

IN THE BROWARD COUNTY, SEVENTENTH CIRCUIT  
COUNTY CIVIL DIVISION  
CASE NO. 17-10101

MIDLAND CREDIT MANAGEMENT, INC

Plaintiff/Counter Defendant,

**ANSWER AND AFFIRMATIVE  
DEFENSES AND COUNTERCLAIM**

vs.

D.

Defendant/Counter Plaintiff.  
\_\_\_\_\_ /

**DEFENDANT/COUNTER PLAINTIFF CARMONA ANSWER, AFFIRMATIVE DEFENSES**

Defendant, I, CARMONA (Hereinafter named "Defendant" or "Ms.  
, hereby files the Answer and Affirmative Defenses to Plaintiff Midland Credit  
Management Inc. ("MCM" or "Midland")'s complaint and states as follows:

**DENIED AS TO ACCOUNT STATED**

1. Denied as to this Plaintiff and to this nonsensical and compound pleading with no proof as to the ownership of the debt. **Please see the Affidavit at Exhibit 1 and Complaint Exhibits.**
2. Denied in that Defendant does not have or had business dealings with Plaintiff Midland and there is no proof Defendant owes a specific debt to Plaintiff. **Please see the Affidavit at Exhibit 1 and Complaint Exhibits.**
3. Denied as to this Plaintiff with no proof of the origination of the debt. **Please see Exhibit 1.**
4. Denied as to this Plaintiff in that there is no proof Defendant owes anything to Midland or its statement about account statements. **Please see Exhibit 1.**
5. Denied as to this Plaintiff and proof. **Please see Exhibit 1.**
6. Denied, and demand specific proof as currently the lawsuit is without proof of specific assignment or credit agreement or that Plaintiff conferred anything on Defendant. **Please see Exhibit 1.**
7. Denied for the same reason as to Answer #6 and demand strict proof thereof

of specific assignment or transfer and further, there is no proof that the specific debt was in any pool of debts bought or sold, no forward flow agreement or "Master Purchase and Sale Agreement" attached to the complaint and nothing titled "Brands Fresh 180 Day Flow Lot 1" attached or showing any debt of Defendant. **Please see the Affidavit at Exhibit 1 and Complaint Exhibits.**

8. Denied for the same reason as to Answer #6 and #7 and demand strict proof thereof as to what the case is based upon, assignment proof or an agreement between Plaintiff and Defendant that is defaulted. **Please see Exhibit 1.**
9. Denied as to this Paragraph pursuant to Paragraph #7-#8.
10. Denied as to this Paragraph pursuant to Paragraph #7-#9.

**WHEREFORE**, Defendant respectfully prays that a No-Cause of Action and Dismissal be entered against Plaintiff and for such other and further relief as justice may require.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE** **Failure to Attach Sufficient Documents**

Plaintiff has styled its complaint as a Breach of Agreement/Account Stated that Plaintiff was assigned from the Original Creditor with the underlying claim in Plaintiff's Complaint appearing to be for a breach of contract. The documents which Plaintiff has attached to the complaint do not show or prove ownership or assignment of the specific Carmona debt. Florida Rule of Civil Procedure 1.130 provides in part that "All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action maybe brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the *pleading.*" Even if Plaintiff is seeking recovery upon a theory of Account Stated to escape the evidentiary burden associated with filing a claim for breach of contract, the fact remains that Plaintiff has taken the position that a contract existed and thus Plaintiff's complaint is "brought" upon a contract under the meaning of Fla. R. Civ. P. 1.130. Plaintiff cannot escape Florida Rule of Civil Procedure 1.130 by filing a complaint based upon a contract but not including proof of why the contract is owned especially as the chain of title and assignment is broken and none of the Forward Flow Agreement or Master Purchase and Sale Agreements are attached to the Complaint that the Bill of Sale is based upon. **See Exhibit 1 and the Complaint Exhibits.**

#### **SECOND AFFIRMATIVE DEFENSE**

### Account Stated

In promulgating the Florida Rules of Civil Procedure, the Florida Supreme Court provided that for an action of Account Stated to be properly plead, "A copy of the account showing items, time of accrual of each, and amount of each must be attached." See Florida Rules of Civil Procedure 1.933. Plaintiff has failed to attach sufficient documents to Plaintiff's Complaint which show how each item in the account was accrued and there is a break in the chain of title and assignment of ownership of the debt.

Further, no burden has been shifted to Defendants to rebut the alleged statement(s) attached by Plaintiff in this case. While some courts have in limited circumstances allowed for a cause of action for Account Stated to proceed without all the underlying statements, those same courts have widely held that "the presumption of correctness which attaches in an account stated stems from the statements themselves." Nants v. F.D.I.C., 864 F. Supp. 1211, 1221 (S.D. Fla., Aug. 12, 1994). Until Plaintiff properly authenticates the alleged statements provided, they cannot be considered as evidence and no presumption of correctness can attach to them.

Although the failure to object to a creditor's periodic billing may establish an account stated, there can be no liability if there has been no mutual agreement. See Recreation Corp of America v. Jack Drury & Associates, Inc., 235 So.2d 49 (Fla. 4th DCA 1970). In Recreation, the defendant did not dispute that the statements were sent but did dispute that there was any agreement. In the instant case, Plaintiff cannot prevail unless it proves that there was an agreement between Defendants and MCM Investments, LLC and/or the original lender or creditor. See F.D.I.C. v. Brodie, 602 So. 2d 1358 (Fla. 3d DCA 1992). "In the absence of such an agreement, no recovery upon an account stated theory is permitted." Dutch Inns of Am., Inc. v. Jenkins, 301 So. 2d 119, 120 (Fla.3d DCA 1974). Despite Plaintiff's allegation that there is a debt owed, Plaintiff has failed to provide any contract or other written document to show that such an agreement existed with Defendant and Plaintiff or that a debt was assigned to MCM and by not including proof of why the contract is owned especially as the chain of title and assignment is broken and none of the Forward Flow Agreement or Master Purchase and Sale Agreements are attached to the Complaint that the Bill of Sale is based upon. **Please see Exhibit 1 and Complaint.**

### THIRD AFFIRMATIVE DEFENSE

#### Lack of Standing / No Valid Assignment

Plaintiff MCM lacks standing to bring this action. Given the broken chain of title especially as to the lack of specificity of the being transferred or assigned with no ownership proof to or from "Department Stores National Bank" and/or Citibank, Plaintiff has also failed to attach sufficient documents to the complaint to establish the assignment of the debt allegedly owed

by Defendant, which is now allegedly owned by Plaintiff. Please see Exhibit 1 and Complaint.

**FORTH AFFIRMATIVE DEFENSE**

**Lack or Proof of ownership of the debt and standing.**

As there is a broken chain of title and no ownership interest in the debt by Plaintiff, MCM has no standing to sue and is not a Real Party in Interest so this case should be dismissed. Please see Exhibit 1 and complaint exhibits showing missing chain of title and assignments to MCM and no specific debt of Defendant being transferred or sold in any pool of debts with "Brands Fresh 180 Day Flow Lot 1."

WHEREFORE, Defendant respectfully prays that a No-Cause of Action and Dismissal be entered against Plaintiffs and for such other and further relief as justice may require.

Respectfully Submitted,

/s/ Brian P. Parker

Brian P. Parker, Esq. (FL. Bar No. 0980668)

10401 Big Tree Circle East

Jacksonville Fl. 32257

(90) 466-8872

*Attorney for Defendant and Counter Plaintiff*

## **COUNTERCLAIM AGAINST COUNTER DEFENDANT MCM**

COMES NOW, the Defendant/Counter-Plaintiff, [Name] [“Counter Plaintiff” or “Plaintiff”], by and through undersigned counsel, and brings this Counter Claim action against the Plaintiff/Counter-Defendant [“Counter-Defendant” or “Defendant”], Midland Credit Management, Inc. (“MCM” or “Midland” or “Counter Defendant” or “Defendant” and as grounds thereof would allege as follows:

### **ALLEGATIONS OF THE CONSUMER STATUTE THAT IS VIOLATED**

1. The Florida Consumer Collection Practices Act (“FCCPA”), FLA. STAT. §§ 559.55 *et seq.* is an act to regulate the collection practices of certain persons; to provide for the powers and duties of certain state agencies; and to provide penalties and civil fines. Significantly, “in applying and construing” the FCCPA, “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 (2018).
2. Under the FCCPA, a person who suffers injury, loss, or damage, or from whom money was collected by the use of a method, act, or practice in violation of this act may bring an action for actual damages and for additional statutory damages of up to \$1,000, together with court costs and reasonable attorney’s fees incurred by the plaintiff. *Id.* at § 559.77. In an action so brought, in determining the Defendant’s liability for any additional statutory damages, the court shall consider the nature of the Defendant’s noncompliance with § 559.72, the frequency and persistence of such noncompliance, and the extent to which such noncompliance was intentional.
3. The FCCPA defines “communication” as the conveying of information regarding a debt directly or indirectly to any person through any medium. FLA. STAT. § 559.55(2).
4. “Section 559.72 provides that “no person” shall engage in certain practices while attempting to collect a consumer debt.
5. At all material times, the Defendant MCM was a “person” subject to Florida Statutes, Section 559.72. See Florida Statutes, Section 559.55(3); *Schauer v. General Motors Acceptance Corp.*,

819 So. 2d. 809 (Fla. 4th DCA 2002).

6. At all relevant times, the Defendant MCM is a "person" and Party attempting to collect a consumer debt, subject to FLA. STAT. § 559.72 and an outside entity corporation doing business collecting debts in the State of Florida.

7. "Debtor" or "consumer" means any natural person obligated or allegedly obligated to pay any debt. *Id.* at § 559.55(8). Plaintiff ( ) "Party" located in Duval County and a debtor or consumer under the FCCPA.

8. A "debt" or "consumer debt" is any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for person, family, or household use. *Id.* at § 559.55(6).

9. At all times herein, Defendant MCM attempted to collect a debt, including but not limited to, a balance allegedly owed on a consumer financing or consumer loan with the original creditor through a lawsuit as a collection attempt on Plaintiff ( )

10. Prohibited acts by Defendant MCM attempting to collect a consumer debt under FLA. STAT. § 559.72, include violations where here:

(9) Defendant MCM claimed, attempted, or threatened to enforce a debt when such person knows that the debt is not legitimate and unassigned or sold to MCM, or assert the existence of some other legal right when MCM knows that the right does not exist by claiming in its lawsuit to have been assigned a debt by an original creditor with no proof or with proof that violates Florida Rules of Evidence and Civil Procedure. **Please see Exhibit 1 and the Complaint Exhibits in this case and Paragraph #7 with no proof of assignment of the specific**

( ) t:

7. Plaintiff has acquired all right, title and interest to Defendant's account, and has attempted to contact Defendant through several means in an effort to resolve the account with Defendant, but has been unsuccessful. Defendant has not repaid the balance owed on the account. Plaintiff remains willing to discuss various options to resolve the outstanding obligation, although the options may be different than they were prior to the initiation of litigation.

11. Defendant violated Fl. St. 559.72(10) by use of a debt collection lawsuit that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not a proper Plaintiff or debt collector/creditor (at the same time) in suing Ms. Carmone and notifying her that Plaintiff is a debt collector collecting a debt in a pleading as the single party Plaintiff in the lawsuit with a *mini-Miranda* Notice:

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.

#### FACTUAL ALLEGATIONS

12. Defendant MCM sued Plaintiff ~ owing it was not assigned the specific debt in this case and has no proof of assignment or ownership of the specific debt from the Original Creditor and therefore, amount other things, no standing to sue. **Please see the Exhibit 1 and the Complaint Exhibits in this case showing a missing assignment in the chain of title with no proof of any Forward Flow Agreement, "Master Purchase and Sale Agreement," "Brands Fresh 180 Day Flow Lot 1" or proof of the specific ~ bt being part of any sale of a pool of debts.**

13. Defendant violation Fl. St. 559.72(9) by serving the lawsuit in this case on Plaintiff without proof of an assignment of the original note or specific ~ bt from Citibank Bank and "Department Stores National Bank" to MCM and a clear break in the chain of title as the Bill of Sale Exhibits lack any proof of ownership of the subject debt. **Please see Exhibit 1 and Complaint Exhibits.**

14. The lawsuit in this case has failed to show any proof or evidence that MCM has the original contract assignment and has no transfer or assignment proof that MCM received the specific debt or the "account" of Plaintiff as an owner or current creditor and has no standing to sue on this case because of this lack of ownership and assignment proof. **Please see Exhibit 1 and**

**the lawsuit pleadings at Paragraph #7 stating it acquired the debt without proof of reference to specific documented proof:**

7. Plaintiff has acquired all right, title and interest to Defendant's account, and has attempted to contact Defendant through several means in an effort to resolve the account with Defendant, but has been unsuccessful. Defendant has not repaid the balance owed on the account. Plaintiff remains willing to discuss various options to resolve the outstanding obligation, although the options may be different than they were prior to the initiation of litigation.

15. Defendant MCM sued Plaintiff knowing it was not assigned the specific debt and has no proof of assignment or ownership of the specific debt from the Original Creditor in this case and refers to itself as a *third-party debt collector* while collecting a debt from Ms. ~

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and therefore, among other things, MCM is a debt collector subject to the Fair Debt Collection Practices Act with no standing to sue. **Please see Exhibit 1 and the Lawsuit and Exhibits in this case.**

16. Defendant violated Fl. St. 559.72(10) by use of a debt collection lawsuit that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not a proper Plaintiff or debt collector/creditor (at the same time) in suing Ms. and notifying her that Plaintiff is a debt collector collecting a debt in a pleading as the single party Plaintiff in the lawsuit with a *mini-Miranda* Notice:

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.

when under 15 USC 1692e (11), Federal mandates a party plaintiff collector shall not provide a



*mini-Miranda* Notice in a pleading:

(11)The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, *except that this paragraph shall not apply to a formal pleading made in connection with a legal action.*

and so appropriately, as Counter Defendant is notifying Counter Plaintiff they are a debt collector collecting a debt in the lawsuit in a collection communication while also claiming to be the current creditor in Paragraph #7 of its complaint and MCM is legally bound to provide 15 USC 1692g notice of Validation and Verification under the FDCPA, MCM has failed to honor federal Validation rules and violated both Federal and Florida in continuing to collect upon the debt without proper validation warnings. **See Exhibit 1 and Complaint.**

17. Florida Statutes, Section 559.77 provides for an award of up to \$1,000.00 in statutory damages against each Defendant, actual damages, and an award of attorneys' fees and costs to Plaintiff should Plaintiff prevail in this action against Defendant; it also provides for declaratory and injunctive relief.

18. The Defendant's unlawful and intentional avoidance of the mandates of the FCCPA protections violates Florida and Federal law as stated.

**Count 1- Violation of Florida Statutes, Section 559.72(9) and Section 559.72(10)**

19. Plaintiff realleges paragraphs one (1) through seventeen (18) as if fully restated herein and further states as follows:

20. Plaintiff is a natural person and a debtor or consumer.

21. If at all relevant times, Defendant MCM was and is and has been a "person" attempting to collect a

consumer debt, it is subject to FLA. STAT. § 559.72 with this subject lawsuit.

22. Defendant MCM is subject to and has violated § 559.72(9) and § 559.72(10) and by pursuing Plaintiff for the subject debt in its lawsuit without the proper proof, evidence, assignment

or ownership documents of the specific debt of Plaintiff under Florida and Federal law.

**Please see Exhibit 1 and the Complaint Exhibits.**

23. Defendant's willful and flagrant violation of the FCCPA, as a means to collect a consumer debt, constitutes unlawful conduct and harassment as is contemplated under FLA. STAT. § 559.72(9) and § 559.72(10).

24. As a direct and proximate result of Defendant's actions and illegal and wrongful contact of a Plaintiff during a collection action and collection attempt supported by the allegations and exhibits above, Plaintiff has sustained damages of damage to Plaintiff's financial and emotional and reputational wellbeing and having to pay attorney's fees and costs as defined by FLA. STAT. § 559.77.

**JURISDICTION OF THE COURT TO HEAR THE FAIR DEBT COLLECTION  
PRACTICES ACT (FDCPA) UNDER MCM'S EXHIBITS TO ITS COMPLAINT AND  
THE FDCPA**

25. This court has subject matter jurisdiction over this Complaint pursuant to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 *et seq.*, 28 U.S.C. 1331 and 28 U.S.C. 1367. The venue is proper in any court of competent jurisdiction under 15 U.S.C. 1692k(d) and in Response to MCM's Complaint and Exhibits as stated in the allegations above and as shown in **Plaintiff's Exhibit 1 and MCM's Complaint.**

**Count 2-Violations of the Fair Debt Collection Practices Act**

26. As stated in the above allegations, the FDCPA was passed to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuse. 15 U.S.C. 1692.

27. Under the FDCPA, a consumer is any natural person obligated or allegedly obligated to pay any debt. 15 U.S.C. 1692a (3).

28. Under the FDCPA, a debt 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, which are the subject of the transaction, are primarily for personal, family, or household purposes. 15 U.S.C. 1692a (5).

29. Under the FDCPA, a debt collector is any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose for which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. 15 U.S.C. 1692a (6) and 15 U.S.C. 1692a(6)(f)(iii) as the debt was in default when falsely and purportedly obtained by Defendant MCM if MCM is found to be a "person."

30. Defendant MCM is a debt collector whose primary purpose is the purchase and collection of debts and is not a creditor. 15 U.S.C. 1692a (6) though it is alleging it is both a creditor and debt collector.

31. In violation of Federal and Florida law, MCM is suing Ms. [redacted] with no proof of ownership or assignment that it has any SPECIFIC ownership of the SUBJECT DEBT. **See Exhibit 1 and Complaint Exhibits.**

32. As a direct and proximate result of Defendant's actions and illegal and wrongful contact of a Plaintiff during a collection action and collection attempt supported by the allegations and exhibits above, Plaintiff has sustained damages of damage to Plaintiff's financial and emotional and reputational wellbeing and is entitled to seek its attorney's fees and costs as defined by the FDCPA under 15 U.S.C. 1692k et al.

**Violation of 15 USC 1692e (10) and 15 U.S.C. 1692e(2)(A) and 15 U.S.C. 1692f**

33. As stated in the above allegations, MCM is collecting on a false debt it does not own and in violation of the FDCPA under 15 U.S.C. 1692e(2)(A) and 15 U.S.C. 1692e (10) without evidence of an ownership proof in this case. **Please see Ms. [redacted] Affidavit at Exhibit 1 and MCM's complaint with proof of a Master Purchase and Sale Agreement, "Brands Fresh 180 Day Flow Lot 1" or proof of the specific Campaign [redacted] being part of any sale of a pool of debts."**

34. In violation of Federal law, MCM has provided no evidence of the assignment or chain of title of the SPECIFIC debt of Ms. \_\_\_\_\_ by Forward Flow Agreement or "Master Purchase and Sale Agreement," or "Brands Fresh 180 Day Flow Lot 1" or proof of the specific debt being part of any sale of a pool of debts to be considered an Original Creditor as alleged. **Please see Exhibit 1 and MCM's Complaint Exhibits.**

35. A debt collector like MCM may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. 1692e and 15 U.S.C. 1692f.

36. Defendant violated 15 USC 1692e (11), as Federal law mandates a party plaintiff collector shall not provide a *mini-Miranda* Notice in a pleading:

(11)The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, *except that this paragraph shall not apply to a formal pleading made in connection with a legal action.*

and so appropriately, as Counter Defendant is notifying Counter Plaintiff they are a debt collector collecting a debt in the lawsuit in a collection communication while also claiming to be the current creditor in Paragraph #7 of its complaint, MCM is legally bound to provide 15 USC 1692g notice of Validation and Verification under the FDCPA, MCM has failed to honor federal Validation rules and violated both Federal and Florida law and is not doing that while continuing to collect upon the debt. **See Exhibit 1 and Complaint Exhibits.**

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.

37. As MCM is violating Federal and Florida law in collecting on this debt at 15 U.S.C. 1692e and 15 U.S.C. 1692f. **Please see Ms. \_\_\_\_\_ Affidavit at Exhibit 1 and the Defendant's alleging false and unproven ownership in a debt collection complaint.**

38. The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation.

39. Whether a debt collector's actions are false, deceptive, or misleading under § 1692(a)-g is based on whether the "least sophisticated consumer" would be misled by a defendant's actions. Courts are required to apply the "least sophisticated consumer" standard in evaluating the claim, an "objective" test that assesses the alleged violation from the perspective of the hypothetical "least sophisticated consumer." See *Landeros v. Pinnacle Recovery, Inc.*, 692 F. App'x 608, 612-13 (11th Cir.

2017); *see also Leonard v. Zwicker & Assocs., P.C.*, 713 F. App'x 879, 881-82 (11th Cir. 2017).

40. In violation of the FDCPA 15 U.S.C. 1692e, 15 U.S.C. 1692e (10), 15 U.S.C. 1692e(2)(A) and 15 U.S.C. 1692f and Florida Assignment law, MCM is not a Real Party in Interest and has no ownership rights to the debt they are suing upon and MCM is liable to Counter Plaintiff Carmona under 15 U.S.C. 1692k. **Please see Ms. Carmona's Affidavit at Exhibit 1 and MCM's complaint exhibits.**

41. As a direct and proximate result of Defendant's actions and illegal and wrongful contact of a Plaintiff during a collection action and collection attempt supported by the allegations and exhibits above, Plaintiff has sustained damages of damage to Plaintiff's financial and emotional and reputational wellbeing and is entitled to seek its attorney's fees and costs as defined by the FDCPA under 15 U.S.C. 1692k et al.

**Count 3-Violation of 15 USC 1692g Failure to provide Validation and Verification Rights under the FDCPA**

42. As stated in the above allegations and in violation of 15 U.S.C. 1692e, 15 U.S.C. 1692e (10), 15 U.S.C. 1692e(2)(A), the lawsuit against Ms. \_\_\_\_\_ based upon an unbroken chain of title that has no proof of perfection under Federal and Florida law and Defendant is falsely claiming to be a Creditor when it is also claiming to be a debt collector under 15 USC 1692e (11) and is doing so in violation of 15 USC 1692g for not providing Plaintiff with her Validation Rights under Federal Law within five days of the contact upon Plaintiff and while continuing to collect the debt through its collection lawsuit. **Please see Exhibit 1 and Complaint.**

43. In violation of the FDCPA 15 U.S.C. 1692g through 15 U.S.C. 1692e (11) in the collection complaint, MCM has failed to properly alert and provide Plaintiff with her Validation and Verification rights under Federal law as stated above. **Please see Ms. Carmona's Affidavit at Exhibit 1 and MCM's complaint.**

44. As a direct and proximate result of Defendant's actions and illegal and wrongful contact of a Plaintiff during a collection action and collection attempt supported by the allegations and exhibits above, Plaintiff has sustained damages of damage to Plaintiff's financial and emotional and reputational wellbeing and is entitled to seek its attorney's fees and costs as defined by the FDCPA

under 15 U.S.C. 1692k et al.

**DEMAND FOR RELIEF AND JURY DEMAND**

WHEREFORE, Counter Plaintiff requests the following remedies based upon the illegal conduct of Counter Defendant MCM as follows:

- a) A Judgment against Defendant declaring the Defendant has violated the FCCPA, FDCPA and Florida Law;
- a) Awarding actual damages suffered by Plaintiff in an amount to be determined at trial;
- b) Awarding Plaintiff, the maximum statutory damages under the FCCPA, FDCPA and Florida Law;
- c) Awarding Plaintiff such equitable relief as the Court deems necessary or proper;
- d) Awarding Plaintiff's counsel reasonable attorneys' fees and costs incurred in this action under the FDCPA, FCCPA and Florida Law;
- e) Awarding Plaintiff pre-judgment and post judgment interest as permissible by law;
- f) Awarding such other and further relief as the Court may deem just and proper.

**SPOILATION NOTICE AND DEMAND TO SAVE EVIDENCE**

Counter Plaintiff hereby gives notice to Counter Defendant MCM and demands that Counter Defendant and their affiliates safeguard all relevant evidence (paper, electronic documents, or data) pertaining to this potential litigation as required by law.

Respectfully submitted this July 20, 2023

/s/ Brian P. Parker

Brian P. Parker, Esq. (FL. Bar No. 0980668)

10401 Big Tree Circle East

Jacksonville FL 32257

(904) 466-8872

*Attorney for Defendant and Counter Plaintiff*

**NOTICE OF DISPUTING CLAIM**

Counter Plaintiff hereby gives notice that Counter Plaintiff disputes all of the allegations in the Counter Defendant's complaint that pertain to liability and damages for all purposes, which encompass, but are not limited to, claims under the Fair Debt Collection Practices Act, Florida Law and Federal Law.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 20, 2023, a true and correct copy of the foregoing was furnished by email to the email address(s) registered in this matter upon the Florida Courts E-Filing Portal.

/s/ Brian P. Parker

Brian P. Parker, Esq. (FL. Bar No. 0980668)

*Attorney for Defendant and Counter Plaintiff*

# EXHIBIT #1

AFFIDAVIT OF DA

STATE OF FLORIDA )

COUNTY OF BROWARD) \*

Pursuant to 28 U.S.C § 1746, DAYANA C. ... A having been duly sworn

and upon oath, verifies, certifies, and declares as follows:

1. I have learned from receiving letters from attorneys that I am being sued by Midland Credit Management, Inc. ("MCM") in the Seventeenth Judicial Circuit in Broward County Civil Division through their law firm.
2. I have reviewed the complaint and the paperwork attached to the lawsuit. I have seen no paperwork that is in my name showing I owe the debt to specifically to MCM and there is no proof MCM owns this debt.
3. Indeed, Paragraph #7 states the debt has been assigned to MCM yet there is no proof of an assignment of the specific debt being assigned in this case and the paragraph has a number of sentences not really saying anything or referencing any paperwork as proof:

7. Plaintiff has acquired all right, title and interest to Defendant's account, and has attempted to contact Defendant through several means in an effort to resolve the account with Defendant, but has been unsuccessful. Defendant has not repaid the balance owed on the account. Plaintiff remains willing to discuss various options to resolve the outstanding obligation, although the options may be different than they were prior to the initiation of litigation.

4. Not sure what this paragraph is saying as it does not prove anything or that I owe a debt and I am being sued by a company that is making this stuff up without respect or compassion:

1. Plaintiff is authorized to file this Complaint in this Court. Plaintiff owns portfolios of consumer receivables, which it attempts to collect. Plaintiff strives to treat its consumers, such as Defendant, with respect, compassion and integrity, hoping to provide mutually-beneficial opportunities for consumers to repay their debts and attain financial recovery.

5. The Bill of Sale and Assignment paperwork is missing part of the chain of title and I do not know how MCM obtained the debt to sue me as the lawsuit paperwork does not show MCM being assigned the specific debt as it represents in the lawsuit.



6. The debt is supposedly a Citibank debt but the Bill of Sale and Assignment states that a Department Stores National Bank is part of the sale. I don't know who Department Stores National Bank is.
7. In the lawsuit, MCM states that this is an Account Stated claim. I have not made a payment to MCM or have an Agreement to pay them as appears to be stated in the complaint.
8. Again, the action is disputed, and I am answering to prevent further damage to my reputation this complaint is causing me on a public record.
9. I do not owe this debt to MCM as stated in their lawsuit.



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DATED: July 18th, 2023

MIDLAND CREDIT MANAGEMENT, INC.  
Plaintiff,

IN THE COUNTY COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY, FLORIDA  
CASE NO.:

vs.

\_\_\_\_\_  
Defendants. /

**COMPLAINT**

Plaintiff, MIDLAND CREDIT MANAGEMENT, INC., by counsel, sues Defendant \_\_\_\_\_  
\_\_\_\_\_er Account Stated and in support thereof states:

1. Plaintiff is authorized to file this Complaint in this Court. Plaintiff owns portfolios of consumer receivables, which it attempts to collect. Plaintiff strives to treat its consumers, such as Defendant, with respect, compassion and integrity, hoping to provide mutually-beneficial opportunities for consumers to repay their debts and attain financial recovery.
2. Defendant is subject to this Court's jurisdiction.
3. Defendant established an account with CITIBANK, N.A., under redacted account number XXXXXXXXXXXX-3976. Defendant did not object to the statement.
4. Defendant was provided statements delineating Defendants use of the account and stating the current balance due.
5. Defendant defaulted on the account.
6. A statement of account balance was sent to Defendant and not paid. Defendant did not object to the statement.
7. Plaintiff has acquired all right, title and interest to Defendant's account, and has attempted to contact Defendant through several means in an effort to resolve the account with Defendant, but has been unsuccessful. Defendant has not repaid the balance owed on the account. Plaintiff remains willing to discuss various options to resolve the outstanding obligation, although the options may be different than they were prior to the initiation of litigation.
8. Plaintiff has met all conditions precedent to the initiation of this lawsuit, or those conditions have been waived.
9. Defendant owes Plaintiff \$9,452.34.
10. In support of the allegations, Plaintiff incorporates herein by reference the attached Exhibits.

\* ?

\* No Proof

WHEREFORE, Plaintiff requests judgment against the Defendant for \$9,452.34 and costs of the action and post judgment interest at the statutory rate.

/s/ Johan A. Green, Esq.

PAYAL CHATANI, Esq., Fla. Bar 25285  
COLLEEN E. LEHMANN, Esq., Fla. Bar 33496  
JOHAN A. GREEN, Esq., Fla. Bar 1011917  
MELISSA HORNE, Esq., Fla. Bar 845031  
ELIZABETH FERRELL, Esq., Fla. Bar 52092  
ASHLEY PALMER, Esq., Fla. Bar 1035484  
Attorneys for Plaintiff  
PO BOX 2121  
Warren MI 48090  
(866) 300-8750 Phone  
E-service address: IL\_FL@mcmcg.com

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.

Violation of FDCPA

**BILL OF SALE AND ASSIGNMENT**

THIS BILL OF SALE AND ASSIGNMENT dated April 22, 2022, is by Citibank, N.A., a national banking association organized under the laws of the United States, located at 5800 South Corporate Place, Sioux Falls, SD 57108 ("Bank"), to Midland Credit Management, Inc., a corporation organized under the laws of Kansas, with its headquarters/principal place of business at 350 Camino De La Reina, Suite 100, San Diego, CA 92108 ("Buyer").

*Where?  
What?*

For value received and subject to the terms and conditions of the Master Purchase and Sale Agreement dated April 30, 2021 between Bank, ~~Department Stores National Bank~~, and Buyer (the "Master Purchase Agreement"), and that certain Addendum No. 6 dated September 22, 2021, between Bank and Buyer (the "Addendum", and together with the Master Purchase Agreement, the "Agreement"), the Bank does hereby transfer, sell, assign, convey, grant, bargain, set over and deliver to Buyer, and to Buyer's successors and assigns, the Accounts summarized on the Asset Schedule attached hereto as Exhibit A and included in the Final Electronic File. Capitalized terms not defined herein shall have the definition ascribed in the Agreement.

*? who +  
? where*

With respect to information for the Accounts summarized on the Asset Schedule and included in the Final Electronic File, the Bank represents and warrants to Buyer that (i) the Account information constitutes the Bank's own business records and accurately reflects in all material respects the information in the Bank's database; (ii) the Account information was kept in the regular course of business; (iii) the Account information was made at or near the time by, or from information transmitted by, a person with knowledge of the data entered into and maintained in the Account's database; and (iv) it is the regular practice of the Bank's business to maintain and compile such data.

*Where  
Specific  
Debt  
assigned?*

CITIBANK, N.A.

MIDLAND CREDIT MANAGEMENT, INC.

By: *Terri Bergman*  
(Signature)

By: *Danielle Wohlfahrt*  
(Signature)

Name: Terri Bergman

Name: Danielle Wohlfahrt

Title: Authorized Party

Title: VP of Business Development

Contract ID: EN8MUMAA043021  
Addendum ID: EN8MUMAA092221C6  
Document ID: 041322MC1MU3FMA1

Exhibit A to Bill of Sale

The individual Accounts transferred are described in the Final Electronic File named Encore-Brands-Fresh-180-Day-Flow-Lot1-0422 and delivered by the Bank to Buyer, the same deemed attached hereto by this reference.

Lot	Sale ID	# of Accounts	Sale Balance	Cut-Off Date	Purchase Price Percentage
Brands Fresh 180 Day Flow Lot1	041322MC1MU3FM			4/13/2022	



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**AFFIDAVIT OF SALE OF ACCOUNT**

State of Missouri  
County of Platte

Terri Bergman, being duly sworn, deposes and says:

I am an authorized employee of Citibank, N.A. ("CBNA") located at 5800 South Corporate Place, Sioux Falls, SD 57108 am authorized to make the statements and representations herein and I am over 18 years of age. In this position, I have access to the creditor's books and records and am aware of the process of the sale of accounts and electronic storage of business records.

On or about April 22, 2022, CBNA sold a pool of charged-off accounts (the Accounts) by a Master Purchase and Sale Agreement dated April 30, 2021, Bill of Sale, and Addendum No. 6 dated September 22, 2021 to Midland Credit Management, Inc. As part of the sale of the Accounts, certain electronic records were transferred on individual accounts to the debt buyer. These records were kept in the ordinary course of business of creditor.

*Where?*

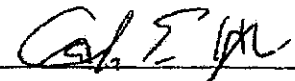
I am not aware of any errors in the information provided about the Accounts. The above statements are true to the best of my knowledge.

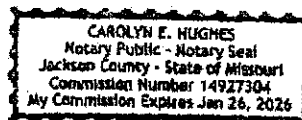
Signed this 26 day of April, 2022

  
Terri Bergman

State of Missouri )  
                          ) ss  
County of Platte )

On this 26 day of APR, 2022, before me, the undersigned notary, personally appeared Terri Bergman, personally known to me to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

 [SEAL]



**CERTIFICATE OF CONFORMITY**

**STATE OF MISSOURI  
CITY OF KANSAS CITY**

The undersigned does hereby certify that he/she is an attorney at law duly admitted to practice in the State of Missouri and is a resident of Platte County, in the State of MISSOURI; that he/she is a person duly qualified to make this certificate of conformity pursuant to the laws of the State of Missouri; that the foregoing affidavit by Terri Bergman named in the foregoing instrument taken before Carolyn E. Hughes, a Notary in the State of Missouri, was taken in the manner prescribed by such laws of the State of Missouri, being the State in which it was taken; and that it duly conforms with such laws and is in all respects valid and effective in such state.

2  
2

4-26-2022  
Date

[Signature] no# 51227  
Attorney at Law