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Steven D. Grierson
CLERK OF THE COURT

Luba Dace
[redacted]
In Propria Persona

DISTRICT COURT

CLARK COUNTY, NEVADA

LUBA DACE, Plaintiff, v. CAPITAL ONE, Defendant.	Case No.: A-23-876878-C Dept. No.: 9 EXHIBITS FOR VIOLATION OF FDCPA 15 U.S.C. §1692

EXHIBIT A – Credit Report #1. Snapshot showing credit report before validation request.

EXHIBIT B – Copy of All Letters Sent to Defendant.

EXHIBIT C – Response from creditor *(only if sent with Tracking or via Certified/Registered).*

EXHIBIT D – Credit Report #2. Snapshot showing credit report after validation request.

EXHIBIT E – UCC Presentment. Law stating how presentments must be made to be legal.

EXHIBIT F – USC Validation. Law stating how collections must proceed after a validation request.

EXHIBIT G – Non-Original Promissory Note. This proof is submitted with *ghoulish overtones*. It is a copy of a $100 US Note. If a debt which did not require

Case Number: A-23-876878-C

BOTH PARTIES signatures, or is not required to be an original · must be allowed to be paid with non-original debt notes as well (i.e. the $100 photocopied note printed ad infinitum).

EXHIBIT H – FDCPA Fine. Law stating how much is owed for violations of the FDCPA laws.

EXHIBIT I – CFPB Bulletin. Outline of deceptive claims made by debt collectors. Proof why one may have paid an alleged debt while still fighting it.

EXHIBIT J – UCC Negotiable Instrument. Outlines what is required for the acceptance of the previously sent *Notice of Fault & Opportunity to Cure*, namely that is a negotiable instrument that was agreed to by *tacit acquiescence* (consent by silence, common law accepts 30 days).

I AFFIRM that a copy of these EXHIBITS was mailed/delivered to Defendant.

Luba Dace

_____

Luba Dace
8 SEP 2023

EXHIBIT A

99+

Your credit reports

Experian Equifax TransUnion

Experian credit report

LUBA SNOW

As of Jun 28, 2023

FICO SCORE 8

Experian data Jun 28, 2023

644

FAIR

300 850

Personal information

NAME

LUBA SNOW

ALSO KNOWN AS

LUBA DACE

GENERATIONAL IDENTIFIER

-

YEAR OF BIRTH

1980

ADDRESSES

[redacted]

LYNDEN, WA 98264-9391

EMPLOYERS

-

PERSONAL STATEMENTS

06& 03-10-23 0000000 ID FRAUD VICTIM ALERT FRAUDULENT APPLICATIONS MAY BE SUBMITTED IN MY NAME OR MY IDENTITY MAY HAVE BEEN USED WITHOUT MY CONSENT TO FRAUDULENTLY OBTAIN GOODS OR SERVICES. DO NOT EXTEND CREDIT WITHOUT FIRST CONTACTING ME [redacted] OR EVENING [redacted] . THIS VICTIM ALERT WILL BE MAINTAINED FOR SEVEN YEARS BEGINNING 03-10-23.

Quick actions

Print your report
Open a printable version

You have 9 open accounts

Total balance: $6,275

Credit cards or credit lines

Total balance: $6,275

11% credit usage

Credit used: **$6,258**

Credit limit: **$58,450**

6%	30%

BANK OF AMERICA AUTHORIZED USER >

Link card name | What's this?

Balance $712

Balance updated Jun 15, 2023

BANK OF AMERICA AUTHORIZED USER >

Link card name

Balance $289

Balance updated Jun 15, 2023

BANK OF AMERICA AUTHORIZED USER >

Link card name

Balance -

Balance updated -

BARCLAYS BANK/OLD NAVY >

Link card name

Balance $0

Balance updated Jun 20, 2023

CAPITAL ONE AUTHORIZED USER >

(Capital One Walmart Rewards® Mastercard®) Unlink card name

Balance $140

Balance updated Jun 17, 2023

CAPITAL ONE >

Link card name

Balance $2,017

Balance updated Jun 02, 2023

CITI >

(Costco Anywhere Visa® Card by Citi) Unlink card name

Balance $149

Balance updated Jun 01, 2023

DISCOVER BANK

(Discover it® Balance Transfer) Unlink card name

Balance	**$2,313**
Balance updated	**Jun 26, 2023**

JPMCB CARD AUTHORIZED USER

Link card name

Balance	**$655**
Balance updated	**Jun 11, 2023**

8 closed accounts

Auto loans or leases

Total balance: -

3 closed accounts

Real estate loans

Total balance: -

1 closed account

Personal loans

Total balance: -

1 closed account

0 collections

Experian has no collections on file for you as of Jun 29, 2023. If you fall behind on payments, your lender or service provider may sell your debt to a collections agency, so remember to pay on time.

6 inquiries

These lenders have accessed your credit file:

BK OF AMER
Inquiry date **Apr 19, 2023**
Removal date **May 2025**

CAP ONE NA
Inquiry date **Apr 19, 2023**
Removal date **May 2025**

DISCOVER FINANCIAL SER
Inquiry date **Oct 13, 2022**
Removal date **Nov 2024**

JPMCB CARD
Inquiry date **Apr 23, 2023**
Removal date **May 2025**

JPMCB CARD
Inquiry date **Mar 5, 2023**
Removal date **Apr 2025**

JPMCB CARD
Inquiry date **Oct 13, 2022**
Removal date **Nov 2024**

EXHIBIT B

DEBT VALIDATION REQUEST

FROM:

Luba Dace

[redacted]

TO:

CAPITAL ONE

Certified Mail with Return Receipt #

THIS NOTICE AND ENCLOSURES ARE A PRIVATE COMMUNICATION BETWEEN THE PARTIES AND CONSTITUTES DUE PROCESS IN ADMINISTRATIVE PROCEDURE. NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT. APPLICABLE TO ALL SUCCESSORS AND ASSIGNS.

Re: Account for 515676XXX...

I. NOTICE OF VALIDATION REQUEST

You are hereby in receipt of notice, per 15 U.S. Code § 1692, that the above referenced file number and alleged debt, in part, or in whole, is now officially **disputed**. By the authority of the Fair Debt Collections Practices Act (FDCPA), all activities on this account must cease until resolved. I affirm that said account(s) contain fraudulent or incorrect information. Transactions were not incurred by me nor any person with my authority, either expressed, implied, or apparent.

You are obligated by 15 U.S. Code § 1681i and § 1692e(8) to inform all credit reporting agencies (CRA) or Credit Bureaus (CB) of the dispute. Further, verification, as of today, with the CBs or non-action of these requests is in violation of the FCRA and the FDCPA and is subject to fines.

Verification and validation are demanded. Verification and validation are very different terms and ideas. Verification is making sure one actually owes the debt, see *Chaudhry v. Gallerizzo, 174 F.3d 394 (4th Cir. 1999)*. The definition of *verification* according to Black's Law Dictionary is *"...averment that the party pleading is ready to establish the truth of what he has set forth. ... The examination of a writing for the purpose of ascertaining its truth; or a certificate or affidavit that it is true.."* The court said *"Confirmation of the correctness, truth, or authenticity of a pleading, account, or other paper, by an affidavit, oath, or deposition."* McDonald v. Rosengarten, 134 Ill. 126, 25 N.E. (1890) ; and Summerfield v. Phoenix Assur. Co. (C. C.) 65 Fed. 296 (1922); and Patterson v. Brooklyn, 6 App. Div. 127, 40 N.Y. Supp. 581 (1898).

Validation is for disputing a debt, stopping account activities until the debt has been confirmed, see Spears v. Brennan, 745 N.E. 2d 862 Ind. App. (2001). The definition of *validation* according to Black's Law Dictionary is *"assessing an action to determine it is complete, correct, implemented and delivering the correct outcome.";* Oxford states it as *"to check or prove the validity or accuracy of something"*; Merriam-Webster says, *"to show the existence or truth of, by evidence."*

II. VERIFICATION AND VALIDATION REQUIREMENTS

The demands are, but not be limited to:

1) I invoke the Truth in Lending Act per 15 U.S. Code § 1601-1667f, and thereby demand the afforded

right to know who the true party of interest [original creditor] in this transaction is.

2) An authentic contract with wet-ink signatures, signed by both parties. **Only a certified copy** (before trial) **and then the original** (demanded during trial) **of the said 'note' will be acceptable.** An *affidavit of loss* or any other form will not be accepted. If located in an off-site location, send information on where the original contract is and when it can be viewed in person. The maxim of contract law is, *"The basic elements required for the agreement to be a legally enforceable contract are: mutual assent (agreement by both parties to a contract), expressed by a valid offer and acceptance; adequate consideration; capacity; and legality."*

3) Disclose what the money of the alleged debt is for, and explain how your organization calculated the total for the alleged debt; including supporting documentation that gave rise to the alleged obligation that is claimed as owed per 15 U.S. Code § 1692g(a) and § 1692g(b).

4) Production of account and general ledger statement(s) showing the full accounting of alleged obligation. To be admissible as evidence (sufficiency of pleadings by a fact-witness), a signed affidavit by the person responsible for maintaining these records and having first-hand knowledge as to its accuracy and authenticity, able to testify under oath to that effect, is required.

5) Deliver proof your organization is a party to the transaction. You seem to think there is a right to collect when your organization never lent money to me. I have never signed any contract with you. You may have bought a note, but it was not assigned. American Jurisprudence 2d 73 states that *"The right of subrogation does not exist for a stranger to the transaction."* Subrogation means *"to substitute"* and *"stranger to the transaction"* means a party that is not on the original contract. So, the right to substitute a third-party collector [you] into a contract, does not exist. The third-party has no rights if they did not give consideration in the original contract and were not mentioned on the contract or were any part of the contract; including loans transferred, assigned, sold, or changed hands in one manner or another.

6) Proof that the alleged account is not out of the state's statute of limitations.

7) A copy of your license numbers and registered agent information to operate as an agency in this state[, except if in AL, CA, DC, DE, GA, KS, KY, MO, MS, MT, NH, NY, OH, OK, PA, SC, SD, TX, VA or VT].

8) Stipulate for the record whether or not the alleged loan has been securitized, and if so, the name and all other information of the financial instrument the alleged loan is bundled with.

9) Where did the money or credit supposedly loaned or issued to me come from?

III. OPPORTUNITY TO CURE

Reply *in affidavit* to these demands, point by point, is required by law. As the maxim states, *"He who does not deny, admits."* and *"An unrebutted affidavit stands as truth."* Per Restatement 2nd § 69, failure to reply within thirty days shall constitute admission of debt being invalid, release of all legal claim(s) and that the above-named entity on the account is a victim of identity fraud. Upon invalidation, demand is made to terminate the claim and correct any negative credit reporting which may have been made in connection with the alleged debt for all CRAs and CBs.

You have thirty days from receipt of this letter to either: 1) respond to the enclosed affidavit on a point-

by-point basis, via sworn responsive affidavit, under your full commercial liability, signing under penalty of perjury that the facts contained therein are true, correct, complete and not misleading. Mere declarations are an insufficient response. If an extension of time is needed to properly answer, please request it in writing, or, 2) an original letter is received within thirty days stating full satisfaction of alleged debt being met, including when the item will be removed from the credit reports, bank records, internal records and all public records where recorded, then no further action is required, and you shall be released of all liability regarding this matter. Failure to cure shall constitute dishonor in commerce and your consent to the facts contained in the affidavit will be construed as an admission of the facts.

IV. FUTURE COMMUNICATION(S)

Per FDCPA § 805(c), TCPA, FOTI and 15 U.S. Code § 1692c, but waiving § 1692c(c), further contact regarding this alleged debt after receipt of this notice without providing procedurally proper validation is a violation. There will be a refusal for cause to correspondence not signed or that does not indicate who, personally, at your firm has sent it. Written communication allowed strictly for notifications regarding a settlement offer or debt validation.

V. NOTICE AND DEMAND FOR PAYMENT

If no validation of alleged debt occurs, you have harmed and injured the above named entity to the value of the debt invalidated at a 20% interest rate. This stands as official notice and demand for payment of any invalidated debt including at least a $1,000 fine due to FDCPA violation(s). A notice of lien will be recorded against all assets to recoup the amount due.

VI. CASE LAW AND JUDGEMENTS AGAINST DEBT COLLECTORS

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573 (2010) held that a debt collector who makes an incorrect statement of law in communications FDCPA's "bona fide error" defense, per 15 U.S.C. § 1692k(c), even if it was an unintentional error.

"The Act is a strict liability statute; violations of the Act do not need to be intentional to be actionable." Smith v. National Credit Systems, Inc., 807 F. Supp. 2d 836, 840 (D. Az. 2011)

"Because the FDCPA is a "strict liability statute," Plaintiff need only demonstrate "one violation of its provisions" to be entitled to a favorable judgment." Doshay v. Global Credit and Collection Corporation, 796 F.Supp.2d 1301, 1304 (D. Colo. 2011)

"The FDCPA is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F.3d 1107, 1117 (10th Cir. 2002)

"Simply stated, if an attorney regularly engages in debt collection activities, that attorney is a 'debt collector' under the FDCA and is subject to its provisions'.... This court holds that there is no additional implied exemption for 'attorneys when performing tasks of a legal nature'." Heintz v. Jenkins, 514 U.S. 291 (1995)

Regarding hearsay exceptions for business records, *"In short, it is manifest that, in this case, those reports are not for the systematic conduct of the enterprise as a railroad business. Unlike payrolls, accounts receivable, accounts payable, bills of lading, and the like, these reports are calculated for use essentially in the court, not in the business. Their primary utility is in litigating, not in railroading."* Palmer v Hoffman 318 US 109 (1943) Affidavit Decision

De facto or de jure rulings secured by incestuous relationships in a lower District Court are *"to be*

decided by the trier of fact on the evidence" in an Appellate Court judged by *facts alone*. Lewis v. ACB Business Services, Inc. [redacted] (1998). *"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."* Norton v. Shelby County, 118 U.S. 425, 6 S. Ct. 1121, 30 L. Ed. 178 (1886)

And let's not forget the wealth of judgments against debt collectors for exceptionally deserved recompense, such as Dixon-Rollins v. Experian Information Services et. al. 2:09-CV-00646-TJS, revolving around inaccurate items on Dixon-Rollins' credit report. Initially, the jury awarded Dixon-Rollins $500,000; this amount was reduced to $270,000 by the court.

Even better, in Nelson v. Santander Consumer USA, Inc., 931 F. Supp. 2d 919, 932 (W.D. Wis. 2013) Mrs. Heather Nelson was awarded $571,000 in damages for the harassment received.

Gryzbowski v. I.C. System, Inc., 691 F. Supp. 2d 618 (2010) found a message was a communication in an attempt to collect a debt; and Mark v. J.C. Christensen & Associates, Inc., Civil No. 09-100 ADM/SRN, 2009 WL 2407700 (D.Minn. Aug. 4, 2009) found a voicemail to be the same. Even worse, in Costa v. National Action Financial Services, 634 F. Supp. 2d 1069 (E.D. Cal. 2007), NAFS failed to state a message was from a debt collector and lost.

Romea v. Heiberger & Associates, 988 F. Supp. 715 (S.D.N.Y. 1998); and Inman v. NCO Fin. Sys., Inc., No. CIV.A. 08-5866, 2009 WL 3415281, at *1 (E.D. Pa. Oct. 21, 2009) found pre-recorded calls count as communication.

In the case of Brim v. Midland Credit Management, Inc., 795 F. Supp.2d 1255 (2011) the jury rendered a verdict awarding plaintiff $100,000 in compensatory damages and $632,180.00 in punitive damages due to Midland Credit's "willful noncompliance" of its duties under federal law (FCRA) to adequately investigate the consumer's repeated credit report disputes over a 2-year period. Midland Credit sought to vacate the judgment or reduce the plaintiff's award, but the court refused, finding that a punitive damages award of roughly six times the actual damages award of $100,000 was appropriate under Supreme Court standards.

Other cases showing the ease of incurring FDCPA violations, like Cavallaro v. Law Office of Shapiro & Kreisman, 933 F. Supp. 1148 E.D.N.Y. (1996); and Masciarelli v. Richard J. Boudreau & Associates, LLC, 529 F. Supp. 2d 183 (2007); and Harrington v. CACV OF COLORADO, LLC, 508 F. Supp. 2d 128 (2007); and Picht v. Hawks, 77 F. Supp. 2d 1041 (1999); and West v. Nationwide Credit, Inc., 998 F. Supp. 642 (1998); and Cloman v. Jackson, 988 F2nd 1314, 1320 (1993); and Edwards v. Niagara Credit Solutions, Inc., 584 F.3d 1350 (2009).

Including case law that shows pro se and pro per litigation is extremely effective in rendering invalid debt obsolete, such as Acosta v. Campbell Case No. 6:04-cv-761-Orl-28DAB (2006); and Sherman v. Blair, Case No: 5:15-cv-36-Oc-34PRL (2015); and Stinson v. Asset Acceptance, LLC, No. 1:05cv1026 JCC (2006); and Chlanda v. Wymard No. 3-93-321 (1994).

VII. CASE LAW AND JUDGEMENTS AGAINST ORIGINAL CREDITORS

Creditors may not lend money from their assets or their depositors' assets: *"A national bank has no power to lend its credit to any person or corporation..."* Bowen v. Needles Nat. Bank, 76 F. 176 (1896). Since a bank cannot lend credit, any signed contract by a customer must be converted into a negotiable instrument under 12 USC § 1832, the instrument becomes cash for deposit on the account.

Thus a request for validation is given, as it seems no loss has occurred on behalf of the creditor.

"... a bank is expressly prohibited (sect. 5201; 13 Stat. 110, sect. 35) from loaning money upon or purchasing its own stock ... [except] in payment of debts previously contracted in good faith." First National Bank of Charlotte v. National Exchange Bank of Baltimore (1875).

"The statutes of the United States relating to the organization and powers of national banks prohibit such banks from purchasing or subscribing to the stock of another corporation..." NY Bank v. Kennedy (1897), as does the case of Concord First National Bank v. Hawkins (1899) agree with this.

The National Bank Act of 1864 and National Banking Act of 1933 furthered these regulations by separating commercial banking from investment banking, accordingly the license to practice fractional reserve lending is only allowed for investment banking funds.

VIII. FINAL PLEA

Litigation is quite expensive and should be avoided at all costs. Should it be necessary, I would appear *in propria persona* [pro per] and file a court case *in forma pauperis* for free; however, my belief is your organization would require retaining the costly services of a lawyer. The cost-to-benefit ratio is quite low when suing indigents; therefore, this is a good-faith attempt to resolve this matter before litigation is necessary. I am willing to resolve this matter privately and civilly, even within private arbitration. Thank you for your time and attention to this matter.

Luba Snow DACE

by: _____,Without Recourse DATED: 20 July 2023

All Rights Reserved

NOTICE OF FAULT AND OPPORTUNITY TO CURE

FROM:

Luba Dace
[redacted]
McLean, NY 89118

TO:

CAPITAL ONE
[redacted]
McLean, NY 22102

Sent Certified Mail with Return Receipt [redacted]02

THIS NOTICE AND ENCLOSURES ARE A PRIVATE COMMUNICATION BETWEEN THE PARTIES AND CONSTITUTES DUE PROCESS IN ADMINISTRATIVE PROCEDURE. NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT. APPLICABLE TO ALL SUCCESSORS AND ASSIGNS.

Re: Account #515676XXX...

I. NOTICE OF FAULT

Notice of fault is hereby given as a courtesy regarding the enclosed commercial presentment received by one of your agents or the principal on or around 25 Jul 2023 (please see the enclosed DEBT VALIDATION REQUEST). **Your response by sworn affidavit is required within twenty days to avoid default.**

Communications, if there have been any, have not been received. Please send by Certified or Registered Mail for proof of delivery. In addition, any response by a lawyer is inadmissible because *"...lawyers are either lawyers or witnesses. They can not be both."* Trinsey v Pagliaro, D.C.Pa. 1964, 229 F.Supp. 647 (1964) Therefore, I require a fact-witness so that a sufficiency of pleadings by sworn testimony can be met in regards to this alleged debt.

II. OPPORTUNITY TO CURE

You have twenty days to either: 1) respond to the enclosed affidavit on a point-by-point basis, via sworn responsive affidavit, under your full commercial liability, signing under penalty of perjury that the facts contained therein are true, correct, complete and not misleading. Mere declarations are an insufficient response. If an extension of time is needed to properly answer, please request it in writing, or, 2) an original letter is received within thirty days stating full satisfaction of alleged debt being met, including when the item will be removed from the credit reports, bank records, internal records and all public records where recorded, then no further action is required, and you shall be released of all liability regarding this matter. Failure to cure shall constitute dishonor in commerce and your consent to the facts contained in the affidavit will be construed as an admission of the facts.

III. FAILURE TO ACT AS REQUIRED

If you fail to respond, this NOTICE OF FAULT AND OPPORTUNITY TO CURE, is an administrative judgment and shall be the **final expression in a record** as a complete and exclusive statement of the terms of the agreement between us. As the maxim states, *"He who does not deny, admits."* and *"An unrebutted affidavit stands as truth."* Per Restatement 2nd § 69, failure to reply within twenty days shall constitute admission of debt being invalid, release of all legal claim(s) and that the above-named entity on the account is a victim of identity fraud.

IV. ENCLOSURES

The following enclosures are incorporated herein for reference, please read each carefully:

1. Debt Validation Request

Thank you for your public service and your time and attention to this matter. Please confirm by signed letter when the requisite steps of cancellation described herein have been completed.

Luba Snow DACE

by: _____, Without Recourse
Luba Snow Dace
DATED:4 Aug 2023

All Rights Reserved

NOTICE OF DEFAULT AND FINAL STATEMENT

FROM:

Luba Dace
[redacted]
McLean, NY 89118

TO:

CAPITAL ONE
[redacted]
McLean, NY 22102

Sent Certified Mail with Return Receipt [redacted] 3142 87

THIS NOTICE AND ENCLOSURES ARE A PRIVATE COMMUNICATION BETWEEN THE PARTIES AND CONSTITUTES DUE PROCESS IN ADMINISTRATIVE PROCEDURE. NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT. APPLICABLE TO ALL SUCCESSORS AND ASSIGNS.

Re: Account for 515676XXX...

I. NOTICE OF DEFAULT

This invalidated account is errant and your company must send a notice saying the account is satisfied immediately or sanctions will begin for your attempts to collect this account illegally. Send information as to when this account will be removed from the credit reports.

II. FINAL STATEMENT

This is a final statement of your account. Please pay in full the amount due within 30 days or less to stop further actions that were agreed to, by tacit acquiescence, in the last mailing sent. Since this is an invalidated and illegally collected debt, you have harmed and injured me according to FDCPA violations the damages of at least $1000. Please remit payment in full immediately or send the letter saying the account has been satisfied in full and no further actions or payments are required for the invalidated debt on your part.

Communications, if there have been any, have not been received. Please send by Certified or Registered Mail for proof of delivery. In addition, any response by a lawyer is inadmissible because *"...lawyers are either lawyers or witnesses. They can not be both."* Trinsey v Pagliaro, D.C.Pa. 1964, 229 F.Supp. 647 (1964) Therefore, I require a fact-witness so that a sufficiency of pleadings by sworn testimony can be met in regards to this alleged debt.

III. ENCLOSURES

The following enclosures are incorporated herein for reference, please read each carefully:

1. Debt Validation Request
2. Notice of Fault and Opportunity to Cure

Thank you for your public service and your time and attention to this matter. Please confirm by signed letter when the requisite steps of cancellation described herein have been completed.

Luba Snow DACE

by: _____,Without Recourse

Luba Dace

DATED:28 AUG 2023

All Rights Reserved

EXHIBIT C

EXHIBIT D