

STATE OF MICHIGAN

IN THE <sup>st</sup> DISTRICT OF THE COUNTY OF WAYNE

MIDLAND FUNDING, LLC,

Plaintiff/Counter-Defendant,

Case No. Case No. 18- GC  
HON.

-vs-

**COUNTER-CLAIM BASED ON THE BASSETT RULE**

Defendant/Counter-Plaintiff.

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MIDLAND FUNDING, LLC  
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**COUNTER PLAINTIFF'S COUNTER COMPLAINT**

Counter Plaintiff \_\_\_\_\_, (“Counter Plaintiff” or “Plaintiff”) by and through counsel, brings this action against the above listed Counter Defendant, MIDLAND FUNDING, LLC (“Counter Defendant” or “MIDLAND” or “Defendant”) on the grounds and in the amounts set forth herein:

**I. PRELIMINARY FACTUAL STATEMENT**

Midland Funding has violated the Bassett Rule based on the two *Midland v Bassett* Court of Appeals Opinions at **Exhibit 2**. Midland has filed a lawsuit against \_\_\_\_\_ that is based upon a false Affidavit and False Assignment Documents that do not align with the information in Midland’s Affidavit that is sworn to under oath saying an obligation was sued upon on December 21, 2017 but the actual lawsuit was not filed until two months later February 27, 2018. Further, Midland Funding has violated the *Bassett* Rule that requires proof of the assignment of

the Specific Debt of the Defendant be shown between the debt buyers. That does not exist here between GE Capital and Midland Funding, LLC. **Please see Exhibit 3.**

The Counter Plaintiff brings this action for damages based upon the Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq*, violations of the Regulation of Michigan Collection Practices Act ("RCPA"), M.C.L. § 445.251 *et seq*, and the Michigan Occupational Code, M.C.L. § 339.901 ("MOC") and seeks actual damages, punitive damages, costs and attorney's fees because of Midland.

## **II. PARTIES**

1. The Counter Plaintiff is a natural person and consumer as defined by 15 U.S.C. 1692a (3).
2. The Counter Defendant is a Foreign Corporation doing business in the State of Michigan.
3. The Counter Defendant Midland is a debt buyer and debt collector whose principal business purpose is the collection of defaulted debts through lawsuits. The Counter Defendant is engaged in the collection of credit card debts from consumers using the mail and telephone. The Counter Defendant regularly attempts to collect consumer debts alleged to be due another and is a debt collector as provided in 15 U.S.C. 1692a (6) and 15 U.S.C. 1692a(6)(f)(iii) as the debt was in default when obtained by Midland. *Bridge v. Ocwen Federal Bank, FSB*, 681 F. 3d 355 - Court of Appeals, 6th Circuit 2012.
4. Congress has unambiguously directed our focus to the time the debt was acquired in determining whether one is acting as a creditor or debt collector under the FDCPA."); *Schlosser v. Fairbanks Capital Corp.*, 323 F.3d 535, 536 (7th Cir. 2003) (noting that "the Act treats assignees as debt collectors if the debt sought to be collected was in default when acquired by the assignee, *and as creditors if it was not.*").

## **III. JURISDICTION AND VENUE**

5. This court has subject matter jurisdiction over this Complaint pursuant to the FCRA, 15 U.S.C. 1681 *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).

## **IV. STATUTORY STRUCTURE**

### **FAIR DEBT COLLECTION MIDLANDCTICES ACT (FDCPA)**

6. The FDCPA was passed to eliminate abusive debt collection practices by debt collectors, to insure 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.

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

8. 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).

9. 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 obtained by Defendant Midland.

10. At the time Defendant MIDLAND alleges it obtained the debt from GE Capital the debt was in default. Defendant MIDLAND is a debt collector and not a creditor. 15 U.S.C. 1692a(6)(f)(iii).

11. A debt collector 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.

12. Any debt collector who fails to comply with the provisions of the FDCPA is liable for any actual damages sustained, statutory damages up to \$1,000.00, attorney's fees as determined by the Court and costs of this action. 15 U.S.C. 1692k.

#### **V. FACTUAL ALLEGATIONS**

13. Defendant MIDLAND is suing Plaintiff based on an Affidavit from Erin Stocker of Midland Funding that is false and does not in any way coordinate with the Plaintiff's documents the Affiant from Midland relies upon. **Please see Exhibit 3.**

14. Ms. Stocker for Midland Funding states that she has reviewed the "electronic records but does not add the records she reviewed to the Affidavit in violation of MRE 803(6) at **Exhibit 3.**

15. Further and in the Stocker Affidavit at **Exhibit 3**, Ms. Stocker states that "Plaintiff is the current owner of, and/or successor to, the obligation sued upon, and was assigned all the rights,

title and interest to Defendant's GE Capital account" when the Affidavit was signed on December 21, 2017 and the lawsuit was not filed until February 27, 2018.

16. Plaintiff is relying upon a Stocker affidavit that is false as the Affidavit of MCM was signed more than ten days before the lawsuit was filed in violation of MCL 600.214517.

17. Defendant MIDLAND is claiming to be owed the debt amount and interest, fees and costs without itemizing the debts and costs in violation of the FDCPA 15 U.S.C. 1692f (1), and 15 U.S.C. 1692e (2) A) while using a false Affidavit and no Assignments to prove it. **Please see Exhibit 1-3.**

18. MIDLAND has violated 15 U.S.C. 1692e and 1692e (10) that specifically prohibits "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." **Please see Exhibit 1-3.**

19. Defendant MIDLAND has sued Ms. for a debt she does not owe them under 15 USC 1692e (5). The Affidavit of Ms. Stocker is false and there are no Assignments of the Debt in violation of the Bassett Rule. **Please see Exhibit 1-3.**

20. Further, statements showing any payments made on the debt are irrelevant under the *Bassett Rule*. In the second Bassett Opinion, the Court of Appeals held, "Specifically, the trial court found that defendant had conceded he "probably owes" a debt to either FIA Card Services, N.A. or Asset Acceptance, LLC. Therefore, the only issue in this case was whether plaintiff could prove, through establishing a chain of title, that it was the owner of defendant's debt." **Page 4 of Exhibit 2, Bassett II.**

21. As the attorney for Midland signed the complaint against Ms. Debtor has relied upon false assignments that don't line up chronologically and an Affidavit from Midland that is false, clearly, the attorney signed his name without a meaningful file review and in violation of MCR 2.114.

22. Defendant Midland has had its attorney sign the complaint-- ***without any meaningful attorney review or file involvement*** in violation of 15 U.S.C. §§ 1692e (3) and 15 U.S.C. §§ 1692e (10).

23. If there was any meaningful involvement or oversight by an Attorney, there would be an assignment attached from GE Capital and Midland specifically mentioning Ms. Debtor.

24. The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation. 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. *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 329 (6th Cir. 2006). This standard ensures "that the FDCPA protects all consumers, the gullible as well as the shrewd." *Kistner v. Law Offices of Michael P. Margelefsky, LLC.*, 518 F.3d 433, 438 (6th Cir).

25. In applying the "least sophisticated consumer" standard, the Sixth Circuit has adopted the "***more than one reasonable interpretation standard.***" *Kistner*, 518 F.3d at 441. Under that approach, a collection letter can be "deceptive" if it is open to "more than one reasonable interpretation, at least one of which is inaccurate." *Id.* (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993)). "[T]he 'more than one reasonable interpretation' standard is applicable to the entirety of § 1692e as a useful tool in analyzing the least sophisticated consumer test." *Id.*

26. Whether a debt collector's actions are false, deceptive, or misleading under §1692e is based on whether the "least sophisticated consumer" would be misled by defendant's actions. *Wallace v. Washington Mutual Bank*, 683 F.3d. 323, 327 (6<sup>th</sup> Cir. 2012), *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 329 (6th Cir.2006).

27. The RCPA mirrors the requirements and remedies of the FDCPA with the same 6<sup>th</sup> Circuit use of the "least sophisticated consumer" standard. *McKeown v. Mary Jane M. Elliott P.C.*, No. 07-12016-BC, 2007 WL 4326825, at \*5 (E.D. Mich. Dec. 10, 2007) (citing *Hubbard v. Nat'l Bond and Collection Assocs., Inc.*, 126 B.R. 422, 426 (D.Del.1991)) held that "§ 445.252(e) applies to Defendant, its analysis is similar to that under § 1692e of the FDCPA, both of which bar misleading and deceptive communications... In light of the similarity between 15 U.S.C. § 1692e and these causes of action, it appears appropriate to view Plaintiff's claims under the same "least sophisticated consumer" standard.

28. The *Bassett* Rule that requires proof of the assignment of the Specific Debt of the Defendant be shown between the debt buyers. That does not exist here between GE Capital and Midland Funding, LLC. **Please see the *Bassett* Opinions from the Court of Appeals at Exhibit 2.**

29. Counter Plaintiff seeks judgment against the Counter Defendant in whatever amount that Counter Plaintiff is entitled to including consequential damages and the costs and expenses of

this action.

## **VI. CAUSES OF ACTION**

### **CLAIM AGAINST COUNTER DEFENDANT MIDLAND UNDER THE FDCA**

30. Defendant violated 15 U.S.C. 1692e and e (10) with the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer as mentioned above. **Please see Exhibit 1-3.**
31. Defendant violated 15 U.S.C. 1692e(2)(A) by making false representations about the character, amount and legal status of the debt and without itemization of the debt. **Please see Exhibit 1-3.**
32. Defendant violated 15 U.S.C. 1692e (5) by suing on a debt that Plaintiff does not owe MIDLAND. **Please see Exhibit 1-3.**
33. Defendant violated 15 U.S.C. 1692f (1) by suing for interest costs, damages and fees that it is not authorized by the original contract to collect and without itemization of the debt.
34. Defendant violated 15 U.S.C. 1692e (3) and 15 U.S.C. 1692e (10) by filing a lawsuit without any meaningful attorney review of the file before it was signed and in violation of MCR 2.114. **See Exhibit 1-3.**
35. As a result of Counter Defendant's wrongful conduct, Counter Plaintiff has suffered statutory, actual, emotional and financial damages and seeks his attorney fees and costs under the FDCA.
36. Counter Plaintiff seeks judgment against the Counter Defendant in whatever amount that Plaintiff is entitled to plus consequential damages and the costs and expenses of this action.

### **VII. CLAIM AGAINST COUNTER DEFENDANT MIDLAND UNDER THE MICHIGAN OCCUPATIONAL CODE (MOC) AND MICHIGAN COLLECTION PRACTICES ACT (RCPA)**

37. Relying upon **Exhibit 1-3**, Counter-Plaintiff alleges Counter Defendant's foregoing acts in attempting to collect this alleged debt against the Counter Plaintiff constitute violations of the Occupational Code, M.C.L. 339.915 including but not limited to the following:
  - a. (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.

- b. (n) by using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor.
- c. (q) Failing to implement a procedure designed to prevent a violation by an employee.

38. Counter Defendant has violated MCLA 445.252 in the following ways:

- a. Counter Defendant has violated MCLA 445.252(a) with the use of false representations and deceptive means in its contact of Counter Plaintiff.
- b. Counter Defendant has violated MCLA 445.252(n) by using a harassing, oppressive or abusive method to collect on a debt.
- c. Counter Defendant has violated MCLA 445.252(q) by failing to implement a procedure designed to prevent a violation by an employee
- d. Counter Defendant has violated MCLA 445.252(e) by making an inaccurate, misleading, untrue or deceptive statement or claim in a communication to collect a debt.
- e. Counter Defendant has violated MCLA 445.252(f) by Misrepresenting in a communication with a debtor any of the following:
  - (i) The legal status of a legal action being taken or threatened.
  - (ii) The legal rights of the creditor or debtor.

39. As a result of Counter Defendant's wrongful conduct, Counter Plaintiff has suffered statutory, actual, emotional and financial damages and seeks his attorney fees and costs under the MOC and the MCPA.

40. As a result of the actions of Defendant, Counter Plaintiff hired the undersigned counsel. Counsel has been an attorney in good standing for 25 years and has handled thousands of consumer cases, personally. Counsel is known in his field of a consumer advocate and a competent, experienced consumer trial attorney. As a result, counsel's time is billed at the reasonable rate of \$400.00 an hour.

41. Counter Plaintiff seeks judgment against the Counter Defendant in whatever amount that

Counter Plaintiff is entitled to plus statutory, actual and consequential damages and the costs and expenses of this action.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Counter Plaintiff DEBTOR prays that the Court grants the following relief against the Counter Defendant MIDLAND in this case and:

1. For compensatory damages under the FDCPA;
2. For statutory and emotional damages under the FDCPA, MOC and RCPA;
3. For attorney's fees and costs incurred in this action under the FDCPA, MOC, RMCPA;
4. For Triple Damages under the MOC and RCPA, and
5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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BRIAN P. PARKER (P48617)  
Attorney for Plaintiff

Dated: May 29, 2018