

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

NICOLE PATTERSON, <i>on behalf of</i>	)	<b>CIVIL ACTION NO. 1:15-cv-94</b>
<i>herself and all others similarly situated,</i>	)	
	)	
Plaintiff,	)	<b><u>COMPLAINT – CLASS ACTION</u></b>
	)	
vs.	)	
	)	<b><u>JURY TRIAL DEMAND</u></b>
JM ADJUSTMENT SERVICES, LLC	)	
	)	
Defendant.	)	
_____	)	

**NATURE OF ACTION**

1. Plaintiff Nicole Patterson (“Plaintiff”) brings this action against Defendant JM Adjustment Services, LLC (“Defendant”) under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, the North Carolina Collection Agency Act (“NCCAA”), N.C. Gen. Stat. § 58-70-90 *et seq.*, and the North Carolina Debt Collection Act (“NCDCA”), N.C. Gen. Stat. § 75-50 *et seq.* on behalf all persons similarly situated.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

## THE FAIR DEBT COLLECTION PRACTICES ACT

4. “Congress enacted the FDCPA ‘to eliminate abusive debt collection practices by debt collectors.’ ” *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 388 (4th Cir. 2014) (quoting 15 U.S.C. § 1692(e)).

5. “To effectuate this purpose, the FDCPA regulates interactions between consumers and debt collectors by imposing affirmative statutory obligations upon debt collectors and proscribing certain abusive conduct.” *Id.* at 388-89.

6. For example, “it [is] unlawful for debt collectors to make false or deceptive statements in the course of their collection activities.” *Id.* at 389.

7. “Whether a communication is false, misleading, or deceptive in violation of § 1692e is determined from the vantage of the ‘least sophisticated consumer.’ ” *Id.* at 394.

8. “Under this objective standard, a debt collector violates the FDCPA if its communication would mislead or confuse the ‘least sophisticated debtor’ as to her rights or obligations under the FDCPA.” *Garcia-Contreras v. Brock & Scott, PLLC*, 775 F. Supp. 2d 808, 817 (M.D.N.C. 2011) (quoting *Beasley v. Sessoms & Rogers, P.A.*, No. 5:09-CV-43-D, 2010 WL 1980083, at \*3 (E.D.N.C. Mar. 1, 2010)).

9. Another key provision of the FDCPA is § 1692g, which requires a debt collector to send, within five days of its initial communication with a consumer, a written “validation” notice which provides information regarding the

debt, including the amount of the debt and the name of the creditor, as well as statutorily required disclosures about the consumer's rights under federal law. *See* 15 U.S.C. § 1692g(a).

10. If a consumer disputes the debt in writing, “the debt collector shall cease collection of the debt...until the debt collector obtains verification” and mails such verification to the consumer. 15 U.S.C. § 1692g(b).

11. To ensure debt collectors' notices meaningfully convey consumers' rights under § 1692g, Congress has further declared that “[a]ny collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.” *Id.*

12. Thus, “a debt collector does not comply with § 1692g merely by inclusion of the required debt validation notice; *the notice Congress required must be conveyed effectively to the debtor.*” *Miller v. Payco-Gen. Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991) (emphasis added and quotations omitted).

13. “[I]n order to be effective, the notice must not be overshadowed or contradicted by other messages or notices appearing in the initial communication.” *Id.*

## **PARTIES**

14. Plaintiff is a natural person who at all relevant times resided in the State of North Carolina, County of Guilford, and City of Browns Summit.

15. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

16. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. §1692a(5).

17. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6). *See Siwulec v. J.M. Adjustment Servs., LLC*, 465 F. App’x 200, 204 (3d Cir. 2012).

### **FACTUAL ALLEGATIONS**

18. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

19. Plaintiff’s obligation, or alleged obligation, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, a mortgage for a residential home (the “Debt”).

20. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

21. JPMorgan Chase Bank, N.A. (“Chase”) is the creditor to whom the Debt is allegedly owed.

22. On its website (<http://www.jmadjustment.com>), Defendant describes itself as “an industry-leading provider of face-to-face borrower communications” and touts that it can “deliver impressive and demonstrable results.”

23. Defendant's website is designed to attract new creditor-clients and states "[w]e can help you get the results you need."

24. During the month of January 2014, Plaintiff could not make her regularly-scheduled Chase home mortgage payment.

25. She contacted Chase to inform it that her payment would be late that month.

26. On January 26, 2014, Defendant sent a representative to drop off a packet of information regarding Plaintiff's Chase mortgage at Plaintiff's residence.

27. On January 27, 2014, Defendant taped a letter to Plaintiff's front door and rang the door bell.

28. Plaintiff opened the door and spoke to Defendant's representative, who stated she was with the bank.

29. Defendant's representative appeared to be inspecting Plaintiff's property to note its value.

30. After being told to leave, Defendant's representative took a photo of Plaintiff standing at the front door.

31. On January 31, 2014, Defendant sent Plaintiff a letter regarding the Debt ("the Letter").

32. A true and accurate copy of Defendant's January 31, 2014 letter to Plaintiff is attached to this complaint as Exhibit A.

33. The Letter was its initial written communication with Plaintiff with respect to the Debt.

34. Defendant sent Plaintiff the Letter on behalf of and/or at the direction of Chase.

35. The Letter states, in relevant part:

Creditor: Chase

Amount of Debt: Contact Chase

Dear Nicole Patterson:

On 01/27/2014, we, on behalf of Chase, made or attempted to make contact with you to encourage you to contact Chase.

We are not collecting that debt nor are we demanding any money, so, any questions you may have regarding the debt should be directed to Chase at (800)848-9380 [sic] during their normal office hours....

The purpose of this letter is to provide you with *Important Consumer Information* regarding certain rights afforded you under the law.

Sincerely,

J.M. Adjustment Services, LLC

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#### NOTICE REGARDING DISPUTING YOUR DEBT

Unless you, within 30 days after receipt of this notice, dispute the validity of the debt, or any portion thereof, the debt will be assumed to be correct and valid. However, your failure to dispute the validity of a debt may not be construed by any court as an admission of liability by you.

If you notify us in writing within 30 days after receipt of this letter that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you, and a copy of such verification will be mailed to you.

Upon your request within the 30 day period we will provide you with the name and address of the original creditor, if different from the current creditor. We shall cease collection of the debt, or any disputed portion thereof, until we obtain verification of the debt or a

copy of the judgment, or the name and address of the original creditor, and a copy of such information is mailed to you.

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.  
ANY INFORMATION OBTAINED WILL BE USED FOR THAT  
PURPOSE.

*See Exhibit A.*

36. One of the animating purposes of the Letter is to assist in the ultimate collection of the Debt—whether the debt is collected through payments, a refinance or forbearance agreement, or through a short sale or foreclosure.

37. Defendant's conduct, including the sending of the Letter, went beyond mere information gathering or message delivery, and instead constitutes activity taken in furtherance of the direct or indirect collection of a debt.

38. The Letter however states that it is not collecting the Debt.

39. The Letter fails to state the amount of the Debt.

### **CLASS ACTION ALLEGATIONS**

40. Plaintiff repeats and re-alleges all paragraphs above.

41. Upon information and belief, the Letter is based on a form or template that Defendant has sent, on behalf of Chase and various other creditors, to over 50 similarly situated consumers like Plaintiff.

42. Plaintiff brings this action on behalf of herself and others similarly situated. Specifically, Plaintiff seeks to represent three classes of individuals defined as:

1. All consumers in the United States to whom Defendant—in the year prior to the filing of this complaint and in

connection with the collection of any debt—sent a letter substantially similar or materially identical to the Letter Defendant sent to Plaintiff, in that the letter failed to state the amount of the debt.

2. All consumers in the United States to whom Defendant—in the year prior to the filing of this complaint and in connection with the collection of any debt—sent a letter substantially similar or materially identical to the Letter Defendant sent to Plaintiff, in that the letter stated that Defendant was not collecting the debt.
3. All consumers in the United States to whom Defendant—in the year prior to the filing of this complaint and in connection with the collection of any debt—sent a letter substantially similar or materially identical to the Letter Defendant sent to Plaintiff, in that the letter stated that any questions about the debt should be directed to the creditor.

43. The proposed classes specifically exclude the United States of America, the State of North Carolina, counsel for the parties, the presiding United States District Court Judge, the Judges of the United States Court of Appeals for the Fourth Circuit, and the Justices of the United States Supreme Court, all officers and agents of Defendant, and all persons related to within the third degree of consanguinity or affection to any of the foregoing persons.

44. The classes are averred to be so numerous that joinder of members is impracticable.

45. The exact number of class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery.

46. The classes are ascertainable in that the names and addresses of all class members can be identified in business records maintained by Defendant.



47. There exists a well-defined community of interest in the questions of law and fact involved that affect the parties to be represented. These common questions of law and fact predominate over questions that may affect individual class members. Such issues include, but are not limited to: (a) the existence of Defendant's identical conduct particular to the matters at issue; (b) Defendant's violation of the FDCPA; (c) the availability of statutory penalties; and (d) attorney's fees and costs.

48. The claims of Plaintiff are typical of those of the classes she seeks to represent.

49. The claims of Plaintiff and of the classes originate from the same conduct, practice, and procedure on the part of Defendant. Thus, if brought and prosecuted individually, the claims of the class members would require proof of the same material and substantive facts.

50. Plaintiff possesses the same interests and has suffered the same injuries as each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of the unnamed class members.

51. Plaintiff will fairly and adequately protect the interests of the classes and has no interest adverse to or which directly and irrevocably conflicts with the interests of other members of the classes.

52. Plaintiff is willing and prepared to serve this Court and the proposed classes.

53. The interests of Plaintiff are co-extensive with and not antagonistic to those of the absent class members.

54. Plaintiff has retained the services of counsel who are experienced in consumer protection claims, as well as complex class action litigation, will adequately prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent class members.

55. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and 23(b)(1)(B). The prosecution of separate actions by individual members of the classes would, as a practical matter, be dispositive of the interests of other members of the classes who are not parties to the action or could substantially impair or impede their ability to protect their interests.

56. The prosecution of separate actions by individual members of the classes would create a risk of inconsistent or varying adjudications with respect to individual members of the classes, which would establish incompatible standards of conduct for the parties opposing the classes. Such incompatible standards of conduct and varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow the existence of inconsistent and incompatible rights within the classes.

57. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that Defendant has acted or refused to act on grounds generally applicable to the classes, making final declaratory or injunctive relief appropriate.

58. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the questions of law and fact that are common to members of the classes predominate over any questions affecting only individual members.

59. Moreover, a class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint in that: (a) individual claims by the class members will be impracticable as the costs of pursuit would far exceed what any one plaintiff or class member has at stake; (b) as a result, very little litigation has been commenced over the controversies alleged in this Complaint and individual members are unlikely to have an interest in prosecuting and controlling separate individual actions; and (c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy.

**COUNT I**  
**VIOLATION OF 15 U.S.C. § 1692e**

60. Plaintiff repeats and re-alleges each and every factual allegation above.

61. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of a debt, in that it stated it was not collecting a debt, but then stating that it was a debt collector and any information would be obtained for the purpose of collecting a debt.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e;
- c) Awarding Plaintiff, and all others similarly situated, statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(B);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) or Rule 23;
- e) Awarding Plaintiff, and all others similarly situated, pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem just and proper.

**COUNT II**  
**VIOLATION OF 15 U.S.C. § 1692e(11)**

62. Plaintiff repeats and re-alleges each and every factual allegation above.

63. Defendant violated 15 U.S.C. § 1692e(11) by failing to notify Plaintiff during the initial communication that it was attempting to collect a debt and that any information obtained would be used for that purpose.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e(11);
- c) Awarding Plaintiff, and all others similarly situated, statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(B);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) or Rule 23;
- e) Awarding Plaintiff, and all others similarly situated, pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem just and proper.

**COUNT III**  
**VIOLATION OF 15 U.S.C. § 1692g(a)(1)**

64. Plaintiff repeats and re-alleges each and every factual allegation above.

65. Defendant violated 15 U.S.C. § 1692g(a)(1) by failing to disclose the amount of the Debt in its initial written communication with Plaintiff.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(a)(1);
- c) Awarding Plaintiff, and all others similarly situated, statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(B);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) or Rule 23;
- e) Awarding Plaintiff, and all others similarly situated, pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem just and proper.

**COUNT IV**  
**VIOLATION OF 15 U.S.C. § 1692g(b)**

66. Plaintiff repeats and re-alleges each and every factual allegation above.

67. Defendant violated 15 U.S.C. § 1692g(b) by overshadowing or making statements inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor from Defendant.

68. Specifically, the statement in the that Defendant was "not collecting that debt" overshadowed or was inconsistent with the disclosure of the consumer's right to dispute the validity of the debt, or any portion thereof.

69. In addition, the FDCPA only requires the debt collector, not the original creditor, to respond to written disputes or requests made under § 1692g, so the statement in the Letter that "any questions [Plaintiff] may have regarding the debt should be directed to Chase" overshadowed or was inconsistent with the disclosure of the consumer's rights § 1692g.

70. By encouraging Plaintiff to send written disputes or requests to Chase, rather than Defendant, the Letter discourages Plaintiff from exercising her rights under § 1692g.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of

the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;

- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(b);
- c) Awarding Plaintiff, and all others similarly situated, statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(B);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) or Rule 23;
- e) Awarding Plaintiff, and all others similarly situated, pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem just and proper.

### **TRIAL BY JURY**

71. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: January 27, 2015.

Respectfully submitted,

s/ Holly E. Dowd

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