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**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

HEIDI L. GATHEN, on behalf of herself and others similarly situated,	:	**Case No.**
Plaintiff,	:	**JURY TRIAL DEMANDED**
v.	:	
CIANFRONE, NIKOLOFF, GRANT & GREENBERG, P.A.,	:	
Defendant.	:	

COMPLAINT—CLASS REPRESENTATION

Nature of the Action

1. This is a class action brought under the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*., and the Florida Consumer Collection Practices Act ("FCCPA"), Fla Stat. § 559.55 *et seq*., for the benefit of Florida consumers who have been the subject of improper debt collection efforts by Cianfrone, Nikoloff, Grant & Greenberg, P.A. ("Defendant").

2. Defendant's improper debt collection efforts are two-fold: it collected illegitimate debts on behalf of its client—Countryside North Community Association, Inc. ("Association")—and Defendant further used misleading and improper means in collecting those illegitimate debts for the Association.

3. By way of background, Congress enacted the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors," 15 U.S.C. § 1692(e), and in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by

many debt collectors," which Congress found to have contributed "to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692(a).

4. As the Consumer Financial Protection Bureau ("CFPB")—the federal agency tasked with enforcing the FDCPA—once explained, "[h]armful debt collection practices remain a significant concern today. In fact, the CFPB receives more consumer complaints about debt collection practices than about any other issue."[1]

5. Today, approximately half of all debt collection complaints received by the CFPB involve debt collectors' attempts to collect debts that consumers do not owe.[2]

6. As applied here, the FDCPA prohibits false or misleading representations, and unfair or unconscionable means, in collecting or attempting to collect a debt—including falsely representing the amount of a debt. 15 U.S.C. §§ 1692e, 1692f.

7. Florida's state-law analog—the FCCPA—offers many of the same protections and more. *See* Fla. Stat. § 559.552 ("This part is in addition to the requirements and regulations of the federal act. In the event of any inconsistency between any provision of this part and any provision of the federal act, the provision which is more protective of the consumer or debtor shall prevail.").

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[1] *See* Brief for the CFPB as Amicus Curiae, Dkt. No. 14, p. 10, *Hernandez v. Williams, Zinman, & Parham, P.C.*, No. 14[redacted] (9th Cir. Aug. 20, 2014), http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf (last visited January 19, 2022).

[2] *See* Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act Annual Report 2021*, at 19 (2021), available at https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2021/ (last visited January 19, 2022).

8. Among the FCCPA's prohibitions: claiming or attempting to enforce a debt that is known to be illegitimate. *Id*. § 559.72(9).

9. Here, Defendant attempted to collect, and did collect in part, known illegitimate debts in the form of improper association assessments and corresponding inflated interest charges.

10. Regarding Defendant's collection methods, the FDCPA requires debt collectors to send to consumers, at the outset of the collection relationship, "validation notices" containing certain information about the consumers' alleged debts and their rights with respect to those debts. 15 U.S.C. § 1692g(a).

11. As noted by the CFPB and the Federal Trade Commission, "this validation requirement was a 'significant feature' of the law that aimed to 'eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid,'" *see Hernandez*, No. 14-15672, at 5 (quoting S. Rep. No. 95-382, at 4 (1977)), and to guarantee that consumers would receive adequate notice of their legal rights. *See* S. Rep. No. 382, 95th Cong., 1st Sess. 4, 8, *reprinted in* 1977 U.S. Code Cong. & Admin. News 1695, 1699, 1702.

12. Relevant here, the validation notice must advise the consumer of her right to dispute the debt or any portion thereof, which may be done orally or in writing, and which *need not* include any supporting documentation to justify the dispute.

13. A debt collector's initial communication does not comply with section 1692g "merely by inclusion of the required debt validation notice; the notice Congress required must be conveyed *effectively* to the debtor." *Swanson v. Southern Oregon Credit Serv., Inc.,* 869 F.2d 1222, 1225 (9th Cir. 1988) (emphasis added).

14. Defendant disseminated initial debt collection communications to consumers containing language that overshadows, or is inconsistent with, required validation notices because of its instructions for consumers to submit supporting documentation with their disputes, where the law requires no such documentation.

Parties

15. Heidi L. Gathen ("Plaintiff") is a natural person who at all relevant times resided in Pinellas County, Florida.

16. Plaintiff is obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, a creditor other than Defendant.

17. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, homeowners' assessments due to the Association (the "Debt").

18. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

19. Defendant is a law firm with its principal office in Pinellas County, Florida.

20. Defendant "proudly offers decades of Community Association Law experience to [its] clients," which includes "a full range of services including collections and general counsel representation."[3]

21. Regarding "Collections and Foreclosures," Defendant boasts of "decades of experience developing and enforcing effective collection policies to keep our clients' finances in

[3] http://www.attorneyjoe.com/ (last visited January 19, 2022).

the black. We efficiently manage the lien and foreclosure process for our clients and provide free up-to-date collection reports on a monthly basis."[4]

22. Defendant is an entity that at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

23. Upon information and belief, at the time Defendant attempted to collect the Debt from Plaintiff, the Debt was in default, or Defendant treated the Debt as if it were in default from the time that Defendant acquired it for collection.

24. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, or to regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

25. Defendant represented to Plaintiff that it is a debt collector, as shown below.

26. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6), and the FCCPA, Fla. Stat. § 559.55(7).

Jurisdiction and Venue

27. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and Fla. Stat. § 559.77.

28. Venue is proper before this Court under Fla. Stat. §§ 47.011 and 559.77(1) as Plaintiff's cause of action accrued in this county and as Defendant has its principal place of business in this county.

Factual Allegations

29. On or about August 13, 2021, Defendant sent Plaintiff a written debt collection communication.

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4 *Id.*

30. A redacted copy of the August 13 letter to Plaintiff is attached as Exhibit A.

31. Defendant's August 13 letter begins: "Please be advised that this office represents Countryside North Community Association, Inc." Ex. A at 1.

32. Next, Defendant warns:

> Enclosed please find a copy of a Claim of Lien which is to be filed against your property for failure to pay your maintenance assessments to Countryside North Community Association, Inc. The Association intends to foreclose the lien and collect the unpaid amounts after forty-five (45) days from this letter being provided to you.

Id.

33. Defendant then demands payment of the following sums:

Annual Maintenance Assessment Fees in the amount of $125.00 due and owing for 1/19, 1/20 and 1/21	$ 375.00
Interest due 1/01/19 through 8/12/21 *	60.58
Attorney's Fees, including Title and Bankruptcy Search	350.00
Prior Attorney's Fee/Costs	257.51
Recording Fee (Claim of Lien)	18.50
Recording Fee (Release of Lien, if Paid in Full)	10.00
Certified Mail Charges	6.37
Association Collection Costs	106.00
TOTAL UNPAID AMOUNT THROUGH 8/12/21	**$1,183.96**

* Interest accrues at the rate of ten percent (10%) per annum.

Id.

34. On the second page of the letter, Defendant provides the following notice:

> **NOTICE UNDER 15 U.S.C. SECTION 1601 FAIR DEBT COLLECTION PRACTICES ACT**
>
> The amount of the debt is stated above. The amount of the debt contained in this letter is believed to be due and owing by the debtor(s) who in this instance is/are the present owner(s) of the said real property. The Association is the creditor to whom the debt is owed. The debt described herein will be assumed to be valid unless, within thirty (30) days after receipt of this correspondence, you dispute the validity of the amounts due or any portion thereof. If you notify this office in writing within the thirty (30) day period that the amounts due or any portion thereof is disputed, this office will obtain verification of the amount due, and verification will be mailed to you by this office.

Id. at 2.

35. However, further down the second page, Defendant states: "If you dispute the amount due, we would appreciate you submitting any documentation or evidence that you have in support of your contention that the amounts due are not correct." *Id.*

36. Defendant also states: "Please only respond in writing by mail or facsimile." *Id.*

37. After the signature of attorney Daniel J. Greenberg, Defendant states at the bottom of the second page, in bold, capitalized letters: "**THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**" *Id.*

38. Fearing the lien and threat of foreclosure, Plaintiff paid Defendant a total of $1,128.38 in September 2021.

39. A "Master Declaration of Covenants, Conditions and Restrictions for Countryside North" (the "Declaration") was originally recorded at Book 5173 at Page 2158 of the Official Records of Pinellas County, Florida on April 8, 1981, and subsequently revitalized and recorded at Book 20089 at Page 282 *et seq.* on June 13, 2018.

40. Attached as Exhibit B are true and correct relevant portions of the Declaration.

41. Defendant assisted the Association in revitalizing the Declaration in 2018, as indicated on the Notice of Revitalization of the Master Declaration of Covenants, Conditions and Restrictions for Countryside North, which states that such notice was "prepared by" Defendant. *See* Ex. B at 1.

42. Further, the Florida Department of Economic Opportunity ("Department") notified the Association of the Department's approval of the revitalized Declaration by sending a

confirmation letter, dated May 17, 2018, addressed to Stephen C. Nikoloff at Defendant's address in Dunedin, Florida. *See id.* at 5-6.

43. Dating back to 2018—and potentially earlier—Defendant thus served the Association in an advisory capacity beyond the collection efforts apparent from its August 13, 2021 collection letter to Plaintiff.

44. Regarding attorney Nikoloff (to whom the state of Florida addressed its approval letter for the Association), Defendant's website boasts: "Through the litigation and enforcement of many communities' covenants, Mr. Nikoloff is very familiar with how courts interpret documents and has used that knowledge to help communities draft amendments and has also drafted original governing documents, amendments and other covenants and restrictions."[5]

45. And regarding attorney Greenberg (the signatory to Defendant's August 13 letter to Plaintiff), Defendant advertises his broad skillset counseling community associations:

> Mr. Greenberg also represents communities on collection matters and promotes an active approach by the Association's Board of Directors in developing and consistently applying collection policies and practices aimed at keeping Association finances in the black. Mr. Greenberg's proactive approach extends to his day-to-day counseling of clients, including the drafting and enforcement of policies regarding violations, fair housing compliance, records inspection and retention and Board operations.[6]

46. Upon information and belief, Defendant provides legal advice to the Association regarding all aspects of Florida community association law, including assessments charged to homeowners.

47. The Declaration allows the Association to levy annual assessments to, *inter alia*, fund the care of the property maintained by the Association.

48. From 2014 through 2016, the Association levied annual assessments of $50.

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5 http://www.attorneyjoe.com/attorneys.html (last visited January 19, 2022).

6 *Id.*

49. In 2017, the Association increased its annual assessments to $100.

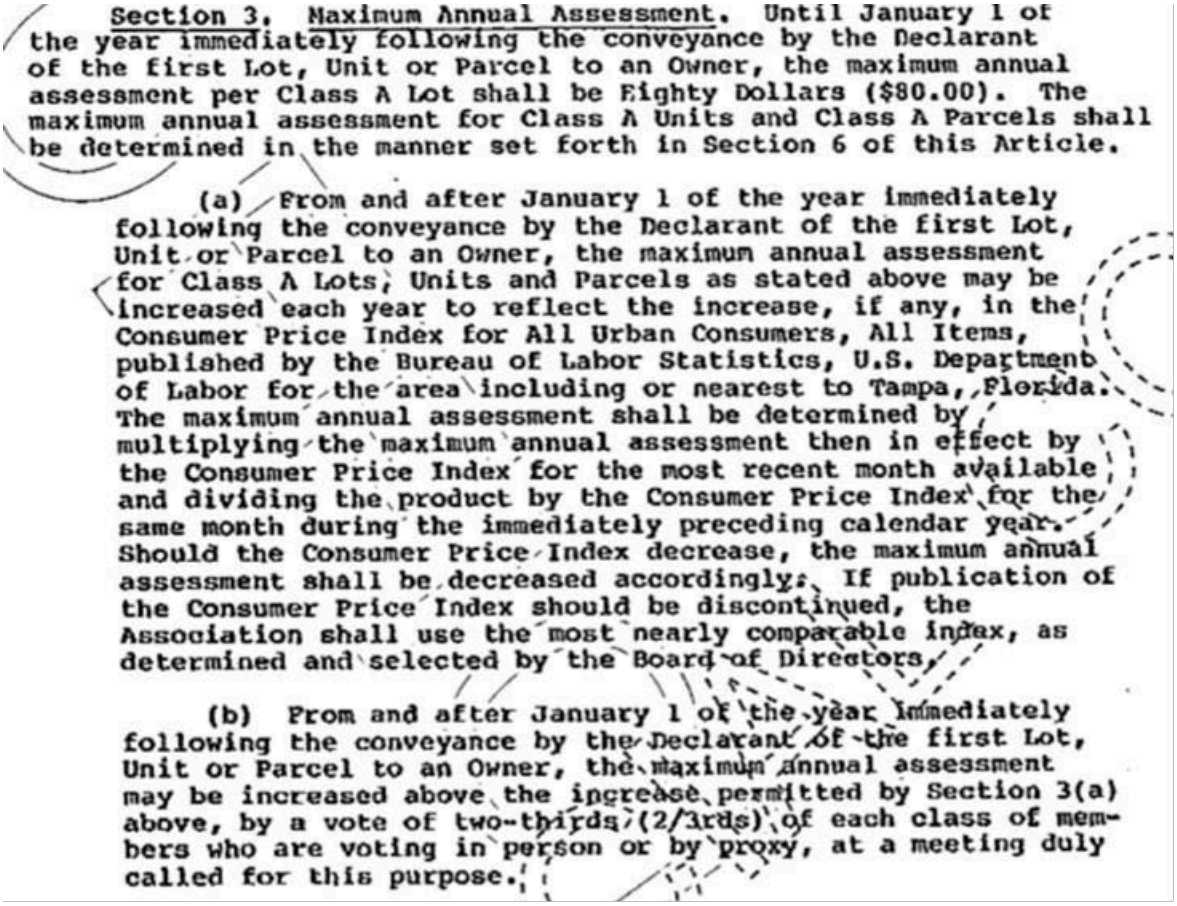
50. In 2018, the Association again increased its annual assessments to $125.

51. From 2019 through 2021, the Association's annual assessments remained at $125, as confirmed by Defendant's August 13 collection letter.

52. As more fully set forth below, the increases in the Association's annual assessments from 2016 through and including 2021 were void and unenforceable.

53. Pursuant to Article VI, Section 3 of the Declaration, the Association may increase annual assessments year-over-year (a) in line with the Tampa-area Consumer Price Index, or (b) by a vote of at least two-thirds of each class of members voting at a meeting duly called for the purpose of raising assessments.

54. The Declaration at Article VI, Section 3 states as follows:



Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance by the Declarant of the first Lot, Unit or Parcel to an Owner, the maximum annual assessment per Class A Lot shall be Eighty Dollars ($80.00). The maximum annual assessment for Class A Units and Class A Parcels shall be determined in the manner set forth in Section 6 of this Article.

(a) From and after January 1 of the year immediately following the conveyance by the Declarant of the first Lot, Unit or Parcel to an Owner, the maximum annual assessment for Class A Lots, Units and Parcels as stated above may be increased each year to reflect the increase, if any, in the Consumer Price Index for All Urban Consumers, All Items, published by the Bureau of Labor Statistics, U.S. Department of Labor for the area including or nearest to Tampa, Florida. The maximum annual assessment shall be determined by multiplying the maximum annual assessment then in effect by the Consumer Price Index for the most recent month available and dividing the product by the Consumer Price Index for the same month during the immediately preceding calendar year. Should the Consumer Price Index decrease, the maximum annual assessment shall be decreased accordingly. If publication of the Consumer Price Index should be discontinued, the Association shall use the most nearly comparable index, as determined and selected by the Board of Directors.

(b) From and after January 1 of the year immediately following the conveyance by the Declarant of the first Lot, Unit or Parcel to an Owner, the maximum annual assessment may be increased above the increase permitted by Section 3(a) above, by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

Ex. B at 4.

55. The assessment increase in 2017 from $50 to $100 represented a 100% year-over-year increase.

56. The assessment increase in 2018 from $100 to $125 represented a 25% year-over-year increase.

57. At no point in 2016 did the relevant Consumer Price Index for All Urban Consumers for the Tampa area, or for its surrounding region, increase by 25% or more.

58. At no point in 2017 did the relevant Consumer Price Index for All Urban Consumers for the Tampa area, or for its surrounding region, increase by 25% or more.

59. Upon information and belief, at no time between 2016 and 2018 did the Association convene a meeting duly called for the purpose of voting to raise assessments.

60. Upon information and belief, at no time between 2016 and 2018 did the Association hold a meeting of the membership at which a quorum was present to approve, by vote of at least two-thirds of each class of members, an increase in annual assessments exceeding the relevant increase in the Tampa-area Consumer Price Index for All Urban Consumers, as expressly required by the Declaration at Article VI, Section 3.

Class Representation Allegations

61. Plaintiff brings this action as a class action pursuant to Rules 1.220(a) and 1.220(b)(3) of the Florida Rules of Civil Procedure, on behalf of the following three classes:

> Collection Class: All persons (a) with a Florida address, (b) to whom Cianfrone, Nikoloff, Grant & Greenberg, P.A. mailed a debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) in the one year preceding the date of this complaint, (e) that attempted to collect (i) assessments owed to Countryside North Community Association, Inc. in the amount of $125 for 2019, 2020, and/or 2021, and/or (ii) interest on such assessments.

> State Law Class: All persons (a) with a Florida address, (b) to whom Cianfrone, Nikoloff, Grant & Greenberg, P.A. mailed a debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) in the two years preceding the date of this complaint, (e) that attempted to collect (i) assessments owed to Countryside North Community Association, Inc. in the amount of $125 for 2019, 2020, and/or 2021, and/or (ii) interest on such assessments.
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> Overshadow Class: All persons (a) with a Florida address, (b) to whom Cianfrone, Nikoloff, Grant & Greenberg, P.A. mailed an initial debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) in the one year preceding the date of this complaint, (e) that stated: (1) "If you dispute the amount due, we would appreciate you submitting any documentation or evidence that you have in support of your contention that the amounts due are not correct," or (2) "Please only respond in writing by mail or facsimile."

62. Excluded from the classes are Defendant, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had controlling interests.

63. The classes satisfy Rule 1.220(a)(1) because, upon information and belief, they are so numerous that joinder of all members is impracticable.

64. The exact number of class members is unknown to Plaintiff at this time and can only be determined through appropriate discovery.

65. The classes are ascertainable because they are defined by reference to objective criteria.

66. In addition, upon information and belief, the names and addresses of all members of the proposed classes can be identified through business records maintained by Defendant.

67. The classes satisfy Rules 1.220(a)(2) and (3) because Plaintiff's claims are typical of the claims of the members of the classes.

68. Plaintiff's claims and those of the members of the classes originate from the same standardized debt collection letters utilized by Defendant on behalf of the Association, and

Plaintiff possesses the same interests and has suffered the same injuries as each member of the classes.

69. Plaintiff satisfies 1.220(a)(4) because she will fairly and adequately protect the interests of the members of the classes, and she has retained counsel experienced and competent in class action litigation.

70. Plaintiff has no interests that are contrary to or in conflict with the members of the classes that she seeks to represent.

71. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since, upon information and belief, joinder of all members is impracticable.

72. Furthermore, as the damages suffered by individual members of the classes may be relatively small, the expense and burden of individual litigation could make it impracticable for the members of the classes to individually redress the wrongs done to them.

73. There will be no unusual difficulty in the management of this action as a class action.

74. Issues of law and fact common to the members of the classes predominate over any questions that may affect only individual members, in that Defendant has acted on grounds generally applicable to the classes.

75. Among the issues of law and fact common to the classes:

a. Defendant's violations of the FDCPA as alleged herein;

b. whether Defendant is a debt collector as defined by the FDCPA;

c. whether the Association's assessments for 2019, 2020, and 2021 are void and unenforceable per the terms of the Declaration;

d. the availability of statutory penalties and actual damages; and

e. the availability of attorneys' fees and costs.

Count I: Violation of the FDCPA, 15 U.S.C. § 1692e(2)(A)
On behalf of the Collection Class

76. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 75 above.

77. The FDCPA at 15 U.S.C. § 1692e(2)(A) provides:

> 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;

78. Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character and amount of the Debt in its August 13, 2021 communication to Plaintiff.

79. Specifically, Defendant attempted to collect alleged past due assessments owed to the Association in the amount of $125 dated January 2019, $125 dated January 2020, and $125 dated January 2021, plus related interest charges of $60.58. *See* Ex. A at 1.

80. However, neither the Association nor Defendant had any basis to collect assessment of $125 per year for each of 2019, 2020, or 2021.

81. This is because the Association's ability to increase assessments from one year to the next is limited by the Declaration, which states that annual assessments may be increased only in line with the Tampa-area Consumer Price Index or as otherwise approved by a vote of at least two-thirds of each class of members at a meeting duly called for the purpose of raising assessments.

82. When the Association raised assessments in 2017 from $50 to $100, it had no authority to do so per the Declaration, as the percentage increase exceeded that allowed by the Declaration because it exceeded the relevant local Consumer Price Index movements over the prior year.

83. Nor did the Association obtain a vote of at least two-thirds of each class of members to raise assessments to $100 at a duly called meeting for that purpose at any time in 2016 or 2017.

84. When the Association again raised assessments in 2018 from $100 to $125, it had no authority to do so per the Declaration, as the percentage increase exceeded that allowed by the Declaration because it exceeded the relevant local Consumer Price Index movements over the prior year.

85. Nor did the Association obtain a vote of at least two-thirds of each class of members to raise assessments to $125 at a duly called meeting for that purpose at any time in 2017 or 2018.

86. Correspondingly, Defendant attempted to collect improperly levied assessments for 2019, 2020, and 2021 that exceeded the limit allowed under the Declaration.

87. And, in response to Defendant's August 13 demand letter, Plaintiff paid Defendant $1,128.38 in September 2021.

88. In seeking to collect improperly levied assessments of $375 in total, plus associated interest charges of $60.58, Defendant falsely represented the character and amount of the Debt, in violation of 15 U.S.C. § 1692e(2)(A).

89. Plaintiff suffered actual damages in the form of her making a payment in September 2021 of $1,128.38, which amount necessarily included improperly levied annual assessments to which neither Defendant nor the Association was entitled.

90. Thus, Defendant's conduct in falsely representing the character and amount of the Debt induced Plaintiff to pay money that she did not owe.

Count II: Violation of the FDCPA, 15 U.S.C. § 1692f(1)
On behalf of the Collection Class

91. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 75 above.

92. The FDCPA at 15 U.S.C. § 1692f(1) provides:

> 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:
>
> *****
>
> (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

93. Defendant violated 15 U.S.C. § 1692f(1) by using unfair and unconscionable means in its August 13, 2021 collection communication to collect Plaintiff's Debt.

94. Specifically, Defendant attempted to collect alleged past due Association assessments in the amount of $125 dated January 2019, $125 dated January 2020, and $125 dated January 2021, plus related interest charges of $60.58. *See* Ex. A at 1.

95. However, neither the Association nor Defendant had any basis to collect $125 per year in assessments for 2019, 2020, or 2021.

96. This is because the Association's ability to increase assessments from one year to the next is limited by the Declaration, which states that annual assessments may be increased

only in line with the Tampa-area Consumer Price Index or as otherwise approved by a vote of at least two-thirds of each class of members at a meeting duly called for the purpose of raising assessments.

97. When the Association raised assessments in 2017 from $50 to $100, it had no authority to do so per the Declaration, as the percentage increase exceeded that allowed by the Declaration because it exceeded the relevant local Consumer Price Index movements over the prior year.

98. Nor did the Association obtain a vote of at least two-thirds of each class of members to raise assessments to $100 at a duly called meeting for that purpose at any time in 2016 or 2017.

99. When the Association again raised assessments in 2018 from $100 to $125, it had no authority to do so per the Declaration, as the percentage increase exceeded that allowed by the Declaration because it exceeded the relevant local Consumer Price Index movements over the prior year.

100. Nor did the Association obtain a vote of at least two-thirds of each class of members to raise assessments to $125 at a duly called meeting for that purpose at any time in 2017 or 2018.

101. Correspondingly, Defendant attempted to collect, and did collect, improperly levied annual assessments for 2019, 2020, and 2021 that exceeded the limit allowed under the Declaration.

102. In response to Defendant's demand letter, Plaintiff paid Defendant $1,128.38 in September 2021.

103. By collecting the improperly levied 2019, 2020, and 2021 assessments, Defendant unfairly and unconscionably collected amounts not expressly authorized by the Declaration or otherwise permitted by law, in violation of 15 U.S.C. § 1692f(1).

104. Plaintiff suffered actual damages in the form of her making a payment in September 2021 of $1,128.38, which necessarily included the improperly levied assessments to which neither Defendant nor the Association was entitled.

105. Thus, Defendant's unfair and unconscionable conduct caused Plaintiff to pay money that she did not owe.

Count III: Violation of Fla. Stat. § 559.72(9)
On behalf of the State Law Class

106. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 75 above.

107. The FCCPA at section 559.72(9) provides:

In collecting consumer debts, no person shall:

* * * *

> (9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

108. Through its August 13, 2021 communication to Plaintiff, and by attempting to collect improperly levied assessments and associated interest charges that Plaintiff did not owe, Defendant claimed, or attempted or threatened to enforce, a debt that it knew was not legitimate, in violation of Fla. Stat. § 559.72(9).

109. Defendant's attorneys specialize in drafting community association governing documents, advising associations on interpreting and enforcing those same documents, and

providing more generalized counseling to community associations and their boards of directors. *See supra* ¶¶ 44-45.

110. To that end, for years prior to the specific collection conduct at issue, Defendant advised the Association on the Declaration giving rise to the Debt. *See* Ex. B at 1, 5-6.

111. In 2018, Defendant worked closely with the Association to revitalize the Declaration with the state of Florida, even preparing the notice of revitalization that the Association filed with the state. *Id.*

112. Defendant thus helped to obtain state regulatory approval of the very governing document that it and the Association later (mis)applied to improperly inflate the Debt during its August 2021 collection efforts from Plaintiff.

113. At the time of its improper collection efforts from Plaintiff, Defendant was familiar with the Declaration and its contents, including those provisions limiting the increases in assessments allowed by the Association.

114. Upon information and belief, given the breadth of Defendant's general counsel services to the Association, *see supra* ¶¶ 20, 44-46, Defendant was responsible for advising the Association on such matters as the levying of annual assessments.

115. By way of its August 13 letter, Defendant attempted to collect and enforce a debt that included annual assessments to the Association of $125 for each of 2019, 2020, and 2021, plus related interest charges of $60.58.

116. However, neither the Association nor Defendant had any basis to collect $125 per year in assessments for 2019, 2020, or 2021.

117. This is because the Association's ability to increase assessments from one year to the next is limited by the Declaration, which states that annual assessments may be increased

only in line with the Tampa-area Consumer Price Index or as otherwise approved by a vote of at least two-thirds of each class of members at a meeting duly called for the purpose of raising assessments.

118. When the Association raised assessments in 2017 from $50 to $100, it had no authority to do so per the Declaration, as the percentage increase exceeded that allowed by the Declaration because it exceeded the relevant local Consumer Price Index movements over the prior year.

119. Nor did the Association obtain a vote of at least two-thirds of each class of members to raise assessments to $100 at a duly called meeting for that purpose at any time in 2016 or 2017.

120. When the Association again raised assessments in 2018 from $100 to $125, it had no authority to do so per the Declaration, as the percentage increase exceeded that allowed by the Declaration because it exceeded the relevant local Consumer Price Index movements over the prior year.

121. Nor did the Association obtain a vote of at least two-thirds of each class of members to raise assessments to $125 at a duly called meeting for that purpose at any time in 2017 or 2018.

122. Given Defendant's broad engagement with the Association by which it advised the Association in connection with obtaining state regulatory approval of the Declaration, Defendant was familiar with the Declaration's contents, to include its restrictions on raising annual assessments from one year to the next.

123. Correspondingly, Defendant knowingly attempted to collect, and did collect, improperly levied annual assessments that exceeded the limit allowed under the Declaration.

124. Plaintiff suffered actual damages in the form of her making a payment in September 2021 of $1,128.38, which necessarily included the improperly levied assessments to which neither Defendant nor the Association was entitled.

125. Thus, Defendant's collection of a debt it knew to be illegitimate caused Plaintiff to pay money that she did not owe.

Count IV: Violation of the FDCPA, 15 U.S.C. § 1692g(b)
On behalf of the Overshadow Class

126. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 75 above.

127. The FDCPA at 15 U.S.C. § 1692g(b) provides:

> 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) of this section 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.*

(emphasis added).

128. Defendant's August 13, 2021 communication was its initial communication to Plaintiff.

129. The manner in which Defendant conveyed the validation notice required by 15 U.S.C. § 1692g(a) in its August 13 communication was ineffective, as Defendant's simultaneous

request for written "documentation or evidence" supporting any dispute contradicted and overshadowed the mandatory validation notice.

130. That is, Defendant's request for "documentation or evidence" justifying any potential debt dispute implied to Plaintiff that any dispute of the Debt would need to be supported by some sort of documentation or evidence, or that she needed to provide a valid reason to Defendant to dispute the Debt and invoke her rights under the FDCPA.

131. However, the only action a consumer must take to dispute a debt pursuant to 15 U.S.C. § 1692g(a)(3)—to rebut the presumption of validity of the debt—is to call the debt collector (or visit the collector in person) within the 30-day validation period and state that she disputes the debt.

132. Alternatively, pursuant to 15 U.S.C. § 1692g(a)(4), the consumer may write to the debt collector to dispute a debt, but no supporting documentation is required.

133. In other words, for a consumer to avail herself of her statutory validation rights, the FDCPA does not require submission of *any* written dispute, let alone one supported by "documentation or evidence" justifying that dispute.

134. But by Defendant specifically instructing Plaintiff to submit "any documentation or evidence that you have in support of your contention that the amounts due are not correct," Ex. A at 2, it made the dispute process more onerous than is required and thereby encouraged Plaintiff to *not* take advantage of her validation rights and thus forego important protections afforded by the FDCPA. *See McCurdy v. Prof'l Credit Serv.*, No. 15-1498, 2015 WL 6744269, at *3 (D. Or. Oct. 30, 2015) ("The least sophisticated consumer could read the additional language to require a consumer intending to dispute a debt to do so in writing and to submit justification for the dispute. In other words, the least sophisticated consumer would be encouraged to waive

her right to challenge the validity of the debt by a phone call or without providing justification for contesting the debt.").

135. At the very least, Defendant's instruction to submit "any documentation or evidence that you have in support of your contention that the amounts due are not correct" created an apparent contradiction with the statutorily required validation disclosures, and Defendant failed to explain this contradiction.

136. Further, the August 13 letter advised Plaintiff to "[p]lease only respond in writing by mail or facsimile." *See* Ex. A at 2.

137. But the FDCPA allows a debtor to respond to an initial debt collection letter by placing a phone call to dispute the debt. *See*, *e.g.*, *Higgins v. Quality Recovery Servs., Inc.*, No. 17-2581, 2018 WL 1840200, at *6 (N.D. Ga. Feb. 13, 2018) ("The Court agrees with Plaintiff and the Ninth, Second, and Fourth Circuits that the plain language of § 1692g(a)(3) does not contain a requirement to dispute the debt in writing, and that, under the Supreme Court's approach to statutory interpretation stated in *Lamie*, when the plain language of a statute does not render the statute absurd, it must be enforced. As the Ninth and Second Circuits explained, the plain language of the FDCPA grants a limited set of rights to debtors who dispute a debt only orally, and a more extensive set of rights to debtors who dispute their debt in writing.").

138. In other words, a consumer is not limited to only a writing or facsimile to respond to a debt collection letter, so a demand that a consumer so respond violates the FDCPA. *See*, *e.g.*, *Baez v. Wagner & Hunt, P.A.*, 442 F. Supp. 2d 1273, 1277 (S.D. Fla. 2012) (collection letter violated FDCPA by stating that consumer had to notify debt collector in writing in order to dispute validity of debt).

139. By advising Plaintiff to only respond to the August 13 collection letter in writing, Defendant contradicted and overshadowed Plaintiff's right to dispute the Debt by telephone or in person.

140. Accordingly, by way of its August 13 letter to Plaintiff, Defendant violated 15 U.S.C. § 1692g(b).

Count V: Violation of the FDCPA, 15 U.S.C. § 1692e(10)
On behalf of the Overshadow Class

141. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1 through 75 above.

142. The FDCPA at 15 U.S.C. § 1692e(10) provides:

> 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:
>
> *****
>
> (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.

143. As explained above, Defendant's August 13, 2021 collection letter instructed Plaintiff to submit "documentation or evidence" supporting any potential dispute of the Debt. *See* Ex. A at 2.

144. However, the FDCPA requires no such "documentation or evidence" to justify a debt dispute or request for validation of a debt, as consumers may dispute their debts over the phone or in-person in compliance with section 1692g(a)(3), and written disputes or requests for validation under sections 1692g(a)(4)-(5) need *not* be supported or accompanied by documents of any sort.

145. So, Defendant's instruction to provide "documentation or evidence" places more of a burden on consumers than the law requires and, in doing so, creates an actual or apparent contradiction with the statutory validation notice, which Defendant fails to explain.

146. Further, the August 13 letter advised Plaintiff to "[p]lease only respond in writing by mail or facsimile." *See* Ex. A at 2.

147. But the FDCPA allows a debtor to respond to an initial debt collection letter by placing a telephone call or visiting the debt collector in person to dispute the debt.

148. In other words, a consumer is not limited to only a writing or facsimile to respond to a debt collection letter, so a demand that a consumer so respond violates the FDCPA.

149. By advising Plaintiff to only respond to the August 13 collection letter in writing, Defendant contradicted and overshadowed Plaintiff's right to dispute the Debt by telephone or in person.

150. As such, Defendant's August 13 letter to Plaintiff included a false representation and deceptive means in attempting to collect the Debt, in violation of 15 U.S.C. § 1692e(10).

WHEREFORE, Plaintiff respectfully requests relief and judgment as follows:

A. Determining that this action is a proper class action under Rule 1.220 of the Florida Rules of Civil Procedure;

B. Adjudging and declaring that Defendant violated 15 U.S.C. §§ 1692e(2)(A), 1692e(10), 1692f(1), and 1692g(b);

C. Adjudging and declaring that Defendant violated Fla. Stat. § 559.72(9);

D. Awarding Plaintiff and members of the classes statutory damages pursuant to 15 U.S.C. § 1692k and Fla. Stat. § 559.77(2);

E. Awarding Plaintiff and members of the classes actual damages incurred, as applicable, pursuant to 15 U.S.C. § 1692k and Fla. Stat. § 559.77(2);

F. Enjoining Defendant from future violations of 15 U.S.C. §§ 1692e(2)(A), 1692e(10), 1692f(1), and 1692g(b), and Fla. Stat. § 559.72(9), with respect to Plaintiff and the classes;

G. Awarding Plaintiff and members of the classes their reasonable costs and attorneys' fees incurred in this action, including expert fees, pursuant to 15 U.S.C. § 1692k and Fla. Stat. § 559.77(2);

H. Awarding Plaintiff and the members of the classes any pre-judgment and post-judgment interest as may be allowed under the law; and

I. Awarding other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff is entitled to, and hereby demands, a trial by jury.

Dated: January 19, 2022

Respectfully submitted,

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