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 Setneska and all others similarly situated

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY**

NATALIE A. WILLIAMS and ALAN J.
 SETNESKA, individually and on behalf
 of all others similarly situated,
 Plaintiffs,

vs.

PRESSLER AND PRESSLER, LLP,
 Defendants.

**AMENDED CLASS ACTION
 COMPLAINT
 AND JURY DEMAND**

Plaintiffs, Natalie A. Williams (“WILLIAMS”) and Alan J. Setneska (“SETNESKA”), individually and on behalf of all those similarly situated, by way of Complaint against Defendant, Pressler and Pressler, LLP (“PRESSLER”), says:

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I. NATURE OF THE ACTION

1. This action stems from the Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq.

II. PARTIES

2. WILLIAMS is a natural person.

3. At all times relevant to the factual allegations of this Complaint, WILLIAMS was and is a citizen of the State of New Jersey, residing in Hudson County, New Jersey.

4. WILLIAMS was formerly known as Natalie A. Freeman.

5. SETNESKA is a natural person.

6. At all times relevant to the factual allegations of this Complaint, SETNESKA was and is a citizen of the State of New Jersey, residing in Mercer County, New Jersey.

7. At all times relevant to the factual allegations of this Complaint, PRESSLER was and is a for-profit limited liability partnership existing pursuant to the laws of the State of New Jersey and is engaged in the private practice of law. PRESSLER maintains its principal business address at 7 Entin Road, in the Township of Parsippany, Morris County, New Jersey.

III. JURISDICTION AND VENUE

8. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

9. Venue is appropriate in this federal district pursuant to 28 U.S.C. § 1391 because the events giving rise to Plaintiff's claims occurred within this federal judicial district, and because PRESSLER regularly transacts business within this federal judicial district and, therefore, resides in the State of New Jersey within the meaning of 28 U.S.C. § 1391(b) and (c).

IV. LEGAL BASIS FOR FAIR DEBT COLLECTION PRACTICES ACT CLAIMS

10. The FDCPA simultaneously advances two objectives: it protects vulnerable citizens while promoting a competitive marketplace. 15 U.S.C.

§ 1692(e).

11. Congress adopted the FDCPA with the “express purpose to eliminate abusive debt collection practices by debt collectors, and to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. ___, 130 S. Ct. 1605, 1623, 176 L. Ed. 2d 519 (2010) (internal quotes and ellipsis omitted). “Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to ‘insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.’” *Leshner v. Law Offices of Mitchell N. Kay, P.C.*, 650 F.3d 993, 996 (3d Cir. 2011).

12. Congress had found abundant evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors contributed to the number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. 15 U.S.C. § 1692(a). It also found that existing consumer protection laws were inadequate. 15 U.S.C. § 1692(b). Therefore, “Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act.” *Leshner*, 650 F.3d at 997.

13. Thus, the intended effect of these private enforcement actions was not only to reduce the number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy caused by abusive, deceptive, and unfair debt collection practices but, simultaneously, to promote a competitive marketplace for those debt collectors who voluntarily treat consumers with honesty and respect.

14. “Congress recognized that ‘the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness or marital difficulties or divorce.’” *FTC v. Check Investors, Inc.*, 502 F.3d 159, 165 (3d Cir. 2007). Nevertheless, “[a] basic tenet of the Act is that all consumers, *even those who have mismanaged their financial affairs resulting in default on their debt*, deserve ‘the right to be treated in a reasonable and civil manner.’” *FTC, supra*, 502 F.3d at 165 (emphasis added) quoting *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1324 (7th Cir. 1997).

15. The FDCPA is construed broadly so as to effectuate its remedial purposes and a debt collector’s conduct is judged from the standpoint of

the “least sophisticated consumer,” *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 453n1 (3d Cir. 2006). Thus, by way of example, “A debt collection letter is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate.” *Id.* at 455.

16. “Congress also intended the FDCPA to be self-enforcing by private attorney generals.” *Weiss v. Regal Collections*, 385 F.3d 337, 345 (3d Cir. 2004). “In order to prevail, it is not necessary for a plaintiff to show that she herself was confused by the communication she received; it is sufficient for a plaintiff to demonstrate that the least sophisticated consumer would be confused. In this way, the FDCPA enlists the efforts of sophisticated consumers like Jacobson as ‘private attorneys general’ to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.” *Jacobson v. Healthcare Fin. Services, Inc.*, 516 F.3d 85, 91 (2d Cir. 2008); and, see, *Gonzales v. Arrow Fin. Services, LLC*, __ F.3d __, 11 Cal. Daily Op. Serv. 12210, 2011 Daily Journal D.A.R. 14504, 2011 WL 4430844 (9th Cir. Sept. 23, 2011). Thus, “the FDCPA protects all consumers, the gullible as well as the shrewd.” *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

17. Except where the Act expressly requires knowledge or intent, the “FDCPA is a strict liability statute to the extent it imposes liability without proof of an intentional violation,” *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 368 (3d Cir. 2011) (citing, in footnote 7, supporting authorities from the Second, Seventh, Ninth and Eleventh Circuits).

18. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, provides that a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt and, without limiting the generality of the prohibited conduct, enumerates sixteen acts and omissions which are deemed to be *per se* violations of that section. 15 U.S.C. § 1692e(1)-(16). That list includes:

- 18.01. Making a false representation as to the legal status of the debt, 15 U.S.C. § 1692e(2)(A); and
- 18.02. Using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10).

19. To deter unfair and unconscionable collection practices, the FDCPA, at 15 U.S.C. § 1692f, provides that a debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt and, without limiting the generality of the prohibited conduct, enumerates eight acts and omissions which are deemed to be *per se* violations of that section. 15 U.S.C. § 1692f(1)-(8). That list includes:

19.01. Attempting to collect any amount which is neither expressly authorized by contract or permitted by law, 15 U.S.C. § 1692f(1).

20. Liability under the FDCPA is excused *only* when a debt collector establishes, as an affirmative defense, the illegal conduct was either “not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error,” 15 U.S.C. § 1692k(c), or an “act done or omitted in good faith in conformity with any advisory opinion of the” Federal Trade Commission, 16 U.S.C. § 1692k(e). Thus, common law privileges and immunities are not available to absolve a debt collector from liability under the FDCPA. See, *Heintz v. Jenkins*, 514 U.S. 21, (1995); *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 369 (3rd Cir. 2011); and *Sayyed v. Wolpoff & Abramson*, 485 F. 3d 236, 232-233 (4th Cir. 2007).

21. Liability under the FDCPA arises upon the showing of a single violation. *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62-3 (2d Cir. 1993).

22. A debt collector who violates any provision of the FDCPA is liable for any actual damages, “additional damages” (also called “statutory damages”), and attorney’s fees and costs. 15 U.S.C. § 1692k(a). However, “the FDCPA permits and encourages parties who have suffered no loss to bring civil actions for statutory violations.” *Jacobson, supra*, 516 F.3d at 96.

23. The FDCPA applies to lawyers regularly engaged in consumer debt-collection litigation. *Heintz v. Jenkins*, 514 U.S. 291 (1995). The FDCPA creates no exceptions for attorneys – even when that conduct falls within conduct traditionally performed only by attorneys. *Id.* For example, there is no “litigation privilege” for debt collecting attorneys. *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007). “Attorneys who regularly engage in debt collection or debt collection litigation are covered by the FDCPA, and *their litigation activities must comply with the*

requirements of that Act.” Piper v. Portnoff Law Associates, 396 F.3d 227, 232 (3d Cir. 2005) (emphasis added).

24. WILLIAMS, individually and on behalf of all those similarly situated seeks statutory damages, attorney fees, and costs pursuant to the FDCPA. If the Court does not certify that this action may be maintained as a class action under Fed.R.Civ.P. 23, then WILLIAMS will also seek actual damages (but waives any claim for actual damages if this action is certified as a class action).

V. FACTS REGARDING WILLIAMS

25. Sometime prior to November 1, 2010, WILLIAMS is alleged to have incurred a financial obligation (“Williams Debt”) to “GE CAPITAL – REGULAR WALMART.”

26. The Williams Debt is alleged to arise from one or more transactions.

27. WILLIAMS has no recollection of ever incurring any financial obligation in a transaction other than for primarily personal, family, or household purposes and, therefore, on information and belief alleges that the Williams Debt arose from a transaction for primarily personal, family, or household purposes.

28. PRESSLER is regularly engaged in the collection of debts.

29. The principal purpose of PRESSLER is the collection of debts and it uses the mails, telephone, the internet and other instruments of interstate commerce.

30. PRESSLER contends that the Williams Debt is in default.

31. The Williams Debt was placed with, obtained by or assigned to PRESSLER for the purpose of collecting or attempting to collect the Williams Debt.

32. The Williams Debt was in default or alleged to be in default at the time it was placed with, obtained by or assigned to PRESSLER.

33. In an attempt to collect the Williams Debt, PRESSLER sent WILLIAMS a letter dated November 1, 2010 (“November Letter”).

34. A true and correct redacted copy of the November Letter is attached as Exhibit 1 on page 18, below.

35. In an attempt to collect the Williams Debt, PRESSLER commenced an action (“Williams Collection Action”) against WILLIAMS by filing a complaint (“Williams Collection Complaint”) on December 17, 2010 in the Superior Court of New Jersey, Law Division, Special Civil Part, Hudson County, entitled “New Century Financial Services, Inc. vs. Natalie Freeman” and designated in that court by Docket No. DC-031425-10.

36. A true copy of the Williams Collection Complaint is attached as Exhibit 2 on page 19, below.

37. Ralph Gulko, Esq. signed the Williams Collection Complaint as an attorney with PRESSLER.

38. By signing the Williams Collection Complaint, Gulko certified that he read the Williams Collection Complaint and that “to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” “the factual allegations have evidentiary support”.

39. Gulko’s certification was false. (Pursuant to Fed.R.Civ.P. 11, this allegation will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.)

40. Gulko signs so many complaints that it is either physically impossible or so highly improbably that he read the Williams Collection Complaint. (Pursuant to Fed.R.Civ.P. 11, this allegation will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.)

41. Had Gulko in fact read the Williams Collection Complaint and undertaken “an inquiry reasonable under the circumstances,” he would have concluded that the claim was time barred and that, in fact, the factual allegations did not have evidentiary support. (Pursuant to Fed.R.Civ.P. 11, this allegation, informed by the fact that the Collection Complaint was filed notwithstanding that the Debt was time-barred, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.)

42. The Williams Collection Complaint was served on WILLIAMS on or about December 20, 2010.

43. On or about January 7, 2011, WILLIAMS, acting pro se, filed an Answer to the Williams Collection Complaint and asserted, among other

things, that the statute of limitations had expired.

44. A true copy of the Answer is attached as Exhibit 3 on page 20, below.

45. In an attempt to collection the Williams Debt, PRESSLER sent WILLIAMS a letter dated January 12, 2011 (“Williams Settlement Letter”).

46. A true copy of the Williams Settlement Letter is annexed as Exhibit 4 on page 21, below.

47. The Williams Settlement Letter included this sentence: “Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau.” That sentence falsely represented to the least sophisticated consumer that one benefit from paying the amount requested in the Williams Settlement Letter would be the consumer’s ability to obtain a more favorable credit report than the one that existed prior to settlement.

48. In fact, there was no information contained in the consumer’s credit file which could be affected by the consumer sending “proof that the debt has been paid” to any “credit bureau.” Specifically:

48.01. Neither PRESSLER nor New Century Financial Services, Inc. reported a trade line to any consumer credit reporting agency concerning the Williams Debt or, in the alternative, based on the filing of an answer to the Williams Collection Complaint, New Century Financial Services, Inc. deleted any trade line it may have reported;

48.02. Neither PRESSLER nor New Century Financial Services, Inc. can affect any information provided to any consumer credit reporting agency by any prior owner of any debt; and

48.03. The fact that PRESSLER commenced an action in an attempt to collect a debt allegedly due New Century Financial Services, Inc. is not a fact which appears on or it reported to a consumer credit reporting agency.

49. In an attempt to collect the Williams Debt, PRESSLER served interrogatories on WILLIAMS by certified mail dated January 24, 2011.

50. On or about February 21, 2011, WILLIAMS served responsive

answers to those interrogatories.

51. In an attempt to collect the Williams Debt, PRESSLER sent WILLIAMS a letter dated February 25, 2011 asserting that her answers to interrogatories were unresponsive.

52. On or about February 26, 2011, WILLIAMS served additional answers to interrogatories.

53. By letter dated February 25, 2011 and in an attempt to collect the Williams Debt, PRESSLER served "Supplemental Interrogatories."

54. On or about March 22, 2011, WILLIAMS served responsive answers to the Supplemental Interrogatories.

55. On or about March 22, 2011, WILLIAMS served interrogatories on PRESSLER to be answered by PRESSLER's client, New Century Financial Services, Inc.

56. By letter dated March 28, 2011, PRESSLER sent a letter to WILLIAMS advising that the interrogatories sent by WILLIAMS would not be answered.

57. On or about March 31, 2011, PRESSLER submitted a "Stipulation of Dismissal" to the court in the Williams Collection Action. As such, dismissal was entered without prejudice.

58. PRESSLER's filing of a "Stipulation of Dismissal" misrepresented that the requested dismissal was with WILLIAMS's consent – in other words, a stipulation between the parties – when, in fact, WILLIAMS had not consented to the "Stipulation of Dismissal."

59. PRESSLER knew or reasonably should have known that, after a defendant has filed an answer to the complaint, the plaintiff cannot dismiss the action without prejudice unless by stipulation with the defendant.

60. WILLIAMS had not in fact stipulated to dismissal or consented to the filing of the Stipulation of Dismissal.

61. By motion filed on or about May 3, 2011, WILLIAMS moved for the entry of dismissal with prejudice.

62. By letter dated May 11, 2011, PRESSLER wrote to the court in the Collection Action consenting to the entry of dismissal with prejudice.

63. On June 3, 2011, the court in the Williams Collection Action entered an order dismissing the complaint with prejudice.

64. WILLIAMS incurred expenses in defending herself against the Williams Collection Action including filing fees, photocopying expenses, and postage.

65. PRESSLER's bringing and attempts to prosecute the Williams Collection Action has caused WILLIAMS emotional distress.

VI. WILLIAMS' CLAIM FOR VIOLATIONS OF THE FDCPA

66. WILLIAMS realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

67. WILLIAMS is a "consumer" within the meaning of 15 U.S.C. § 1692a(3).

68. PRESSLER is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

69. The Williams Debt is a "debt" within the meaning of 15 U.S.C. § 1692a(5).

70. PRESSLER violated the FDCPA in one or more of the following ways:

70.01. The false representation in the Williams Collection Complaint that "to the best of [Gulko's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," "the factual allegations have evidentiary support" was in violation of 15 U.S.C. §§ 1692e(2)(A), 1692e(10), and 1692f(1);

70.02. The filing of the Williams Collection Complaint on a time-barred debt constitutes the unfair or unconscionable means to attempt to collection a debt in violation 15 U.S.C. § 1692f.

70.03. The false representation that WILLIAMS had assented to the Stipulation of Dismissal in violation of 15 U.S.C. § 1692e(10).

70.04. The misrepresentation in the Settlement Letter that, by agreeing to settle, WILLIAMS could remove negative

information from her credit report in violation of 15 U.S.C. § 1692e(10).

71. Based on any one of those violations, PRESSLER is liable to WILLIAMS for actual and statutory damages, attorney's fees and costs.

VII. FACTS REGARDING SETNESKA

72. Sometime prior to June 7, 2011, SETNESKA is alleged to have incurred a financial obligation ("Setneska Debt") to "CITIBANK SOUTH DAKOTA, N.A."

73. The Setneska Debt is alleged to arise from one or more transactions.

74. SETNESKA has not incurred any financial obligations in a transaction other than for primarily personal, family, or household purposes and, therefore, on information and belief alleges that the Setneska Debt arose from a transaction for primarily personal, family, or household purposes.

75. PRESSLER is regularly engaged in the collection of debts.

76. The principal purpose of PRESSLER is the collection of debts and it uses the mails, telephone, the internet and other instruments of interstate commerce.

77. PRESSLER contends that the Setneska Debt is in default.

78. The Setneska Debt was placed with, obtained by or assigned to PRESSLER for the purpose of collecting or attempting to collect the Setneska Debt.

79. The Setneska Debt was in default or alleged to be in default at the time it was placed with, obtained by or assigned to PRESSLER.

80. In an attempt to collect the Setneska Debt, PRESSLER commenced an action ("Setneska Collection Action") against SETNESKA by filing a complaint ("Setneska Collection Complaint") on June 7, 2011 in the Superior Court of New Jersey, Law Division, Mercer County, entitled "New Century Financial Services, Inc. vs. Alan Setneska" and designated in that court by Docket No. MER-L-001502-11.

81. A true copy of the Setneska Collection Complaint is attached as Exhibit 5 on page 22, below.

82. Ralph Gulko, Esq. signed the Setneska Collection Complaint as an attorney with PRESSLER.

83. By signing the Setneska Collection Complaint, Gulko certified that he read the Setneska Collection Complaint and that “to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” “the factual allegations have evidentiary support”.

84. Gulko’s certification was false. (Pursuant to Fed.R.Civ.P. 11, this allegation will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.)

85. Gulko signs so many complaints that it is either physically impossible or so highly improbably that he read the Setneska Collection Complaint. (Pursuant to Fed.R.Civ.P. 11, this allegation will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.)

86. The Setneska Collection Complaint was served on SETNESKA on or about June 21, 2011.

87. On September 6, 2011, SETNESKA, acting pro se, served an Answer to the Setneska Collection Complaint on PRESSLER.

88. A true copy of the Answer is attached as Exhibit 6 on page 23, below.

89. In an attempt to collection the Setneska Debt, PRESSLER sent SETNESKA a letter dated September 7, 2011 (“Setneska Settlement Letter”).

90. A true copy of the Setneska Settlement Letter is annexed as Exhibit 7 on page 26, below.

91. The Setneska Settlement Letter included this sentence: “Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau.” That sentence falsely represented to the least sophisticated consumer that one benefit from paying the amount requested in the Setneska Settlement Letter would be the consumer’s ability to obtain a more favorable credit report than the one that existed prior to settlement.

92. In fact, there was no information contained in the consumer’s

credit file which could be affected by the consumer sending “proof that the debt has been paid” to any “credit bureau.” Specifically:

- 92.01. Neither PRESSLER nor New Century Financial Services, Inc. reported a trade line to any consumer credit reporting agency concerning the Setneska Debt or, in the alternative, based on filing an answer to the Setneska Collection Complaint, New Century Financial Services, Inc. deleted any trade line it may have reported;
- 92.02. Neither PRESSLER nor New Century Financial Services, Inc. can affect any information provided to any consumer credit reporting agency by any prior owner of any debt; and
- 92.03. The fact that PRESSLER commenced an action in an attempt to collect a debt allegedly due New Century Financial Services, Inc. is not a fact which appears on or it reported to a consumer credit reporting agency.

VIII. SETNESKA’S CLAIM FOR VIOLATIONS OF THE FDCPA

93. SETNESKA realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

94. SETNESKA is a “consumer” within the meaning of 15 U.S.C. § 1692a(3).

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

96. The Setneska Debt is a “debt” within the meaning of 15 U.S.C. §1692a(5).

97. PRESSLER violated the FDCPA in one or more of the following ways:

- 97.01. The false representation in the Setneska Collection Complaint that “to the best of [Gulko’s] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,” “the factual allegations have evidentiary support” was in violation of 15 U.S.C. §§ 1692e(2)(A), 1692e(10), and 1692f(1);
 - 97.02. The misrepresentation in the Setneska Settlement Letter that, by agreeing to settle, SETNESKA could remove
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negative information from her credit report in violation of 15 U.S.C. § 1692e(10).

98. Based on any one of those violations, PRESSLER is liable to SETNESKA for statutory damages, attorney's fees and costs.

IX. POLICIES AND PRACTICES COMPLAINED OF

99. PRESSLER engaged or engages in the practice of sending letters substantially in the form of the Williams Settlement Letter (Exhibit 4) and the Setneska Settlement Letter (Exhibit 7) to consumers who have filed a *pro se* answer to a complaint filed by PRESSLER on behalf of New Century Financial Services, Inc. in the Superior Court of New Jersey which contain the sentence "*Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau.*"

100. Such policy and practice is in violation of 15 U.S.C. § 1692e(10).

X. CLASS ALLEGATIONS

101. Plaintiffs bring this action individually and as a class action on behalf of all other persons similarly situated pursuant to Fed. R. Civ. P. 23.

102. Subject to discovery from PRESSLER concerning the size of the class which may dictate a modification of the following description, the "Class" consists of:

Each natural person who was named as a defendant in a complaint filed by PRESSLER in the Superior Court of New Jersey on behalf of New Century Financial Services, Inc. who were sent a letter after filing an answer to the complaint which letter was not returned to PRESSLER by the postal service and was substantially similar to Exhibits 4 and 7 and contained the sentence "*Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau*" excluding, however, such persons who, prior to the date that this action is certified to proceed as a class, either:

- A. died,
- B. filed for bankruptcy,

- C. filed a claim against PRESSLER in any action or arbitration alleging that PRESSLER violated the FDCPA, or
- D. signed a release of claims against PRESSLER.

103. The “Class Period” is the continuous period beginning December 17, 2010 and ending on the date this Amended Complaint is filed.

104. The “Class Claims” consist of all causes of action arising from letters sent by PRESSLER to Class members which letters were substantially similar to Exhibits 4 and 7 and contained the sentence “Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau

105. The identity of each member of the Class is readily ascertainable from PRESSLER’s records and the records of New Century Financial Services, Inc.

106. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Fed. R. Civ. P. 23(a) because there is a well-defined community interest in the litigation in that:

106.01.*Numerosity.* Plaintiffs are informed and believe, and on that basis allege, that the members of the Class are so numerous that joinder of all members would be impractical. On information and belief, there are more than 40 members of the Class.

106.02.*Commonality.* Common questions of law and fact exist as to all members of the Class, the principal issues are whether PRESSLER’s letters substantially in the form of Exhibits 4 and 7 and contained the sentence “Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau” violated 15 U.S.C. § 1692e(10).

106.03.*Typicality.* Plaintiffs’ claims are each typical of the claims of the class members in that theirs and those of the Class

members arise out of PRESSLER sending letters in connection with the collection of debts in substantially the same form as Exhibits 4 and 7 and containing the sentence *“Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau*

106.04.Adequacy. Plaintiffs will fairly and adequately protect the interests of the class members because they are each committed to vigorously litigating this matter, have retained counsel experienced in handling consumer class action lawsuits, neither they nor their counsel have any interests adverse to the absent class members or which might cause them not to vigorously pursue the instant class action lawsuit.

107. This action has been brought and may be maintained as a “B3-class.” Certification of a class under Fed. R. Civ. P. 23(b)(3) is appropriate in that the questions of law and fact common to members of the Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy because individual joinder of all members would be impracticable, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender, an important public interest will be served by addressing the matter as a class action, substantial expenses to the litigants and to the judicial system will be realized, and difficulties are unlikely in the management of a class action.

108. Based on discovery and further investigation, at the time Plaintiffs move for class certification, they may seek class certification only as to particular issues as permitted under Fed. R. Civ. P. 23(c)(4).

XI. PRAYER FOR RELIEF

109. WHEREFORE, Plaintiffs, Natalie A. Williams and Alan Setneska, respectfully request that the Court enter judgment against Defendant, Pressler and Pressler, LLP, as follows:

109.01. An order certifying that the Cause of Action may be maintained as a class action pursuant to Fed. R. Civ. P. 23 including defining the class, defining the class claims, and appointing Plaintiffs as the class representatives and the undersigned attorney as class counsel;

109.02. An award of statutory damages for WILLIAMS pursuant to 15 U.S.C. § 1692k(a)(2)(A);

109.03. An award of statutory damages for SETNESKA pursuant to 15 U.S.C. § 1692k(a)(2)(A);

109.04. An award of statutory damages for the Class pursuant to 15 U.S.C. § 1692k(a)(B);

109.05. Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(3);

109.06. If this action is not certified as a class action, an award of actual damages for WILLIAMS pursuant to 15 U.S.C. § 1692k(a)(1); and

109.07. For such other and further relief as may be just and proper.

XII. JURY DEMAND

110. Plaintiffs demand a trial by jury on all issues so triable.

XIII. CERTIFICATION PURSUANT TO LOCAL CIVIL RULE

111. Pursuant to L. Civ. R. 11.2, I hereby certify to the best of my knowledge that the matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that I know of no party, other than putative class members, other than putative class members, who should be joined in the action at this time.

Philip D. Stern & Associates, LLC
Attorneys for Plaintiffs, Natalie A. Williams and
Alan J. Setneska

s/Philip D. Stern

Dated: June 19, 2012

Philip D. Stern

EXHIBIT 1

MAURICE H. PRESSLER(1930-2002) SHELDON H. PRESSLER ----- GERARD J. FELT STEVEN P. MCCABE LAWRENCE J. McDERMOTT, JR. ----- MITCHELL L. WILLIAMSON THOMAS H. BROGAN RALPH GULKO JOANNE L. D'AURIZIO CHRISTOPHER P. CDOGBILI	PRESSLER AND PRESSLER, L.L.P. COUNSELLORS AT LAW 7 Entin Road Parsippany, NJ 07054-5020 Off: (973) 753-5300 Fax: (973) 753-5353 ----- NY Office 305 Broadway 9th Floor New York, NY 10007 Off: (212) 222-7929 Fax: (212) 753-5353 Reply to [X] NJ Office NY Office	DALE L. GELBER CRAIG S. STILLER* STEVEN A. LANG LESLIE L. SWISFER ----- * NY State License Only	DARYL J. KIPNIS DARRIN H. TANAKA MITCHELL E. ZIPKIN DANIEL B. SULLIVAN
--	--	--	---

11/01/10
P&P FILE F96305
Amount of Debt \$720.11

NATALIE FREEMAN
REDACTED
JERSEY CITY, NJ 073052911

Dear NATALIE FREEMAN

This is to notify you that your account with GE CAPITAL - REGULAR WAL-MART , account # C77W03423244788 has been purchased by NEW CENTURY FINANCIAL SERVICES, INC. and has been placed with the firm of Pressler and Pressler, LLP for collection.

We shall afford you this opportunity to pay this debt immediately and avoid further action against you. Make your check or money order payable to Pressler and Pressler, LLP and include your File Number F96305 and remit to:

Pressler and Pressler, LLP 7 Entin Rd. Parsippany, NJ 07054-5020

Payment can be made on the website www.paypressler.com. We also accept Visa/Mastercard and American Express. If you choose this payment option return this letter along with:

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

Should you have any questions, please feel free to contact me at 1-888-312-8600 Ext 5368 or anyone in my department at Ext 5105.

Thank You, KEVIN V - Paralegal Ext 5368

~~At this time, no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, our client may consider additional remedies to recover the balance due.~~

PLEASE READ THE FOLLOWING PROVIDED TO YOU PURSUANT TO FEDERAL STATUTE:

This communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receipt of this notice that you dispute the validity of the debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receipt of this notice that the debt or any portion thereof is disputed, 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. Upon your request 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.

EXHIBIT 2

RECEIVED FRIDAY 12/17/2010 1:09:59 PM 6542505	FILED Dec 17, 2010
 Pressler and Pressler, LLP 7 Entin Rd. Parsippany, NJ 07054-5020 (973) 753-5100 Attorney for Plaintiff File # F96305	
<hr/>	
NEW CENTURY FINANCIAL SERVICES, INC.	SUPERIOR COURT OF NEW JERSEY Law Division
Plaintiff	HUDSON Special Civil Part
vs.	Docket # DC-031425-10
NATALIE FREEMAN	Civil Action
Defendant(s)	COMPLAINT (Contract)
<hr/>	
Plaintiff having a principal place of business at: 110 SOUTH JEFFERSON ROAD SUITE 104 WHIPPANY, NJ 07981 says:	
1. It is now the owner of the defendant(s) GE CAPITAL - REGULAR WAL-MART account number C77W03423244788 which is now in default. There is due the plaintiff from the defendant(s) NATALIE FREEMAN the sum of \$720.11 plus interest from 10/27/2010 to 12/15/2010 in the amount of \$1.45 for a total of \$721.56.	
WHEREFORE, plaintiff demands judgment for the sum of \$721.56 plus accruing interest to the date of judgment plus costs.	
I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.	
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance in Rule 1:38-7(b).	
PRESSLER and PRESSLER, LLP Attorneys for Plaintiff(s) By: S/Ralph Gulko	
<hr/> Ralph Gulko	

EXHIBIT 3

**Superior Court Of New Jersey
Law Division, Special Civil Part**

Plaintiff's Name PRESSLER & PRESSLER, LLP
Street Address 7 ENTIN ROAD
Town, State, Zip Code PARSIPPANY NJ 07054-502
Telephone Number (973) 753-5100

County HUDSON
Docket No. DC-031425-10

vs.

Defendant's Name NATALIE FREEMAN
Street Address REDACTED
Town, State, Zip Code JERSEY CITY NJ 07305
Telephone Number RED ACT

CIVIL ACTION
Answer

Check the appropriate statement or statements below which set forth why you claim you do not owe money to the plaintiff.

☐ (1) The good or services were not received.
☐ (2) The goods or services received were defective.
☐ (3) The bill has been paid.
☐ (4) I/We did not order the goods or services.
☒ (5) The dollar amount claimed by the plaintiff(s) is incorrect.
☒ (6) Other – Set forth any other reasons why you believe money is not owed to the plaintiff(s). (You may attach more sheets if you need to.)

BECAUSE IT'S
* THIS LAWSUIT I FIND TO BE FRIVOLOUS FROM A DEBT I BELIEVE TO BE AT LEAST 10 YEARS
OLD - AND TO SEEK PAYMENT AFTER THE STATUTE OF LIMITATIONS AROUND THE HOLIDAYS
I FIND TO BE MALICIOUS.

Trial by jury requested; an extra \$50 check or money order is enclosed.

At the trial Defendant requests:
An interpreter: ☒ Yes ☒ No
An accommodation for a disability: ☒ Yes ☒ No

Indicate Language: NOT APPLICABLE
Requested accommodation: DAYCARE FOR 8 MONTH BABY

I certify the matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I further certify that this answer was served on all other parties within 35 days of the date the summons and complaint were mailed to me as indicated on page 2 of the summons.

Dated: 01/07/2011

Natalie A. Williams
Defendant's Signature
NATALIE A. WILLIAMS
Defendant's Name – Type or Printed

Revised 09/1/2009, CN 10542-English (How to Answer a Complaint in the Special Civil Part) Page 9 of 9

EXHIBIT 4

MAURICE R. PRESSLER(1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

MITCHELL L. WILLIAMSON
THOMAS M. BROGAN
RALPH GULKO
JOANNE L. D'AURIZIO
CHRISTOPHER P. ODOGBILI

PRESSLER AND PRESSLER, L.L.P.

COUNSELLORS AT LAW
7 Entin Road
Parsippany, NJ 07054-5020
Off: (973) 753-5100
Fax: (973) 753-5353

NY Office
305 Broadway
9th Floor
New York, NY 10007
Off: (516) 222-7929
Fax: (973) 753-5353
Reply to [X] NJ Office [] NY Office

DALE L. GELBER
CRAIG S. STILLER*
STEVEN A. LANG
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MICHAEL J. PETERS
RITA E. AYOUB

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DANIEL B. SULLIVAN
GINA M. LO BUE

* NY State License Only

OFFICE HOURS:
Monday-Thursday: 8am-5pm
Friday: 8am-7pm
Saturday: 9am-2pm

01/12/11

|||||

NATALIE FREEMAN

REDACTED

JERSEY CITY, NJ 073052911

P&P FILE #: F96305

Re: NEW CENTURY FINANCIAL SERVICES, INC. v. NATALIE FREEMAN
Docket # DC-031425-10
~~Superior Court of New Jersey: Law Division HUDSON Special Civil Part~~

Dear NATALIE FREEMAN :

You are hereby offered a significant savings on your GE CAPITAL - REGULAR WAL-MART account C77W03423244788 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . As you probably know, this office has filed a lawsuit against you in which the amount claimed is \$790.58 . This includes costs and other amounts the creditor is seeking. If you can make a payment of \$592.94 , 75 % of the amount claimed by Tuesday, January 25, 2011 , it will be accepted as payment in full, a savings to you of \$197.64 from the amount claimed in the lawsuit.

This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau. If you are unable to pay the 75 %, we can accept \$197.65 down (25 % of the full balance) and enter into acceptable arrangements on the remaining 75 % when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5368 or anyone in my department at 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number F96305 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After January 25, 2011 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

Thank you, KEVIN V - Paralegal EXT - 5368

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

EXHIBIT 5

PRESSLER and PRESSLER, LLP
COUNSELLORS AT LAW
7 Entin Rd.
Parsippany, NJ 07054-5020
(973) 753-5100 Ext. 5100
Attorney for Plaintiff

Plaintiff
NEW CENTURY FINANCIAL SERVICES, INC.
vs.

Defendant

ALAN J SETNESKA

Plaintiff having a principal place of business at: 110 S. JEFFERSON ROAD SUITE 104
WHIPPANY, NJ 07981 says:

1. It is now the owner of the defendant(s) CITIBANK SOUTH DAKOTA, N.A. account
number 5121079640375975 which is now in default. There is due the plaintiff from
the defendant(s) ALAN J SETNESKA the sum of \$15,219.30 plus interest from
04/08/2011 to 06/03/2011 in the amount of \$11.68 for a total of \$15,230.98.

WHEREFORE, plaintiff demands judgment for the sum of \$15,230.98 plus accruing
interest to the date of judgment plus costs.

I certify that the matter in controversy is not the subject of any other court
action or arbitration proceeding, now pending or contemplated, and that no other
parties should be joined in this action.

Debit Account # 148275
Using reference # 112326493

P & P FILE NO. S258431

L1572-11

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MERCER COUNTY
Docket No.
CIVIL ACTION
COMPLAINT

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff
By: s/Ralph Gulko
Ralph Gulko

EXHIBIT 6 (page 1 or 3)

Alan J. Setneska
 153 Hickory Corner Road
 East Windsor, NJ 08520
 (609) 448-0707

**NEW CENTURY FINANCIAL
 SERVICES, INC.**

Plaintiff,

vs.

ALAN J. SETNESKA,

Defendant.

SUPERIOR COURT OF NEW JERSEY

**LAW DIVISION
 MERCER COUNTY**

DOCKET NO: L - 001502 - 11

**CIVIL ACTION
 ANSWER**

RECEIVED
 SEP 03 2011
 DEPT. CLERK OF SUPERIOR COURT
 MERCER COUNTY

I, Alan J. Setneska, Defendant, answers the plaintiff's complaint as follows:

1. Defendant did not receive the proper documentation necessary to be notified to be sued in the Law Division of the Superior Court of New Jersey. The complaint, Case Information Statement (CIS) and TAN must be served with the summons on all parties. The CIS was not served.
2. COMPLAINT - Denied: Defendant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged debt. According to the FDCPA 15 U.S.C. §1692, Plaintiff needs to establish that Defendant is liable for the alleged debt.

WHEREFORE, the defendant demands judgment dismissing the complaint with costs.

AFFIRMATIVE DEFENSES

1. This Complaint is not substantiated with proper evidence supporting the Plaintiff's claims, as required by Federal Rules of Civil Procedure, Rule 26(a)(1), regarding initial supporting documentation.
2. The Plaintiff lacks standing to sue the Defendant, since at no time did the Defendant cause any harm to the Plaintiff: (a) the Defendant has never had any sort of relationship, business or otherwise, with the Plaintiff; (b) at no time did the Defendant become indebted to the Plaintiff; (c) as such, the Defendant has no obligation to the Plaintiff, monetary or otherwise.
3. The Defendant claims Lack of Privity as Defendant has never entered into any contractual arrangements with the Plaintiff.
4. The Plaintiff has not proven that it has acquired the alleged account from Citibank South Dakota, N.A.

EXHIBIT 6 (page 2 or 3)

5. The Plaintiff has not proven that it is the real successor-in-interest. The Defendant demands proof of ownership specifically that the alleged account is the legal property of the Plaintiff with all of the original creditor's rights and privileges intact.
6. The Plaintiff's claims are barred by the Statute of Frauds since any contract or agreement alleged in the Complaint falls within a class of contracts or agreements required to be in writing. Any alleged contract or agreement by Plaintiff is not in writing nor signed by Defendant.
7. The Defendant alleges that the granting of the Plaintiff's demand in the Complaint would result in Unjust Enrichment, as the Plaintiff would receive more money than the Plaintiff is entitled to receive.
8. The Plaintiff's alleged damages are limited to real or actual damages only. Plaintiff has not provided a bill of sale with the purchase price of the alleged account. Debt Collectors purchase consumer accounts for pennies on the dollar. However, Plaintiff claims the damage in the amount of \$15,230.98 plus accruing interest to the date of judgment plus costs.
9. The Plaintiff admits voluntarily purchasing the alleged account, causing the Plaintiff's damages to its own self, therefore Plaintiff is barred from seeking relief for such self-inflicted damages.
10. The Defendant reserves the right to plead other affirmative defenses that may become applicable and/or available at a later time.
11. The Defendant reserves the right to submit counterclaims that may become applicable and/or available at a later time.

The Defendant requests this case be dismissed with prejudice along with any further relief the court deems just and proper.

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in the action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I further certify that this answer was served on all parties after the Order was returned on the motion that had been filed. .

Dated: September 6, 2011

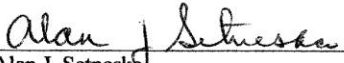

Alan J. Setneska
Defendant

EXHIBIT 6 (page 3 of 3)

CERTIFICATION OF SERVICE

I certify that on September 6, 2011, I sent a copy of the Answer to the following parties
by:

REGULAR MAIL

New Century Financial Services, Inc.
c/o Pressler and Pressler, LLP
7 Entin Road
Parsippany, NJ 07054-5020
Attorney for Plaintiff

Date: September 6, 2011


Alan J. Setneska
Defendant

EXHIBIT 7

MAURICE H. PRESSLER(1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

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CHRISTOPHER P. ODGOBILI

PRESSLER AND PRESSLER, L.L.P.

COUNSELLORS AT LAW
7 Entin Road
Parsippany, NJ 07054-5020
Off: (973) 753-5100
Fax: (973) 753-5353

NY Office
305 Broadway
9th Floor
New York, NY 10007
Off: (516) 222-7929
Fax: (973) 753-5353
Reply to [X] NJ Office [] NY Office

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RITA E. AYOUB

* NY State License Only

OFFICE HOURS:
Monday-Thursday: 8am-9pm
Friday: 8am-7pm
Saturday: 9am-2pm

|||||

09/07/11

ALAN J SETNESKA
153 HICKORY CORNER RD
EAST WINDSOR, NJ 085202417

P&P FILE #: S258431
Docket # L -001502-11

Re: NEW CENTURY FINANCIAL SERVICES, INC. v. ALAN J SETNESKA
Superior Court of New Jersey: Law Division MERCER County

Dear ALAN J SETNESKA :

You are hereby offered a significant savings on your CITIBANK SOUTH DAKOTA, N.A. account 5121079640375975 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . As you probably know, this office has filed a lawsuit against you in which the amount claimed is \$15,498.44 . This includes costs and other amounts the creditor is seeking. If you can make a payment of \$12,398.75 , 80 % of the amount claimed by Thursday, September 22, 2011 , it will be accepted as settlement in full, a savings to you of \$3,099.69 from the amount claimed in the lawsuit.

This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau. If you are unable to pay the 80 %, we can accept \$3,874.61 down (25 % of the full balance) and enter into acceptable arrangements on the remaining 75 % when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number S258431 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After September 22, 2011 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.