801  
Telephone: (407) 513-1900  
Facsimile: (407) 513-1988  
[dsantos@kelattorneys.com](mailto:dsantos@kelattorneys.com)  
[twasserman@kelattorneys.com](mailto:twasserman@kelattorneys.com)  
Counsel for Plaintiff  
NORMA HENRY

---

# Exhibit A

IN THE COUNTY COURT IN THE NINTH JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

NORMA HENRY,

Plaintiff,

Case No.:

vs.

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ORANGE

Before me, the undersigned authority, personally appeared, Laura Garber, who upon being first duly sworn, swears to the following statement of facts:

1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am the Manager of the Intake/Production Team within Kaufman, Engleit & Lynd, PLLC.
3. The Intake/Production Team is responsible for sending out the "Borrower Signature Authorization and Notice of Representation" to the Lender/Servicer/Debt Collector in a given file.
4. It is the regular course of business and standard operating procedure for an intake specialist within my department to fax a copy of the "Borrower Signature Authorization and Notice of Representation" to the Lender/Servicer/Debt Collector.

5. After faxing the "Borrower Signature Authorization and Notice of Representation" to the Lender/Services/Debt Collector it is the regular course of business and standard operating procedure for an intake specialist within my department to obtain the fax confirmation and scan a copy of the "Borrower Signature Authorization and Notice of Representation" and fax confirmation into the ProLaw event file for the client.
6. I have personally reviewed the ProLaw event file for Norma Henry, and have found the scanned in "Borrower Signature Authorization and Notice of Representation" and fax confirmation sent to Bank of America Corporation, N.A.
7. The "Borrower Signature Authorization and Notice of Representation" was sent by facsimile transmission to fax number (805) 520-5019 on November 1, 2011, and the fax confirmation shows that the fax was successfully sent on November 1, 2011.

*[Intentionally left blank]*

8. I have attached a true and accurate copy of the "Borrower Signature Authorization and Notice of Representation" and fax confirmation to this Affidavit as Composite Exhibit "A".

FURTHER Affiant sayeth naught.

*Laura Garber*  
Laura Garber  
8/1/2012  
Dated.

STATE OF FLORIDA  
COUNTY OF ORANGE

SWORN TO AND SUBSCRIBED before me, the undersigned, on this 7 day of August, 2012, appeared Laura Garber, who is/are personally known to me, or who produced Personally Known as identification, and does solemnly swear that they are the person(s) named in the foregoing and that they have read same and know the contents to be true and correct.



*Brian L.*  
Notary Public  
State of Florida, at Large  
My Commission Expires: May 26 2016

TIME SENT November 1, 2011 5:43:11 PM EDT	REMOTE CSID CRPRDNHDS426	DURATION 93	PAGES 3	STATUS Sent
--	-----------------------------	----------------	------------	----------------

**RECEIVER**

**TRANSMITTER**

Name: Ashley Kessler 18055205019@fax.com

Phone: Fax: 4073096956 18055205010

E-mail: akessler@kelattorneys.com

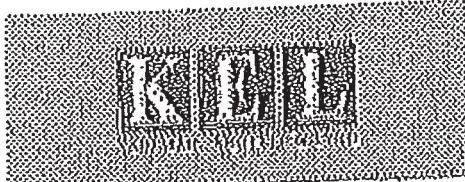
Sent: 11/1/11 at: 6:41:30 PM

3 page(s) (including cover)

Subject: BORROWERS AUTHORIZATION-11LAW22400

---

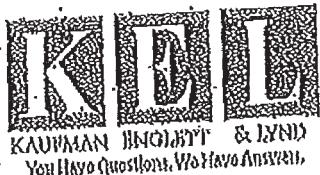
Comments:



Ashley Kessler  
Data Entry Clerk

P. 407.513.1900 Ext. 7040  
P. 407.360.6141  
111 N. Magnolia Ave., Suite 1000  
Orlando, FL 32801  
[www.kellogkrooks.com](http://www.kellogkrooks.com)

IMPORTANT NOTICE: Privileged and/or confidential information, including attorney-client communication and/or attorney work product may be contained in this message. This message is intended only for the individual or individuals to whom it is directed. If you are not an intended recipient of this message (or responsible for delivery of this message to such person), any dissemination, distribution or copying of this communication is strictly prohibited and may be a crime. No confidentiality or privilege is waived or lost by any misdirection of this message. If you received this message in error, please immediately delete it and all copies of it from your system, destroy any hard copy of it and notify the sender by return e-mail.



BORROWER SIGNATURE AUTHORIZATION  
AND NOTICE OF REPRESENTATION

Part I - General Information

1. Borrower(s) Name(s): NORMA HENRY  
2. Subject Property Address: 1225 E. 42nd ST. NEW YORK, NY 10022  
3. Borrower(s) SSN(s): 074-66-1973  
4. First Lender Name: Bank of America  
5. First Loan Number: 10142607

Part II - Borrower Authorization

I hereby authorize Kaufman, Binglby and Lynd, PLLC to act as my legal counsel for purposes of loss mitigation. Kaufman, Binglby and Lynd, PLLC is authorized to negotiate with my lender(s), obtain all information requested including but not limited to payoff requests, payment history, CMA's and any other information that may be relevant to the loss mitigation process.

Furthermore Kaufman, Binglby and Lynd, PLLC and any employee, attorney or agent of the firm is hereby authorized to negotiate on my behalf with the lender regarding any proposed short-sale, refinances, loan-modification, deed-in-lieu or other disposition of the property or any motor as it relates to foreclosure, if any, regarding this property. This authorization is binding and continuing and shall be in effect until such time as I revoke it writing. As such I expect that your, my lender, cooperates fully with my attorney, Kaufman, Binglby and Lynd, PLLC as though you were dealing with me with respect to any requests for information regarding my account or loan with you.

Authorized Paralegal: Walter Lombardo, Samuel Juslin, Franklin Quinon, Olga Bouza, Barbara Duplon, Brian Spake, Ezra Williams, Diana Russell, Natasha Ramos, Jonas Wondol, Jason Sooh, Courtney Crossland, Kimberly Thomas, Christ Branz, Misty Ruggles, Molly West, Luis Caneel, Cely Gafoll, Enilio Devalle, Dillon Guillen, Jim Washburn, Dorsey Gilliam, Ammarito Rodriguez

PASSWORD: MITIGATION

KEL Matter ID: 1112W22408  
(Remittance)

Part III - Notice of Representation

I hereby request that my attorney, Kaufman, Binglby and Lynd, PLLC be contacted from this point forward regarding my loan modification efforts. Please forward all mitigation related documents (if any), emails and faxes to them directly. I further request that any phone calls be made directly to the firm as well. You may continue to send account statements directly to me.

Signature

Date

Signature

Date

**Exhibit B**

IN THE COUNTY COURT IN THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

NORMA HENRY,

Case No.:

Plaintiff,

v.

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ORANGE

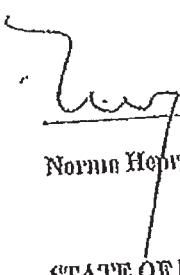
Before me, the undersigned authority, personally appeared, NORMA HENRY, who upon being first duly sworn, swears to the following statement of facts:

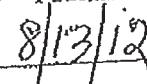
1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am over the age of 18 and have personal knowledge of the events stated herein.
3. I currently live in Orange County, Florida.
4. On or about January 18, 2012, I received a mailed correspondence from Defendant in an attempt to collect a debt, despite knowledge that I am represented by an attorney. Attached hereto as Exhibit "A" is a true and accurate copy of the letter I received from Defendant.
5. On or about January 30, 2012 through March 10, 2012, I received approximately four (4) communications from Defendant in an attempt to collect a debt, despite knowledge that I was represented by an attorney. Attached hereto as Exhibit "B" is a true and accurate copy of the call log I drafted contemporaneously with the

communications received.

6. The tactics employed by Defendant have caused considerable worry, embarrassment, distress, and concern that this organization would go to this extent to collect a debt.

FURTHER AFFIANT SAYETH NAUGHT.

  
Norma Henry

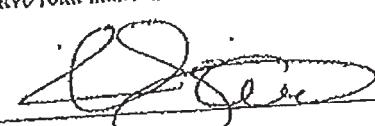
  
8/13/12

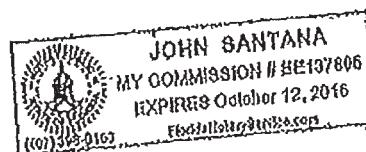
Dated

STATE OF FLORIDA

COUNTY OF Orange

SWORN TO AND SUBSCRIBED before me, the undersigned, on this 13 day of August, 2012, appeared Norma Henry, who is/were personally known to me, or who produced Driver's Licence as Identification, and does solemnly swear that they are the person(s) named in the foregoing and that they have read same and know the contents to be true and correct.

  
Notary Public  
State of Florida  
My Commission Expires: Oct. 12, 15



**Exhibit A**

We want to help you avoid  
foreclosure.

Come meet with a home loan  
specialist and have a personalized  
conversation about your options.

ELA1012  
Donovan Robertson  
Norma Henry  
1228 Epcot Oaks Way  
Orlando, FL 32897

Loan Number Ending In: 8073

January 18, 2012

Dear Donovan Robertson & Norma Henry:

We value your relationship with Bank of America and understand that you may be experiencing difficulty making your mortgage payment. Let us help.

We would like to invite you to our Orlando Customer Assistance Center to have a personalized discussion with a home loan specialist about your financial situation. They will explain the details of foreclosure alternatives such as loan modification, short sale, or a deed-in-lieu and will evaluate which options are available for you.

5323 Millenia Lakes Blvd, Suite 100  
Orlando, FL 32839

Schedule an appointment:

Please call us at 407.869.7375 Monday through Thursday from 9 a.m. to 8 p.m., Friday from 9 a.m. to 6 p.m., or Saturday from 9 a.m. to 1 p.m. to schedule an appointment. To provide you with dedicated assistance, meetings with our specialists are by appointment only.

What you will need to bring:

In order for our specialists to determine all available options for you, each borrower listed on the loan must bring all of the required documents as outlined in the attached Document Checklist.

Please remember to bring:

- 1) Updated financial documents. Be sure that your forms are dated according to the checklist. We must have the most current picture of your financial situation.
- 2) Complete documents. Make sure that your forms are filled out completely, signed and that all pages are provided (specifically tax returns and bank statements).

We hope you are able to take advantage of this opportunity. You may also visit [www.bankofamerica.com/homeloanhelp](http://www.bankofamerica.com/homeloanhelp) for more information on home loan assistance.

Home Loan Team  
Bank of America, N.A.

Enclosure: Document Checklist  
Code: IPO11.012

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. The purpose of this communication is to let you know about your potential eligibility for a loan modification program to help you avoid foreclosure.

Mortgages funded and originated by an FDIC Regulated Lender

Bank of America  Home Loans

## Required Documents for Home Loan Assistance

**Please complete all 3 sections below**

If you are mailing in documents, only send copies—keep originals for your records.

**Section 1:** All borrowers listed on the loan must provide all of the documents listed in this section.

- Federal tax returns from the previous two years (all pages, signed and dated)
- Homeowners Insurance Declaration Page
- Real Estate Property Tax Certification Statement (if not escrowed into your mortgage payment)

**Section 2:** All borrowers listed on the loan must complete and provide all of the documents in this section.

- Copies of these documents can be downloaded at [bankofamerica.com/documentschecklist](http://bankofamerica.com/documentschecklist) or provided by a specialist if you are attending an in-person meeting. Please note: If all borrowers are not attending the in-person meeting, they must complete these documents individually:
- Request for Modification Affidavit (RMA)
- IRS Form 4868-T
- Dodd-Frank Certification Form
- Hardship Letter

**Section 3:** In addition, all borrowers must provide the documents in the categories that apply.

If you are a salaried or hourly employee:

- Two most recent and consecutive pay stubs showing 30 days of income and year-to-date earnings (less than 60 days old)

If you receive alimony, child support or separation maintenance as qualifying income;

You are not required to disclose child support, alimony or separation maintenance income, unless you choose to have it considered.

- Divorce decree, separation agreement, other written agreement filed with the court; or decree that states the amount and period of time payment will be received
- Two most recent monthly bank statements (all pages) or other proof showing receipt of funds

If you receive funds from Social Security, disability or death benefits, pension, adoption assistance, public assistance, unemployment or if your employment is seasonal;

- Benefits statement or letter from the provider that states the amount, frequency and duration of the benefit
- Two most recent monthly bank statements (all pages) or other proof showing receipt of funds
- If unemployed, proof of unemployment wages for a minimum of 6 months

If you have income from any other source(s); this could include bonuses, tips or investment income.

- Documentation describing the nature of the income, such as an employment contract or documents tracking tip income

Two most recent bank statements (all pages) or other proof showing receipt of funds

If you are a military borrower on active duty or within 9 months of release;

- Active-duty military officer or other proof of active duty status which reflects start and end date
- Most recent Paylip and Retirement statement showing year-to-date earnings

For questions about these documents, please call us or visit: [bankofamerica.com/documentschecklist](http://bankofamerica.com/documentschecklist)

This is not a commitment to lend. Please contact your lender for more information. Bank of America, N.A. Member FDIC. ©2013 Bank of America, N.A. ER 05/03/2013 16193 2013-02-2013



February 2, 2012  
Loan Number ending in 6071

NOB-01248  
Donovan Robertson  
Norma Honny  
1225 Epson Oaks Way  
Orlando, FL 32837-6323

Property Address: 1225 EPSON OAKS WAY  
ORLANDO, FL 32837

Dear Donovan Robertson and Norma Honny,

Bank of America, N.A. would like to help you prevent the upcoming foreclosure on the property listed above. My name is Brenda, and I will be calling you soon to discuss our Cooperative Short Sale Program. Since this may be your last opportunity to prevent foreclosure, I strongly urge you to review the benefits of a Cooperative Short Sale.

What is a Cooperative Short Sale?

In a Cooperative Short Sale, you list the property for sale at the fair market value and, when the property has sold, your mortgage is paid off with the proceeds even if you sell your property for less than you owe on the loan. In addition, after a successful Cooperative Short Sale under this program, we may be able to forgive any remaining balance on the above-referenced account. A short sale generally takes less time to complete than a foreclosure, so your reported delinquency could be shorter than it would with a foreclosure. As a result, your credit may improve sooner than it would if your house were to go into foreclosure.

Additional benefits of a Cooperative Short Sale include:

- You have up to four (4) months to sell your property
- You may be eligible to receive a relocation assistance payment of up to \$3,000
- You will have dedicated support so you have the information you need to make informed decisions throughout the process

While this may be a difficult time for you, know that we are here to help you avoid foreclosure and to make the process as easy as possible. I will be calling you soon to follow up and discuss any questions you may have. In the meantime, you can reach me directly on my toll free number at 1-877-633-4744 Ext. 3496 Monday through Friday 11:00am to 8:00pm Eastern. I will be happy to answer all of your questions, and all of your information will be kept confidential.

Sincerely,

Brenda  
Associate  
Bank of America, N.A.

In order to expedite the Short Sale process, Bank of America, N.A. is working with a third party company, NOB. Federal law requires that we communicate to you that Bank of America, N.A. and NOB are debt collectors. However, the purpose of the communication is to let you know about your potential eligibility for this program to help you avoid foreclosure.

Please send us the requested items as soon as possible. The foreclosure process will continue until we resolve all of the requested items and complete our review.

July 10, 2012

DONOVAN ROBERTSON  
NORMA HENRY  
1228 Epson Oaks Way  
Orlando, FL 32837

Loan Number: ~~XXXXXX~~ 6071

Dear DONOVAN ROBERTSON and NORMA HENRY:

Thank you for your interest in the modification program. We need information relating to your financial situation and the circumstances of your hardship to determine if your loan is eligible for this program.

As of the date of this letter, we cannot complete our review because some information we need is missing or incomplete.

Please complete and fax the required documentation using the enclosed fax cover sheet to 1.800.260.7329 or return using the enclosed FedEx envelope.

Please ensure all submissions are complete. You may find the list below contains one or more documents you submitted as part of your Borrower Response Package. If so, they are listed because we need more information about them or because they were submitted with missing or incomplete information. When providing the additional documentation or clarifications, remember the following helpful hints:

- Write your loan number at the bottom of all pages if it's not already listed. This will aid in identifying your documents should they be sent separately or get separated.
- Include ALL PAGES of any document with multiple pages. For instance, if the last page of your bank statement indicates Page 6 of 6, ensure you provide the copy of all six pages.
- The signature of each borrower and the date the document was signed is required for many documents. Please make sure all the proper signatures and dates are provided for any documents listed below.
- Some requested documents have columns of numbers that must be added or subtracted to determine a total value (for example, Request for Mortgage Assistance or Uniform Borrower Assistance Form (Form 710), profit and loss statement). Please ensure that complete and accurate totals are provided for any and all columns.
- If a document you previously submitted is listed below, it may be too old to be useful. Please send us a copy of the most recent version(s) of the document.

**Important Information about Foreclosure**

If you receive a completed Borrower Response Package, your loan is subject to the foreclosure process; up to and including foreclosure sale. Once your loan enters the foreclosure process (or if it has already entered the foreclosure process), foreclosure activities will continue until you have been evaluated for and enter into an approved foreclosure avoidance alternative. It is important that you continue to respond to any foreclosure notice and to any request for additional documentation required to complete your Borrower Response Package.

If you submit a complete Borrower Response Package less than 37 calendar days before a scheduled foreclosure sale, we will attempt to review your loan for a foreclosure alternative, but there is no guarantee we can stop the foreclosure sale. Even if we are able to approve your loan for a foreclosure alternative prior to a sale, a court with jurisdiction over the foreclosure proceeding (if any) or public official charged with carrying out the sale may not halt the scheduled sale. Also, if we receive your complete package less than 10 days before a scheduled foreclosure sale date, we are not obligated to review your package or request a postponement of the sale.

Please submit the following information for each borrower:

- IRS Form 4868T (enclosed) - This form allows us to request a copy of the tax return for each borrower. Borrowers who filed their tax returns jointly may send in one IRS Form 4868T signed and dated by both joint filers.
- Tax Return - A signed copy of the most recently filed tax return, with all schedules and tax forms (for example, Schedules A-E, Tax Form 8979 e-filing, 4868 Tax Filing Extension, etc.). If you are not required to file a tax return, please submit a letter of explanation.
- Pay Stubs - The most recent pay stub that reflects at least 30 days of year to date earnings for each borrower who is either a salaried employee or hourly wage earner. (For example; if you are paid weekly, provide four pay stubs that cover the full month and if you are paid bi-monthly, two pay stubs at a minimum.) If you are new to your job and do not yet have a pay stub, submit a letter from employer verifying employment start date and salary or rate of pay.
- Rental Income - A copy of each of the following: 1) the current lease agreement for all rental properties, 2) evidence of receipt of payment, such as copies of your most recent two (2) months bank statements or cancelled checks, and 3) your most recent filed and signed federal tax return with all schedules, including Schedule E if not previously provided. If you no longer receive rental income, or this property is not listed on Schedule E of your most recent tax return, please provide a letter of explanation.
- Pension / Retirement Benefits - A copy of the most recent pension/retirement benefit statement that states the amount, frequency and duration of the benefit, along with evidence of receipt of payment, such as bank statements.
- Bank Statements for Verification of Receipt of Income - A copy of two (2) most recent, consecutive months of bank statements -- all pages -- evidencing receipt of payment of income (for example, rental/security deposits, boarder, Social Security, disability, pension, unemployment, alimony, child support, etc.)
- Verification of Occupancy - A copy of a utility bill (for example, gas, electric, cable service, personal cell phone, land line phone) in either borrower's name verifying occupancy of the subject property.
- Homeowners Association Documentation - Letter or bill from homeowners/condominium association reflecting dues amount and frequency paid.
- Homeowners Hazard Insurance - A copy of your most recent hazard insurance declaration indicating the total annual premium amount for the current year.
- Boarder Income - A copy of a room rental agreement or statement from the borrower or boarder indicating how much boarder rent is paid monthly. Also provide proof of receipt of monthly rent by providing two (2) most recent, consecutive bank statements and/or two (2) most recent, consecutive deposit receipts/cancelled checks. Handwritten receipts are not acceptable.
- Proof of Hardship - Copy of documentation to support the hardship indicated on the section of your Request for Mortgage Assistance or Uniform Borrower Assistance Form (Form 710). Please see the enclosed Request for Hardship Documentation for a list of specific documents.
- Form 710 Uniform Borrower Assistance Form (enclosed) - This form must be completed in its entirety. Sections requiring a total must be completed and accurately totaled. The form must be signed and dated by all borrowers.
- Hardship Letter - A written explanation describing the specific nature of your Hardship.

Please note: Keep a copy of all documents for your records. Do not send original documentation unless otherwise noted.

Also, we have been unable to contact you to discuss your options. Please call the number below to provide a phone number that we may call to discuss your account with you to determine the documentation required to review your loan for this program.

#### Other foreclosure prevention alternatives that may be available

If you do not wish to pursue a loan modification or do not return your documents as requested above, we want you to know about other options to avoid foreclosure, including short sale and deed in lieu of foreclosure.

In a short sale, you list the property for sale at the fair market value and, when the property has sold, your mortgage is paid off with the net proceeds even if you sell your property for less than you owe on the loan. In addition, after a successful short sale, we may be able to forgive any outstanding balance.

#### Additional benefits of a short sale include:

- Potential for financial assistance upon closing to help with relocation expenses.
- Takes less time to complete than a foreclosure, so your reported delinquency could be shorter than it would with a foreclosure. As a result, your credit may improve sooner than it would if your house were to go into foreclosure.
- Bank of America's guidance on a fair list price to market and list your home.
- Assistance from a licensed real estate agent of your choice throughout the process.

If you are unable to sell the property in a short sale, another option to avoid foreclosure is a deed in lieu of foreclosure. With a deed in lieu, you voluntarily transfer ownership of the property owned by the mortgage lender to us to satisfy the total amount due on the first mortgage.

#### Benefits of a deed in lieu include:

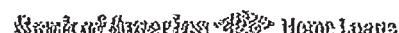
- You may be eligible to receive financial assistance upon closing for relocation expenses.
- Allows you to avoid the public auction of your property.
- Generally takes less time to complete than a foreclosure, so your reported delinquency could be shorter than it would with a foreclosure. As a result, your credit may improve sooner than it would if your house were to go into foreclosure.

If staying in your home is not the best option for your situation, contact Short Sale Customer Care at 1-800-880-1232 or your customer relationship manager for more information about a short sale or deed in lieu of foreclosure.

#### We are here to help

You will be assigned a dedicated customer relationship manager and will be receiving their direct contact information in a separate letter soon. If you have any questions about our request for documents, want to confirm that we have received your missing information, or are interested in other alternatives to avoid foreclosure please call 1-888-339-7411 Monday - Friday from 9 a.m. - 6 p.m. Eastern time. We want to work with you and urge you to send us your documentation as soon as possible.

Home Loan Team  
Bank of America, N.A.

 Home Loans

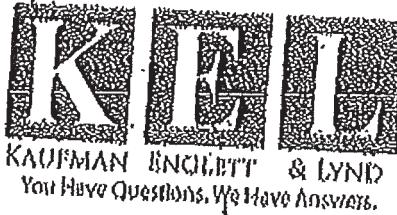
Enclosures: 1) Pre-paid envelope 2) Customized Cover Sheet 3) IRS Form 4608-T 4) Important Disclosures 5) 710 Uniform Borrower Assistance Form 6) Request for Proof of Hardship Documentation

This communication should not be construed as an attempt to collect a debt or a demand for payment. You are not obligated to enter into a Modification Agreement or other loss mitigation program. You should consult with your bankruptcy attorney or other advisor regarding a modification or other loss mitigation program and how it will affect your legal rights and options.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. However, the purpose of this communication is to let you know that we need additional information in order to complete our review of your request for a loan modification or other loss mitigation needs to us.

Debt collector as defined by Federal Fair Debt Collection Practices Act.  
© 2009 Bank of America Corporation.

# Exhibit B



KAUFMAN ENCLERETT & LYNN  
You Have Questions, We Have Answers.

## DEBTOR HARASSMENT CALL LOG SHEET

We suggest you keep this near your phone to record all creditor calls with as much information as possible. Provide this Creditor with KEL's Contact Information.

\*Complete ONE Call Log Sheet per Creditor/Lender. Please DO NOT group multiple accounts.\*\*\*

Client Name(s), Norma Henry

Client ID# XXXXXXXXXX

Creditor/Lender Name Be A

Account Number XXXXXX

Date Verbally Notified Creditor/Lender of KEL Representation

CALL #	DATE MM/DD/YYYY	TIME OF DAY	CALLER'S NAME AND POSITION	CALLER ID/CREDITOR PHONE#	MESSAGE/DETAILS
1	1/30/12	4:07pm	?	877-633-4744	Calling from 633-4744
2	2/23/12	6:26pm	Brenda	877-633-4744	Re: Client S.A.L. II Re: my new info Re: add. 5% interest Re: 1/30/12
3	2/28/12	6:13pm	Brenda	877-633-4744	On behalf of
4	3/10/12	10:46pm	Ryan	877-633-4744	On behalf of
5			Sydney	877-633-4744	On behalf of
6					
7					
8					
9					
10					

Please type/print all information. Please be as accurate and detailed as possible. After the sheet is complete, please fax, e-mail, or mail this Call Log to KEL and begin a new Call Log sheet.

Kaufman, Enclerett & Lynn

222 N. Magnolia Avenue

Suite 1600

Plano, TX 75075

Debt Harassment Logon Assistance

Daniel Vega

(407)523-1900 FAX: (407)523-1903

E-mail: dvega@kellaw.com

11

TRANSACTION DATE	TRANSACTION ID	STATUS
MARCH 20, 2012 6:40:50 AM EDT	32320029	PENDING

EXHIBIT

8

ORIGINAL

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

FRANCES SOSA,

Plaintiff,

CASE NO. 2013-SC-007776

v.

BANK OF AMERICA, N.A.

Defendant,

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

THIS CAUSE came before the Court on February 6, 2014, on Defendant, Bank of America's Motion for Summary Disposition. The Court, having reviewed the Motion, and the Court file, hearing argument and being otherwise fully advised in the matter, it is:

ORDERED and ADJUDGED that:

1. Defendant, Bank of America's Motion for Summary Disposition is GRANTED.
2. The specific communications attached to plaintiff's statement of claim are not attempts to collect a debt and therefore do not violate the Florida Consumer Collection Practices Act.

(3) The Clerk is directed to close this case.

DONE AND ORDERED in Chambers, in Pinellas County, Florida, this 6 day of February, 2014;



Honorable John Carassas  
County Court Judge

cc: Kristine Callagy, Esq.  
Jacqueline A. Simms-Petredis, Esq.

{28039356;1}

EXHIBIT B-7

IN THE COUNTY COURT IN THE  
SIXTH JUDICIAL COURT IN AND  
FOR PINELLAS COUNTY, FLORIDA

FRANCES SOSA,

Case No.:

Plaintiff,

v.

BANK OF AMERICA, N.A., et al.,

Defendant.

STATEMENT OF CLAIM

The Plaintiff, FRANCES SOSA, (hereinafter referred to as "Plaintiff") by and through undersigned counsel, sues the Defendant BANK OF AMERICA, N.A, (hereinafter referred to as "Defendant"), and in support thereof respectfully alleges the following:

JURISDICTION AND VENUE

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Florida Consumer Collection Practices Act, Fla. Stat. §559.55-559.785, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.
2. This is an action for damages not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) exclusive of attorney fees and costs.
3. Jurisdiction and venue for purposes of this action are appropriate and conferred by Florida Statutes.
4. Pursuant to §559.77(1), Fla. Stat., a debtor may bring a civil action against a person violating the provisions of §559.72, Fla. Stat., in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.
5. The alleged violations and all acts giving rise to the claim described in the Complaint

occurred in Pinellas County, Florida.

6. Venue is proper in this Court, as all acts giving rise to this claim occurred in Pinellas County, Florida.
7. Defendant is subject to personal jurisdiction in Pinellas County.

**FACTS COMMON TO ALL COUNTS**

8. Plaintiff, FRANCES SOSA, is an individual who resides in Pinellas County, at 2002 Valley Drive, Dunedin, FL 34698.
9. Plaintiff is a debtor or consumer as defined by §559.55(2), Fla. Stat.
10. Defendant BANK OF AMERICA, N.A. is a national banking association under the laws of the United States, engaged in collecting debts in this state with its principal place of business located at 100 N. Tryon Street, Charlotte, North Carolina 28255.
11. Defendant is a person as defined in §1.01(3), Fla. Stat.
12. Defendant consents of and has knowledge and control of the collection activities of its agents and representatives, including but not limited to supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors, and/or contractors for the alleged debt of account number ending in 1624.
13. On November 21, 2012, Plaintiff's attorney sent a Borrower Signature Authorization and Notice of Legal Representation to Defendant. Attached hereto as Exhibit "A" is a true and accurate copy of the Borrowers Authorization and Notice of Representation sent to Defendant.
14. On or about February 14, 2013, Plaintiff received door hanger from Defendant in an attempt to collect a debt, despite knowledge that Plaintiff was represented by an attorney.

Attached hereto as Exhibit "C" is a true and accurate copy of the Letter received by Plaintiff on or about February 14, 2013, for account ending in ████

15. On or about April 1, 2013, Plaintiff received mailed letter from Defendant in an attempt to collect a debt, despite knowledge that Plaintiff was represented by an attorney.

Attached hereto as Exhibit "C" is a true and accurate copy of the Letter received by Plaintiff on or about April 1, 2013, for account ending in ████

16. On or about April 4, 2013, Plaintiff received mailed letter from Defendant in an attempt to collect a debt, despite knowledge that Plaintiff was represented by an attorney.

Attached hereto as Exhibit "D" is a true and accurate copy of the Letter received by Plaintiff on or about April 4, 2013, for account ending in ████

17. Defendant's statements and actions as well as that of its representative(s), employee(s) and/or agent(s) were attempts to collect a debt in violation of Florida Statutes.

18. The tactics employed by Defendant have caused Plaintiff considerable concern.

19. Plaintiff's damages pursuant to Florida Statutes including §559.77 have continued and are continuing as of the filing of this complaint.

20. All conditions precedent to the filing of this action have occurred.

**CLAIM FOR RELIEF VIOLATION OF THE FLORIDA CONSUMER COLLECTION  
PRACTICES ACT SECTION 559.77(18)**

21. Plaintiff repeats and re-alleges and incorporates by reference Paragraphs 1 through 21 above.

22. Plaintiff is a consumer and the obligation between the parties which is the debt owed pursuant to the subject note is a consumer debt as defined in Fla. Stat. §559.55(1).

23. Fla. Stat. §559.72(18) provides:

In collecting consumer debts, no person shall;

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;

24. Defendant has violated Fla. Stat. §559.72(18) by communicating with the Plaintiff after the Defendant received notification that the Plaintiff was represented by legal counsel, when Defendant did not have prior consent from Plaintiff's attorney to contact Plaintiff directly, Plaintiff did not initiate the communication with Defendant, and Plaintiff's attorney did not fail to respond to a communication from the Defendant within the proscribed timeframe.
25. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.
26. As a result of the above violations of the Florida Consumer Collection Practices Act, the Defendant is liable to the Plaintiff for injunctive and declaratory relief and actual damages, statutory damages, and attorneys' fees and costs.
27. Defendant's actions have directly and proximately resulted in Plaintiff's prior and continuous sustaining of damages as described by Fla. Stat. §559.77.
28. Plaintiff is entitled to damages under Fla. Stat. §559.77.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the Florida Consumer Collection Practices Act and declaratory and injunctive relief for the Defendant's violations for the FCCPA.
- B. That Defendant be enjoined from any and all further illegal collection practice.
- C. Actual damages pursuant to Fla. Stat. §559.77(2).
- D. Statutory damages pursuant to Fla. Stat. §559.77(2).
- E. Costs and reasonable attorney's fees pursuant to Fla. Stat. §559.77(2).
- F. For such other and further relief as may be just and proper.

DATED: 10/29/13

KAUFMAN, ENGLETT & LYND, PLLC

/s/ Dalyla Santos D-S  
DALYLA SANTOS, ESQUIRE  
Florida Bar No. 064455  
111 N. Magnolia Avenue, Suite 1500  
Orlando, Florida 32801  
Telephone: (407) 513-1900  
Primary Email: [dsantos@kelattorneys.com](mailto:dsantos@kelattorneys.com)  
Secondary Email: [sgreene@kelattorneys.com](mailto:sgreene@kelattorneys.com)  
Counsel for Plaintiff: FRANCES SOSA

# Exhibit A

\*\* SENDING NOTIFICATION : FAX SENT SUCCESSFULLY \*\*

TIME SENT

November 21, 2012 2:29:17 PM EST

REMOTE CSTD  
BankofAmericaCardN36a

DURATION  
116

PAGES  
3

STATUS  
Sent

FROM

TO

Name: Marianne Cruz-Otero

18006580395@FAX.COM

Phone: Fax: 4073895141

18006580395

E-mail: molero@keltonlawyers.com

Sent: 11/21/12

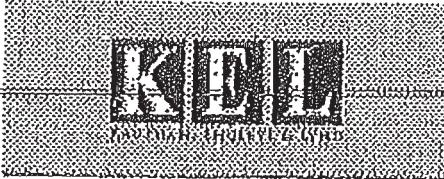
PM

3 page(s) (including cover)

Subject: BORROWERS AUTHORIZATION; #2LAW33144

IMPORTANT NOTICE: This facsimile contains auto-generated and privileged and/or confidential information, including attorney-client communication and/or attorney work product may be contained in within the faxed information. The information intended to be provided is on authorization permitting the intended recipient to discuss the account number(s) identified in the authorization with representatives from the Law Offices of Kaufman, Engle & Lynd PLLC. If you are not an intended recipient of this message (or responsible for delivery of this message to such person), or if this fax transmission contains any information beyond the noted authorization, any distribution, disclosure or copying of this communication is strictly prohibited and may be a crime. No confidentiality or privilege is waived or lost by any misdirection or forwarding of this message. If you received this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender by return e-mail.  
molero@keltonlawyers.com

**\*\*DO NOT REPLY TO THIS MESSAGE\*\***



**Data Entry**

P. 407.513.1800 Ext. 7200  
F. 407.369.6141  
111 N. Magnolia Ave., Suite 1800  
Orlando, FL 32801  
[www.kolaattorneys.com](http://www.kolaattorneys.com)

### Borrower Signature Authorization and Notice of Representation

#### Part I – General Information

1. Borrower(s) Name(s): Frances Sosa
2. ██████████ Key Dr, Dunedin, FL 34698
3. Borrower(s) SSN(s): ██████████
4. Lender Name: Bank of America
5. Loan Number: 16324

#### Part II – Borrower Authorization

I hereby authorize Kaufman, Englehardt and Lynd, PLLC to act as my legal counsel for purposes of loss mitigation. Kaufman, Englehardt and Lynd, PLLC is authorized to negotiate with my lender(s), obtain all information requested including but not limited to payoff requests, payment history, CMA's and any all information that may be relevant to the loss mitigation process.

Further Kaufman, Englehardt and Lynd, PLLC and any employee, attorney or agent of that firm is hereby authorized to negotiate on my behalf with the lender regarding any proposed short sale, refinancing, loan modification, deed in lieu or other disposition of the property or any matter as it relates to foreclosure, if any, regarding this property. This authorization is binding and continuing and shall be in effect until such time as I revoke it writing. As such I expect that you my lender cooperate fully with my attorney, Kaufman, Englehardt and Lynd, PLLC as though you were dealing with me with respect to any requests for information regarding my account or loan with you.

Authorized Parties: Melissa Lombardo, Olga Bouza, Erin Spaho, Courtney Crossland, Braille Davalos, Anna Almenar, Kristie Stokes, Erlin Zaharia, Ricardo Colon, Ricardo Martinez, Luke Davis, Sophia Cabacan, Scott Loitner, Mario Jandy, Mark Watson, Taylor Asselmann, Valerie Newell, Mila Melendez, Heather Hunter, Jeremy Gatz

#### PASSWORD: MITIGATION

KBL Master ID: 1211483144  
(Master ID Only)

#### Part III – Notice of Representation

I hereby request that my attorney, Kaufman, Englehardt and Lynd, PLLC be contacted from here forward regarding my loan modification efforts. Please forward any/all mitigation related documents (if any), emails and faxes to them directly. I further request that any phone calls be made directly to my lawyer as well. You may continue to send account statements directly to me.

Frances Sosa  
Signature

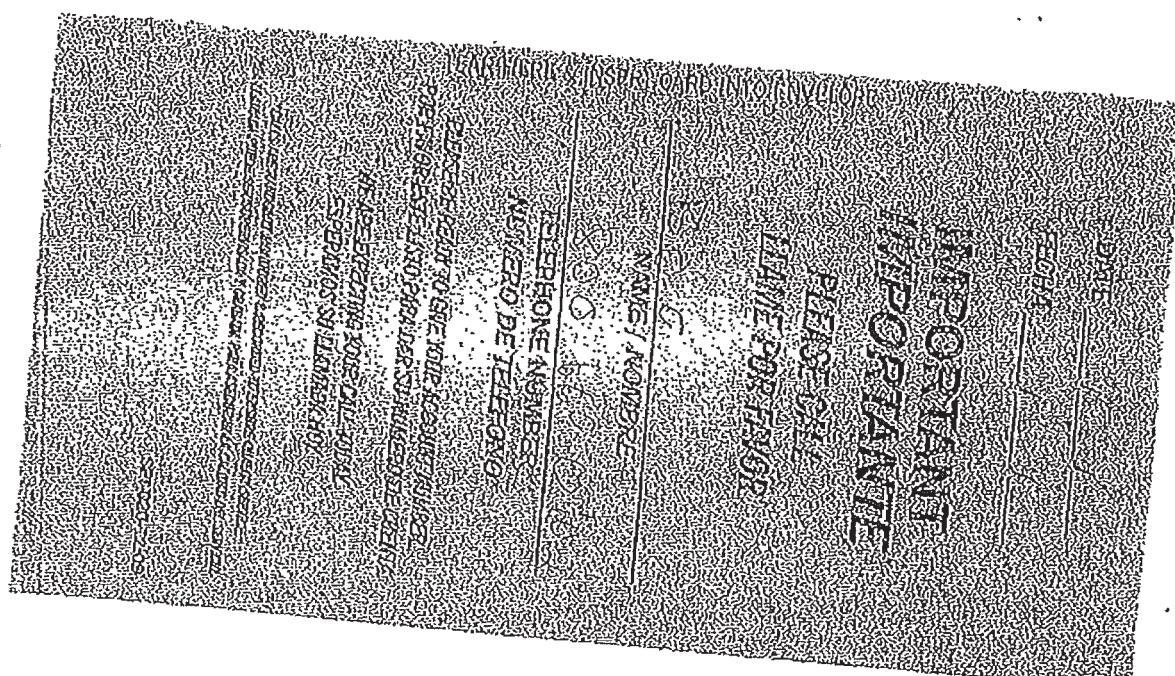
11-12-12  
Date

██████████  
Signature

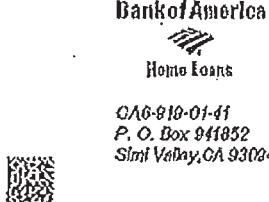
11-12-12  
Date

**Exhibit B**

2-14-13



# Exhibit C



C3\_733 CRMWLCME 15545 09/07/2012

Bank of America



Homo Eos

CA6-810-01-41  
P. O. Box 941852  
Simi Valley, CA 93024-1852

AT1 FRANCES SOSA  
2002 VALLEY DR  
DUNEDIN FL 34008

Notice Date: April 1, 2013

Account No.: 100-100

**Property Address:**  
2002 Valley Drive  
Dunedin, FL 34689

Dear Frances Sosa,..

My name is Geneva Lawton and I will be your dedicated Customer Relationship Manager. Bank of America, N.A. has several programs designed to help homeowners who are having trouble making their monthly mortgage payment, and it's possible that one could help you. Please review the enclosed brochure for more information.

## What I will provide

As your Customer Relationship Manager, I will work with you to review your individual situation and help determine which of our programs may be available to you. I will let you know where you are in the loan assistance process, where you've been and what your next steps are. I will be with you the entire time, and you will get periodic status updates from me.

## What I need from you

One of the most important things you can do to successfully complete the loan assistance process is to provide us with all of the documents we require within the timeline requested. Depending on your individual situation, we will request income and property related documents. Once we determine what program is right for your loan, we will provide you with instructions for the preferred method of submitting those documents to us.

## Next steps

I will be calling you soon, but in the meantime, if you have questions, you can reach me at 1.800.669.6650 or 1.877.447.4002. Please have your loan number available when you call. Additionally, you can visit [bankofamerica.com/homeloanhelp](http://bankofamerica.com/homeloanhelp) to learn about the home loan assistance process.

We know this is a difficult time, and we're here to help.

Geneva Lawton  
Customer Relationship Manager  
Bank of America, N.A.

**Enclosure**

Mortgages funded and administered by an Equal Housing Lender.   
Protect your personal information before recycling this document.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. However, the purpose of this communication is to provide you information concerning your Customer Relationship Manager.

If you are currently in a bankruptcy proceeding, or have previously obtained a discharge of this debt under applicable bankruptcy law, this is not an attempt to collect, a demand for payment, or an attempt to impose personal liability for that debt. You are not obligated to discuss your home loan with us or enter into a loan modification or other loan-assistance program. You should consult with your bankruptcy attorney or other advisor about your legal rights and options.

# Exhibit D

Bank of America



Home Loans

CAG-919-01-41  
P. O. Box 941052  
Silv Valley, CA 93094-1852



C3\_734 CRMRSAGN 14970 06/11/2012

ATI 03-001-1-  
FRANCES SOSA

2002 VALLEY DR  
DUNEDIN FL 34698

Notice Date: April 4, 2013

Account No.: XXXXXXXXXX

Property Address:  
2002 Valley Drive  
Dunedin, FL 34680

Dear Frances Sosa,

My name is Hillary Camperl and I am your new Customer Relationship Manager at Bank of America, N.A., your home loan servicer. I will continue the work you started with your previous Customer Relationship Manager with the same goal of pursuing every available option to assist you with your home loan.

In most cases, we assign new Customer Relationship Managers when the associate you previously worked with has moved to another position or in order to make sure you are assigned to the associate that specializes in your loan type. We apologize for any inconvenience this may cause.

I will be in contact with you soon. If you would like to speak with me right away, please call me directly at 1-800-669-8850. Please remember to have your loan number available when you call.

I look forward to working with you.

Sincerely,

Hillary Camperl  
Customer Relationship Manager  
Bank of America, N.A.

This communication is from Bank of America, N.A., the servicer of your home loan.

Bank of America, N.A., is required by law to inform you that this communication is from a debt collector. However, the purpose of this communication is to provide you information concerning your Customer Relationship Manager.

If you are currently in a bankruptcy proceeding, or have previously obtained a discharge of this debt under applicable bankruptcy law, this notice is for information only and is not an attempt to collect the debt, a demand for payment, or an attempt to impose personal liability for that debt. You are not obligated to discuss your home loan with us or enter into a loan modification or other loan-assistance program. You should consult with your bankruptcy attorney or other advisor about your legal rights and options.

---

EXHIBIT

9

INSTRUMENT#: 2014083114, BK: 22459 PG: 1287 PGS: 1287 - 1287 03/12/2014 at  
03:31:08 PM, DEPUTY CLERK: SSANDERS Pat Frank, Clerk of the Circuit Court  
Hillsborough County

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

MALENA NELSON,

Plaintiff,

CASE NO. 2013-CC-014771

v.

BANK OF AMERICA, N.A.

DIVISION: L

Defendant,

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

This case came before the Court on February 19, 2014, on Bank of America, N.A.'s (BANA) Motion for Summary Disposition. After hearing the arguments of the parties, it is ordered and adjudged that:

1. BANA did not violate the Florida Consumer Collection Practices Act, Florida Statutes Section 559.72.
2. The letter from BANA, dated September 2, 2012 and the telephone call from BANA dated September 7, 2012, directed to Plaintiff in this case were not attempts to collect a the debt. The communications were for information and loss mitigation purposes.
3. Plaintiff is not entitled to any damages.
4. The Clerk is directed to close this case.

It is therefore, ORDERED AND ADJUDGED that Defendant's Motion for Summary Disposition is granted.

DONE AND ORDERED in Chambers at Hillsborough County, Florida this 11 day of March, 2014.

13-CC-014771-14112014 2:58:52 PM

Honorable Jennifer Gabbard

Copies furnished to:  
Jacqueline Simms-Petredis, Esquire  
Kristine Callagy, Esquire

{2815172};1

EXHIBIT

10

2013 WL 875770 (Fla.Cir.Ct.) (Trial Order)  
Circuit Court of Florida.  
Broward County

Edith W. GIANOS, et al., Plaintiff(s),

v.

WELLS FARGO BANK, N.A., Defendant(s).

No. 12-010099 COCE 56.

March 1, 2013.

**Order on Defendant's Motion for Summary Judgment**

Linda R. Pratt, Judge.

THIS CAUSE is before the Court on Defendant's motion for summary judgment. The material facts of the case are not in dispute. Defendant is the servicer of a mortgage loan taken out by plaintiff. On April 17, 2012 defendant sent plaintiff a form letter captioned "Mortgage payment challenges? Consider your options." The letter advised plaintiff that she had options to avoid a foreclosure sale on her mortgage. It described how a deed in lieu of foreclosure works as an option to be released from liability on her mortgage balance, whether the home is in foreclosure or not, and advised that she might qualify for a relocation incentive. It also advised she could call to see if she qualified for a loan modification if she wished to stay in the home. The letter did not seek any information from plaintiff nor reference a loan balance or seek any payment. At the time the letter was sent, plaintiff's loan was in foreclosure.

Plaintiff contends that defendant violated subsection 559.72(18) of the Florida Consumer Collection Practices Act, F.S. 559.55 -- 559.785, (FCCPA) by sending this letter directly to her because defendant had previously been advised by letter dated March 14, 2012 that she was represented by Loan Lawyers, LLC. At issue is whether the letter's purpose was the collection of a consumer debt. The parties cite no Florida cases directly on point, but refer the Court to Federal cases interpreting the Federal Fair Debt Collection Practices Act, which cases are to be given great weight in interpreting the FCCPA. See: Florida Statute section 559.77(5) (2012).

The Seventh Circuit Court of Appeals has noted that there is no bright line rule for determining whether a communication from a debt collector was made in connection with the collection of any debt. *Gburek v. Litton Loan Service LP*, 614 F.3<sup>rd</sup> 380, 384 (7<sup>th</sup> Cir. 2010). In *Gburek* the Court held that letters sent by a loan servicer were a communication in connection with collection of a debt, where the letters

- 1.) Requested the debtor to "contact our office to review your financial situation and discuss foreclosure alternatives" and
- 2.) Asked the debtor to provide extensive financial information, to explain why she had defaulted, and to propose ways to resolve her delinquent status. *Gburek*, supra 614 F.3<sup>rd</sup> 380, 382.

On the other hand, in *Santoro v. CTC Foreclosure Service* 12 Fed. Appx. 476 (9<sup>th</sup> Cir. 2001) the Court held that a letter sent by a loan servicer to a borrower offering loan work out options did not constitute debt collection for purposes of the FDCPA or the state equivalent. Similarly, in *Gillespie v. Chase Home Finance, LLC*, 2009 WL4061428 (N.D. Ind. 2009) the US District Court N.D. Indiana held that a letter advising that a homeowner's loan had been referred to the Homeowner's Assistance Department because of her delinquency, and asking her to call the Department to discuss "a variety of workout options which might help

you resolve your delinquency?" was not a communication in connection with collection of a debt. The Court stated, "The Court finds that the letters sent to the plaintiffs were in the nature of providing information as opposed to being in the nature of a debt collection demand," 2009 WL 4061428 at 5.

This Court finds that the letter sent to plaintiff in this case is more similar to the communications in the *Santoro* and *Gillespie* cases and unlike the letter in the *Gburek* case, which asked for detailed financial information before any legal action would be delayed. Therefore the Court holds that as a matter of law defendant's letter of April 17, 2012 was not a communication to collect a debt pursuant to F.S. 559.72.

Accordingly, it is ordered that defendant's motion for summary judgment is granted.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this 1 day of March, 2013.

---

LINDA R. PRATT, COUNTY COURT JUDGE

Copies furnished:

P/Yechezkel Rodal, Esquire

D/Tenikka L. Cunningham., Esquire

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT

11

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

ALFREDO REMANTE,

Plaintiff,

CASE NO. 2014-CC-004132

v.

BANK OF AMERICA, N.A.

Defendant,

---

ORDER ON DEFENDANT BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY  
DISPOSITION AND PLAINTIFF ALFREDO REMANTE'S MOTION FOR SUMMARY  
DISPOSITION

THIS CAUSE came before the Court on October 8, 2014, upon defendant's motion for summary disposition and plaintiff's motion for summary disposition. The Court, having reviewed the court file, having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that:

1. Defendant's motion for summary disposition is GRANTED.
2. Plaintiff's motion for summary disposition is DENIED.
3. The Court finds that there is no genuine issue of material fact on the following issue: The letter attached as Exhibit B to the Statement of Claim does not violate the Florida Consumer Collection Practices Act.
4. The Clerk is instructed to close this case.

Alfredo Remante v. Bank of America, N.A. Hillsborough County Case No.2014-CC-004132; Order on Defendant Bank of America, N.A.'s Motion for Summary Disposition and Plaintiff Alfredo Remante's Motion for Summary Disposition

DONE AND ORDERED in Hillsborough County, Florida on this \_\_\_\_ day of October,  
2014.

Electronically Conformed 10/14/2014

---

County Judge Joelle Ann Ober

Copies furnished to:

Rebecca N. Shwayri, Esquire  
Kristine Callagy, Esquire

EXHIBIT

12

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

JESUS PINEIRO,

Plaintiff,

CASE NO. 2013-SC-000159

v.

BANK OF AMERICA, N.A.

Defendant,

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

THIS CAUSE came before the Court on April 16, 2013, on Defendant, Bank of America's Motion for Summary Disposition. The Court, having reviewed the Motion, and the Court file, hearing argument and being otherwise fully advised in the matter, it is:

ORDERED and ADJUDGED that:

1. Defendant, Bank of America's Motion for Summary Disposition is GRANTED.
2. The Clerk is directed to close this case.

DONE AND ORDERED in Chambers, in Pinellas County, Florida, this \_\_\_\_\_ day of April, 2013.



Honorable John Carassas  
County Court Judge

cc: Dalyda Santos, Esq.  
Jacqueline A. Simms-Petredis, Esq.

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

JESUS PINEIRO,

Plaintiff,

CASE NO. 2013-SC-000159

v.

BANK OF AMERICA, N.A.

Defendant,

---

BANA'S<sup>1</sup> MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

Plaintiff Jesus Pineiro's claim under Florida's Consumer Collection Practices Act (FCCPA) is improper and frivolous. He seeks damages for three loss mitigation letters—claiming BANA communicated with him in an attempt to collect a debt after BANA allegedly knew he was represented by counsel. But BANA's letters did not "convey[] information regarding a debt"—a prerequisite for relief under the FCCPA. Instead, BANA's letters were regarding loss mitigation. Courts in Florida have recently ruled on this exact issue, in cases involving opposing counsel and the law firm of Kaufmann, Englehardt & Lynd. Those courts, and others, have held that communications involving loss mitigation are not debt collection activity and cannot base an FCCPA action. See e.g., *Hardat Sligh v. Bank of Am. Corp., N.A.*, Orange County Case No. 12-007105 SC (Feb. 17, 2013) (directed verdict in favor of BANA as to loss mitigation communications, holding plaintiff failed to state a claim for a violation of the FCCPA); *Norma Henry v. Bank of Am. Corp., N.A.*, Orange County Case No. 12-007101 SC (Feb. 5, 2013) (directed verdict in favor of BANA as to loss mitigation communications, including phone calls

---

<sup>1</sup> "BANA" abbreviates defendant Bank of America, N.A.

and letters, holding plaintiff failed to state a claim for a violation of the FCCPA) and *Emelina Boyd v. Wells Fargo Bank*, Orange County Case No. 2012-SC-10274 (February 28, 2013) (summary disposition granted in favor of Wells Fargo as to loss mitigation communications, door hangers and notice of intent to accelerate, holding plaintiff failed to state a claim for a violation of the FCCPA). The above matters are attached as Composite Exhibits A, B and C, respectively.

There are no triable issues of fact here. Pneiro and his counsel seek to profit from BANA's attempts to inform Pneiro of possible modification and mitigation options available to him. This Court should grant summary disposition in favor of BANA pursuant to Florida Rule of Small Claims Procedure 7.135.

## II. BACKGROUND

Pneiro alleges on or about March 20, 2012, his attorney sent a notice of representation to BANA. Thereafter, he alleges BANA contacted him with three letters, on April 13, 2012, April 24, 2012 and June 28, 2012, in an attempt to collect a debt.<sup>2</sup> All three of the letters at issue concern loss mitigation. They discuss short sale programs with an offer of up to \$3,000.00 in relocation assistance, modification programs and even advise Pneiro that BANA received his financial packet and is evaluating his request for a loan modification. Importantly, Pneiro was approved for a loan modification shortly thereafter and KEL sent correspondence to BANA on December 12, 2012, that they no longer represented Pneiro with respect to his modification efforts. BANA did not communicate with Pneiro in an attempt to collect a debt after having knowledge he was represented by counsel. Pneiro's claim is not supported by law or fact.

---

<sup>2</sup> The letters are attached as Composite Exhibit D.

### III. LEGAL ANALYSIS

#### A. Legal Standard.

Florida Rule of Small Claims Procedure 7.135 provides, "if there is no triable issue, the court shall summarily enter an appropriate order or judgment." There are no triable issues here. This Court should grant BANA's motion for summary disposition, enter an order dismissing this case with prejudice and award BANA's fees and costs incurred in defending this matter.

#### B. BANA's Letters Did Not Violate the FCCPA.

The FCCPA is modeled after the federal Fair Debt Collection Practices Act (FDCPA). Like the FDCPA, the FCCPA seeks to prevent abusive debt collection activity. *See Laughlin v. Household Bank, Ltd.*, 969 So. 2d 509 (Fla. 1st DCA 2007) ("The Consumer Collection Practices Act is a laudable legislative attempt to curb what the Legislature evidently found to be a series of abuses in the area of debtor-creditor relations."). Both prohibit "collecting consumer debt" and have the same definitions of "consumer,"<sup>3</sup> and "debt."<sup>4</sup> Both prohibit communicating "with a consumer in connection with the collection of any debt . . . if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address." See 15 U.S.C. § 1692e(a)(2); Fla. Stat. § 559.72(18).

While the FDCPA and FCCPA do not define "collecting" or the term "collection of any debt," courts consistently review three factors to determine whether a communication is in an attempt to collect a debt: (i) whether the communication demands payment from the debtor; (ii)

<sup>3</sup> "Consumer" is defined as "any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. § 1692a(3); Fla. Stat. § 559.55(2) (including "debtor" in the same definition).

<sup>4</sup> "Debt" is defined as means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services . . . are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment". 15 U.S.C. § 1692a(5); Fla. Stat. § 559.55(1).

whether the communication discusses the specifics of the debtor's underlying debt; and (iii) the purpose of the communication. See e.g., *Parker v. Midland Credit Mgmt, Inc.*, 874 F. Supp. 2d 1353, 1356 (M.D. Fla. Jun. 15, 2012).

In *Parker*, the defendant provided notice of debt assignment, as required under the FDCPA. The Court found the letter "did not demand payment or discuss specifics of the underlying debt. . . and the purpose was to inform Plaintiff of the assignment of the account to Defendant." *Id.* at 1358. "On its face it is clearly informational." *Id.* The letter was not sent in connection with the collection of any debt and "any other conclusion would defy logic and place debt collectors in an untenable position, where they are subjected to lawsuits, despite their best efforts." *Id.*

In *Marshall v. Deutsche Bank Nat'l Trust Co.*, 2011 WL 345988, \* 3 (E.D. Ark. Feb. 1, 2011), the court held "communications that do not seek to collect debts cannot be considered as debt collection activities." The Court went onto state that "letters regarding loan modification were attempts to restructure the debt instrument and lower the payments, not a demand for payment." *Id.*

Similarly, in *Gillespie v. Chase Home Finance, LLC*, No. 3:09-CV-191-TS, 2009 WL 4061428, at \*2-3 (N.D. Ind. Nov. 20, 2009), the borrower challenged two letters sent by the servicer's homeowner assistance department informing him of options to avoid foreclosure. The first letter advised of a "variety of workout options which might help resolve your delinquency," requested a return call, and closed with the statement, "[w]e look forward to working with you, and while no guarantee can be made, we believe it would be beneficial for all parties to attempt to work out a resolution." *Id.* The second letter was identical to the first, but included the California FDCPA notices and mini-Miranda warning. *Id.* The *Gillespie* court held the letters

were in the "nature of providing information" rather than "in connection with the collection of any debt," *Id.* at 5. Likewise, in *Santoro v. CTC Foreclosure Serv. Corp.*, 12 Fed. Appx. 476, 480, (9th Cir. 2001), the Ninth Circuit Court held letters suggesting loan workout options sent by the mortgage servicer directly to borrowers was not "in connection with the collection of any debt," notwithstanding knowledge that the borrowers were represented by counsel.

In *Lewis v. ABC Business Services Inc.*, 135 F.3d 389, 402 (6th Cir. 1998), the debtor sent a "cease communication" letter in accordance with section 1692(c) of the FDCPA. Thereafter, the collection agency sent the borrower a letter outlining options to settle the delinquent credit card debt. *Id.* 395-396. The borrower filed suit alleging several FDCPA violations, including the cease-communication provision. *Id.* at 397. The court found the debt collector's letter notifying the debtor of payment plans was a permissible communication, stating, "[w]e believe that Lewis' interpretation of §1692c(c)(2), which would prohibit collectors from sending non-coercive settlement offers as a remedy, is plainly at variance with the policy of the legislation as a whole." *Id.* at 398.

In *Bailey v. Security Nat'l Servicing Corp.*, 154 F.3d 384, 386 (7th Cir. 1998), a mortgage servicer provided the debtor with a payment listing. The letter further expressed willingness to "work with" the debtor in resolution of his delinquency. *Id.* The Seventh Circuit held the letter did not qualify as a communication in connection with debt collection. *Id.* at 388-389. Because the letter did not demand payment and or attempt to collect the debt, despite its warning that delinquent payment could trigger an obligation to pay the entirety of the loan immediately, it did not fall under the FDCPA. *Id.* The court held the letter acted as the debtor's account status. *Id.* See also *Porter v. Fairbanks Capital Corp.*, No. 01 C 9106, 2003 WL 21210115, \*3 (N.D. Ill. May 21, 2003) (A videotape encouraging borrowers to contact the loan servicer and suggesting

possible loan workout options did not demand payment and could not be construed as a communication in connection with the collection of debt.); *Wexler v. Banc of Am. Auto Fin. Corp.*, No. 00-C-865, 2000 WL 1230497, at \*2 (N.D. Ill. Aug. 25, 2000) (a letter that does not demand payment does not qualify as communication in connection with the collection of debt subject to the FDCPA); and *Mabbutt v. Midwestern Audit Serv., Inc.*, No. 07-11550, 2008 WL 723507 at \*4-5 (E.D. Mich. Mar. 17, 2008) (letter notifying consumer her outstanding balance was transferred to new account for "convenience in making payment" did not contain language that she was "required to pay the debt" and was not debt collection communication.).

None of the factors required to violate PLA, STAT. § 559.72(18) are present in BANA's communication to Pinelro. And, Pinelro brings this action alleging violations for communications regarding a loan modification, which he was in fact approved for. Summary disposition must be entered in BANA's favor.

#### IV. CONCLUSION

Pinelro's claim falls as a matter of law. BANA requests this Court issue an order: (i) entering summary disposition dismissing the statement of claim in its entirety with prejudice; (ii) awarding BANA its costs and reasonable attorney's fees pursuant to PLA, STAT. § 559.77(2) and PLA, STAT. § 57.105(1); and (iii) granting such other relief as the Court deems just and proper.

Respectfully submitted,

AKERMAN SENTERYTT  
401 E. Jackson Street, Suite 1700  
Tampa, FL 33602-5250  
Telephone: (813) 223-7333/Fax: (813) 223-2837

By: Jacqueline A. Simms-Petredis  
Julie S. Sneed  
Florida Bar No. 51594  
julie.sneed@akerman.com  
Jacqueline A. Simms-Petredis

Florida Bar No. 906751  
Jacqueline.Simms-Petredis@akerman.com

-and-

William P. Heller  
Florida Bar No. 987263  
william.heller@akerman.com  
350 East Las Olas Blvd., Suite 1600  
Fort Lauderdale, Florida 33301-2229  
Telephone: 954-463-2700/Fax: 954-463-2224

*Attorneys for Bank of America, N.A.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via E-mail; Dalyla Santos, Esquire, Kaufman Inglett & Lynd, [dsantos@kelattorneys.com](mailto:dsantos@kelattorneys.com); [julloch@kelattorneys.com](mailto:julloch@kelattorneys.com); [lwarrington@kelattorneys.com](mailto:lwarrington@kelattorneys.com) 111 N. Magnolia Ave, Suite 1500, Orlando, FL 32801, this 1st day of April, 2013.

J. Vinina-Petredis  
Jacqueline A. Simms-Petredis



January 3, 2013

Re: JESUS PINEIRO v. BANK OF AMERICA

Dear Clerk:

Please find enclosed for filing the following document(s):

1. Civil Cover Sheet
2. Notice to Appear for Pretrial Conference
3. Statement of Claim
4. Affidavit of Laura Garber
5. Affidavit of Jesus Pineiro
6. Check in the amount of \$185

Should you have any questions or require anything further, please do not hesitate to contact our office. Thank you.

Regards,

KAUFMAN, ENGLETT & LYND, PLLC

A handwritten signature in black ink, appearing to read "Megan K. Reid".

Megan K. Reid  
Paralegal for the Firm

/s/ok

Enclosures as stated

CIRCUIT COURT, PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION  
CIVIL COVER SHEET

The 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. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.076. (See instructions for completion.)

I. CASE STYLE

Plaintiff JESUS PINERO,

Case #: \_\_\_\_\_

vs. \_\_\_\_\_

Judge: \_\_\_\_\_

Defendant BANK OF AMERICA,

CORPORATION, N.A., et al.

II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.)

If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- |  |  |
|--|--|
| <input type="checkbox"/> Condominium   | <input type="checkbox"/> Other real property actions \$250,000 or more |
| <input type="checkbox"/> Contracts and Indebtedness                              | <input type="checkbox"/> Professional malpractice                      |
| <input type="checkbox"/> Eminent domain  | <input type="checkbox"/> Malpractice—business                          |
| <input type="checkbox"/> Auto negligence   | <input type="checkbox"/> Malpractice—medical                           |
| <input type="checkbox"/> Negligence—other  | <input type="checkbox"/> Malpractice—other professional                |
| <input type="checkbox"/> Business governance                                     | <input checked="" type="checkbox"/> Other FCCPA Violation              |
| <input type="checkbox"/> Business torts  | <input type="checkbox"/> Antitrust/Trade regulation                    |
| <input type="checkbox"/> Environmental/Toxic tort                                | <input type="checkbox"/> Business transactions                         |
| <input type="checkbox"/> Third party indemnification                             | <input type="checkbox"/> Constitutional challenge—statute or ordinance |
| <input type="checkbox"/> Construction defect                                     | <input type="checkbox"/> Constitutional challenge—proposed amendment   |
| <input type="checkbox"/> Mass tort   | <input type="checkbox"/> Corporate trusts                              |
| <input type="checkbox"/> Negligent security                                      | <input type="checkbox"/> Discrimination—employment or other            |
| <input type="checkbox"/> Nursing home negligence                                 | <input type="checkbox"/> Insurance claims                              |
| <input type="checkbox"/> Premises liability—commercial                           | <input type="checkbox"/> Intellectual property                         |
| <input type="checkbox"/> Premises liability—residential                          | <input type="checkbox"/> Libel/Slander                                 |
| <input type="checkbox"/> Products liability                                      | <input type="checkbox"/> Shareholder derivative action                 |
| <input type="checkbox"/> Real property/Mortgage foreclosure                      | <input type="checkbox"/> Securities litigation                         |
| <input type="checkbox"/> Commercial foreclosure \$0 - \$50,000                   | <input type="checkbox"/> Trade secrets                                 |
| <input type="checkbox"/> Commercial foreclosure \$50,001 - \$249,999             | <input type="checkbox"/> Trust litigation                              |
| <input type="checkbox"/> Commercial foreclosure \$250,000 or more                |  |
| <input type="checkbox"/> Homestead residential foreclosure \$0 - \$50,000        |  |
| <input type="checkbox"/> Non-homestead residential foreclosure \$0 - \$50,000    |  |
| <input type="checkbox"/> Homestead residential foreclosure \$50,001 - \$249,999  |  |
| <input type="checkbox"/> Non-homestead residential foreclosure \$250,000 or more |  |
| <input type="checkbox"/> Other real property actions \$0 - \$50,000              |  |
| <input type="checkbox"/> Other real property actions \$50,001 - \$249,999        |  |

III. REMEDIES SOUGHT (check all that apply):

- monetary;  
 nonmonetary declaratory or injunctive relief;  
 punitive

IV. NUMBER OF CAUSES OF ACTION: [ 1 ]  
(specify) CCPA Violation

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes  
 no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no  
 yes If "yes," list all related cases by name, case number, and court.

---

---

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes  
 no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature



Attorney or party

John Leone

(type or print name)

Fla. Bar # 0097864  
(Bar # if attorney)

1-2-2013  
Date

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET

FORM 1.997 - Civil Rules of Procedure

Plaintiff must file this cover sheet with first paperwork filed in the action or proceeding (except small claims cases or other county court cases, probate, or family cases). Domestic and Juvenile cases should be accompanied by a completed Florida Family Law Rules of Procedure Form 12.920, Cover Sheet for Family Court Cases. Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Type of Case. Place an "X" in the appropriate box. If the cause has more than one type of case, select the most definitive. If the most definitive label is a subcategory (indented under a broader category label), place an "X" in the category and subcategory boxes. Definitions of the cases are provided below in the order they appear on the form.

- (A) Condominium - all civil lawsuits pursuant to Chapter 718, Florida Statutes, in which a condominium association is a party.
- (B) Contracts and indebtedness - all contract actions relating to promissory notes and other debts, including those arising from the sale of goods, but excluding contract disputes involving condominium associations.
- (C) Eminent domain - all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, or public service corporations.
- (D) Auto negligence - all matters arising out of a party's allegedly negligent operation of a motor vehicle.
- (E) Negligence—other - all actions sounding in negligence, including statutory claims for relief on account of death or injury, that are not included in other main categories.
- (F) Business governance - all matters relating to the management, administration, or control of a company.
- (G) Business torts - all matters relating to liability for economic loss allegedly caused by interference with economic or business relationships.
- (H) Environmental/Toxic tort - all matters relating to claims that violations of environmental regulatory provisions or exposure to a chemical caused injury or disease.
- (I) Third party indemnification - all matters relating to liability transferred to a third party in a financial relationship.
- (J) Construction defect - all civil lawsuits in which damage or injury was allegedly caused by defects in the construction of a structure.
- (K) Mass tort - all matters relating to a civil action involving numerous plaintiffs against one or more defendants.
- (L) Negligent security - all matters involving injury to a person or property allegedly resulting from insufficient security.
- (M) Nursing home negligence - all matters involving injury to a nursing home resident resulting from negligence of nursing home staff or facilities.
- (N) Premises liability—commercial - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a commercial property.
- (O) Premises liability—residential - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a residential property.
- (P) Products liability - all matters involving injury to a person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.
- (Q) Real property/Mortgage foreclosure - all matters relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property, including foreclosures associated with condominium associations or condominium units.
- (R) Commercial foreclosure - all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).
- (S) Homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).

(Form 1.997 Civil Rules of Procedure 1/2010)

- (T) Non-homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).
- (U) Other real property actions - all matters relating to land, land improvements, or property rights not involving commercial or residential foreclosure. Check the category that includes the estimate of the amount in controversy of the claim (section 28.241, Florida Statutes).
- (V) Professional malpractice - all professional malpractice lawsuits.
- (W) Malpractice—business - all matters relating to a business's or business person's failure to exercise the degree of care and skill that someone in the same line of work would use under similar circumstances.
- (X) Malpractice—medical - all matters relating to a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.
- (Y) Malpractice—other professional - all matters relating to negligence of those other than medical or business professionals.
- (Z) Other - all civil matters not included in other categories.
- (AA) Antitrust/Trade regulation - all matters relating to unfair methods of competition or unfair or deceptive business acts or practices.
- (AB) Business transactions - all matters relating to actions that affect financial or economic interests.
- (AC) Constitutional challenge—statute or ordinance - a challenge to a statute or ordinance, citing a violation of the Florida Constitution.
- (AD) Constitutional challenge—proposed amendment - a challenge to a legislatively-initiated proposed constitutional amendment, but excluding challenges to a citizen-initiated proposed constitutional amendment because the Florida Supreme Court has direct jurisdiction of such challenges.
- (AE) Corporate trusts - all matters relating to the business activities of financial services companies or banks acting in a fiduciary capacity for investors.
- (AF) Discrimination—employment or other - all matters relating to discrimination, including employment, sex, race, age, handicap, harassment, retaliation, or wages.
- (AG) Insurance claims - all matters relating to claims filed with an insurance company.
- (AH) Intellectual property - all matters relating to intangible rights protecting commercially valuable products of the human intellect.
- (AI) Libel/Slander - all matters relating to written, visual, oral, or aural defamation of character.
- (AJ) Shareholder derivative action - all matters relating to actions by a corporation's shareholders to protect and benefit all shareholders against corporate management for improper management.
- (AK) Securities litigation - all matters relating to the financial interests or instruments of a company or corporation.
- (AL) Trade secrets - all matters relating to a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.
- (AM) Trust litigation - all civil matters involving guardianships, estates, or trusts and not appropriately filed in probate proceedings.

**III. Remedies Sought:** Place an "X" in the appropriate box. If more than one remedy is sought in the complaint or petition, check all that apply.

**IV. Number of Causes of Action:** If the complaint or petition alleges more than one cause of action, note the number and the name of the cause of action.

**V. Class Action:** Place an "X" in the appropriate box.

**VI. Related Cases:** Place an "X" in the appropriate box.

**VII. Is Jury Trial Demanded In Complaint?** Check the appropriate box to indicate whether a jury trial is being demanded in the complaint.

**ATTORNEY OR PARTY SIGNATURE:** Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that the filer has provided accurate information on the civil cover sheet.

(Form 1.997 Civil Rules of Procedure 1/2010)

IN THE COUNTY COURT IN THE  
SIXTH JUDICIAL COURT IN AND  
FOR PINELLAS COUNTY,  
FLORIDA

JESUS PINEIRO,

Plaintiff,

v.

Case No.:

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

SUMMONS/NOTICE TO APPEAR FOR PRETRIAL CONFERENCE

THE STATE OF FLORIDA:

NOTICE TO PLAINTIFF(S) AND DEFENDANT(S):

Bank of America  
c/o CT Corporation System  
1200 South Pine Island Road  
Plantation, FL 33324

YOU ARE HEREBY NOTIFIED that you are required to appear in person or by attorney at  
the Pinellas County Courthouse in \_\_\_\_\_

for a PRETRIAL CONFERENCE before a judge of this court.

**IMPORTANT - READ CAREFULLY**

**THE CASE WILL NOT BE TRIED AT THAT TIME**

**DO NOT BRING WITNESSES - APPEAR IN PERSON OR BY ATTORNEY**

The defendant(s) must appear in court on the date specified in order to avoid a default judgment. The plaintiff(s) must appear to avoid having the case dismissed for lack of prosecution. A written MOTION or ANSWER to the court by the plaintiff(s) or the defendant(s) shall not excuse the personal appearance of a party or its attorney in the PRETRIAL CONFERENCE. The date and/or time of the pretrial conference CANNOT be rescheduled without good cause and prior court approval.

A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation. Written authorization must be brought to the Pretrial Conference.

The purpose of the pretrial conference is to record your appearance, to determine if you admit all or part of the claim, to enable the court to determine the nature of the case, and to set the case for trial if the case cannot be resolved at the pretrial conference. You or your attorney should be prepared to confer with the court and to explain briefly the nature of your dispute, state what efforts have been made to settle the dispute, exhibit any documents necessary to prove the case, state the names and addresses of your witnesses, stipulate to the facts that will require no proof and will expedite the trial, and estimate how long it will take to try the case.

If you admit the claim, but desire additional time to pay, you must come and state the circumstances to the court. The court may or may not approve a payment plan and withhold judgment or execution or levy.

**RIGHT TO VENUE.** The law gives the person or company who has sued you the right to file in any one of several places as listed below. However, if you have been sued in any place other than one of these places, you, the defendant(s), have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following: (1) Where the contract was entered into; (2) If suit is on an unsecured promissory note, where note is signed or where maker resides; (3) If the suit is to recover property or to foreclose a lien, where the property is located; (4) Where the event giving rise to the suit occurred; (5) Where any one or more of the defendant(s) sued resides; (6) Any location agreed to in a contract.

In an action for money due, if there is not agreement as to where suit may be filed, proper venue lies in the county where payment is to be made.

If you, as a defendant(s), believe the plaintiff(s) has/have not sued in one of these correct places, you must appear on your court date and orally request a transfer, or you may file a WRITTEN request for transfer, in affidavit form (sworn to under oath) with the court seven days prior to your first court date and send a copy to the plaintiff(s) or plaintiff's(s') attorney.

A copy of the statement of claim shall be served with this summons.

Dated at \_\_\_\_\_, Florida, on \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_

As Clerk of the County Court

IN THE COUNTY COURT IN THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA

JESUS PINEIRO,

Plaintiff,

Case No.:

vs.

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

STATEMENT OF CLAIM

The Plaintiff, JESUS PINEIRO, (hereinafter referred to as "Plaintiff") by and through undersigned counsel, sues the Defendant BANK OF AMERICA CORPORATION, N.A., (hereinafter referred to as "Defendant"), and in support thereof respectfully alleges the following:

JURISDICTION AND VENUE

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Florida Consumer Collection Practices Act, Fla. Stat. §559.55-559.785, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.
2. This is an action for damages not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) exclusive of attorney fees and costs.
3. Jurisdiction and venue for purposes of this action are appropriate and conferred by Florida Statutes.
4. Pursuant to §559.77(1), Fla. Stat., a debtor may bring a civil action against a person violating the provisions of §559.72, Fla. Stat., in the county in which the alleged violator

resides or has his or her principal place of business or in the county where the alleged violation occurred.

5. The alleged violations and all acts giving rise to the claim described in the Complaint occurred in Pinellas County, Florida.
6. Venue is proper in this Court, as all acts giving rise to this claim occurred in Pinellas County, Florida.
7. Defendant is subject to personal jurisdiction in Pinellas County.

FACTS COMMON TO ALL COUNTS

8. Plaintiff, JESUS PINEIRO, is an individual who resides in Pinellas County, at 7319 33rd Avenue North, Saint Petersburg, Florida 33710.
9. Plaintiff is a debtor or consumer as defined by §559.55(2), Fla. Stat.
10. Defendant BANK OF AMERICA CORPORATION, N.A., is a registered Florida foreign corporation, engaged in collecting debts in this state with its principal place of business located at 100 North Tryon Street, Charlotte, North Carolina 28255.
11. Defendant is a person as defined in §1.01(3), Fla. Stat.
12. Defendant consents of and has knowledge and control of the collection activities of its agents and representatives, including but not limited to supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors, and/or contractors for the alleged debt of Account Number ending in [REDACTED]
13. On or about March 20, 2012, Plaintiff's attorney sent a notice of representation to Defendant. Attached hereto as Exhibit "A" is a true and accurate copy of "Laura Garber's" affidavit and the notice of representation sent to defendant.

14. On or about April 13, 2012 through June 28, 2012, Plaintiff received approximately three (3) communications from Defendant in an attempt to collect a debt, despite knowledge that Plaintiff was represented by an attorney. Attached hereto as Exhibit "B" is a true and accurate copy of the Plaintiff's affidavit and the communications received.
15. Defendant's statements and actions as well as that of its representative(s), employee(s) and/or agent(s) were attempts to frighten, harass and abuse the Plaintiff into paying the alleged debt.
16. The tactics employed by Defendant have caused Plaintiff considerable worry, embarrassment, frustration, anger, distress, and concern that this organization would go to this extent to collect a debt.
17. Plaintiff's damages pursuant to Florida Statutes including §559.77 have continued and are continuing as of the filing of this complaint.
18. All conditions precedent to the filing of this action have occurred.

CLAIM FOR RELIEF  
VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT

19. Plaintiff repeats and re-alleges and incorporates by reference Paragraphs 1 through 18 above.
20. Plaintiff is a consumer and the obligation between the parties which is the debt owed pursuant to the subject note is a consumer debt as defined in Fla. Stat. §559.55(1).
21. Fla. Stat. §559.72(18) provides:

In collecting consumer debts, no person shall:

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;

22. Defendant has violated Fla. Stat. §559.72(18) by communicating with the Plaintiff after the Defendant received notification that the Plaintiff was represented by legal counsel, when Defendant did not have prior consent from Plaintiff's attorney to contact Plaintiff directly, Plaintiff did not initiate the communication with Defendant, and Plaintiff's attorney did not fail to respond to a communication from the Defendant within the proscribed timeframe.
23. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.
24. As a result of the above violation of the Florida Consumer Collection Practices Act, the Defendant is liable to the Plaintiff for injunctive and declaratory relief and actual damages, statutory damages, and attorneys' fees and costs.
25. Defendant's actions have directly and proximately resulted in Plaintiff's prior and continuous sustaining of damages as described by Fla. Stat. §559.77.
26. Plaintiff is entitled to damages under Fla. Stat. §559.77.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory Judgment that Defendant's conduct violated the Florida Consumer Collection Practices Act and declaratory and injunctive relief for the Defendants' violations of the FCCPA.
- B. That Defendant be enjoined from any and all further illegal collection practice.
- C. Actual damages pursuant to Fla. Stat. §559.77(2).
- D. Statutory damages pursuant to Fla. Stat. §559.77(2).
- E. Costs and reasonable attorney's fees pursuant to Fla. Stat. §559.77(2).

V. For such other and further relief as may be just and proper.

*M. M. III*

For DALYLA SANTOS, ESQUIRE Bar No. 0097864  
Florida Bar No. 064455  
TAMARA WASSERMAN, ESQUIRE  
Florida Bar No. 0095073  
KAUPMAN, ENGLETT & LYND, PLLC  
111-N, Magnolia Avenue, Suite 1500  
Orlando, Florida 32801  
Telephone: (407) 513-1900  
Facsimile: (407) 513-1988  
[dsantos@kelattorneys.com](mailto:dsantos@kelattorneys.com)  
[twasserman@kelattorneys.com](mailto:twasserman@kelattorneys.com)  
Counsel for Plaintiff  
JESUS PINEIRO

**Exhibit A**

IN THE COUNTY COURT IN THE  
SIXTH JUDICIAL CIRCUIT IN AND  
FOR PINELLAS COUNTY, FLORIDA

JESUS PINEIRO,

Plaintiff,

vs.

Case No.:

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant,

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF PINELLAS

Before me, the undersigned authority, personally appeared, Laura Garber, who upon being first duly sworn, swears to the following statement of facts:

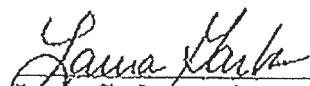
1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am the Manager of the Intake/Production Team within Kaufman, Baglett & Lynd, PLLC.
3. The Intake/Production Team is responsible for sending out the "Borrower Signature Authorization and Notice of Representation" to the Lender/Service/Debt Collector in a given file.
4. It is the regular course of business and standard operating procedure for an Intake specialist within my department to fax a copy of the "Borrower Signature Authorization and Notice of Representation" to the Lender/Service/Debt Collector.

5. After faxing the "Borrower Signature Authorization and Notice of Representation" to the Lender/Service/Debt Collector it is the regular course of business and standard operating procedure for an intake specialist within my department to obtain the fax confirmation and scan a copy of the "Borrower Signature Authorization and Notice of Representation" and fax confirmation into the ProLaw event file for the client.
6. I have personally reviewed the ProLaw event file for Jesus Pinelro, and have found the scanned in "Borrower Signature Authorization and Notice of Representation" and fax confirmation sent to Bank of America.
7. The "Borrower Signature Authorization and Notice of Representation" was sent by facsimile transmission to fax number (805) 520-5019 on March 20, 2012, and the fax confirmation shows that the fax was successfully sent on March 20, 2012.

*[Intentionally left blank]*

8. I have attached a true and accurate copy of the "Borrower Signature Authorization and Notice of Representation" and fax confirmation to this Affidavit as Composite Exhibit "A".

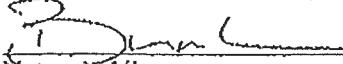
FURTHER Affiant sayeth naught.

  
Laura Garber  
9/26/2012  
Dated

STATE OF FLORIDA  
COUNTY OF ORANGE

SWORN TO AND SUBSCRIBED before me, the undersigned, on this 28 day of September, 2012, appeared Laura Garber, who is/are personally known to me, or who produced Personally Known as identification, and does solemnly swear that they are the person(s) named in the foregoing and that they have read same and know the contents to be true and correct.



  
Notary Public  
State of Florida, at Large  
My Commission Expires: May 26 2015

**Exhibit A**

SENDING NOTIFICATION FAX SENT SUCCESSFULLY					
TIME SENT	RECEIVED BY	DURATION	PAGES	STATUS	
MARCH 29, 2012 1:01:54 PM EDT	REZOTI, CELESTE CAPTIONED&FILED	104	2	Sent	

[RECIPIENT]

[RECIPIENT]

Name: Susan J. Proster

10086208019@fax.com

Phone: Fax: 4073098961

18086208019

E-mail: sproster@kohlforneys.com

Sent: 3/20/12 at: 12:54:19 PM

2 page(s) (including cover)

Subject: BORROWERS AUTHORIZATION; 12LAW20404

Comments:

**BORROWER SIGNATURE AUTHORIZATION  
AND NOTICE OF REPRESENTATION FOR FIRST MORTGAGE**

**Part I - General Information**

1. Borrower(s) Name(s): J. Jesus Pinero / Tatiana Pinero
2. Subject Property Address: 17319 33rd Ave N, Seattle, WA 98133
3. Borrower(s) SSN(s): XXXXXXXXXX
4. First Lender Name: Bank of America
5. First Loan Number: XXXXXXXXXX

**Part II - Borrower Authorization**

I hereby authorize Kaufman, Englehardt and Lynd, PLLC to act as my legal counsel for purposes of loss mitigation. Kaufman, Englehardt and Lynd, PLLC is authorized to negotiate with my lender(s), obtain all information requested including but not limited to payoff requests, payment history, CMA's and any all information that may be relevant to the loss mitigation process.

Furthermore Kaufman, Englehardt and Lynd, PLLC and any employee, attorney or agent of the Firm is hereby authorized to negotiate on my behalf with the lender regarding any proposed short sale, refinancing; loan modification, deed in lieu or other disposition of the property or any matter as it relates to foreclosure, if any, regarding this property. This authorization is binding and continuing and shall be in effect until such time as I revoke it writing. As such I expect that you, my lender, cooperate fully with my attorney, Kaufman, Englehardt and Lynd, PLLC as though you were dealing with me with respect to any requests for information regarding my account or loan with you.

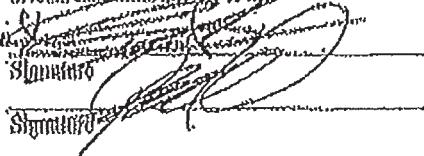
Authorized Paralegals: Melissa Lombardo, Samia Jusino, Brandy Quisen, Olga Noviza, Darlene Duplow, Erin Spak, Karen Williams, Diana Norrell, Nathalia Ramos, Jonas Womber, Jason Soell, Courtney Crookland, Kimberly Thomas, Cindy Deeney, Mikie Ruzzeger, Molly Wisk, Luisa Guicel, Cecily Gafoll, Leslie Davalos, Belton Gullion, Jimi Washington, Norsey Gilliam, Ammarito Rodriguez, Carlis Wilson

**PASSWORD: MITIGATION**

KBL Matter ID: 1234567890  
(or similar ID)

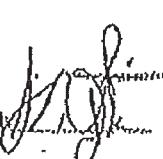
**Part III - Notice of Representation**

I hereby request that my attorney, Kaufman, Englehardt and Lynd, PLLC be consulted from this point forward regarding my loan modification efforts. Please forward all mitigation related documents (if any), emails and faxes to them directly. I further request that any phone calls be made directly to the Firm as well. You may continue to send account statements directly to me.

  
Signature

3/19/11  
Date

Date



# Exhibit B

IN THE COUNTY COURT IN THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA

JESUS PINEIRO,

Plaintiff  
v.

Case No:

BANK OF AMERICA CORPORATION, N.A.,  
et al.,

Defendant.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF PINELLAS

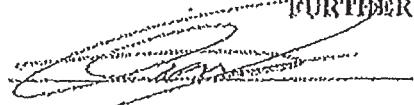
Before me, the undersigned authority, personally appeared, JESUS PINEIRO, who upon being first duly sworn swears to the following statement of facts:

1. That each of these statements is made on my own personal knowledge with full knowledge of potential penalties for perjury.
2. I am over the age of 18 and have personal knowledge of the events stated herein.
3. I currently live in Pinellas County, Florida.
4. On or about April 13, 2012 through June 28, 2012, I received approximately three (3) communications from Defendant in an attempt to collect a debt. Attached hereto as Exhibit "A" is a true and accurate copy of the communications I received.

*[Intentionally left blank]*

5. The tactics employed by Defendant have caused considerable worry, embarrassment, distress, and concern that this organization would go to this extent to collect a debt.

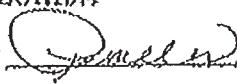
FURTHER AFFIANT SAYETH NAUGHT.

  
JESUS PINERO

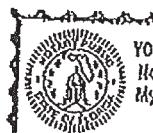
Dated

9-27-2012

STATE OF FLORIDA

COUNTY OF 

SWORN TO AND SUBSCRIBED before me, the undersigned, on this 27<sup>th</sup> day of September, 2012, appeared JESUS PINERO, who is/are personally known to me, or who produced F.D.I.R. as identification, and does solemnly swear that they are the person(s) named in the foregoing and that they have read same and know the contents to be true and correct.



VOLANDA P. ANDRADE, Notary Public  
Notary Public - State of Florida  
My Comm. Expires Jun 10 2016  
Commission # FL 09279

My Commission Expires June 1st 2016

**Exhibit A**

**Bank of America**  **Memo To: [REDACTED]**

cc: NDS  
120 Harrison Avenue  
Burlington, MA 01803

There are other options to foreclose.  
Please call me at:  
1-877-888-4744 ext. 4088  
to discuss a better option.  
Respond by May 14, 2012.

333 South Zeeb  
James Pinto  
Idalia Pinto  
7810 Zeeb Ave N  
Saint Paul, MN 55110-4203

Loan Number Ending in 8018

April 19, 2012

Dear James Pinto and Idalia Pinto,

We have short sale programs that could help you avoid foreclosure, but time is limited so it is important for us to discuss them right away. I have been assigned to your unit/territory specialist to help you through the short sale process.

You may be eligible for either the federal government's Home Affordability Modification Alternative program (HAMP) or a Bank of America's Short Sale, which offer up to \$8,000 in relocation assistance.

I understand that this is a difficult time, and you probably have a lot of questions. I can help answer them. That's why I'd suggest that you talk to me as soon as possible. Please call me at 1-877-888-4744 ext. 4088 by May 14, 2012 so we can go over your options.

The Customer Relationship Manager that supported you previously, Antonia Roberts, is available at 1-800-888-8000 to discuss how important it is for you to call this number today.

I look forward to hearing from you soon.

Regards,  
Antonia

Bank of America, N.A.

P.S. Please call me right away, so the foregoing proposal is moving forward.

How do I get started?  
Call me today at  
1-877-888-4744 ext. 4088

How to operate  
Non-PRI return to Agopia Footer

For more information  
Member FDIC Equal Housing Lender © 2012 Bank of America Corporation

INBOUND NOTIFICATION FAX RECEIVED SUCCESSFULLY

TIME RECEIVED  
APRIL 26, 2012 2:30:50 PM EDT

REMOTE CALL

DURATION  
226

PAGES  
1

STATUS  
Received

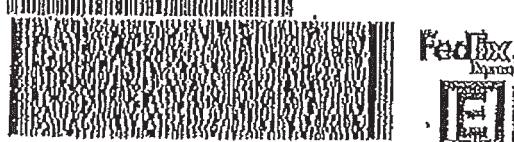
8502128031 111255CA  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE  
WILSON, JESUS

11201012810  
COURTROOM 20  
BUTTERFIELD

To JESUS PINEIRO

7310 23RD AVE N

SAINT PETERSBURG FL 33710



DEPL 7983 2200 0401 WHO - 20 APR 2012  
STANDARD OVERNIGHT

XJ SEFA

33710  
m-01 TRA



IF UNDELIVERABLE: STAT 34.. DO NOT RTS

BACLMWDEN\_04232012\_B

Please call us by  
May 24, 2012  
to discuss other options to  
avoid foreclosure.

Bank of America, N.A.  
6401 N Central St  
Dallas, TX 75201-3137

April 24, 2012

JESUS PINERO  
IDALIA PINERO  
2018 2nd Ave N  
Rehoboth Beach, DE 19971-1701

Loan Number: 352888

Dear JESUS PINERO and IDALIA PINERO:

Thank you for contacting us regarding the federal government's Home Affordable Modification Program. We are not considering your request for a modification because after being offered a Trial Period Plan or Home Affordability Modification, you did not make the required Trial Period Plan payment by the end of the first month of the trial period.

We're here to help you.

We are currently reviewing your financial information to determine if there are other options available to you. These options may include:

- A different modification program that may help you achieve affordable payments.
- Forbearance program. With this program, you could receive fewer payments or no payments for a limited number of months to either give you time to resolve your financial difficulties or give you time to work together on a more permanent solution.
- Short Sale. With this program, you agree to sell your home at fair market value and settle your mortgage debt for less than the amount you owe.
- Deed in Lieu. With this program, you can avoid the public auction of your home by voluntarily transferring the title or ownership of your property to satisfy your mortgage debt.

Every program has different requirements and guidelines. Details of the programs could include possible reduction in monthly payments for borrowers who qualify and potentially lower payments to your bank than with a foreclosure. Please contact us at 1.888.325.8390 to learn more about these programs.

#### Important information about foreclosure

If a foreclosure sale of your home is initially postponed and on hold, that will still remain in effect while you are considered for other foreclosure mitigation programs, such as a short sale or Deed in Lieu of foreclosure. However, if we do not hear from you by May 24, 2012, the hold on a foreclosing sale will be released and foreclosure proceedings will resume. We urge you to call us at 1.888.325.8390 by May 24, 2012 to discuss these programs.

#### Important—Do not ignore any foreclosure notices

You may receive foreclosure notices delivered by mail or in person—or you may see signs being taken to protect with a temporary sale of your home. While you will not lose your home before May 24, 2012, to protect your rights under applicable foreclosure law, you may need to respond to these notices yourself or take other action. If you have any questions about the foreclosure process, contact us at 1.888.325.8390. If you do not understand the legal consequences of this foreclosure, you are also encouraged to consult a lawyer or legal counselor for assistance.

According to the guidelines of the Home Affordability Modification Program, if we performed a Net Present Value (NPV) evaluation as part of your modification request, we are required to provide you with the enclosed set of input values we used in the calculation. Since the Net Present Value was not the reason for the denial of your application, program guidelines do not allow you to appeal the input values provided. A change in the assumed values would not result in a change of the approval status of your loan.

We're here to help you.

If this communication was made in error or you would like to explore your options to avoid foreclosure, please call me at 1-800-323-5300. I am available to speak with you Monday through Friday from 8 a.m. to 10 p.m. Eastern and on Saturday from 9 a.m. to 8 p.m. Eastern. Again, we want to work with you to help you determine what options may be right for your individual situation and strongly encourage you to consider the options above in order to avoid foreclosure.

You can also seek assistance at no charge from U.S. Department of Housing and Urban Development-approved housing counseling firms HOPE Hotline Number at 1-800-898-HOPE. Assistance in understanding this notice is available through the HOPE Hotline by calling for FREE HELP.

Ambonella Roberta  
Home Loan Team  
Bank of America, N.A.

Branch of Operation:  New Jersey

Telephone: (1) NPV Input Versions

Bank of America, N.A. is required by law to inform you that this communication is being made in the course of business. The purpose of this communication is to let you know about your potential options to help you avoid foreclosure.

Messages are supplied and administered by the Equal Housing Lender, an FDIC-insured financial institution that is a member of the Federal Home Loan Bank System.

Input Data Fields	Description	Value used in NPV calculation to determine the HAMP eligibility of your loan
<b>I. Borrower Information</b>		
1. Credit Score	This field identifies the credit score, as provided by a national credit reporting agency that was used in the modification NPV calculation. If there is more than one borrower you will enter the lower of the borrower's credit scores. If one or both of your borrowers has a credit score below 600, the consumer reporting agency we used could not provide us your initial FICO score within the 60 days allowed to determine your eligibility for a loan modification. According to the guidelines of the program, we used a proxy score of 600. In addition, if your HAMP score was lower than the minimum score of 250, we listed your score as 250.	800
2. Monthly Gross Income	This field identifies the monthly gross income of all household members from any payroll deduction or taxes.	\$2,002.00
<b>II. Property Information</b>		
3. Property City	This field identifies the two letter state code of the property securing your mortgage.	FL
4. Property Zip Code	This field identifies the zip code of the property securing your mortgage.	00710
5. Property Value	This field identifies the estimated fair market value of your property used by us, your servicer for this analysis.	\$80,300.00
6. Property Valuation Type	This field identifies the method by which your property was valued (as noted in Field 5, Property Value) 1 - Automated Valuation Model (AVM) 2 - Exterior Uniform Price Opinion (EUP) / Approval (as is value) 3 - Interior EUP / Appraisal (as is value)	1
7. Property Valuation Date	This field identifies the date when your property value was determined (as noted in Field 5, Property Value)	January 24, 2012
<b>III. Mortgage Information</b>		
8. Date Collection Date	This field identifies the date on which the unpaid principal balance and other data used in the NPV analysis were collected by us, your servicer.	January 20, 2012

9. Settlement Default Flag	This field indicates your default status at the time you asked to be evaluated for HAMP. If you have not received any payments in less than two months from the date imposed by the end of the month in which they are due, you are considered to be in temporary default and the value in this field is 'Y'. If less or more payments are due with respect to the data collection date as defined in #8 above, the value in this field is 'N'.	N
10. Investor Code	This field identifies the owner of your mortgage. 1. Family Home 2. Freddie Mac 3. Owned by a private investor other than to your servicer 4. Owned by us, your servicer or an affiliated company 5. Ginnie Mae	3
11. unpaid Principal Balance as of Origination	This field identifies the amount of unpaid principal of the loan it does not reflect the the current payoff balance.	\$138,886.00
12. First Payment Date of Origination	This field identifies the date the first payment on your mortgage was due and it was collected.	01/01/2008
13. Previous Balance Modification	This field is a codes to identify the type of modification you held prior to applying for HAMP modification: 1. Adjustable Rate Mortgage (ARM) and/or Interest Only mortgage loan, 2. Fix & Rate 3. Step Rate 4. One Step Variable	1
14. Adjustable Rate Mortgage (ARM) Reset Date	This field applies only to Adjustable Rate Mortgage (ARM) loans. If you do not have an ARM loan this field will be blank. This field identifies the date on which the next Adjustable Rate Mortgage (ARM) reset was due to occur, as of the Data Collection Date. (Field #)	May 01, 2012
15. Next Adjustable Rate Mortgage (ARM) Reset Date	This field identifies the rate at which your mortgage was expected to change based on when the next reset date (Field 14) is anticipated to occur. Please look to your monthly loan documents for information on how your mortgage rate is calculated at the reset date.	4.87%
16. Unpaid Principal Balance Modification	If this field's date on your ARM loan is within 120 days of the Data Collection Date, the value in this field is a projected interest rate on your mortgage at the next reset date.  If the reset date on your ARM loan is more than 120 days from the Data Collection Date, the value in this field is your current interest rate at the time of HAMP evaluation. This field identifies the unpaid principal balance (money you borrowed) on your mortgage as of the Data Collection Date. It does not include any unpaid interest or other amounts that you may owe.	\$134,700.07
17. Interest Only Before Modification	This field identifies the interest rate on your mortgage as of the Data Collection Date.	6.31%
18. Remaining Term (# of Payment Months Remaining)	This field identifies the remaining number of months you have left to pay under the original term of your mortgage as of the Data Collection Date.	205

	<p>This field is the amount of principal and interest you were scheduled to pay each month as of the Date of Sale.</p> <p>A. If your loan had an adjustable rate scheduled to reset within 120 days, this field will reflect the principal and interest payment associated with the new interest rate.</p> <p>B. If your mortgage is an interest only loan and your loan was in the interest only period, the value in this field is the interest payment for a given month.</p> <p>C. If your mortgage is a negative amortization loan, the value in this field is the greater of:</p> <ol style="list-style-type: none"> <li>The principal and interest payment you had on the last regular payment date; or</li> <li>The minimum payment required on your loan.</li> </ol>	
10. Principal and Interest Payment Before Modification		\$1,168.88
20. Monthly Real Estate Taxes	<p>This field identifies the monthly real estate tax rate paid (ex: if your tax bill is paid annually this amount will be 1/12th of the annual tax).</p>	\$52.00
21. Monthly Hazard and Flood Insurance	<p>This field identifies the monthly cost of your hazard and flood insurance coverage. If your insurance is paid annually the amount will be 1/12th of the annual cost.</p>	\$100.00
22. Homeowners Association dues / fees	<p>This field identifies your monthly homeowners or condominium association fee payments, if any, smaller and larger monthly service charges. If your homeowners or condominium association fee payments are paid annually, this will be 1/12th of the annual cost. If you improperly have no homeowner fee payments, this field is blank.</p>	\$20.45
23. Monthly Past Due	<p>This field identifies the number of mortgage payments you would have had to make in order to make your mortgage current, as of the Sale Collector Date.</p>	27
24. Mortgage Insurance Premium	<p>This field identifies the percentage of private mortgage insurance coverage on your loan. If you do not have private mortgage insurance this field is blank.</p>	
25. Monthly Mortgage Insurance Payment Annual	<p>This field identifies the monthly payment amount of your private mortgage insurance. If you do not have private mortgage insurance this field is blank.</p>	
<b>IV. Proposed Modification Information</b>		
<p>You fields below describe the proposed modifications that may result from your transfer according to the HAMP program guidelines (subject to investor restrictions) the terms used in your Net Present Value (NPV) calculation</p>		
26. NPV Date	<p>This field identifies the date that the Net Present Value calculation was conducted on your mortgage.</p>	January 20, 2012

27. Original Principal Amount or the Proposed HAMP Modification (Not of Voluntary & Principal Reduction)	This field identifies the principal balance on which you would have been required to pay interest if you had received a HAMP modification.	
28. Interest Rate of the Proposed HAMP Modification	It is likely to be different than your current principal balance because it includes amounts you owe for missed mortgage payments and unpaid expenses that are allowed to be added (capitalized) to your principal balance. Additionally, it may be reduced by proposed principal forbearance (Field 29) or proposed principal forgiveness (Field 30).	\$117,970.00
29. Interest Rate of the Proposed HAMP Modification	This field identifies the starting interest rate of the proposed HAMP modified mortgage. This rate is the rate for fixed term loans at your original origination.	2.078%
30. Amortization Term of the Proposed HAMP Modification	This field identifies the number of months left to pay the proposed HAMP modified mortgage.	288
31. Principal and Interest Payment by the Proposed HAMP Modification	This field identifies the amount of principal (monthly payment) and interest payment on the proposed HAMP modified mortgage.	\$870.00
32. Principal Forgiveness Amount of the Proposed HAMP Modification	This field identifies the amount of principal your investor was willing to forgive on the proposed HAMP modified mortgage. You would have still owed this amount but you would not be charged interest on it for no principal would have been on this amount until you paid off your loan.	\$0.00
33. Modification Fees	This field identifies the total amount of fees and costs that would have been paid by the investor(s) of your loan, if you had been approved for a HAMP modification. It includes expenses such as notary fees, property valuation, credit report and other consulting fees.	\$0.00
34. Mortgage Insurance Premium Credit Amount of the Proposed HAMP Modification	This field identifies any mortgage insurance payout amount as part of the proposed HAMP modified mortgage, whether it is the difference of your mortgage's remaining equity.	
	This should be zero if you were not approved for a trial period plan or permanent HAMP modification for reason of negative NPV.	

**IMPORTANT NOTICE:**

Thank you for sending your complete financial information.  
Please wait to expect next.

JESUS PINERO  
ITALIA PINERO  
7210 USO AVEN  
AGUST PATRIOTURG, MI 23710

Loan Number: 09298088

June 20, 2012

Dear JESUS PINERO and ITALIA PINERO:

Thank you for beginning this home loan modification process with us and for providing your complete financial information. We are now evaluating your loan for modification options, including a new modification program that has been developed as a result of the U.S. Department of Justice and State Attorney General's joint settlement with major mortgage servicers, including Bank of America, N.A. This modification would offer you significant financial reduction and low monthly.

This evaluation process takes approximately 30 days. When we have completed our review, you will receive one of these three responses:

- Your loan has been approved to begin a Trial Period. This modification will come in the form of a Trial Period Plan Letter, and will provide you details of your Trial Period Plan and instructions on how to proceed.
- Your loan is not eligible for this program, but may be eligible for other foreclosure prevention alternatives. This modification will come in the form of a letter describing other options such as a different modification program, short sale or deed-in-lieu of foreclosure.
- We need more information from you before our review. We will either call you or email you a letter with this request.

We appreciate your patience while we evaluate your loan. If you have questions about this process, please call us at 1-813-333-0274 (Monday through Thursday from 8:00 a.m. - 8:00 p.m., Friday from 8:00 a.m. - 6:00 p.m., Saturday 9:00 a.m. - 1:00 p.m.). We look forward to working with you and appreciate the opportunity to serve your home loan needs.

MATTHEW KENNEDY  
Home Loan Team  
Bank of America, N.A.

Matthew Kennedy, Home Loan Team

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector. However, the purpose of this communication is to let you know about your potential eligibility for a loan modification program that may help you keep your loan current through reduced payments.

If you are currently in a bankruptcy proceeding, or have previously applied a discharge of this debt under applicable bankruptcy laws, this option is not available for this debt, or if there is an intent to convert the debt, a demand for payment, or an attempt to impose personal liability for that debt. You also not eligible to discuss your home loan with us or enter into a loan modification or other loan assistance program. You should consult with your bankruptcy attorney or other creditor about your legal rights and options.

In addition, if you are currently in a bankruptcy proceeding, approval of any program for which you may be eligible is contingent on approval by the bankruptcy court in accordance with law.

Copyright ©2012 Bank of America, N.A. All rights reserved.

EXHIBIT

13

IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR CITRUS COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

MICHAEL L. MORALES, )  
Plaintiff/Counter-Defendant, )  
v. ) CASE NO. 2014-SC-000660  
DISCOVER FINANCIAL SERVICES LLC, )  
Defendant/Counter-Plaintiff. )

**ORDER GRANTING DISCOVER BANK'S MOTION FOR SUMMARY DISPOSITION**

THIS CAUSE came before the Court on February 9, 2015 on Defendant/Counter-Plaintiff, Discover Bank's (incorrectly named as Discover Financial Services LLC in the Statement of Claim) Motion for Summary Disposition. The Court, having reviewed the Motion and the Court file, and having heard argument of counsel and being otherwise fully advised in the matter, hereby

**ORDERS and ADJUDGES:**

1. Discover Bank's Motion for Summary Disposition is GRANTED.
2. Judgment is hereby entered in favor of Discover Bank and against Plaintiff/Counter-Defendant, Michael L. Morales ("Morales") on Morales's Statement of Claim.
3. Judgment is hereby entered in favor of Discover Bank and against Morales on Discover Bank's Counterclaim in the amount of \$5,448.86, plus attorneys' fees and interest accruing at the statutory rate, all for which let execution issue forthwith.
4. The Court hereby retains jurisdiction to determine the amount of attorney's fees, costs, and any other damages owed to Discover Bank on the Counterclaim and to enter any

IN THE COUNTY COURT IN THE FIFTH  
JUDICIAL CIRCUIT IN AND FOR CITRUS  
COUNTY, FLORIDA

MICAHEL L. MORALES,

Plaintiff,

Case No.:

vs.

DISCOVER FINANCIAL SERVICES, LLC,

Defendant.

---

**STATEMENT OF CLAIM**

The Plaintiff, MICAHEL L. MORALES, (hereinafter referred to as "Plaintiff") by and through undersigned counsel, sues the Defendant DISCOVER FINANCIAL SERVICES, LLC, (hereinafter referred to as "Defendant"), and in support thereof respectfully alleges the following:

**JURISDICTION AND VENUE**

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Florida Consumer Collection Practices Act, Fla. Stat. §559.55-559.785, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.
2. This is an action for damages not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) exclusive of attorney fees and costs.
3. Jurisdiction and venue for purposes of this action are appropriate and conferred by Florida Statutes.
4. Pursuant to §559.77(1), Fla. Stat., a debtor may bring a civil action against a person violating the provisions of §559.72, Fla. Stat., in the county in which the alleged violator

resides or has his or her principal place of business or in the county where the alleged violation occurred.

5. The alleged violations and all acts giving rise to the claim described in the Complaint occurred in Citrus County, Florida.
6. Venue is proper in this Court, as all acts giving rise to this claim occurred in Citrus County, Florida.
7. Defendant is subject to personal jurisdiction in Citrus County.

**FACTS COMMON TO ALL COUNTS**

8. Plaintiff, **MICAHUEL L. MORALES**, is an individual who resides in Citrus County, at 7294 W. Vineyard Drive, Homosassa, FL 34448.
9. Plaintiff is debtor or consumer as defined by §559.55(2), Fla. Stat.
10. Defendant **DISCOVER FINANCIAL SERVICES, LLC** is a registered Florida foreign corporation, engaged in collecting debts in this state with its principal place of business located at 2500 LAKE COOK ROAD, RIVERWOODS, IL 60015 and its registered agent, CT CORPORATION SYSTEM, located at 1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324.
11. Defendant is a person as defined in §1.01(3), Fla. Stat.
12. Defendant consents of and has knowledge and control of the collection activities of its agents and representatives, including but not limited to supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors, and/or contractors for the alleged debt of loan number ending in [REDACTED]
13. On June 22, 2013, Plaintiff's attorney sent a Borrower Signature Authorization and

Notice of Representation to Defendant. Attached hereto as Exhibit "A" is a true and accurate copy of the Borrower Signature Authorization and Notice of Representation sent to Defendant.

14. On or about January 18, 2014, Plaintiff received a letter from FMS INC. indirectly and on behalf of the Defendant, in an attempt to collect a debt, despite knowledge that Plaintiff was being represented by an attorney. Attached as Exhibit "B", please find a copy of the correspondence received by the Plaintiff.
15. Defendant's statements and actions as well as that of its representative(s), employee(s) and/or agent(s) were attempts to collect a debt in violation of Florida Statutes.
16. The tactics employed by Defendant have caused Plaintiff considerable worry, frustration, and concern.
17. Plaintiff damages pursuant to Florida Statutes including §559.77 have continued and are continuing as of the filing of this complaint.
18. All conditions precedent to the filing of this action have occurred.

**CLAIM FOR RELIEF VIOLATION OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT SECTION 559.72(18)**

19. Plaintiff repeats and re-alleges and incorporates by reference Paragraphs 1 through 18 above.
20. Plaintiff is a consumer and the obligation between the parties which is the debt owed pursuant to the subject note is a consumer debt as defined in Fla. Stat. §559.55(1).
21. Fla. Stat. §559.72(18) provides:

In collecting consumer debts, no person shall:

Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such

- attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;
22. Defendant has violated Fla. Stat. §559.72(18) by communicating indirectly with the Plaintiff after the Defendant received notification that the Plaintiff was represented by legal counsel, when Defendant did not have prior consent from Plaintiff's attorney to contact Plaintiff directly, Plaintiff did not initiate the communication with Defendant, and Plaintiff attorney did not fail to respond to a communication from the Defendant within the proscribed timeframe.
23. Defendant's acts as described above were done with the purpose of coercing Plaintiff to pay the alleged debt.
24. As a result of the above violations of the Florida Consumer Collection Practices Act, the Defendant is liable to the Plaintiff for injunctive and declaratory relief, statutory damages, and attorneys' fees and costs.
25. Defendant's actions have directly and proximately resulted in Plaintiff prior and continuous sustaining of damages as described by Fla. Stat. §559.77.
26. Plaintiff is entitled to damages under Fla. Stat. §559.77.

*[Intentionally left blank]*

**WHEREFORE**, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the Florida Consumer Collection Practices Act and declaratory and injunctive relief for the Defendant's violations for the FCCPA.
- B. That Defendant be enjoined from any and all further illegal collection practice.
- C. Statutory damages pursuant to Fla. Stat. §559.77(2).
- D. Costs and reasonable attorney's fees pursuant to Fla. Stat. §559.77(2).
- E. For such other and further relief as may be just and proper.

DATED: 10-23-14

KAUFMAN, ENGLETT & LYND, PLLC



ADAM CHARLES O'NEIL, ESQUIRE  
Florida Bar No.: 103120  
150 N. Orange Ave., Suite 100  
Orlando, Florida 32801  
Telephone: (407) 513-1900  
Primary Email: [aoneil@kelattorneys.com](mailto:aoneil@kelattorneys.com)  
Secondary Email: [cloy@kelattorneys.com](mailto:cloy@kelattorneys.com)  
Counsel for Plaintiff: MICAHEL L. MORALES

# **EXHIBIT A**



Saturday, June 22nd

VIA FACSIMILE

Discover Fin Svcs Llc  
FAX: 13023237612

RE: Our Client:  
Social Security Number:  
Account Number:

Michael L. Morales  
XXX-XX-[REDACTED]  
[REDACTED]

To Whom It May Concern:

Please be advised that Kaufman, Englett and Lynd, PLLC (the Firm) has been retained to represent Michael L. Morales, Social Security number ending in [REDACTED] regarding any and all accounts associated with Michael L. Morales, including but not limited to: account ending in [REDACTED] (the "Account").

Please forward any and all communication regarding any accounts assigned to Michael L. Morales to the Firm including but not limited to all communication regarding loan modification efforts, settlement communication and collection efforts. Furthermore, any phone calls with respect to any accounts shall be directly made to the Firm as well.

Please cease all collection efforts directly to Michael L. Morales relative to any and all accounts except for communications required to be sent directly to a debtor pursuant to the applicable law and mortgage loan documents. Any collection communication must be directed to Kaufman, Englett & Lynd, PLLC, 111 North Magnolia Avenue, Suite 1600, Orlando, Florida 32801, telephone (407) 513-1900 extension 5084.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander C. Newman'.

Alexander C. Newman, Legal Assistant  
For the firm



### BORROWER SIGNATURE AUTHORIZATION AND NOTICE OF LEGAL REPRESENTATION

If you are represented by an attorney with respect to this matter, please forward this communication immediately to that attorney.

#### Part I - General Information

Borrower Name: Janya Cheek  
Borrower SS#: [REDACTED]

Borrower Name: Michael L. Morales  
Borrower SS#: [REDACTED]

#### Part II - Borrower Authorization

I/we hereby authorize Kaufman, Englett and Lynd, PLLC to act as my legal counsel for purposes of debt mitigation. Kaufman, Englett and Lynd, PLLC is authorized to negotiate with my creditor/lender(s), obtain all information requested including but not limited to payoff requests, payment history, CMA's and any/all information that may be relevant to the debt mitigation process.

This authorization is binding and continuing and shall be in effect until such time as I revoke it writing. As such I expect that you, my/our creditor/lender, cooperate fully with my attorney, Kaufman, Englett and Lynd, PLLC as though you were dealing with me/us with respect to any requests for information regarding my/our account(s) or loan(s) with you.

#### Part III - Notice of Legal Representation

I/we hereby request that my/our attorney, Kaufman, Englett and Lynd, PLLC be contacted from this point in time forward regarding my debt. Please forward all communication to Kaufman, Englett and Lynd, PLLC directly. I/we further request that any phone calls be made directly to Kaufman, Englett and Lynd, PLLC as well. You may continue to send any tax forms to Borrower(s) directly.

Janya Cheek 6-18-13  
Client Signature Date

Michael L. Morales 6/18/13  
Client Signature Date

# **EXHIBIT B**

02/16/2014 16:20 PAX

002



Office Hours:  
Mon - Thurs 7:00AM to 9:00PM CST  
Friday 7:00AM to 8:00PM CST  
Saturday 9:00AM to 4:00PM CST

Emergency: FMS INC. • 4919 South Union Avenue • Tulsa • Oklahoma • 74197

## 20% SETTLEMENT OFFER

January 18, 2014

Dear Michael Morales,

We have been authorized by DISCOVER CARD to offer you a 20% settlement to pay your outstanding balance, as shown. We can offer payment arrangements on this settlement offer to assist you in clearing this account in three(6) monthly installments.

Take advantage of this offer by contacting us at 866-282-5138 to make arrangements to settle your account. This offer is good through March 4, 2014.

Due to the age of your account, Discover Bank is not able to file suit against you but if you take specific action such as making a payment or making a written promise to pay the time for filing a suit will be reset. We would like to work with you to resolve your account balance.

\* Any returned payment will be represented electronically.

Your payment should be made payable to DISCOVER CARD and mailed to the address on the tear-off portion of this letter.

We also accept payment by Western Union, MoneyGram, Visa, and Mastercard. Call us at 866-282-5138 for information on these easy methods of payment.

If you have a savings of \$600 or more, our client may be required to report this amount to the IRS. You may receive a 1099c for tax purposes. Any questions you may have, you will need to refer to a tax specialist of your choice for further clarification on the tax law.

### IMPORTANT NOTIFICATION PER FEDERAL LAW

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THIS DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS FROM RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL OBTAIN VERIFICATION OF THE DEBT OR OBTAIN A COPY OF A JUDGMENT AND MAIL YOU A COPY OF SUCH JUDGMENT OR VERIFICATION. IF YOU REQUEST THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE, THIS OFFICE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

Account Information
DISCOVER CARD
18662825138
MICHAEL MORALES
58280566
\$5,448.86
\$1,089.78

Benefits of Paying:
• Take up to 8 months to settle your obligation.
• Settle your past-due obligation at a discounted rate.
• Satisfaction that your obligation is resolved.
• Collection efforts cease.



101  
FBI-REGISTRATION  
#10010

\*\*\* Attach Lower Portion And Return With Payment \*\*\*

January 18, 2014

PO BOX 707600  
TULSA, OK 74170-7600  
1-866-282-5138 - 563

DISCOVER

DISCOVER	
DISCOVER	ACCOUNT
DISCOVER	DISCOVER
DISCOVER	DISCOVER \$5,448.86

DISCOVER  
28180566 - 8999-253  
MICHAEL MORALES  
7288 W VINEYARD DR  
HOMOASSA, FL 34448-1540

DISCOVER  
FMS INC.  
PO BOX 707600  
TULSA, OK 74170-7600

IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR CITRUS COUNTY, FLORIDA  
SMALL CLAIMS DIVISION

MICHAEL L. MORALES, )  
Plaintiff/Counter-Defendant, )  
v. ) CASE NO. 2014-SC-000660  
DISCOVER FINANCIAL SERVICES LLC, )  
Defendant/Counter-Plaintiff. )

**DISCOVER BANK'S MOTION FOR SUMMARY DISPOSITION**

Defendant/Counter-Plaintiff, Discover Bank, incorrectly named in the Statement of Claim as Discover Financial Services LLC ("Discover"), by and through undersigned counsel and pursuant to Rule 7.135, Florida Rules of Small Claims Procedure, hereby moves for the entry of a summary disposition on the Statement of Claim filed by Plaintiff/Counter-Defendant, Michael L. Morales ("Morales") and on Discover's Counterclaim, and states in support:

**I. INTRODUCTION**

Morales's claim under Florida's Consumer Collection Practices Act ("FCCPA") is improper. He seeks damages for one letter—claiming Discover communicated with him in an attempt to collect a debt after Discover allegedly knew he was represented by counsel. The letter did not communicate with Morales "in an attempt to collect a debt"—a prerequisite for relief under the FCCPA. Instead, the letter was informational and regarding loss mitigation.

Courts in Florida have ruled on this exact issue, in cases involving opposing counsel and the law firm of Kaufmann, Englett & Lynd. Those courts, and others, have held that communications involving loss mitigation are not debt collection activity and cannot form the

basis for an FCCPA action. See e.g., *Alfredo Remante v. Bank of Am.*, Hillsborough County Case No.: 2014-SC-004132 (granting summary disposition in favor of Defendant on loss mitigation communication); *Malena Nelson v. Bank of Am.*, Hillsborough County Case No.: 2013-SC-014771 (granting summary disposition in favor of Defendant on loss mitigation communication); *Jesus Pineiro v. Bank of Am.*, Pinellas County Case No.: 2013-SC-000159 (court granted summary disposition in favor of Defendant, holding the communications at issue involved loss mitigation and were not debt collection); *Frances Sosa v. Bank of Am.*, Pinellas County Case No.: 2013-SC-007776 (court granted summary disposition in favor of Defendant, holding specifically that the communications attached to the statement of claim were not attempts to collect a debt and were therefore not violations of the FCCPA); *Hardat Singh v. Bank of Am. Corp., N.A.*, Orange County Case No. 12-007105 SC (Feb. 17, 2013) (directed verdict in favor of Defendant as to loss mitigation communications, holding plaintiff failed to state a claim for a violation of the FCCPA); *Norma Henry v. Bank of Am. Corp., N.A.*, Orange County Case No. 12-007101 SC (Feb. 5, 2013) (directed verdict in favor of Defendant as to loss mitigation communications, including phone calls and letters, holding plaintiff failed to state a claim for a violation of the FCCPA); *Gianos v. Wells Fargo Bank, N.A.*, Broward County Case No.: 12-010099 COCE 56, 2013 WL 875770 (granting defendant's motion for summary judgment and holding communication from defendant offering loss mitigation options was not an attempt to collect a debt).

Morales and his counsel seek to profit from attempts to inform Morales of a possible settlement of his account for half of the balance owed. Additionally, as mentioned above, the letter was not sent by Discover. This Court should grant summary disposition in favor of Discover pursuant to Florida Rule of Small Claims Procedure 7.135.

## **II. BACKGROUND**

Morales alleges on or about June 22, 2013, his attorney sent a notice of representation to Discover. Thereafter, he alleges Discover "indirectly" contacted him with one letter, on January 18, 2014, in an attempt to collect a debt. The letter is on its face informational and concerns loss mitigation options. In fact, the letter actually informs Morales that he is eligible for settlement of his account for half of the balance owed. Because this communication was for loss mitigation and informational purposes, Morales's claim alleging violations of the FCCPA is not supported by law or fact.

## **III. LEGAL ANALYSIS**

### **A. Legal Standard.**

Florida Rule of Small Claims Procedure 7.135 provides, "if there is no triable issue, the court shall summarily enter an appropriate order or judgment." There are no triable issues here. This Court should grant Discover's motion for summary disposition and enter an order dismissing this case with prejudice.

### **B. Discover's Letter Did Not Violate the FCCPA.**

#### **1. The Florida Consumer Collection Practices Act and Applicable Case Law**

The FCCPA is modeled after the federal Fair Debt Collection Practices Act ("FDCPA"). Like the FDCPA, the FCCPA seeks to prevent abusive debt collection activity. *See Laughlin v. Household Bank, Ltd.*, 969 So. 2d 509 (Fla. 1st DCA 2007) ("The Consumer Collection Practices Act is a laudable legislative attempt to curb what the Legislature evidently found to be a series of abuses in the area of debtor-creditor relations.").

Both prohibit "collecting consumer debt" and have the same definitions of "consumer,"<sup>1</sup> and "debt."<sup>2</sup> Both prohibit communicating "with a consumer in connection with the collection of any debt . . . if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address."  
See 15 U.S.C. §1692c(a)(2); FLA. STAT. § 559.72(18).

While the FDCPA and FCCPA do not define "collecting" or the term "collection of any debt," courts consistently review three factors to determine whether a communication is in an attempt to collect a debt: (i) whether the communication demands payment from the debtor; (ii) whether the communication discusses the specifics of the debtor's underlying debt; and (iii) the purpose of the communication. See e.g., *Parker v. Midland Credit Mgmt. Inc.*, 874 F. Supp. 2d 1353, 1356 (M.D. Fla. Jun. 15, 2012).

In *Parker*, the defendant provided notice of debt assignment, as required under the FCCPA. The Court found the letter "did not demand payment or discuss specifics of the underlying debt. . . and the purpose was to inform Plaintiff of the assignment of the account to Defendant" *Id.* at 1358. "On its face it is clearly informational." *Id.* The letter was not sent in connection with the collection of any debt and "any other conclusion would defy logic and place debt collectors in an untenable position, where they are subjected to lawsuits, despite their best efforts." *Id.*

---

<sup>1</sup> "Consumer" is defined as "any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. § 1692a(3); FLA. STAT § 559.55(2) (including "debtor" in the same definition).

<sup>2</sup> "Debt" is defined as means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services. . . are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment". 15 U.S.C. § 1692a(5); FLA. STAT. § 559.55(1).

In *Marshall v. Deutsche Bank Nat'l Trust Co.*, 2011 WL 345988, \* 3 (E.D. Ark. Feb. 1, 2011), the court held "communications that do not seek to collect debts cannot be considered as debt collection activities." The Court went onto state that "letters regarding loan modification were attempts to restructure the debt instrument and lower the payments, not a demand for payment." *Id.*

Similarly, in *Gillespie v. Chase Home Finance, LLC*, No. 3:09-CV-191-TS, 2009 WL 4061428, at \*2-3 (N.D. Ind. Nov. 20, 2009), the borrower challenged two letters sent by the servicer's homeowner assistance department informing him of options to avoid foreclosure. The first letter advised of a "variety of workout options which might help resolve your delinquency," requested a return call, and closed with the statement, "[w]e look forward to working with you, and while no guarantee can be made, we believe it would be beneficial for all parties to attempt to work out a resolution." *Id.* The second letter was identical to the first, but included the California FDCPA notice and mini-Miranda warning. *Id.* The *Gillespie* court held the letters were in the "nature of providing information" rather than "in connection with the collection of any debt." *Id.* at 5. Likewise, in *Santoro v. CTC Foreclosure Serv. Corp.*, 12 Fed. Appx. 476, 480, (9th Cir. 2001), the Ninth Circuit Court held letters suggesting loan workout options sent by the mortgage servicer directly to borrowers was not "in connection with the collection of any debt," notwithstanding knowledge that the borrowers were represented by counsel.

In *Lewis v. ABC Business Serv's Inc.* 135 F.3d 389, 402 (6th Cir. 1998), the debtor sent a "cease communication" letter in accordance with section 1692(c) of the FDCPA. Thereafter, the collection agency sent the borrower a letter outlining options to settle the delinquent credit card debt. *Id.* 395-396. The borrower filed suit alleging several FDCPA violations, including the cease-communication provision. *Id.* at 397. The court found the debt collector's letter notifying

the debtor of payment plans was a permissible communication, stating, "[w]e believe that Lewis' interpretation of §1692c(c)(2), which would prohibit collectors from sending non-coercive settlement offers as a remedy, is plainly at variance with the policy of the legislation as a whole." *Id.* at 398.

In *Bailey v. Security Nat'l Serv'ing Corp.*, 154 F.3d 384, 386 (7th Cir. 1998), a mortgage servicer provided the debtor with a payment listing. The letter further expressed willingness to "work with" the debtor in resolution of his delinquency. *Id.* The Seventh Circuit held the letter did not qualify as a communication in connection with debt collection. *Id.* at 388-389. Because the letter did not demand payment and or attempt to collect the debt, despite its warning that delinquent payment could trigger an obligation to pay the entirety of the loan immediately, it did not fall under the FDCPA. *Id.* The court held the letter acted as the debtor's account status. *Id.* See also *Porter v. Fairbanks Capital Corp.*, No. 01 C 9106, 2003 WL 21210115, \*3 (N.D. Ill. May 21, 2003) (A videotape encouraging borrowers to contact the loan servicer and suggesting possible loan workout options did not demand payment and could not be construed as a communication in connection with the collection of debt.); *Wexler v. Banc of Am. Auto Fin. Corp.*, No. 00-C-865, 2000 WL 1230497, at \*2 (N.D. Ill. Aug. 25, 2000) (a letter that does not demand payment does not qualify as communication in connection with the collection of debt subject to the FDCPA); and *Mabbitt v. Midwestern Audit Serv., Inc.*, No. 07-11550, 2008 WL 723507 at \*4-5 (E.D. Mich. Mar. 17, 2008) (letter notifying consumer her outstanding balance was transferred to new account for "convenience in making payment" did not contain language that she was "required to pay the debt" and was not debt collection communication.)

The communication at issue in the instant case involves loss mitigation and is an informational communication designed to assist consumers like Morales. It is difficult to

understand how a communication offering Morales an opportunity to receive a significant balance reduction justifies a lawsuit against Discover. Morales's allegations are plainly at odds with public policy. Courts, along with the government, routinely look to banks, creditors and loan servicers to provide loss mitigation and settlement options. The allegations alleging improper collection by Discover are disingenuous and fail to state a claim.

#### C. Florida County Court Case Law

The following cases from county courts in Central Florida demonstrate that courts in this area consistently hold that communications informing a debtor of loss mitigation options are not violations of the FCCPA:

- *Alfredo Remante v. Bank of America* – The court, Hillsborough County Judge Joelle Ober, granted summary disposition in favor of Defendant. The communications at issue involved loss mitigation and were not debt collection. *Attached as Exhibit A*
- *Malena Nelson v. Bank of America* – The court, Hillsborough County Judge Jennifer Gabbard, granted summary disposition in favor of Defendant. The communications at issue involved loss mitigation and were not debt collection. *Attached as Exhibit B*
- *Jesus Pineiro v. Bank of America* – The court, Pinellas County Judge Carassas, granted summary disposition in favor of Defendant. The communications at issue involved loss mitigation and were not debt collection. *Attached as Exhibit C.*
- *Hardat Singh v. Bank of America* – After plaintiff presented evidence and testimony at trial before Judge Wilfredo Martinez in Orange County, the court ruled plaintiff failed to prove his claim for a violation of the FCCPA. Specifically at issue, and considered by the court during plaintiff's case-in-chief, was a letter inviting plaintiff to the customer assistance center to discuss foreclosure alternatives such as loan

modifications or short sale. The letter requested financial documents and provided a phone number for plaintiff to call with questions. The Court found this letter was not a violation of the FCCPA and granted a directed verdict in favor of Defendant.

*Attached as Exhibit D.*

- *Norma Henry v. Bank of America* – After plaintiff presented evidence and testimony at trial before Judge Wilfredo Martinez in Orange County, the court ruled plaintiff failed to prove her claim for a violation of the FCCPA. Specifically at issue, and considered by the court during plaintiff's case-in-chief, were three letters and four phone calls from Defendant. One letter invited plaintiff to the customer assistance center, another discuss short sale as an alternative to foreclosure and the last letter requested documents needed for a loan modification review. The four phone calls, according to plaintiff's own notes, involved loss mitigation. The Court found these communications were not violations of the FCCPA and granted a directed verdict in favor of Defendant. *Attached as Exhibit E.*

#### D. Summary Disposition on Counterclaim

There is no triable issue of fact regarding whether Morales applied for and was issued a Discover credit card on or about February 28, 2006; that Discover provided him with written terms and conditions for use of the card ("Cardmember Agreement"); and that Morales failed to make his minimum monthly payment on his account in October of 2010 and all minimum monthly payments thereafter.

The Cardmember Agreement, which is attached as *Exhibit F*, provides that by not canceling the account related to his Discover card within 30 days of receiving the Cardmember Agreement, and/or by using his Discover card, he was deemed to have accepted its terms. (See

Cardmember Agreement at 1.) Morales used his card and therefore agreed to Discover's terms and conditions described in the Cardmamber Agreement. Among those terms was the requirement that Morales make his minimum monthly payment each month. However, Morales breached those terms and conditions by failing to make his minimum monthly payment in October 2010 and all payments thereafter. Morales did not remedy this default despite receiving account statements from Discover stating the balance due. As a result, Morales has breached the Cardmember Agreement and is liable for payment on an account stated. Summary disposition on Discover's Counterclaim is thus appropriate. *See Capital One Bank (USA), N.A. v. Garcia*, slip op. No. 08-6604-SP-23, 2008 WL 8740888 (Fla. Cty. Ct. Dec. 22, 2008) (granting summary disposition on credit card company's action for breach of contract supported by affidavit demonstrating that debtor agreed to credit card company's terms and defaulted thereunder).

#### IV. CONCLUSION

None of the factors required to violate FLA. STAT. § 559.72(18) are present in the single communication to Morales. Additionally, the letter at issue was not sent by Discover. Morales's claim fails as a matter of law and summary disposition must be entered in Discover's favor. Furthermore, it is appropriate to enter summary disposition in Discover's favor on its Counterclaim as a matter of law. Discover requests this Court issue an order: (i) entering summary disposition dismissing the statement of claim in its entirety with prejudice; (ii) awarding Discover its costs and reasonable attorney's fees pursuant to FLA. STAT. § 559.77(2); (iii) entering summary disposition in Discover's favor on the Counterclaim and awarding monetary damages, interest, cost, and attorneys' fees; and (iv) granting such other relief as the Court deems just and proper.

Respectfully submitted this 18th day of November, 2014,

*/s/Laura Westerman Tanner*

David Elliott, Esq. (FL Bar # 0094237)

Email: [delliott@burr.com](mailto:delliott@burr.com)

Secondary email: [cwingate@burr.com](mailto:cwingate@burr.com)

Laura Westerman Tanner, Esq. (FL Bar # 085573)

Email: [ltanner@burr.com](mailto:ltanner@burr.com)

Secondary email: [mroessel@burr.com](mailto:mroessel@burr.com)

Burr & Forman LLP

201 North Franklin Street, Suite 3200

Tampa, Florida 33602

Tel: (813) 221-2626

Fax: (813) 357-3534

*Attorneys for Discover*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of November, 2014, a true and correct copy of the foregoing was filed via Florida's EPortal, which will provide electronic service to the following counsel of record:

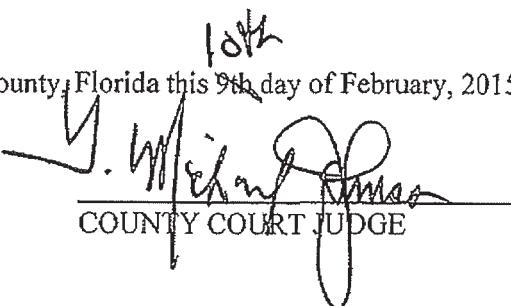
Adam Charles O'Neil, Esq.  
Kaufman, Englett & Lynd, PLLC  
150 N. Orange Avenue, Suite 100  
Orlando, Florida 32801  
[aoneil@kelattorneys.com](mailto:aoneil@kelattorneys.com)  
[cloy@kelattorneys.com](mailto:cloy@kelattorneys.com)

*/s/Laura Westerman Tanner*

Laura Westerman Tanner, Esq. (FL Bar # 085573)

additional orders as may be just and necessary, including, but not limited to, orders in aid of execution of the judgment.

Entered in Inverness, Citrus County, Florida this 9<sup>th</sup> day of February, 2015.

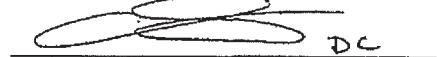
  
\_\_\_\_\_  
Michael J. Phelan  
COUNTY COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing via U.S. Mail to the following counsel of record:

Adam Charles O'Neil, Esq.  
Kaufman, Englett & Lynd, PLLC  
150 N. Orange Avenue, Suite 100  
Orlando, Florida 32801  
[aoneil@kelattorneys.com](mailto:aoneil@kelattorneys.com)  
[cloy@kelattorneys.com](mailto:cloy@kelattorneys.com)

Laura Westerman Tanner  
Email: [ltanner@burr.com](mailto:ltanner@burr.com)  
Secondary email: [mroessel@burr.com](mailto:mroessel@burr.com)  
Burr & Forman LLP  
201 North Franklin Street, Suite 3200  
Tampa, Florida 33602

  
\_\_\_\_\_  
DC  
Attorney/Judicial Assistant