

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

ALBERT GREGORY, on behalf of
himself and all others similarly situated,

Plaintiffs,

-against-

McCABE, WEISBERG & CONWAY,
P.C., and JOHN DOES 1-25,

Defendants.

Civil Case Number: _____

CIVIL ACTION

**CLASS ACTION COMPLAINT
AND
DEMAND FOR JURY TRIAL**

Plaintiff, Albert Gregory, on behalf of himself and all others similarly situated (hereinafter "Plaintiff") residing in the State of New Jersey, by and through his undersigned attorney, alleges against the above-named Defendant, McCabe, Weisberg & Conway, P.C, (hereinafter "MWC"), its employees, agents, and successor alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from the Defendant's violation of 15 U.S.C. §1692 *et seq.*, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331. This is an action for violations of 15 U.S.C. §1692 *et seq.*

3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because the acts and transactions that give rise to this action occurred, in substantial part, in this district.

DEFINITIONS

4. As used in reference to the FDCPA, the terms “creditor,” “consumer,” “debt,” and “debt collector” are defined in §803 of the FDCPA and 15 U.S.C. §1692(a).

PARTIES

5. The FDCPA, 15 U.S.C. §1692 *et seq.*, which prohibits certain debt collection practices provides for the initiation of court proceedings to enjoin violations of the FDCPA and to secure such equitable relief as may be appropriate in each case.

6. Plaintiff is a natural person and a resident of the State of New Jersey, County of Essex and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).

7. Defendant McCabe, Weisberg & Conway, P.C is a law firm with offices located at 216 Haddon Avenue, Suite 303, Westmont, New Jersey 08108.

8. Upon information and belief, MWC is a law firm that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

9. Defendant MWC is a “Debt Collector” as that term is defined by 15 U.S.C. §1692(a)(6).

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter “FRCP”), on behalf of himself and all New Jersey consumers and their successors in interest (the “Class”), who have received debt

collection letters and/or notices from the Defendant which are in violation of the FDCPA, as described in this Complaint.

11. This Action is properly maintained as a statewide class action. The Class consists of:

- All New Jersey consumers who were sent an initial communication from MWC, concerning a debt owed to Champion Mortgage, LLC, which did not state the amount of the debt.:
- The Class period begins one year to the filing of this Action.

12. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from the Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons (*See **Exhibit A***, except that the undersigned attorney has, in accordance with Fed. R. Civ. P. 5.2 partially redacted the financial account numbers in an effort to protect Plaintiff's privacy);
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

- a. Whether Defendant violated various provisions of the FDCPA;
 - b. Whether Plaintiff and the Class have been injured by Defendant's conduct;
 - c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
 - d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.
- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
 - Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
 - Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
 - A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.
- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

13. Plaintiff is at all times to this lawsuit, a "consumer" as that term is defined by 15 U.S.C. §1692a(3).

14. Sometime prior to November 1, 2013 Plaintiff allegedly incurred a financial obligation in the form of a mortgage loan now owed to Champion Mortgage, LLC ("Champion").

15. The Champion obligation arose out of a transaction in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes

16. The alleged Champion obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).

17. At some point prior to November 1, 2013, Plaintiff's mortgage with Champion became past due.

18. On or before November 1, 2013 the Champion obligation was placed with or assigned to MWC for the purpose of foreclosure

19. At the time, the Champion obligation was placed with or assigned to MWC the obligation was past due.

20. At the time, the Champion obligation was placed with or assigned to MWC the obligation was past due in an amount greater than \$30,000.

21. MWC collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and Internet.

22. On or about November 1, 2013, MWC mailed to Plaintiff an initial letter / communication concerning the Champion obligation. *See Exhibit A.*

23. Said letter was sent or caused to be sent by persons employed by MWC as a "debt collector" as defined by 15 U.S.C. §1692a(6).

24. Said letter was sent to Plaintiff in connection with the collection of a "debt" as defined by 15 U.S.C. §1692a(5).

25. Said letter is a "communication" as defined by 15 U.S.C. §1692a(2).

26. Upon receipt of MWC's letter dated November 15, 2013, Plaintiff read said letter.

27. The November 1, 2013 did not state the amount of the debt.

28. The November 1, 2103 did not state the amount of the debt pursuant to 15 U.S.C. §1692g(a)(1).

29. MWC did not provide Plaintiff with a written notice of the amount of the debt Between November 1, 2013 and November 6, 2013.

30. MWC did not provide Plaintiff with a written notice of the amount of the debt Between November 1, 2013 and November 6, 2013, pursuant to 15 U.S.C. §1692g(a)(1).

POLICIES AND PRACTICES COMPLAINED OF

31. It is MWC's policy and practice to send initial written collection communications, in the form annexed hereto as **Exhibit A**, which violate the FDCPA, by inter alia:

- (a) Failing to provided in its initial communication or within five (5) thereafter, a written notice containing the amount of the debt;

32. On information and belief, MWC sent a written communication, in the form annexed hereto as **Exhibit A** to at least 50 natural persons in the State of New Jersey within one year of the date of this Complaint.

COUNT I

**FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692
VIOLATION OF 15 U.S.C. § 1692g et al.**

33. Plaintiff repeats the allegations contained in paragraphs 1 through 32 as if the same were here set forth at length.

34. Collection letters and/or notices such as those sent by Defendants are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

35. Section 1692g(1) of the FDCPA requires the debt collector within five days of the initial communication with a consumer in connections with the collection of any debt, provide the consumer with written notice containing the amount of the debt.

36. MWC's letter to Plaintiff, dated November 1, 2013 failed to state the amount of the debt owed to Champion.

37. MWC failed to provide to Plaintiff, within five days of the November 1, 2013 letter, a written notice stating the amount of the debt owed to Champion..

41. by reason thereof, Defendant is liable to Plaintiff for judgment that MWC's conduct violated Section 1692g(a)(1), of the FDCPA, statutory damages, costs and attorneys' fees.

WHEREFORE, Plaintiff demands judgment against the Defendant on each count as follows:

(a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and the attorney, Joseph K. Jones, Esq., as Class Counsel;

(b) Issuing a preliminary and/or permanent injunction restraining Defendants, their employees, agents and successors from, *inter alia*, engaging in conduct and practices that are in violation of the FDCPA;

(c) Issuing a declaratory Order requiring Defendants to make corrective disclosures;

(d) Awarding Plaintiff and the Class statutory damages;

(e) Awarding Plaintiff and the Class actual damages;

(f) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses; and

(g) Awarding Plaintiff and the Class such other and further relief as the Court may deem just and proper.

Dated: Fairfield, New Jersey
November 15, 2013

/s/ Joseph K. Jones
Joseph K. Jones (JJ-5509)
Law Offices of Joseph K. Jones, LLC
375 Passaic Avenue, Suite 100
Fairfield, New Jersey 07004
(973) 227-5900 telephone
(973) 244-0019 facsimile
jkj@legaljones.com

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

/s/ Joseph K. Jones
Joseph K. Jones

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I, Joseph K. Jones, the undersigned attorney of record for Plaintiff do hereby certify to my own knowledge and based upon information available to me at my office, that the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: November 15, 2013

/s/ Joseph K. Jones
Joseph K. Jones

Exhibit

A

LAW OFFICES
McCABE, WEISBERG & CONWAY, P.C.

SUITE 1400
123 SOUTH BROAD STREET
PHILADELPHIA, PA 19109
(215) 790-1010
FAX (215) 790-1274

SUITE 202
4021 UNIVERSITY DRIVE
FAIRFAX, VA 22030
703-273-3508
FAX (301) 490-1568

SUITE 800
312 MARSHALL AVENUE
LAUREL, MD 20707
(301) 490-3361
FAX (301) 490-1568

Also servicing the District of Columbia

SUITE 303
216 HADDON AVENUE
WESTMONT, NJ 08108
(856) 858-7080
FAX (856) 858-7020

SUITE 210
145 HUGENOT STREET
NEW ROCHELLE, NY 10801
(914)-636-8900
FAX (914) 636-8901

SUITE 100
30 BUXTON FARMS ROAD
STAMFORD, CT 06905
(203) 992-8200
FAX (855) 425-1979

SUITE 130
DELAWARE CORPORATE CENTER I
ONE RIGHTER PARKWAY
WILMINGTON, DELAWARE 19803
(302) 409-3520
FAX 855-425-1980

Albert Gregory



November 1, 2013

Reference:

Dear Borrowers:

**YOUR MORTGAGE LOAN HAS BEEN
REFERRED TO OUR FIRM FOR FORECLOSURE**

Our client, Champion Mortgage LLC, has referred your loan to us for foreclosure. While the foreclosure process has begun, you may still have foreclosure prevention alternatives available to you to avoid the disruption and damage to your credit that a foreclosure sale can cause—BUT YOU MUST ACT IMMEDIATELY!

YOU MAY STILL HAVE ALTERNATIVES

You may have had an unexpected expense, loss of income, or another circumstance that has prevented you from making your mortgage payments. Regardless of your situation, foreclosure is usually the worst possible outcome.

If you provide information about your situation, Champion Mortgage LLC can determine whether you qualify for temporary or long-term relief, including options that allow you to stay in your home (forbearance, repayment, modification) or leave your home while avoiding foreclosure (short sale, deed-in-lieu of foreclosure).

YOU MUST ACT IMMEDIATELY!

Champion Mortgage LLC may have previously sent you a letter advising you of possible alternatives to foreclosure, along with a Borrower Response Package with documents for you to complete and return to Champion Mortgage LLC to be evaluated for these alternatives. If you did not receive or no longer have the documents, or have not returned all of the documents, please contact Champion Mortgage LLC immediately at: 855-683-3095 to obtain the documents.

Even if you have previously indicated that you are not interested in saving your home you can still be evaluated for alternatives to foreclosure.

Once Champion Mortgage LLC has evaluated your information, you will be contacted regarding options and next steps. If you need assistance, contact Champion Mortgage LLC at 855-683-3095.

Be advised that the foreclosure process will continue unabated and without delays unless you are approved for one of the above-described alternatives to foreclosure.

Sincerely,
McCabe, Weisberg and Conway, P.C.

This is a communication from a debt collector who is attempting to collect a debt, and any information obtained will be used for that purpose.

Unless, within thirty (30) days after your receipt of this communication, you dispute the validity of the debt, or any portion of the debt, we will assume that the debt is valid.

This is a communication from a debt collector.

This letter may be an attempt to collect a debt and any information obtained will be used for that purpose.

If you notify us in writing within thirty (30) days of your receipt of this communication that the debt, or a portion of the debt, is disputed, we will obtain verification of the debt or a copy of the judgment against you, and we will mail to you a copy of the verification or judgment that we obtain.

Upon your written request to us within thirty (30) days of your receipt of this communication, we will provide to you the name and address of the original creditor, if different from the current creditor.

This is a communication from a debt collector.

This letter may be an attempt to collect a debt and any information obtained will be used for that purpose.