

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MILUN MILISAVLJEVIC, on behalf of	)	
himself and all others similarly situated,	)	
	)	
PLAINTIFF,	)	
	)	Civil Action No. 19-cv-
v.	)	
	)	
MIDLAND CREDIT MANAGEMENT,	)	
INC.; MIDLAND FUNDING, LLC; and	)	
ENCORE CAPITAL GROUP, INC.,	)	
	)	
DEFENDANTS.	)	

**CLASS ACTION AND INDIVIDUAL COMPLAINT**

Plaintiff, Milun Milisavljevic, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”), and alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA and 28 U.S.C. §1331.
2. Venue is proper in this District because parts of the acts and transactions occurred here and Defendants transact substantial business here.

**STANDING**

3. Plaintiff has suffered an injury in fact that is traceable to Defendants’ conduct and that is likely to be redressed by a favorable decision in this matter.
4. Specifically, Plaintiff has suffered a harm from receiving false, misleading, and deceptive communications from Defendants while they were attempting to collect a debt from him.

5. Plaintiff has thus suffered an injury as a result of Defendants' conduct, giving rise to standing before this Court. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1544 (2016), quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 580 (1992) (Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.); *Bellwood v. Dwivedi*, 895 F. 2d 1521, 1526-27 (7th Cir. 1990) ("Congress can create new substantive rights, such as a right to be free from misrepresentations, and if that right is invaded the holder of the right can sue without running afoul of Article III, even if he incurs no other injury[.]").

### **PARTIES**

6. Plaintiff, Milun Milisavljevic ("Plaintiff"), is a resident of the State of Illinois, from whom Defendants attempted to collect a delinquent consumer debt allegedly owed for a defaulted Citibank, N.A. consumer credit card account.

7. Plaintiff is thus a consumer as that term is defined in 15 U.S.C. § 1692a(3) of the FDCPA.

8. Defendant, Midland Credit Management, Inc. ("MCM"), is a Kansas corporation that does or transacts business in the State of Illinois. Its registered agent is Illinois Corporation Service C, located at 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

9. MCM is engaged in the business of a collection agency, using the mails and telephone to collect defaulted consumer debts originally owed to others.

10. MCM maintains and/or owns a website, [www.midlandcredit.com](http://www.midlandcredit.com).

11. MCM's website contains, in part, the following statements:

# ABOUT US

We help consumers resolve past-due debt obligations. By providing education and payment plans, we help consumers start down the path of resolving their outstanding obligations.



**50 states**

We've helped consumers across the country get back to doing what they love.



**7,000,000+**

consumers that have gained back their financial independence.



**Since 1953**

We have empowered our consumers through education and integrity.

Midland Credit Management, Inc., “About Us”, [www.midlandcredit.com](http://www.midlandcredit.com), Accessed on 22 Dec. 2019.

12. MCM is licensed as a collection agency in the State of Illinois.

13. MCM regularly collects or attempts to collect defaulted consumer debts on behalf of others, and is a “debt collector” as that term is defined in § 1692a(6) of the FDCPA

14. Defendant Midland Funding, LLC (“Midland”) is a Delaware limited liability company that does or transacts business in the State of Illinois. Its registered agent is Midland Credit Management, Inc., located at 1821 Walden Office Sq., Ste. 400, Schaumburg, Illinois 60173.

15. Midland is engaged in the business of a collection agency, using the mails and telephone to collect defaulted consumer debts originally owed to others, via placement of said defaulted consumer debts with entities such as MCM, for collection from consumers.

16. Midland holds a collection agency license from the State of Illinois.

17. Midland’s principal business purpose is the collection of defaulted consumer debts, as it derives all of its revenue from purchasing and recovering portfolios of defaulted receivables from consumers.

18. Midland is thus a “debt collector” as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

19. Encore Capital Group, Inc. (“Encore”), through its subsidiaries (collectively with Encore, the “Company”), is an international specialty finance company providing debt recovery solutions and other related services for consumers across a broad range of financial assets. The Company purchases portfolios of defaulted consumer receivables at deep discounts to face value and manages them by working with individuals as they repay their obligations and work toward

financial recovery. Defaulted receivables are consumers' unpaid financial commitments to credit originators, including banks, credit unions, consumer finance companies and commercial retailers. Defaulted receivables may also include receivables subject to bankruptcy proceedings. The Company also provides debt servicing and other portfolio management services to credit originators for non-performing loans. Encore Capital Group, Inc., QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the quarterly period ended June 30, 2019, <https://encorecapital.gcs-web.com/static-files/76272cc9-10de-4101-88dc-35ab0825ac9e>, Accessed on 22 Dec. 2019.

20. Encore maintains and/or owns a website, [www.encorecapital.com](http://www.encorecapital.com).

21. Through Midland Credit Management, Inc. and its domestic affiliates (collectively, "MCM"), the Company is a market leader in portfolio purchasing and recovery in the United States. Through Cabot Credit Management Limited ("CCM") and its subsidiaries and European affiliates (collectively, "Cabot") the Company is one of the largest credit management services providers in Europe and a market leader in the United Kingdom and Ireland. These are the Company's primary operations. Encore Capital Group, Inc., QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the quarterly period ended June 30, 2019, <https://encorecapital.gcs-web.com/static-files/76272cc9-10de-4101-88dc-35ab0825ac9e>, Accessed on 22 Dec. 2019.

22. Encore's principal purpose is the collection of defaulted consumer debt as it derives a majority of its revenue from the collection of defaulted consumer receivables and it is thus a "debt collector" as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

**FACTUAL ALLEGATIONS**

23. According to Defendants, Plaintiff incurred an alleged debt for the purchase of goods and services, originally for a Citibank, N.A. consumer credit card account (“alleged debt”).

24. The alleged debt arose from funds used for personal purposes, such as for groceries, and is thus a “debt” as that term is defined at § 1692a(5) of the FDCPA.

25. Due to his financial circumstances, Plaintiff could not pay the alleged debt, and the alleged debt went into default.

26. Midland alleged to have purchased the alleged debt after default.

27. Midland filed a lawsuit against Plaintiff on March 25, 2019 in the Circuit Court of Cook County, Illinois (“State Court Complaint”), styled *Midland Funding LLC v. Milun Milisavljevic*, Case No. 19-M1-104566. (Exhibit A, State Court Complaint).

28. Midland served the State Court Complaint, along with a summons (“Summons”) on Plaintiff at his home on or about April 7, 2019, and Plaintiff read each document.

29. The State Court Complaint conveyed information regarding the alleged debt to Plaintiff, including the identity of the original creditor and a balance on the alleged debt.

30. The State Court Complaint was thus a “communication” as that term is defined at 15 U.S.C. § 1692(a) of the FDCPA.

31. In the State Court Complaint, Midland makes the following claim:

Amount Claimed: \$5,804.93  
*plus Costs*

(Ex. A, State Court Complaint) (emphasis added)

32. The Summons, however, does not seek that costs be paid.

33. A “Credit Card or Debt Buyer Collection Action Affidavit” (“Affidavit”) is attached to the State Complaint. (Ex. A, State Court Complaint).

34. The Affidavit attached to the State Complaint references the alleged debt as a “Consumer Debt or Account.”

35. The Affidavit is executed by Theresa Vann.

36. According to the Affidavit, Ms. Vann is an authorized employee of Midland.

37. At all times relevant to this Complaint, Midland authorized, directed, approved of and ratified Ms. Vann's actions taken toward Plaintiff during the course of its attempts to collect the alleged debt therefrom.

38. The Affidavit is a form affidavit provided pursuant to Illinois Supreme Court Rule 280.2, though it was drafted by one or more of the Defendants.

39. Paragraph 3 of the Affidavit requires that the debt collector in a state court action indicate whether or not it is collecting additional amounts after the charge-off date.

40. Midland, through MCM, indicated it is not seeking additional amounts after the charge-off date, as follows:

3.ADDITIONAL ACCOUNT INFORMATION AFTER CHARGE-OFF  
Plaintiff is seeking additional amounts after the charge-off date:  
 No

(Ex. A, State Court Complaint) (emphasis in the original).

41. Court costs *would* be considered “additional amounts” being sought by MCM and Midland, by any reasonable reading.

42. Midland thus communicated to Plaintiff, via the Affidavit, that it would not be seeking costs from him that were incurred after charge-off, in connection with the collection of the alleged debt from Plaintiff.

43. Midland therefore expressly waived any statutory or contractual right to court costs by swearing under oath that is was not seeking additional amounts after charge-off.

44. A representative for Midland swore under oath, in the Affidavit attached to the State Court Complaint, that neither MCM nor Midland was seeking additional amounts from him incurred after charge-off.

45. Despite this fact, the State Court Complaint seeks that the costs of the State Court Complaint be paid by Plaintiff—contrary to the communication contained in the Affidavit.

46. The State Court Complaint specifically seeks that “The Costs of Suit be awarded Plaintiff”. (Exhibit A, State Court Complaint)

47. One of the statements must be false, as Defendants cannot both be seeking, and not seeking, additional amounts, here costs of suit, after charge-off of an alleged debt.

48. 15 U.S.C. § 1692e of the FDCPA provides as follows:

**False or misleading representations**

**A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:**

**... (2) The false representation off—**

**(A) The character, amount, or legal status of any debt**

**... (5) The threat to take any action that cannot legally be taken. . .**

**... (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .**

49. Defendants misrepresented the amount and legal status of an alleged debt, in violation of 15 U.S.C. § 1692e(2)(a), when they sued Plaintiff for court costs which Midland had expressly waived.

50. Defendants used false, misleading, and deceptive means to attempt to collect a debt, in violation of 15 U.S.C. §§ 1692e and §§1692e(10), when they sought court costs in a state court complaint, while also swearing under oath that no additional amounts after charge-off, *i.e.* court costs, were being sought.

51. Plaintiff was confused by the conflicting statements, and he did not know whether Defendants had waived court costs, or whether they were in fact seeking to collect the same from him.

52. Plaintiff did not know how much he was being asked to pay as the result of Defendants' conflicting communications to him.

53. Plaintiff did not understand, and the unsophisticated consumer would not understand, whether Midland was seeking additional amounts after charge-off, as indicated in its State Court Complaint, or not seeking additional amounts after charge-off, as indicated in its Affidavit and Summons.

54. An unsophisticated consumer could pay the alleged debt amount listed on a summons and collection complaint, in reliance on the representation that no additional amounts were being sought and that said payment would satisfy the entire obligation, only to later find that further costs were being sought.

55. In fact, Midland and MCM have a policy of seeking court costs in collection actions they file, when seeking entry of judgment on the same.

56. Midland intended to collect court costs from Plaintiff incurred in connection with the State Court Complaint.

57. MCM intended to collect court costs from Plaintiff incurred in connection with the State Court Complaint.

58. Midland and MCM could have easily avoided violating the FDCPA by selecting “Yes” when indicating whether or not Midland would be seeking additional amounts after charge-off, instead of falsely representing, as they did, that Midland was not seeking additional amounts after charge-off.

59. 15 U.S.C. § 1692f of the FDCPA provides as follows:

**Unfair practices**

**A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:...**

60. Defendants engaged in an unfair practice, in violation of 15 U.S.C. § 1692f when they caused Plaintiff to be served with a state court complaint and summons that indicated both that Midland was, and was not, seeking additional amounts after the charge-off date of an alleged debt.

61. Violations of the FDCPA which would influence a consumer’s decision to pay a debt in response to a dunning letter, are material. *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 366 (7th Cir. 2018) (citing *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623, 628 (7th Cir. 2009)).

62. Here, Defendants’ conflicting information given to a consumer regarding its intention to seek additional amounts after the charge-off date of an alleged debt would prevent a consumer from knowing how much is owed on an alleged debt or what additional exposure he faces were he to proceed with a lawsuit.

63. A default judgment order was thereafter entered against Plaintiff on the State Court Complaint. (Exhibit C, Order).

64. The default judgment order included an amount for costs. (Exhibit C, Order).

65. The amount of judgment entered against Plaintiff would have been substantially less had Defendants not misrepresented the amounts they were seeking to collect.

66. Plaintiff was damaged by Defendants' misrepresentations relating to the amounts that they were seeking to collect, as Plaintiff now owes more money than he was told was being sought by Midland.

67. The FDCPA requires precise calculation of the exact amount of an alleged debt, "and for good reason: the debt collector legally may collect (or attempt to collect) only the amount actually owed by the debtor..." See *Bernstein v. Howe*, No. IP o2-192-C-K/H, 2003 WL 1702254, at \*4 (S.D. Ind. Mar. 31, 2003) (finding an FDCPA violation where a debt collector failed to identify the amount of interest owed on an alleged debt).

68. MCM and Midland filed a Motion for Default Judgment ("Motion") after having served the State Court Complaint. (Exhibit B, Motion).

69. The Motion was served upon Plaintiff.

70. Attached to the Motion seeking default was an "Order" ("False Order"), which stated as follows:

IT IS HEREBY ORDERED that the Defendant(s), MILUN MILISAVLJEVIC is in default for failing to appear, answer or otherwise plead;

IT IS FURTHER ORDERED that Judgment is entered against Defendant(s), MILUN MILISAVLJEVIC, in the amount of \$5,804.93, and costs.

IT IS FURTHER ORDERED that Plaintiff will give notice instanter of the entry of this Default Judgment to Defendant(s) who has appeared, as well as to the parties against whom default has been entered.

(Exhibit B, Judgment Order attached to Motion, emphasis in the original)

71. Defendants did not inform Plaintiff, at the time MCM mailed or served the Motion, that default judgment had not yet been entered against Plaintiff.

72. Defendants' representation that an order of default had already been entered against Plaintiff was false, since the Circuit Court of Cook County had not entered any judgment against Plaintiff.

73. Defendants' representation in the False Order that a judgment in the amount of \$5,804.93 plus court costs had been entered against Plaintiff is false, since the Circuit Court of Cook County had not by that time entered any judgment against Plaintiff.

74. Plaintiff understood that he had already lost his case, and felt hopeless, afraid and upset that he had already lost his case.

75. Plaintiff discussed his options with an attorney to advise him on how to proceed with respect to the False Order and State Court Complaint.

76. By mailing the False Order to Plaintiff, Defendants' intention was to make Plaintiff believe his case was over and that he had lost.

77. Plaintiff in fact believed that his case had been lost.

78. The order used by MCM and Midland to memorialize the entry of judgment, that was presented to the State Court, was not the False Order mailed to Plaintiff.

79. The fact that MCM and Midland presented a draft order *different* than the False Order mailed to Plaintiff, to the State Court to effect the entry of the judgment, evidences that the sole purpose of the False Order was to fool, deceive and/or confuse Plaintiff as the whether judgment had been entered at the time the Motion was served.

80. 15 U.S.C. § 1692e of the FDCPA provides as follows:

**False or misleading representations**

**A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:**

... (2) The false representation of—  
(A) the character, amount, or legal status of any debt. . .

... (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .

81. Defendants made false representations of the character and legal status of the alleged debt when they represented that a default judgment had been entered against Plaintiff, when no such judgment existed, in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(10).

82. 15 U.S.C. § 1692f of the FDCPA provides as follows:

**Unfair practices**

**A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.**

83. Defendants used unconscionable means to collect a debt, in violation of 15 U.S.C. § 1692f, when they mailed a default judgment order directly to Plaintiff that indicated that a judgment had already been entered, which representation was false.

84. Defendants' collection communications are to be interpreted under the "unsophisticated consumer" standard. *See Gammon v. GC Services, Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994).

85. Midland bears the burden of monitoring the activities of those it enlists to collect debts on its behalf, including MCM. *Janetos v. Fulton Friedman & Gullace, LLP*, No. 15-1859, 2016 WL 1382174, at \*7 (7th Cir. Apr. 7, 2016).

86. Encore bears the burden of monitoring the activities of those it enlists to collect debts on its behalf, including Midland and MCM. *Janetos v. Fulton Friedman & Gullace, LLP*, No. 15-1859, 2016 WL 1382174, at \*7 (7th Cir. Apr. 7, 2016).

87. MCM's actions in connection with the collection of the alleged debts were authorized by Midland and Encore.

88. The FDCPA applies to conduct in state-court litigation, including to representations contained in state-court pleadings. *Marquez v. Weinstein, Pinson, & Riley, P.S.*, 836 F.3d 808, 812 (7th Cir. 2016).

**FDCPA—CLASS ALLEGATIONS—COUNT I**

89. Plaintiff re-alleges the paragraphs above as if set forth fully in this count.

90. Plaintiff, Milun Milisavljevic, brings this action individually and as a class on behalf of (1) all persons similarly situated in the State of Illinois (2) from whom Midland and MCM attempted to collect a debt that originated with Citibank, N.A. (3) by serving a complaint and summons filed in the Circuit Court of Cook County (4) which includes an Illinois Supreme Court Rule 280.2 affidavit (5) where the box labeled “[P]laintiff is seeking additional amounts after the charge-off date” is checked “[No]” (6) but where Midland nonetheless requests “court costs” in the complaint and/or summons (7) during the period of time that begins one year prior to the filing of this Complaint, and ends on the date this complaint is filed.

91. The Affidavit contained within the State Court Complaint is a form affidavit that Defendants have caused to be included in at least 35 lawsuits filed on behalf of Midland against consumers in Illinois, within the last year.

92. The form affidavit filed by Midland in collection cases, pursuant to Illinois Supreme Court Rule 280.2, applies only to consumer debts.

93. As the “Credit Card or Debt Buyer Collection Action Affidavit” contained within the State Complaint is a form affidavit, the Class likely consists of more than 35 persons from whom Defendants attempted to collect a debt.

94. Plaintiff’s claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over

any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

95. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class and would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests.

96. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Class, because Defendants' conduct was perpetrated on all members of the Class and will be established by common proof.

97. Plaintiff has retained counsel experienced in class action litigation, including class actions brought under the FDCPA.

98. Defendants misrepresented the amount and legal status of an alleged debt, in violation of 15 U.S.C. § 1692e and § 1692e(2)(a) when they sued Plaintiff for court costs which Midland had expressly waived.

99. Defendants misrepresented the amount and legal status of an alleged debt, in violation of 15 U.S.C. § 1692e and § 1692e(2)(a) when they communicated both that court costs were, and that they were not, owed and/or being sought.

100. Defendants used false, misleading, and deceptive means to attempt to collect a debt, in violation of 15 U.S.C. §§ 1692e and §§1692e(10), when they sought court costs in a state

court complaint while swearing under oath that no additional amounts after charge-off were being sought.

101. Defendants improperly threatened to pursue court costs from Plaintiff, in violation of 15 U.S.C. § 1692e(5), when it sought additional amounts after the charge-off date of a debt that it had indicated under oath it would not seek.

102. Defendants engaged in an unfair practice, in violation of 15 U.S.C. § 1692f when Defendants served a state court complaint on Plaintiff that indicated both that Midland was, and was not, seeking additional amounts after the charge-off date of an alleged debt.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment in Plaintiff's and the class members' favor and against Defendants as follows:

- A. Find that Defendants violated the FDCPA;
- B. Certify the action as a class action;
- C. Award statutory, and actual damages if any, for the Plaintiff and class pursuant to 15 U.S.C. § 1692k(a)(2);
- D. Award costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3);
- E. Award such other or further relief as the Court deems proper.

### **FDCPA—INDIVIDUAL ALLEGATIONS—COUNT II**

103. Plaintiff re-alleges the paragraphs above as if set forth fully in this count.

104. Defendants made false representations of the character and legal status of the alleged debt when they represented that a default judgment had been entered against Plaintiff by

mailing the False Order to Plaintiff, when no such judgment yet existed, in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(10).

105. Defendants used unconscionable means to collect a debt, in violation of 15 U.S.C. § 1692f, when they mailed the False Order directly to Plaintiff.

106. Plaintiff suffered emotional distress as a result of Defendants' actions, as he believed that he had lost the collection case as a result of having read the False Order, though he had not yet lost the collection case at the time the False Order had been mailed.

107. Plaintiff had difficulty sleeping because of Defendants' actions with respect to the False Order, as he believed that his ability to defend the State Court Complaint was terminated as a result of having been mailed, and having read, the False Order.

108. The False Order spurred Plaintiff into inaction as to defending against the State Court Complaint.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment in Plaintiff's favor and against Defendants as follows:

- A. Find that Defendants violated the FDCPA;
- B. Award statutory and actual damages for the Plaintiff pursuant to 15 U.S.C. § 1692k;
- C. Award costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3);
- D. Award such other or further relief as the Court deems proper.

### **JURY DEMAND**

Plaintiff demands trial by jury.

By: s/Mario Kris Kasalo  
One of Plaintiff's Attorneys

Mario Kris Kasalo  
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**NOTICE OF LIEN AND ASSIGNMENT**

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

By: s/ Mario Kris Kasalo  
Mario Kris Kasalo