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§ 3-501. PRESENTMENT.

(a)
"Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

Case 2:23-cv-01806 Document 1-1 Filed 11/03/23 Page 44 of 57

EXHIBIT F

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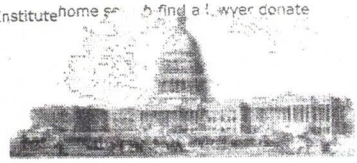

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any 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.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

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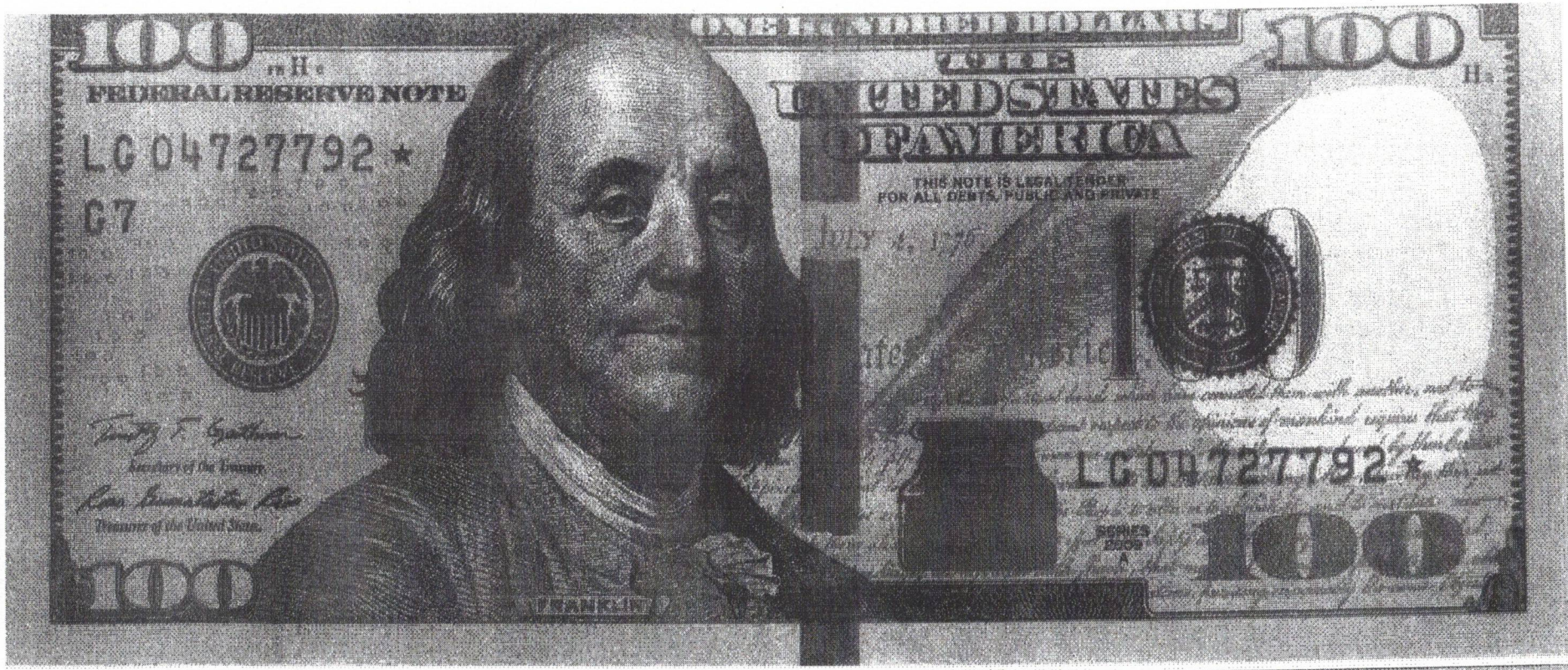

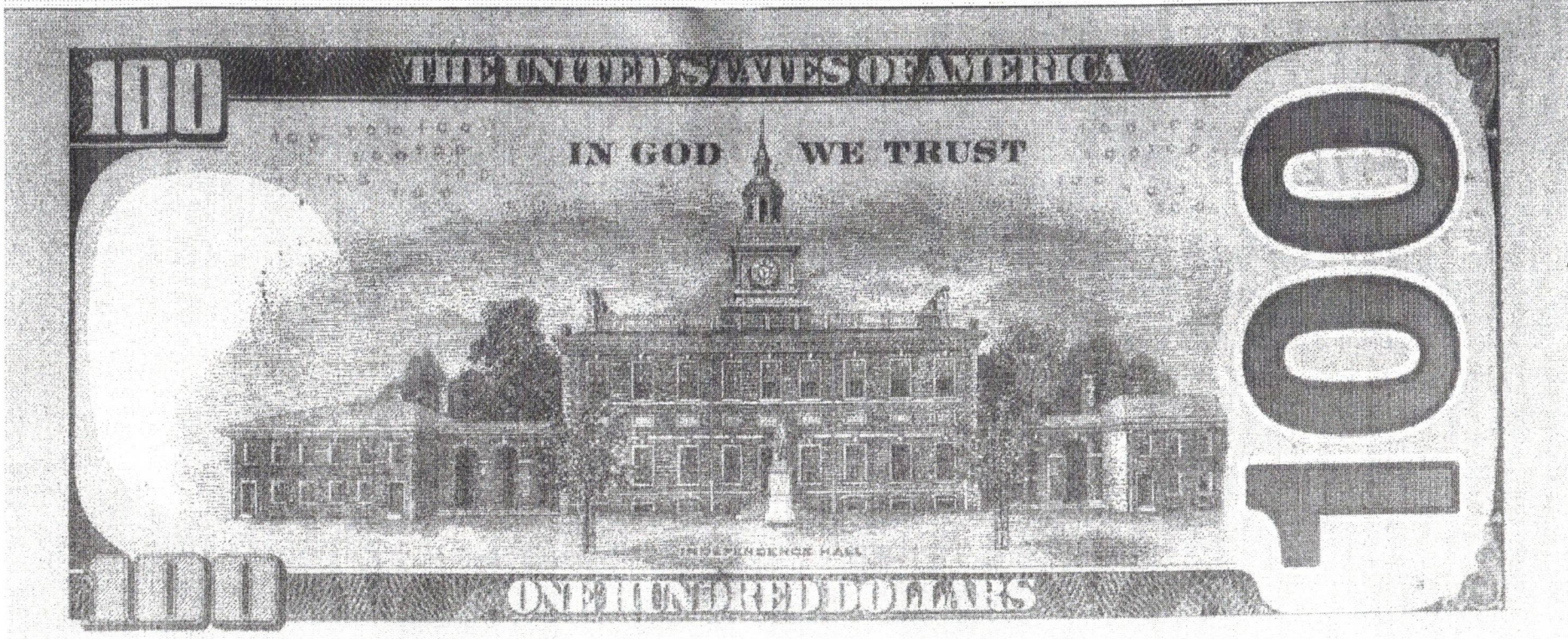

Case 2:23-cv-01806 Document 1-1 Filed 11/03/23 Page 48 of 57

EXHIBIT H

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§ 1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)

(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Commission

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

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EXHIBIT I

cfpb Consumer Financial Protection Bureau

[redacted]

CFPB Bulletin 2013-08 (Fair Debt Collection Practices Act and the Dodd-Frank Act)

Date: July 10, 2013

Subject: Representations Regarding Effect of Debt Payments on Credit Reports and Scores

In response to recent practices observed during supervisory examinations and enforcement investigations, the Consumer Financial Protection Bureau (CFPB or Bureau) issues this bulletin to provide guidance to creditors, debt buyers, and third-party collectors about compliance with the Fair Debt Collection Practices Act (FDCPA)[1] and sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[2] when making representations about the impact that payments on debts in collection may have on credit reports and credit scores.

A. Legal Background

The Dodd-Frank Act granted the CFPB authority to issue regulations and guidance related to the FDCPA and Title X of the Dodd-Frank Act.[3] The FDCPA makes it illegal for a debt collector to "use any false, deceptive, or misleading representation or means in connection with the collection of any debt."[4] In addition, it is illegal for any covered person or service provider of consumer financial products or services to engage in any deceptive act or practice in violation of the Dodd-Frank Act.[5] The FDCPA and the Dodd-Frank Act together prohibit covered persons or service providers, including debt collectors, from engaging in deception while collecting or attempting to collect on consumer debts.

B. Deceptive Claims Regarding Debt Payments and Credit Reports and Scores

While communicating with consumers, creditors and debt buyers (collectively "debt owners") and third-party debt collectors often make material representations intended to persuade consumers to pay debts in collection.[6] Such representations may include, but are not limited to, statements regarding the relationship between:

- Paying debts in collection and improvements in a consumer's credit report;
- Paying debts in collection and improvements in a consumer's credit score;
- Paying debts in collection and improvements in a consumer's creditworthiness; or

---

[1] 15 U.S.C. § 1692 *et seq.*
[2] 12 U.S.C. §§ 5531, 5536.
[3] 12 U.S.C. § 5512(b).
[4] 15 U.S.C. § 1692e.
[5] 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).
[6] For the purposes of this bulletin, "debts" refers to debts in collection.

- Paying debts in collection and the increased likelihood of a consumer receiving credit or more favorable credit terms from a lender.

Representations like those discussed in this bulletin are likely to be important to many consumers who view credit reporting as an important determinant of their future access to credit and other opportunities. Based on its supervision, enforcement, and other activities, the CFPB is aware that these types of representations are being made and is concerned that some of them may be deceptive under the FDCPA, the Dodd-Frank Act, or both.[7]

1. Effects on Credit Reports

One example of a potentially deceptive claim concerns representations that debt owners and third-party debt collectors may make about obsolete debt, which can be defined for the purposes of this bulletin as debt that the Fair Credit Reporting Act (FCRA) prohibits consumer reporting agencies from including on credit reports for most purposes due to the length of time that has passed since a consumer initially defaulted. The FCRA imposes time limits (usually seven years) on including information about debts in certain credit reports.[8] A debt owner or third-party debt collector representing that payments on obsolete debts will result in the removal of information about the debt from the consumer's credit report may well deceive consumers, because such information likely would not have appeared on reports for most purposes even if the debt had remained unpaid.

Another example of a potentially deceptive claim involves representations that debt owners and third-party debt collectors may make about non-obsolete debts. Payments on debts in collection will change credit reports only if debt owners or third-party debt collectors furnish information about the payments to credit reporting agencies and the agencies add the information to credit files and credit reports. If debt owners or third-party debt collectors do not furnish payment information to credit reporting agencies, then it may well be deceptive for them to make representations about how debt payments will be reflected on a consumer's credit report.[9]

2. Effects on Credit Scores

Another potentially deceptive claim involves representations that debt owners and third-party debt collectors may make about how paying debts in collection will improve credit scores. Even assuming that debt owners and third-party collectors report payments on debts in collection to consumer reporting agencies, in light of the numerous factors that influence an individual consumer's credit score, such payments may not improve the credit score of the consumer to whom the representation is being made. Consequently, debt owners or third-party debt collectors

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[7] Collectors who make claims are responsible for both the literal language of their representations and claims that reasonable consumers take away from those representations. *See FTC Policy Statement on Deception* (Oct. 14, 1983), *published at* 103 F.T.C. 110, 174 (1984). The CFPB is informed by the FTC's standard for deception. CFPB Supervision and Examination Manual, UDAAP 5 (Oct. 2012) (online at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf).

[8] Section 605 of the FCRA, 15 U.S.C. § 1681c. We note that there are exceptions to the general rule and, as a result, information about debts that are more than seven years old may appear under some circumstances or in certain consumer reports.

[9] *See American Express Centurion Consent Order, American Express Bank, FSB Consent Order, and American Express Travel Related Services Company, Inc. Consent Order* (collectively "American Express Consent Orders"), October 1, 2012, http://www.consumerfinance.gov/pressreleases/cfpb-orders-american-express-to-pay-85-million-refund-to-consumers-harmed-by-illegal-credit-card-practices/.

may well deceive consumers if they make representations that paying debts in collection will improve a consumer's credit score.

3. Effect on Creditworthiness

A third example of a potentially deceptive claim involves representations that owners of debts and third-party debt collectors may make about how paying debts in collection will improve creditworthiness or enhance the likelihood that a consumer will subsequently receive credit from a lender. Potential lenders may use a variety of sources of information to assess the creditworthiness of prospective borrowers, including credit report or credit score information. Even where they use the same information, potential lenders may assign different weight to information in evaluating the creditworthiness of prospective borrowers. The nature and extent of the impact of a payment on a particular debt in collection to a prospective borrower's creditworthiness may depend on all of the information potential lenders consider and how they weigh that information, factors that debt owners or third-party debt collectors often will not know. Debt owners or third-party debt collectors may well deceive consumers if they make representations about the nature or extent of improved creditworthiness that result from paying debts in collection.

C. CFPB Expectations

The examples of potentially deceptive claims concerning the effect of paying debts in collection on credit reports, credit scores, and creditworthiness set forth in this bulletin are illustrative and non-exhaustive. The prevalence of these types of potentially deceptive claims is a matter of significant concern to the CFPB.

Debt owners and third-party debt collectors should take steps to ensure that any claims that they make about the effect of paying debts in collection on consumers' credit reports, credit scores, and creditworthiness are not deceptive. In the course of supervision activities or enforcement investigations, the CFPB may review communication materials, scripts, and training manuals and related documentation to assess whether owners of debts and third-party debt collectors are making these types of claims and the factual basis for them. In addition, the CFPB will assess whether additional supervisory, enforcement, or other actions may be necessary to ensure that the debt collection market functions in a fair, transparent, and competitive manner.

EXHIBIT J

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UCC: uniform commercial code

U.C.C. - ARTICLE 3 - NEGOTIABLE INSTRUMENTS
..PART 1. GENERAL PROVISIONS AND DEFINITIONS

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§ 3-104. NEGOTIABLE INSTRUMENT.

- (a) Except as provided in subsections (c) and (d), "**negotiable instrument**" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
  - (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
  - (2) is payable on demand or at a definite time; and
  - (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.
- (b) "**Instrument**" means a negotiable instrument.
- (c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.
- (d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.
- (e) An instrument is a "**note**" if it is a promise and is a "**draft**" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.
- (f) "**Check**" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."
- (g) "**Cashier's check**" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
- (h) "**Teller's check**" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.
- (i) "**Traveler's check**" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a

person whose specimen signature appears on the instrument.

- (j) "**Certificate of deposit**" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

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previous section | next section
overview
notes

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JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Luba Dace, Philip Dace

(b) County of Residence of First Listed Plaintiff Clark County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Pro se
[redacted]

DEFENDANTS

TD Bank USA, N.A.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Loren Young, Esq., Lincoln, Gustafson & Cercos LLP, 7670

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC [redacted]

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC [redacted]
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☒ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
15 U.S.C. 1692 et seq.

Brief description of cause:
Plaintiffs allege that TD Bank violated the federal Fair Debt Collection Practices Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
Nov 3, 2023

SIGNATURE OF ATTORNEY OF RECORD
/s/ Loren S. Young, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____