

STATE OF MICHIGAN
IN THE 63rd DISTRICT COURT

MIDLAND CREDIT MANAGEMENT, INC.

Plaintiff/Counter-Defendant,

Case No. _
HON.

-vs-

NICHOLAS

Defendant/Counter-Plaintiff.

**DEFENDANT ANSWER AND
AFFIRMATIVE DEFENSES**

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PRELIMINARY STATEMENT AS TO NO STATED CLAIM

In violation of the Fair Debt Collection Practices Act ("FDCPA") and Regulation of Michigan Collection Practices Act ("RMCPA), Plaintiff is suing NICHOLAS CASTER for an ACCOUNT STATED with no agreement between Midland Credit Management, Inc. ("MCM" or "Midland") and Defendant and with no payment made on the debt to Midland. Mr. Caster should not have been sued in this court as he lives in the State of Illinois and works in Kentucky (state ID attached to [redacted] 's Affidavit). **See Exhibit 1.**

Mr. Caster has reviewed the account statements attached to the lawsuit in this case and they show someone making extensive use of the credit card in California. Defendant did not sign up for the debt and did not use this card in California. **See Exhibit 1.** Further, the chain of title in

this lawsuit lacks any evidentiary proof of the alleged SPECIFIC DEBT of Mr. Caster being assigned to MCM under the *Brownbark*, *Bassett* and *Riley* cases below.

The lawsuit states on the Complaint that: **“Please understand this communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.”** This is a violation of 15 USC 1692e (11) and now turns the lawsuit into a debt collection communication. Further, Mr. Caster was sued in a state he does not reside in. Therefore MCM violated the FDCPA under subsection 15 USC 1692i.

Appropriately, as the Plaintiff has no standing to sue Mr. Caster in the State of Michigan under these facts and lack of proof of ownership of the debt by MCM, this case should be dismissed.

ANSWER AND AFFIRMATIVE DEFENSES

WHEREFORE: _____ ER (“Defendant”), by and through his attorneys, The Law Offices of Brian P. Parker, P.C., Answers Plaintiff Midland Credit Management, Inc., (“Midland” or “MCM”)’s Complaint against Defendant as follows:

1. Defendant Denies under MCR 2.113 in that the paragraphs alleged are neither clear, direct nor concise and all contacted within on Allegation against the rules and further, Midland does not own the debt. **Please see Exhibit 1.**
2. Neither Admit nor Deny as there is no proof as to Plaintiff owning the right to sue upon this debt, no assignment, and Plaintiff is not the Real Party in Interest and further, this lawsuit should be dismissed as Defendant does not reside in the State of Michigan but in the State of Illinois. **Please see Exhibit 1 and the State ID.**
3. Denied as to Plaintiff owning the debt and Defendant owing it to Plaintiff. **Please see Exhibit 1.**

4. Denied as to Plaintiff owning the debt and Defendant owing it to Plaintiff. **Please see Exhibit 1.**
5. Denied as to Plaintiff owning the debt and Defendant owing it to Plaintiff. **Please see Exhibit 1.**
6. Denied as Plaintiff has failed to provide any ownership or assignment proof of the Citibank debt under *Bassett and Brownbark and Riley below*. **Please see Mr. _____ s Affidavit at Exhibit 1.**
7. Denied as to the amount stated as under *Midland Funding v Michael Bassett*, Michigan Court of Appeals, No. 338404, April 24, 2018 and *Brownbark II, LP v. Bay Area Floorcovering & Design Inc. et al*, Michigan Court of Appeals Case No. 296660, May 31, 2011, and *Unifund CCR Partners v. Nishawn Riley*, Michigan Court of Appeals Case No. 287599, February 18, 2010 as there is no agreement or payment plan with Plaintiff and no proof of ownership of the debt by Plaintiff and further, the ownership documents attached to the lawsuit violate MCL 600.2145 and MRE 803(6). **Please see Exhibit 1.**
8. Denied as there is no proof of MCM owning the debt under *Bassett and Brownbark and Riley below* as Defendant has no agreement or payment plan with MCM. **Please see Exhibit 1.**
9. Denied as there is no proof of assignment or chain of title as to Plaintiff owning this debt from the original creditor and Defendant does not owe a debt or debt amount to MIDLAND and further, there is no agreement or payment made with Plaintiff by this Defendant as required by an Account Stated Claim in Michigan.

WHEREFORE, Defendant seeks a No Cause in this case and statutory and actual damages *against* Plaintiff under the FDCPA and RCPA including attorney fees and other relief this Court deems just and equitable.

AFFIRMATIVE DEFENSES

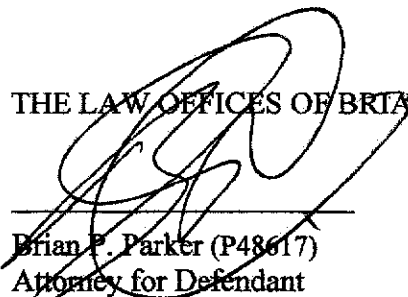
Defendant pleads the following affirmative defenses:

1. Plaintiff fails to state a claim upon which relief can be granted against this Defendant.
2. There is no payment plan or agreement between Plaintiff and Defendant and therefore, no Account Stated Claim.
4. Plaintiff lacks standing to sue because it does not own the alleged debt and is not a Real Party in Interest.
5. Plaintiff lacks capacity to sue as it has no authority to sue upon the debt.
6. Plaintiff has an Affidavit signed by a non-Michigan, out of state representative approving the signing of the Affidavit. This Affidavit should be eliminated as it makes no sense and does not apply here under MRE 803(6) and MCL 600.2145.
7. Plaintiff is suing Defendant in violation of the FDCPA/RCPA based upon false allegations and misrepresentations in suing upon a debt it has not right to sue.
8. There is no proof supporting the lawsuit in violation of MCL 600.2145.
9. Plaintiff violated 15 USC 1692e (11) by placing the words, **"Please understand this communication is from a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose"** in the pleading and the Plaintiff must validate the debt before collecting further. Please see Exhibit 1.
10. Plaintiff is barred by the Fair Debt Collection Practices Act ("FDCPA") from collecting late fees, attorney fees, costs, interest and other amounts.
11. Plaintiff's proofs are inadmissible and are hearsay under MRE 911/112.

12. Plaintiff does not possess the required assignment signed by the Original Creditor that is Notarized and with an account number and name specific to this Defendant and Defendant debt.
13. Plaintiff lacks proof of a chain of title and proof of assignment of the SPECIFIC debt.
14. Another Entity or Creditor owns the rights to the debts.
15. Mr. Caster is not a resident of Michigan, and this court has no jurisdiction over the Defendant, a State of Illinois resident. **See Exhibit 1.**
16. The Plaintiff is missing proof of ownership of the debts..
17. Defendants reserve the right to Amend these Affirmative Defenses throughout discovery. **Please see Exhibit 1 Affidavit of Defendant.**

WHEREFORE, Defendant seeks a No Cause against Plaintiff and statutory and actual damages against Plaintiff under the FDCPA and RCPA including attorney fees and other relief this Court deems just and equitable.

THE LAW OFFICES OF BRIAN PARKER PC



Brian P. Parker (P48617)
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4301 Orchard Lake Road, #180-208
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Dated: March 29, 2023

EXHIBIT #1

AFFIDAVIT OF _____

STATE OF TENNESSEE)

COUNTY OF DAVIDSON) *

Pursuant to 28 U.S.C § 1746, _____ **R** being duly sworn and upon oath verifies, certifies, under threat of perjury and declares as follows:

1. MIDLAND CREDIT MANAGEMENT, INC. and their lawyer, Elizabeth Smith have filed a lawsuit in the 63rd District Court against me titled *Midland Credit Management, Inc. v i* _____ *se #D2: _____*
2. I do not live in Grand Rapids or the State of Michigan as I am a resident of both Illinois (State ID attached) and Kentucky (where my business is located).
3. I have looked over the lawsuit paperwork they gave me, and I see no evidence that Midland has a right to sue me on this debt.
4. The debt is a credit card that, according to account statements from 2019 that are attached to the lawsuit was used in the State of California. I did not use this card in the State of California.
5. I have not received any assignment or proof Midland has a right to sue me on this debt.
6. The lawsuit states to anyone reading it "PLEASE UNDERSTAND THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE."
7. I did not consent to the fact that I am being pursued by a debt collector be exposed to the public.
8. I dispute I owe this debt amount to Midland as stated.
9. This is an Account Stated lawsuit that I have not paid anything to Midland or their law firm or come to any agreement to pay Midland or their law firm.
10. This lawsuit is causing me emotional and financial distress on something there is no proof I owe to Midland their law firm and now a third party has a view of a debt collector pursuing me for a debt.