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

NATALIE A. WILLIAMS and ALAN J.
SETNESKA, individually and on behalf of
all others similarly situated,
Plaintiffs,

vs.

PRESSLER AND PRESSLER, LLP,
Defendants.

Case 2:11-cv-07296-KSH-PS

**NOTICE OF MOTION
FOR
CLASS CERTIFICATION
(Oral Argument Requested)**

TO: Mitchell L. Williamson, Esq.
Pressler and Pressler, LLP, Defendant pro se
7 Entin Road
Parsippany, NJ 07054-9944

Please take notice that, pursuant to ¶11 of the Court's Order [ECF Doc. 28], on February 4, 2013, at 10:00 a.m. or at such other time as counsel may be heard, Philip D. Stern, Esq., attorney for the Plaintiffs, Natalie A. Williams and Alan J. Setneska, will move for an Order certifying this action as a class action under Fed. R. Civ. P. 23(b)(3) including:

1. Defining the class,
2. Defining the class claims,
3. Appointing Plaintiffs as the class representatives,
4. Appointing Plaintiffs' attorney as class counsel.

In support of this Motion, Plaintiffs rely on the Declarations of Natalie A. Williams, Alan J. Setneska, and Philip D. Stern, Esq., as well as the Brief submitted with this Motion. In addition, Plaintiffs will rely on the information filed under seal

immediately after the filing of this Motion (such information is expected to be designated as ECF Doc. 31).

Plaintiffs request oral argument.

Philip D. Stern & Associates, LLC
Attorneys for Plaintiffs
s/Philip D. Stern

Dated: January 11, 2013

Philip D. Stern

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**PLAINTIFFS' BRIEF IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION**

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On the brief:
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NATURE OF THE CASE

This case is about whether a consumer collection law firm's settlement letter, sent during the pendency of a collection lawsuit which promised to send the court proof of the payment and to send a copy of that proof to the consumer "*so that you can advise the credit bureau,*" was unlawfully false and misleading. The letter was sent when neither the law firm nor its client had reported the debt to any credit bureau or when all reported information had previously been completely deleted.

Plaintiffs, Natalie A. Williams and Alan J. Setneska, each received such a letter and bring this action on behalf of themselves and all those similarly situated seeking statutory damages against the defendant law firm, Pressler and Pressler, LLP for violating the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.

Plaintiffs now move for class certification of the 75 individuals to whom Pressler sent the same form letter. Plaintiffs submit the following as the Motion's factual record:

1. Declaration of Natalie A. Williams ("Williams Decl.") with the collection complaint filed against her, her answer to that complaint, and the settlement letter she received attached.
2. Declaration of Alan J. Setneska ("Setneska Decl.") with the collection complaint filed against him, his answer to that complaint, and the settlement letter he received attached.

3. Declaration of Philip D. Stern, Esq. (“Stern Decl.”) with exhibits attached and referred to here as “Ex##,” where ## is the page number.
4. Immediately following the filing of this Motion, Plaintiffs will be filing, under seal, Defendant’s net worth information. It is expected that the filing will be designated as ECF Doc. 31.

PROCEDURAL HISTORY

Plaintiff Natalie A. Williams filed this class-action on December 16, 2011. ECF Doc. 1. Defendant Pressler and Pressler, LLP filed an answer on February 27, 2012. ECF Doc. 7. An Amended Complaint which, among other things, added Alan J. Setneska as a plaintiff, was filed on June 28, 2012. ECF Doc. 19. Pressler filed an answer to the Amended Complaint on August 9, 2012. ECF Doc. 23.

The Court’s Order (ECF Doc. 28) reflects that all discovery deadlines had passed including deadlines for expert reports and depositions. That Order further provided that the final pretrial conference is scheduled for February 25, 2013. Finally, that Order directed the filing of this Motion by January 11, 2013 with Pressler’s response to be filed by January 22, 2013 and any reply by January 28, 2013.

EVIDENTIAL MATERIALS

A. Pressler is a Debt Collector Regularly Engaged in the Collection of Debts.

In response to the allegation that Pressler “is regularly engaged in the collection of debts,” (ECF Doc. 19, ¶¶28 and 75), it only “[a]dmitted that Pressler is located in the State of New Jersey and is engaged in the practice of law, which on *some occasions involves collecting monies due and owing through legal process.*” ECF Doc. 23, ¶¶28 and 75. That response is somewhat disingenuous.

Ralph Gulko, Esq. is the associate attorney at Pressler. Ex5 (T8:1-10¹). From the time he entered private practice in 1979 or 1980, his practice has been primarily related to the collection of defaulted consumer debts. Ex4 (T7:1-25). He began working with Pressler in August 2005. Ex4 (T7:9). It is his job to review all complaints to be filed by Pressler in New Jersey and Pennsylvania. Ex10 (T92:9-23). He explained that, prior to his review of collection complaints, “[w]hen new retail consumer collection claims are received by Pressler from their clients, the first step is to send the ‘Initial Notice Letter’ pursuant to the” FDCPA. Ex33 at ¶2.

Complaints are then prepared by Pressler’s SAC department. Ex9 (T85:12-17). Then, every day he receives a “feed list” for the complaints prepared by Pressler’s SAC Department for him to review within the next day. Ex10 (T92:24-

¹ Exhibit page 5 to the Stern Decl is from the transcript of Mr. Gulko’s deposition. When referring to transcripts, following the exhibit page number the transcript page number and line numbers will in parenthesis. Here, for example, the reference is to transcript page 8, line 1 through 10.

T93:4). The list can have fewer than a hundred, hundreds, or over a thousand complaints for him to review. Ex10 (T93:5-16). His review can be from less than a minute to several minutes. Ex9 (T84:19-24). During the week when the collection complaint was filed against Ms. Williams, Gulko reviewed 1,924 complaints for New Jersey (excluding Pennsylvania), ranging from 128 on one day to 609 on another. Ex39.

Steven P. McCabe, Esq., one of Pressler's limited partners, acknowledged that Pressler files a "huge number of cases" every year. Ex22 (T9:12-17), Ex24 (T21:21).

Plaintiffs and the proposed class were sued by Pressler based on claims alleged by New Century Financial Services, Inc. "Pressler is a New Jersey law firm that represents New Century Financial Services, Inc. ("NCFSI"), a buyer of distressed debt." *Derricotte v. Pressler & Pressler, LLP*, CIV.A. 10-1323, 2011 WL 2971540 (D.N.J. July 19, 2011); Ex62 at ¶2. Indeed, New Century "places every account that we purchase to Pressler & Pressler," and New Century has "hundreds of thousands of accounts." Ex13 (T25:18-T26:7); Ex16 (T37:13-14).

Given all this evidence of the volume of collection activity, it is difficult to imagine why Pressler – who appears in this action *pro se* (ECF Doc. 23 at ECF PageID 172) – refused to admit that it regularly collects debts but, instead, is only willing to concede doing so on "some occasions."

Similarly, in response to the allegation that Pressler "is a 'debt collector' within the meaning of 15 U.S.C. § 1692a(6)," (ECF Doc. 19, ¶¶68 and 95), Pressler responded:

Defendant neither admits nor denies any factual allegations contained within this paragraph leaves plaintiff to her [sic] proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court. [ECF Doc. 23, ¶¶68 and 95.]

The Court has previously answered those questions. It specifically found that Pressler is “a New Jersey law firm specializing in debt collection representation and a debt collector as defined under 15 U.S.C. § 1692a(6).” *Parker v. Pressler & Pressler, LLP*, 650 F. Supp. 2d 326, 329 (D.N.J. 2009).

B. Pressler Filed Collections Complaints and Plaintiffs Answered Them.

Pressler admits to filing the Williams Collection Complaint on December 17, 2010, a copy of which is annexed to the Amended Complaint as Exhibit 2. ECF Doc. 23, ¶¶35-36; see, also, Williams Decl. at ¶8 and Exhibit A. Pressler also admits to filing the Setenska Collection Complaint on June 7, 2011, which is Exhibit 5 to the Amended Complaint. ECF Doc. 23, ¶¶80-81; see, also, Setneska Decl. at ¶5 and Exhibit A. The named plaintiff in each of the collection complaints is New Century.

In the Williams Collection Complaint, New Century alleged that it was the owner of her “GE CAPITAL – REGULAR WAL-MART account...which is now in default.” ECF Doc. 19 at page 19. In the Setneska Collection Complaint, New Century alleged that it was the owner of his “CITIBANK SOUTH DAKOTA, N.A. account...which is now in default.” ECF Doc. 19 at page 22.

Williams filed an answer to the Williams Collection Complaint on January 7, 2011. Williams Decl. ¶12 and Exhibit B. Pressler refused to admit or deny this

allegation. Compare ECF Doc. 19 at ¶¶43 and 44 to ECF Doc. 23 at ¶¶43 and 44. Nevertheless, Pressler produced a copy of that answer in its discovery responses. Stern Decl. at ¶17 and Ex40 and Ex41 (including the postmarked envelope addressed to Pressler). Her answer asserted, among other things, a defense based on the statute of limitations. ECF Doc. 19 at page 20 (also appearing at Williams Decl. Exhibit B and Ex 40).

Pressler admits that, on September 8, 2011, Setneska filed an answer to the Setneska Collection Complaint, a true copy of which is annexed to the Amended Complaint as Exhibit 6. ECF Doc. 23 at ¶¶86-88; see, also Setneska Decl. at ¶9 and Exhibit B.

C. Pressler’s Collection Activities Concerned Consumer Obligations.

Williams applied for the account and used it to make personal purchases of groceries and school supplies at Wal-Mart retail stores. Williams Decl. ¶5. Similarly, Setneska applied for the account and used it to make personal purchases. Setneska Decl. ¶6.

D. Pressler Sent a “Settlement Letter” to Each Plaintiff.

Pressler admits that it sent Williams a letter dated January 12, 2011, a copy of which is annexed to the Amended Complaint as Exhibit 4. ECF Doc. 23, ¶¶45-47; see, also, Williams Decl. at ¶14 and Exhibit C. Pressler also admits that it sent Setneska a letter dated September 7, 2011, a copy of which is annexed to the Amended Complaint as Exhibit 7. ECF Doc. 23, ¶¶89-91; see, also, Setneska Decl. at ¶10 and Exhibit C.

Each of the settlement letters proposed a settlement involving each Plaintiff to make a single payment by a specified date. Each letter then stated, *“This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau.”*

E. New Century’s Credit Reporting Practices.

When New Century purchases defaulted accounts, it waits two months before deciding whether to report information about the accounts to credit reporting agencies. Ex14 (T30:8-12). Then, it makes a decision based on a number of factors. Ex32 at ¶8. It will not report the account, however, if the consumer disputes the debt or files an answer to a collection complaint. Ex32 at ¶8.

There are only three codes which New Century sends to credit reporting agencies: “93” indicating that the account is in collection; “62” indicating that the debt has been paid; or “DA” which deletes previously reported information. Ex32 at ¶9; Ex14 (T28:16-T29:3).

If New Century decides to report an account, the information provided would include the identity of the original creditor, that there’s a balance, the amount of the balance claimed, the original creditor’s account number, and state that it was “assigned to collections.” Ex14 (T30:4-T30:3). New Century continues to report the account on the first of every month using code 93 unless there is a change. Ex14 (T30:13-22). New Century does not inform Pressler

whether it credit reports an account and it is uncertain whether Pressler can obtain that information. Ex17 (T40:2-8)

The only changes to New Century's reporting would be to send code 62 or to send code DA. Ex14 (T30:23-T31:1).

New Century changes its reporting to code 62 when Pressler informed New Century that the account was paid in full. Ex14 (T31:3-8). So, if a consumer made the payment called for in the settlement letter involved here, and New Century was still reporting the account, New Century automatically reports code 62 indicating that account was paid in full. Ex17 (T40:18-24).

If previously reported, New Century sends the code DA when the account is disputed or the consumer files an answer to the collection complaint. Ex14 (T31:9-11).

New Century finds out about the filing of an answer to the collection complaint as soon as Pressler records that fact in its electronic system, which is "essentially instantaneous." Ex15 (T33:6-23). New Century sends the DA code by "an automated process" as soon as New Century finds out that Pressler received the consumer's answer to the collection complaint, which is sent "no matter what" and without waiting until the monthly uploads on the first of the month. Ex15 (T34:3-23).

Sending the DA code deletes the "trade line completely." Ex14 (T31:19-20). Consequently, after sending the DA code, the fact that New Century had reported the account as assigned to collection does not appear on the consumer's credit report. Ex15 (T32:4-8).

Based on New Century's automated practices, because the settlement letters were sent to Williams and Setneska, respectively, *after* they had each filed an answer to their respective collection complaints, either New Century never reported the accounts or all previously reported information had been deleted.

Nevertheless, the settlement letters stated that the proposed lump sum "payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau." By Pressler stating that the purpose for which copy of the "proof" was being sent to the consumer was "so that you can advise the credit bureau," the least sophisticated consumer would conclude that (1) something about the lawsuit or New Century's claim was on his or her credit report and (2) forwarding that proof to the credit reporting agencies would benefit the consumer.

F. Pressler's Purported "Proof that the Debt has been Paid" is Sketchy.

Pressler identified four documents as the "proof that the debt has been paid" to be "sent to the court." Ex18 (T45:4-T46:7); Ex30; Ex35-Ex38. Pressler produced Ex35-Ex38 under cover of a letter which stated, "I've also enclosed a copy of the documents sent to court when the matter is settled." Ex18 (T20-22); T30. They "were meant to be examples of different types of things that could be sent to the court by Pressler & Pressler." Ex18 (T45:24-T46:1). McCabe, however, identified such "proof" as a "stipulation of dismissal." Ex26 (T32:7-21); Ex26 (T35:2-10). None of the documents Pressler identified (i.e., Ex35-Ex38) is a stipulation of dismissal.

Thus, Pressler does not have a handle on what documents were intended by its own phrase “proof that the debt has been paid.”

Pressler’s client, New Century, essentially gives Pressler carte blanche to determine whether to send the letter including the amount to offer and the payment deadline. Ex15 (T35:20-25); Ex16 (T36:1-9); Ex16 (T37:16-19). Pressler does not affirmatively inform New Century that an offer has been made but New Century, if it chose, could access records to find out. Ex16 (T36:10-25); Ex16 (T37:15-T38:19). New Century understands that the “proof” intended in the settlement letters is either a “paid in full letter,” a stipulation of dismissal, or a warrant of satisfaction. Ex17 (T42:13-16). It also understands that the four pages appearing at Ex35-Ex38 are the types of documents intended by the settlement letter to be proof that the debt has been paid. Ex18 (T46:4-20).

A review of the proffered “proof” reveals that they are inconsistent with the facts. The first, Ex35, is a letter addressed to a court clerk to mark a case “settled,” with a “Stipulation of Settlement” to follow later. Next, Ex36, is a letter to the collection defendant enclosing a “Stipulation of Settlement” to be signed and returned. Then, Ex37, is a Stipulation of Settlement calling for monthly installment payments. The settlement letter involved in the instant lawsuit calls for a single payment which “will satisfy the pending lawsuit” and, *after the payment is made*, “proof that the debt has been paid will be sent to the court and a copy to you.” The settlement documents in Ex35-Ex37 have nothing to do with a post-payment proof.

The fourth and final document proffered by Pressler as its “proof” of payment in accordance with the settlement letter is Ex38. That document is a “Warrant for Satisfaction of Judgment.” As it evident from the document, it is used to inform the clerk that a judgment has been satisfied. The settlement letter under scrutiny here, however, on its face reflects that it applies when there is a pending lawsuit. Indeed, Pressler’s systems are structured so that the form cannot be used once a judgment is entered. Ex24 (T22:6-14).

G. Pressler’s Intended Use of the Post-Suit, Prejudgment Settlement Letter.

Whatever documents may have been intended by the settlement letter’s use of the term “proof that the debt has been paid,” a template or form was used to create the settlement letters sent to each Plaintiff. Ex23 (T16:16-21). In 2009, McCabe approved the use of the form letter. Ex23 (T17:21-T18:7); see, also, Ex63 (same form letter dated September 23, 2009).

McCabe described the form as a “post-suit prejudgment settlement letter.” Ex23 (T19:2-3). In other words, it was to be sent only after a lawsuit had been commenced but before the court made any determination on the merits of the case. Ex23 (T19:10-17). Not only was it to be sent after the case had started, but after there had been service of process. Ex24 (T20:1-15). There were no criteria, however, prohibiting it from being sent before the defendant filed a response to the complaint. Ex24 (T20:16-23).

Although unable to determine how the decision would be made in any case to send the settlement letter, Ex24 (T23:12-19), Pressler’s systems would

only permit use of the form if four specific conditions were met. First, a docket number needed to be entered in Pressler's system which would indicate a lawsuit had been filed. Ex24 (T21:24-T22:1). Second, the home address field for the debtor had to be designated as a good address. Ex24 (T22:1-5). Obviously, the second criteria would ensure that the defendant received the letter. Third, Pressler's judgment field, which reflects the judgment amount and any costs, needed to reflect that no judgment had been entered because the settlement letter was not intended to be used after a judgment was entered. Ex24 (T22:6-11). The fourth criteria, which McCabe was unable to offer any explanation, was that there was no attorney on the file – in other words, the settlement letter could not be sent on a file where the consumer was represented by an attorney. Ex24 (T22:14-19). Nevertheless, the fourth criteria ensured that the settlement letter could only be sent to unrepresented consumers. Ex24 (T22:23-T23:11).

Although the FDCPA standard is to analyze the settlement letter from the standpoint of the least sophisticated consumer (see, *infra*, at 20), it is worth understanding what Pressler intended. In this case, we have the testimony of the Pressler partner who approved the use of the form, Steven P. McCabe.

McCabe started his legal career in 1971 as a state employee in the Department of Community Affairs, Office of Legal Services – the predecessor to Legal Services of New Jersey (LSNJ). Ex64 (T7:3); Ex22 (T8:5-11). His mentor was Melville SeSoto Miller, the current president of LSNJ. Ex22 (T8:12). McCabe followed Miller to the Middlesex County Legal Services when Miller became its

director, and McCabe spent the next ten years as staff attorney and senior staff attorney representing low income consumers. Ex22 (T8:17-21).

Throughout his career, McCabe has been honored to appear at seminars and workshops in many places on many subjects. Ex64 (T7:4-5). He has presented workshops to the National Consumer Law Center, Ex64 (T7:8-9), to the judges of the Superior Court of New Jersey, Ex64 (T7:10-14), and been a panel member at an FDCPA workshop, Ex64 (T7:15-17). Most of speaking engagements and, more generally, throughout his career, have dealt with consumer credit. Ex64 (T7:5-7, and T7:17-19). Consequently, he is particularly and acutely aware of the concerns of consumer creditors.

McCabe called the form letter sent to the Plaintiffs as a “settlement letter.” Ex23 (T17:17-20). He explained,

The reason the letter is drafted is to offer to consumers, or to debtors as they are in these instances, an offer of settlement whereby they can resolve a claim against them for less than the full value, and it also has a follow-up design, which is to be a reminder to the debtor that this is the procedure that’s there and sometimes hopefully will be a reminder that they can resolve the matter in a mutually agreeable fashion if that’s their wish. [Ex23 (T18:11-19).]

McCabe was asked:

“So that you can advise the credit bureau,” was there an intent that that act of advising the credit bureau would provide some benefit to the defendant from having settled in accordance with the terms of the letter? [Ex26 (T34:1-5).]

He responded:

This firm has been representing creditors for many, many decades. We, that is to say this firm realizes that when people have an unpaid debt and they’re involved with an

attorney, very often one of their concerns is what's commonly known as their credit rating. For my career at this firm, I speak with debtors all the time. Debtors ask me legal advice about their credit rating. If it's not legal advice I guess it's personal advice. And I've always been in the unfortunate position of saying, I can't really give you guidance about it, but we know that this is a subject that's of interest to debtors and we've put it in. The general reason this letter is sent is to resolve a lawsuit. [Ex26 (T34:10-24).]

This testimony reflects that, based on the firm's decades of experience as well as his own experience, McCabe was aware that a concern of people who have unpaid debt is their credit rating – “a subject that's of interest to debtors” – and that is why they put the credit bureau language in the settlement letter.

After McCabe had identified that the proof of payment which would be copied to the consumer was a stipulation of dismissal, Ex26 (T35:5), he was questioned as to whether any intent could be ascribed to the fact that, from among all the things which the consumer could do with that stipulation, he approved the letter in which Pressler stated that the purpose for sending a copy to the consumer was “so that you can advise the credit bureau.” Ex27 (T37:1-6). McCabe responded that the intent of the letter was to “offer incentives to settlement” and, believing that “it is always of interest to debtors ... that they[,] at the end of the day[,] always have their credit rating be as good as it can be,” the settlement letter's representation that the documentation to be sent would help their credit rating was “one of the incentives given.” Ex27 (T37:7-20).

Then, he concluded:

We don't expect people to settle a case for no reason. We expect people to act in their own best interest, so we suggest to them that our client has these incentives for them, pay

less money and report it to the credit bureau. [Ex27 (T37:20-24).]

Based on Pressler's own understanding of the letter, its statement concerning sending the documentation to the credit bureaus was to lead the unrepresented consumer to believe that doing so would improve the consumer's credit rating.

H. Evan Hendricks – Plaintiffs' Credit Reporting Expert

Plaintiffs submit the Declaration of Evan Hendricks. Ex42-Ex61.

Mr. Hendricks is offered as an expert in the field of consumer credit reporting to describe the credit reporting system and explain the effect of Pressler's letter on a consumer's credit report. His qualifications are detailed in ¶¶34-40 (Ex47-Ex49) of his Declaration and his attached curriculum vitae. As summarized in ¶35, he is

(1) Editor/Publisher of a specialty news reporting service that covers credit reporting; (2) author of the book Credit Scores and Credit Reports: How The System Really Works, What You Can Do (Privacy Times 2004), and co-author of a book with a chapter on credit reporting; (3) an expert witness qualified by the federal courts in Fair Credit Reporting Act litigation; (4) an expert on credit reporting who has testified before Congress on numerous occasions, including four hearings in 2003, and who has testified twice before the California legislature in regards to legislation on the use of financial data; and (5) an expert consultant to government agencies and private corporations, and (6) a member of the Consumer Advisory Council of Experian, one of the three national Credit Reporting Agencies (CRAs).

Hendricks explains that information about a consumer's collection account, called a "tradelines," is provided by "furnishers." Ex43 at ¶13; Ex44 at ¶15.

17. If Defendant previously had furnished information regarding those Plaintiffs' tradelines, and Plaintiffs acted on Defendant's letter and so advised the CRA [acronym for Credit Reporting Agency], the CRA would not have updated Plaintiff's tradelines. Again, this is because CRAs only accept regular updates directly from established furnishers. [Ex44.]

18. However, had Defendant not previously furnished information to CRAs regarding Plaintiffs' tradelines, then there would be no information for the CRA to update. [Ex44.]

After reviewing the credit reporting industry including its history and regulation, Hendricks explained the recognition of its significance by in our society by both governmental institutions which dictate public policy as well as the general public. In preparing his Declaration, Hendricks reviewed, among other things, the Amended Complaint, as well as the affidavits of Marko Galic and Ralph Gulko. Ex47 at ¶33.

Hendricks offered these opinions:

4. Defendant's representations were false and its means were deceptive because it gave Plaintiffs and similarly situated consumers the false impression that providing the letter or communicating its contents to credit bureaus would improve their credit report/creditworthiness. This declaration will explain why Defendant's statements concerning credit bureaus are false and deceptive. * * * [Ex42.]

12. Defendant's letter makes the false and deceptive representation that providing the letter or communicating its contents to credit bureaus would improve the Plaintiffs' credit reports/creditworthiness by somehow convincing the

credit bureaus to improve the status [of] the debt at issue. The representation is false and deceptive in part because it is in contravention as to how the credit reporting system actually works. [Ex43.]* * *

31. Defendants' letter has the strong potential to exploit consumers' general awareness of the role that credit bureaus play in impacting their creditworthiness, while at the same time taking advantage of the fact that many consumers don't know the details of "who does what" in the credit reporting industry. [Ex47.]

32. Thus, it was reasonable for consumers who received Defendant's letters to be deceived into believing the letters would somehow help them with a CRA. [Ex47.]

I. Class Size

Pressler has disclosed that there are 75 individuals who received the settlement letter containing the sentence "*Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau,*" in connection with collection on a New Century account. Ex1 at ¶6. Of those 75, 32 had never been reported. Ex1 at ¶6. Pressler has explained how it searched for and identified the 75 class members, including filtering as to whether the settlement letters were sent "post-answer." Stern Decl. ¶4.06.

J. Pressler's Net Worth

Information regarding Pressler's net worth is being filed under seal immediately after this Motion is filed.

K. Class Representatives

The interest of each Plaintiff is to obtain statutory damages as allowed under the FDCPA for Pressler's violation of that Act. There is no conflict between

Plaintiffs' interests and those of the proposed class. Williams Decl. at ¶20; Setneska Decl. at ¶13.

L. Class Counsel

The proposed class counsel, Philip D. Stern, Esq., has submitted his declaration setting forth (a) the work he has done in identifying and investigating potential claims in this action, (b) his experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (c) his counsel's knowledge of the applicable law, and (d) the resources he will commit to representing the class – all required factors under Fed. R. Civ. P. 23(g). Stern Decl at ¶¶3-9.

MERITS

This case arises under the FDCPA which simultaneously advances two objectives: it protects vulnerable citizens while promoting a competitive marketplace. 15 U.S.C. § 1692(e).

A. Purpose of the Fair Debt Collection Practices Act.

Congress adopted the FDCPA with the “express purpose to eliminate abusive debt collection practices by debt collectors, and to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. ___, 130 S. Ct. 1605, 1623, 176 L. Ed. 2d 519 (2010) (internal

quotes and ellipsis omitted). “Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to ‘insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.’” *Leshner v. Law Offices of Mitchell N. Kay, P.C.*, 650 F.3d 993, 996 (3d Cir. 2011).

Congress had found abundant evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors contributed to the number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. 15 U.S.C. § 1692(a). It also found that existing consumer protection laws were inadequate. 15 U.S.C. § 1692(b). Therefore, “Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act.” *Leshner*, 650 F.3d at 997.

Thus, the intended effect of these private enforcement actions was not only to reduce the number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy caused by abusive, deceptive, and unfair debt collection practices but, simultaneously, to promote a competitive marketplace for those debt collectors who voluntarily treat consumers with honesty and respect.

“Congress recognized that ‘the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness or marital difficulties or divorce.’” *FTC v. Check Investors, Inc.*, 502 F.3d 159, 165 (3d Cir. 2007). Nevertheless, “[a] basic tenet of the Act is that all consumers,

even those who have mismanaged their financial affairs resulting in default on their debt, deserve ‘the right to be treated in a reasonable and civil manner.’” *FTC, supra*, 502 F.3d at 165 (emphasis added) quoting *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1324 (7th Cir. 1997).

The FDCPA is construed broadly so as to effectuate its remedial purposes and a debt collector’s conduct is judged from the standpoint of the “least sophisticated consumer,” *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 453 n.1 (3d Cir. 2006). Thus, by way of example, “A debt collection letter is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate.” *Id.* at 455. “This standard is less demanding than one that inquires whether a particular debt collection communication would mislead or deceive a reasonable debtor.” *Campuzano-Burgos v. Midland Credit Mgmt., Inc.*, 550 F.3d 294, 298 (3d Cir. 2008).

“Congress also intended the FDCPA to be self-enforcing by private attorney generals.” *Weiss v. Regal Collections*, 385 F.3d 337, 345 (3d Cir. 2004). “In order to prevail, it is not necessary for a plaintiff to show that she herself was confused by the communication she received; it is sufficient for a plaintiff to demonstrate that the least sophisticated consumer would be confused. In this way, the FDCPA enlists the efforts of sophisticated consumers like Jacobson as ‘private attorneys general’ to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.” *Jacobson v. Healthcare Fin. Services, Inc.*, 516 F.3d 85, 91 (2d Cir. 2008). “Congress

encouraged private enforcement by permitting aggrieved individuals to bring suit as private attorneys general.” *Gonzales v. Arrow Fin. Services, LLC*, 660 F.3d 1055, 1061 (9th Cir. 2011). In this way, “the FDCPA protects all consumers, the gullible as well as the shrewd.” *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

Except where the Act expressly requires knowledge or intent, the “FDCPA is a strict liability statute to the extent it imposes liability without proof of an intentional violation,” *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 368 (3d Cir. 2011) (citing, in footnote 7, supporting authorities from the Second, Seventh, Ninth and Eleventh Circuits).

The FDCPA applies to lawyers regularly engaged in consumer debt-collection litigation. *Heintz v. Jenkins*, 514 U.S. 291 (1995). The FDCPA creates no exceptions for attorneys – even when that conduct falls within conduct traditionally performed only by attorneys. *Id.* For example, there is no “litigation privilege” for debt collecting attorneys. *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007). “Attorneys who regularly engage in debt collection or debt collection litigation are covered by the FDCPA, and their litigation activities must comply with the requirements of that Act.” *Piper v. Portnoff Law Associates*, 396 F.3d 227, 232 (3d Cir. 2005) (emphasis added).

B. Cause of Action under the FDCPA

Liability under the FDCPA arises upon the showing of a single violation. *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62-3 (2d Cir. 1993).

A debt collector who violates any provision of the FDCPA is liable for any actual damages, “additional damages” (also called “statutory damages”), and attorney’s fees and costs. 15 U.S.C. § 1692k(a). However, “the FDCPA permits and encourages parties who have suffered no loss to bring civil actions for statutory violations.” *Jacobson, supra*, 516 F.3d at 96.

A cause of action under the FDCPA requires proof of three elements. First, the plaintiff must be the object of activities to collect a “debt” as defined by the Act; second, the defendant must be a “debt collector” as defined by the Act; and, third, defendant’s act or omission must be proscribed by the Act. *Kolker v. Duke City Collection Agency*, 750 F. Supp. 468, 469 (D.N.M. 1990); *Sibley v. Firstcollect, Inc.*, 913 F. Supp. 469, 471 (M.D.La. 1995); *Kaplan v. Assetcare, Inc.*, 88 F. Supp. 2d 1355, 1360-1361 (S.D.Fla. 2000); *Fuller v. Becker & Poliakoff, P.A.*, 192 F. Supp. 2d 1361, 1366 (M.D.Fla. 2002); *Dikun v. Streich*, 369 F. Supp. 2d 781, 784-85 (E.D.Va. 2005); *Johnson v. BAC Home Loans Servicing, LP*, 867 F. Supp. 2d 766, 776 (E.D.N.C. 2011).

A “debt” is “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal,

family, or household purposes, whether or not such obligation has been reduced to judgment.” 15 U.S.C. § 1692a(5).

A “debt collector” is either a “person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts,” or a person “who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6).

Here, Plaintiffs claim that Pressler’s settlement letter violated 15 U.S.C. § 1692e(10). To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, provides that a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt and, without limiting the generality of the prohibited conduct, enumerates sixteen acts and omissions which are deemed to be per se violations of that section. 15 U.S.C. § 1692e(1)-(16). That list includes using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10). Consequently, settlement letters from debt collectors are covered by the FDCPA even though they are not technically letters which demand payment. *Campuzano-Burgos*, 550 F.3d at 300.

PROPOSED CLASS DEFINITIONS, CLASS COUNSEL AND NOTICE

“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Fed. R. Civ. P. 23(g).” Fed. R. Civ. P. 23(c)(1)(b). The proposed Class Counsel and definitions of the Class and Class Claims are set forth below.

A. Class Definition

As alleged in Paragraph 102 of the Amended Complaint (ECF Doc. 19), Plaintiffs seek to define the Class as:

Each natural person who was named as a defendant in a complaint filed by PRESSLER in the Superior Court of New Jersey on behalf of New Century Financial Services, Inc. who were sent a letter after filing an answer to the complaint which letter was not returned to PRESSLER by the postal service and was substantially similar to Exhibits 4 and 7 and contained the sentence “*Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau*” excluding, however, such persons who, prior to the date that this action is certified to proceed as a class, either:

- A. died,
- B. filed for bankruptcy,
- C. filed a claim against PRESSLER in any action or arbitration alleging that PRESSLER violated the FDCPA, or
- D. signed a release of claims against PRESSLER.

B. Class Claims Definition

As alleged in Paragraph 104 of the Amended Complaint (ECF Doc. 19) and pursuant to Fed. R. Civ. P. 23(c)(4), Plaintiffs seek to have the class claims defined as:

All causes of action arising from letters sent by PRESSLER to Class members which letters were substantially similar to Exhibits 4 and 7 attached to the Amended Complaint and

contained the sentence “Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau.”

C. Proposed Class Counsel

Philip D. Stern, Esq. is the only applicant seeking appointment as class counsel. Mr. Stern’s qualifications as Class Counsel are discussed in Legal Arguments, below, and in the accompanying Declaration of Philip D. Stern (“Stern Decl.”).

D. Notice to the Class

After a class is certified under Fed. R. Civ. P. 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” “Individual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Larson v. AT & T Mobility LLC*, 687 F.3d 109, 124 (3d Cir. 2012).

There must be individual notice because Pressler has a list of the class members’ names and addresses.

The cost of such notice is on Plaintiffs. *Id.*, at 178-179. Nevertheless, all class members have been or can reasonably be identified by Pressler. STERNDECL. The Supreme Court has expressly recognized that, with respect to identification of class members, “the defendant may be able to perform a necessary task with less difficulty or expense than could the representative

plaintiff.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 356 (1978). “In such cases, we think that the district court properly may exercise its discretion under Fed. R. Civ. P. 23(d) to order the defendant to perform the task in question.” *Id.*

Therefore, if this Motion is granted, Plaintiffs will move for approval of a notice and to compel Pressler to provide that list to the appointed class counsel.

LEGAL ARGUMENT: THE RECORD ESTABLISHES NUMEROSITY, COMMONALITY, TYPICALITY, ADEQUACY, SUPERIORITY AND PREDOMINANCE; THEREFORE, CERTIFICATION OF A “B3” CLASS IS WARRANTED.

“At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.” Fed. R. Civ. P. 23(c)(1)(a).

“In order to be certified, a class must satisfy the four requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. If the Rule 23(a) criteria are satisfied, the court must also find that the class fits within one of the three categories of class actions defined in Rule 23(b).” *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 308-09 (3d Cir. 1998) (hereafter “*Prudential*”).

Here, Plaintiffs seek to certify the class under Fed. R. Civ. P. 23(b)(3). “In order to pass muster under Rule 23(b)(3), the district court must determine that common questions of law or fact predominate and that the class action mechanism is the superior method for adjudicating the case.” *Id.*

“The dominant concern of Rule 23(a) and (b) [is] that a proposed class have sufficient unity so that absentees can fairly be bound by class

representatives' decisions." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 593 (1997).

"Class certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23 are met." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 309 (3d Cir. 2008) (internal quotation marks omitted). Factual determinations are made based on a preponderance of the evidence. *Id.* at 307. Moreover, "the court must resolve all factual or legal disputes relevant to class certification, even if they overlap with the merits-including disputes touching on elements of the cause of action." *Id.*

Like the present matter, *Stair ex rel. Smith v. Thomas & Cook*, 254 F.R.D. 191 (D.N.J. 2008), involved a claim that a form letter violated the FDCPA. There, the issue concerned a form letter sent to 227 people containing language which the least sophisticated consumer would conclude to contradict the notice of the consumer's 30-day rights required under 15 U.S.C. § 1692g(a). *Id.* at 194, 198. Here, the issue concerns whether a form letter sent to 75 people containing language which the least sophisticated consumer would find misleading. With respect to class certification issues, any factual variations between *Stair* and the present matter are distinctions without a difference. *Stair* granted class certification and is so closely aligned to the case at bar, that its decision on class certification issues is overwhelmingly persuasive.

A. The Elements of Rule 23(a) Are Satisfied.

In order for a lawsuit to be maintained as a class action under Fed. R. Civ. P. 23 of the Federal Rules of Civil Procedure, a named plaintiff must establish each of the four threshold requirements of subsection (a) of the rule, which provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. [Fed. R. Civ. P. 23(a). See, e.g., *Barnes v. Am. Tobacco Co.*, 161 F.3d 127 (3d Cir. 1998); *Prudential*, 148 F.3d at 308-09.]

Before addressing the specific factors, it is important to recognize, as did the Supreme Court, that commonality, typicality and adequacy tend to merge as each attempts to address the overriding issue as to whether the interests of absent class members will be sufficiently protected by the representatives. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2551 n.5 (2011); *Amchem Products, Inc. v. Windsor*, 521 U.S. at 593.

Furthermore, when evaluating commonality and typicality, the Third Circuit observed:

We have set a low threshold for satisfying both requirements. That is, Rule 23(a) does not require that class members share every factual and legal predicate to meet the commonality and typicality standards. [N]either of these requirements mandates that all putative class members share identical claims. Nevertheless, we require courts to examine them separately because the criteria remain distinct.

Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154, 183 (3d Cir. 2001) (internal quotation marks and citations omitted).

Here, all four elements are easily satisfied.

1. Numerosity

Fed. R. Civ. P. 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” A class of 40 is presumed to be sufficiently numerous. See, e.g., *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) (“generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.

Nevertheless, numerosity is not purely based on numbers. The factors include “the size of the class, ease of identifying members and determining addresses, ease of service on members if joined, geographical dispersion and whether proposed members of the class would be able to pursue remedies on an individual basis.” *Liberty Lincoln Mercury*, 149 F.R.D. at 74. Thus, courts have found numerosity for classes with as few as 18 members. *Cypress v. Newport News General and Nonsectarian Hospital Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967).

In response to Interrogatory 6, Defendant admitted that there are 75 class members. Ex1 at ¶6. Thus, the size is sufficient under *Stewart, supra*. In addition, by virtue of the proposed class definition, the class consists of those class members who would have been served with process in a New Jersey state court collection case, filed an answer, and been mailed the offending letter. Thus, the class members are connected to this District, and identifying them and their

addresses is relatively easy as Pressler – who identified the class size – has those records. Therefore, like *Stair*, numerosity is satisfied.

2. Commonality

Fed. R. Civ. P. 23(a)(2) requires that there be “questions of law or fact common to the class.”

The commonality requirement is not “a high bar.” *Chiang v. Veneman*, 385 F.3d 256, 265 (3d Cir. 2004). Commonality “does not require an identity of claims or facts among class members.” *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). Instead, it is met if the plaintiffs’ grievances share at least one question of law or of fact with the prospective class. *Smith v. Prof'l Billing & Mgmt. Services, Inc.*, 06-4453JEI, 2007 WL 4191749 (D.N.J. Nov. 21, 2007) (citing *Newton*, 259 F.3d at 183). “We quite agree that for purposes of Rule 23(a)(2) even a single common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011) (internal quotes, citations and editing omitted); *Stewart*, 275 F.3d at 227 (“commonality requirement ... satisfied if the named plaintiffs share *at least* one question of fact or law with the grievances of the prospective class”).

In the present case, the Plaintiffs and the prospective class share the common facts that they each received a letter from Pressler after they had filed an answer to a collection complaint in which Pressler stated that, if the recipient timely paid the amount stated in the letter, “[p]roof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit

bureau.” Plaintiffs and the prospective class also share the common question of law as to whether the inclusion of that quoted sentence violated the Fair Debt Collection Practices Act.

As there exists at least one common question of law or fact among the Plaintiffs and the prospective class, the commonality requirement is satisfied.

In *Stair*, 254 F.R.D. at 198, the Court observed that, because commonality is subsumed by the predominance requirement under Fed. R. Civ. P. 23(b)(3), commonality was addressed under the Court’s predominance analysis.

3. Typicality

Fed. R. Civ. P. 23(a)(3) requires that a representative plaintiffs’ claims be “typical” of those of other class members.

To evaluate typicality, we ask “whether the named plaintiffs’ claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.” *Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994). “[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.” *Id.* at 58 (quoting *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 923 (3d Cir.1992)). The adequacy inquiry “serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997). It “assures that the named plaintiffs’ claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class.” *Baby Neal*, 43 F.3d at 55.

Beck v. Maximus, Inc., 457 F.3d 291, 295-96 (3d Cir. 2006). Thus, typicality often merges with adequacy. *Id.*

Typicality is demonstrated where a plaintiff can “show that two issues of law or fact he or she shares in common with the class occupy the same degree of centrality to his or her claims as to those of unnamed class members.” *Weiss v. York Hosp.*, 745 F.2d 786, 809-10 (3d Cir. 1984).

The requirement is met. The facts amongst the class and the Plaintiffs are the same: the letter was sent to collection case defendants after those defendants filed an answer to a complaint filed by New Century and the letter contained the same sentence concerning Pressler sending something to be forwarded to credit bureaus. The central legal issue in Plaintiffs’ and the class members’ claims is whether the credit bureau language violated the FDCPA. Furthermore, there is nothing to show that Plaintiffs’ interests are adverse to or in conflict with the members of the class.

Stair found no impediment to typicality. “Because the letter Plaintiff received from Defendants was identical to those received by the class members in all relevant respects, Plaintiff’s claim is legally typical of the class members’ claim.” *Stair*, 254 F.R.D. at 199.

It is important to recall that a cause of action under the FDCPA is established by a single violation. *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62-3 (2d Cir. 1993). Furthermore, Plaintiffs’ claim for statutory damages are not enhanced by proof of multiple violations: 15 U.S.C. § 1692k(a)(2)(A) limits such damages to \$1,000 per case, not per violation.

Consequently, the Amended Complaint [ECF Doc. 19], at ¶¶70 and 97, alleges that Defendant violated the FDCPA “in one or more of the following ways.”

Although Williams has asserted other violations of the FDCPA on an individual basis and they include individual damages, she will waive her individual damages claims if a class is certified. Amended Complaint (ECF Doc. 19) at ¶24. Furthermore, under the FDCPA’s single-violation rule, her other claims become moot if there is a successful adjudication of the class claims. Under these circumstances, her reservation of individual claims is no impediment to finding typicality.

Setneska also asserted violations other than the class claim. On January 4, 2013, however, Pressler was informed that Setneska would not be pursuing adjudication as to those other violations – specifically, he is waiving any claim based on the violations in ¶97.01 of the Amended Complaint but pursuing those in ¶97.02 which are the same as the proposed class claim.

Plaintiffs’ claims are, therefore, typical of the class’s claims.

4. Adequacy

The final requirement of Fed. R. Civ. P. 23(a) is set forth in subsection (a)(4). It requires that “the representative parties will fairly and adequately protect the interests of the class.” It looks at whether the representatives and their counsel will prosecute the class claims vigorously to ensure that the absent class members’ interests will be properly advocated. Consequently, it also looks

at conflicts of interest between those of the representatives and those of the class.

Prior to the 2003 amendment to Rule 23, adequacy focused on both the plaintiff and plaintiff's counsel. See, e.g., *Prudential*, 148 F.3d at 312. The Third Circuit recognized, however, that the amendment transferred consideration of class counsel's adequacy to Fed. R. Civ. P. 23(g). *Larson*, 687 F.3d at 132 n. 36; *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 181 n. 13 (3d Cir. 2012); and, *Sheinberg v. Sorensen*, 606 F.3d 130, 132 (3d Cir. 2010). Furthermore, Fed. R. Civ. P. Rule 23(g), when read in conjunction with Fed. R. Civ. P. 23(c)(1)(B), appears to sever the determination of counsel's adequacy from the consideration as to whether to certify a class. *Id.*, at 133.

Courts have been slow to recognize this change and, referring to *Sheinberg*, one authority acknowledged that the Third Circuit is the only appellate court to do so. 1 Rubenstein, *Newburg on Class Actions* (5th ed.) ("*Newburg*") §3:80 at 421. Nevertheless, there is continued difficulty eliminating all consideration of counsel under 23(a)(4). The Third Circuit observed:

“Realistically, for purposes of determining adequate representation, the performance of class counsel is intertwined with that of the class representative.” *Pelt v. Utah*, 539 F.3d 1271, 1288 (10th Cir.2008). As our own Judge Aldisert has explained, “[e]xperience teaches that it is counsel for the class representative and not the named parties ... who direct and manage [class] actions. Every experienced federal judge knows that any statements to the contrary [are] sheer sophistry.” *Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 832 n. 9 (3d Cir. 1973).

In re Cmty. Bank of N. Virginia, 622 F.3d 275, 292 (3d Cir. 2010) (hereafter “*N. Virginia*”). Similarly, in *Coyle v. Hornell Brewing Co.*, CIV. 08-2797 JBS/JS, 2011 WL 3859731 (D.N.J. Aug. 30, 2011), the court suggested that *Sheinberg* did not extract consideration of counsel’s adequacy from Fed. R. Civ. P. 23(a)(4) but merely required that the Fed. R. Civ. P. 23(g) factors be considered.

Consequently, both the adequacy of Plaintiffs and of class counsel is addressed here, incorporating the requirements under Fed. R. Civ. P. 23(g).

Beginning with the Plaintiffs’ adequacy, the focus is on whether the Plaintiffs’ interests conflict with the class. “The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem*, 521 U.S. at 625; *Larson*, 687 F.3d at 132.

Plaintiffs have disavowed the existence of any conflict. Indeed, Plaintiffs’ interests and the class’s interests are the same and not antagonistic. Both seek damages awardable under the FDCPA. Plaintiffs’ pursuit of those damages is not in conflict with the class’s objectives. To the contrary, they both seek the same objectives.

The present case presents even less cause for concern than in *Stair*. The FDCPA allows for up to \$1,000 to each Plaintiff and the class must share in a fund which cannot exceed the lesser of \$500,000 or 1% of Pressler’s net worth. In *Stair*, the Court awarded the maximum allowable under the FDCPA: \$1,000 to the plaintiff and the class of 227 shared \$2,750 (about \$12 each). Here, however, the maximum class award would yield a distribution to each class member substantially more than \$12.

(Note: Per this Court's Order, ECF Doc. 20, Pressler's disclosure of net worth was provided "for counsel's eyes only and may only be used for the purpose of this litigation." Consequently, its contents are not disclosed here. The net worth information will be filed under seal promptly after filing this Motion and expected to be ECF Doc. 31. The Court's *in camera* review should establish the point here: the disparity between the potential recoveries of the Plaintiffs and each class member is significantly less than the disparity in *Stair*.)

Regarding class counsel's adequacy, the Court must consider four factors:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class[.]

Fed. R. Civ. P. 23(g)(1)(A); *Sheinberg*, 606 F.3d at 132-133. In addition, the Court may consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B); *Sheinberg*, 606 F.3d at 132-133.

The Stern Decl. explains that Plaintiffs' attorney has undertaken work investigating and identifying potential claims, his significant experience handling class actions including the types of claims asserted here, his knowledge of the FDCPA, and that, not only is he willing to commit sufficient resources to representing the class, but he has already done so. *Pro v. Hertz Equip. Rental Corp.*, 72 Fed.R.Serv.3d 485, *7 (D.N.J. 2008) (willingness to commit resources evidenced by having already expended significant resources).

Under these circumstances, both the Plaintiffs and the proposed class counsel has satisfied the requirements for adequacy under Fed. R. Civ. P. 23(a)(4).

B. The Class Satisfies Rule 23(b)(3): Predominance and Superiority

Like *Stair*, “predominance and superiority requirements are easily satisfied here.” *Stair*, 254 F.R.D. at 200.

The Court must find that “the questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). Predominance considers the extent to which proof of the class members’ claims can be “through evidence that is common to the class rather than individual to its members.” *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 600 (3d Cir. 2012) (quoting *Hydrogen Peroxide*). Thus, it requires the Court to “formulate some prediction as to how specific issues will play out in order to determine whether common or individual issues predominate in a given case.” *Hydrogen Peroxide*, 552 F.3d at 311. One commentator observed that “the predominance analysis logically entails two distinct steps... . A court must first *characterize* the issue in the case as common or individual and then *weigh* which predominate. * * * This is more of a qualitative than quantitative analysis.” 2 *Newburg*, § 4:50 at 196-7.

The Court must also find “that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). This analysis requires comparing a representative action

where the claims of all the class members are aggregated to multiple individual claims. 2 *Newburg* § 4:64 at 250.

The rule, Fed. R. Civ. P. 23(b)(3), enumerates four factors to be considered in resolving the predominance and superiority issues:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

“All four factors weigh in favor of class certification here.” *Stair*, 254 F.R.D. at 201.

Like in *Stair*, all the class members received the same form letter. Each form letter was merged with information specific as to each member's identity and the alleged defaulted account, but that individualized information is irrelevant to the class claim. The class claim addresses the template's language concerning credit bureaus employed universally. Thus, proof of the class's claim is based on evidence common to all class members. There is no need for individualized evidentiary submissions. Instead, the ultimate question as to whether the letter sent to all class members violated the FDCPA can be readily proven with evidence common to all class members.

Plaintiffs' counsel has researched but been unable to find any cases asserting the proposed class claims. Stern Decl. at ¶4.05. Here, the limited quantum of damages recoverable under the FDCPA renders individualized prosecution of each class member's claims inefficient and, therefore, unlikely.

“[I]ndividual consumer class members have little interest in individually controlling the prosecution or defense of separate actions because each consumer has a very small claim in relation to the cost of prosecuting a lawsuit.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004). Consequently, aggregating those claims is more efficient and economical. *Stair*, 254 F.R.D. at 201.

The Supreme Court recognized the advantage of class actions.

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.

Amchem Products, 521 U.S. at 617. Significantly, the *Amchem* Court was quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997), a case which considered the effects of the statutory damage caps under FDCPA.

Adjudicating the class claims in one forum makes practical sense. The proposed class consists of those individuals sued in the New Jersey state courts and Pressler is a New Jersey limited liability partnership located in New Jersey, and this action is pending in the District of New Jersey.

There should be no difficulty in managing the class. There is no indication of any individualized facts. The class consists of individuals against whom Pressler filed collection actions, who were served with process at the address provided by Pressler, and who filed answers in those cases. Based on the

common nature of the class claims, there is nothing to suggest that the class members would be raising unique or individualized factual or legal issues.

For all of those reasons, the predominance and superiority requirements are satisfied sufficient to certify this class under Fed. R. Civ. P. 23(b)(3).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order (1) certifying a class pursuant to Fed. R. Civ. P. 23(b)(3) and appointing Plaintiffs as Class Representatives and their counsel as Class Counsel; (2) preliminarily approving the proposed settlement; (3) directing notice to Settlement Class Members in the manner contemplated by the Settlement Agreement; (4) scheduling a final fairness hearing for the purpose of determining final approval of the parties' settlement.

Dated: January 11, 2013

Respectfully submitted,

s/ Philip D. Stern

Philip D. Stern, Esq.

Philip D. Stern & Associates, LLC

Attorneys at Law

697 Valley Street, Suite 2d

Maplewood, NJ 07040

(973) 379-7500

Attorney for Plaintiffs and the putative class

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Plaintiffs, Natalie A. Williams, Alan J.
Setneska and all others similarly situated

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

NATALIE A. WILLIAMS and ALAN J.
SETNESKA, individually and on behalf of
all others similarly situated,
Plaintiffs,

vs.

PRESSLER AND PRESSLER, LLP,
Defendants.

Case 2:11-cv-07296-KSH-PS

**DECLARATION OF
NATALIE A. WILLIAMS**

I, Natalie A. Williams, declare:

1. I am one of the Plaintiffs in this lawsuit against Pressler and Pressler, LLP.
2. I make this Declaration in support of my request that the Court allow this case to proceed as a class action.
3. I graduated Fiorello H. LaGuardia High School of Music & Art and Performing Arts in 1997. In 2010, I was married and gave birth to my daughter. Prior to my marriage, I used my maiden name, Natalie A. Freeman.
4. Many years ago, when I was single, I walked into a Wal-Mart store and an employee convinced me to apply for a Wal-Mart credit card.

5. That card could only be used to make purchases at Wal-Mart and I made purchases primarily for groceries and school supplies as I was in school at the time.
6. Subsequently, I was unable to continue paying the account and it was closed.
7. In December 2010, just before Christmas, I received in the mail the paperwork for a lawsuit against me. It was filed by Pressler and Pressler, LLP as the attorneys for New Century Financial Services, Inc.
8. A true copy of the collection complaint is attached as **Exhibit A**.
9. At the time I received that complaint, I was living in Jersey City, where I continue to live (but in a different apartment) with my husband and my daughter.
10. The Complaint alleged that New Century had purchased the Wal-Mart account.
11. I defended myself in that case. I filed an answer.
12. A true copy of my answer is attached as **Exhibit B**.
13. Shortly after I filed the answer, I received a letter from Pressler's office dated January 12, 2011.
14. A true copy of that letter is attached as **Exhibit C**.
15. Although I represented myself, I did receive some assistance from John Ukegbu, Esq., a lawyer at Legal Services in Jersey City. Later on, Mr. Ukegbu suggested that I speak with Philip D. Stern, Esq. because I might have claims.

16. I sent copies of everything I had regarding the lawsuit to Mr. Stern.
17. I authorized Mr. Stern to file the complaint in this case to assert claims against Pressler and Pressler, LLP for violations of the Fair Debt Collection Practices Act.
18. I understand that I am asking the Court to certify that this case can proceed as a class action. I understand that I am asking the Court to treat the claims arising from the January 12, 2011 letter as representative of the claims other people have from receiving a similar letter and, therefore, I would be the representative of the class of those people along with Alan J. Setneska.
19. I understand that, on my behalf, Mr. Stern is pursuing other violations of the Fair Debt Collection Practices Act but that I will not pursue them if the Court allows this case to go forward as a class action and the class claims are successful. I would only assert those other claims if I am denied recovery for the violations arising from the January 12, 2011 letter.
20. I am not aware of any interest I have which would conflict with the interests of the class.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January 11th, 2013


NATALIE A. WILLIAMS

EXHIBIT A

Pressler and Pressler, LLP
7 Entin Rd.
Parsippany, NJ 07054-5020
(973)753-5100
Attorney for Plaintiff
File # F96305

NEW CENTURY FINANCIAL SERVICES, INC.

SUPERIOR COURT OF NEW JERSEY
Law Division

Plaintiff

vs.

HUDSON Special Civil Part

Docket # DC-031425-10

NATALIE FREEMAN

Defendant(s)

Civil Action
COMPLAINT
(Contract)

Plaintiff having a principal place of business at: 110 SOUTH JEFFERSON ROAD SUITE 104 WHIPPANY, NJ 07981 says:

1. It is now the owner of the defendant(s) GE CAPITAL - REGULAR WAL-MART account number C77W03423244788 which is now in default. There is due the plaintiff from the defendant(s) NATALIE FREEMAN the sum of \$720.11 plus interest from 10/27/2010 to 12/15/2010 in the amount of \$1.45 for a total of \$721.56.

WHEREFORE, plaintiff demands judgment for the sum of \$721.56 plus accruing interest to the date of judgment plus costs.

I certify that the matter in controversy is not the subject of any other court action or arbitration proceeding, now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance in Rule 1:38-7(b).

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff(s)
By: S/Ralph Gulko

Ralph Gulko

EXHIBIT B

Superior Court Of New Jersey
Law Division, Special Civil Part

HUDSON County

PRESSLER & PRESSLER, LLP

Plaintiff's Name

7 FENTIN ROAD

Street Address

PARSIPPANY NJ 07054-502

Town, State, Zip Code

(973) 753-5100

Telephone Number

Docket No. DC-031425-10

vs.

CIVIL ACTION

NATALIE FREEMAN

Defendant's Name

271 CHAPEL AVENUE, APT. 2

Street Address

JERSEY CITY NJ 07305

Town, State, Zip Code

(212) 222-7207

Telephone Number

Answer

Check the appropriate statement or statements below which set forth why you claim you do not owe money to the plaintiff.

- (1) The good or services were not received.
- (2) The goods or services received were defective.
- (3) The bill has been paid.
- (4) I/We did not order the goods or services.
- (5) The dollar amount claimed by the plaintiff(s) is incorrect.
- (6) Other - Set forth any other reasons why you believe money is not owed to the plaintiff(s). (You may attach more sheets if you need to.)

* THIS LAWSUIT I FIND TO BE FRIVOLOUS ^{BECAUSE IT'S} FROM A DEBT I BELIEVE TO BE AT LEAST 10 YEARS OLD - AND TO SEEK PAYMENT AFTER THE STATUTE OF LIMITATIONS AROUND THE HOLIDAYS I FIND TO BE MALICIOUS.

Trial by jury requested; an extra \$50 check or money order is enclosed.

At the trial Defendant requests:

An interpreter:

Yes No

Indicate Language:

An accommodation for a disability:

Yes No

Requested accommodation:

NOT APPLICABLE
DAYCARE FOR 8 MONTH BABY

I certify the matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I further certify that this answer was served on all other parties within 35 days of the date the summons and complaint were mailed to me as indicated on page 2 of the summons.

Dated: 01/07/2011

Natalie A. Williams
Defendant's Signature

NATALIE A. WILLIAMS
Defendant's Name - Type or Printed

EXHIBIT C

MAURICE H. PRESSLER(1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

MITCHELL L. WILLIAMSON
THOMAS M. BROGAN
RALPH GULKO
JOANNE L. D' AURIZIO
CHRISTOPHER P. ODOGBILI

PRESSLER AND PRESSLER, L.L.P.

COUNSELLORS AT LAW
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Parsippany, NJ 07054-5020
Off: (973) 753-5100
Fax: (973) 753-5353

NY Office
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New York, NY 10007
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Reply to [X] NJ Office [] NY Office

DALE L. GELBER
CRAIG S. STILLER*
STEVEN A. LANG
LESLIE L. PHIEFER
MICHAEL J. PETERS
RITA E. AYOUB

DARYL J. KIPNIS
DARREN H. TANAKA
MITCHELL E. ZIPKIN
DANIEL B. SULLIVAN
GINA M. LO BUE

* NY State License Only

OFFICE HOURS:
Monday-Thursday: 8am-9pm
Friday: 8am-7pm
Saturday: 9am-2pm

01/12/11



NATALIE FREEMAN
271 CHAPEL AVE APT 2
JERSEY CITY, NJ 073052911

P&P FILE #: F96305

Re: NEW CENTURY FINANCIAL SERVICES, INC. v. NATALIE FREEMAN
Docket # DC-031425-10
~~Superior Court of New Jersey. Law Division HUDSON Special Civil Part~~

Dear NATALIE FREEMAN :

You are hereby offered a significant savings on your GE CAPITAL - REGULAR WAL-MART account C77W03423244788 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . As you probably know, this office has filed a lawsuit against you in which the amount claimed is \$790.58 . This includes costs and other amounts the creditor is seeking. If you can make a payment of \$592.94 , 75 % of the amount claimed by Tuesday, January 25, 2011 , it will be accepted as payment in full, a savings to you of \$197.64 from the amount claimed in the lawsuit.

This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau. If you are unable to pay the 75 %, we can accept \$197.65 down (25 % of the full balance) and enter into acceptable arrangements on the remaining 75 % when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5368 or anyone in my department at 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number F96305 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After January 25, 2011 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

Thank you, KEVIN V - Paralegal EXT - 5368

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Plaintiffs, Natalie A. Williams, Alan J.
Setneska and all others similarly situated

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>NATALIE A. WILLIAMS and ALAN J. SETNESKA, individually and on behalf of all others similarly situated, Plaintiffs,</p> <p>vs.</p> <p>PRESSLER AND PRESSLER, LLP, Defendants.</p>	<p>Case 2:11-cv-07296-KSH-PS</p> <p>DECLARATION OF ALAN J. SETNESKA</p>
---	--

I, Alan J. Setneska, declare:

1. I am one of the Plaintiffs in this lawsuit against Pressler and Pressler, LLP.
2. I make this Declaration in support of my request that the Court allow this case to proceed as a class action.
3. I graduated high school in 1984. From 1987 to 2011, I worked for Russ Berrie US Gift, Inc. In 2011, Russ Berrie went out of business. Since that time, I have been out of work.
4. In 2011, Pressler filed a complaint against me to collect on a Citibank credit card account which I had been unable to pay.
5. A true copy of the complaint is attached as **Exhibit A**.
6. I am single, have never been married and have no children. I have never owned a business. Therefore, I had used that account to make purchases for myself.
7. The complaint alleged that a company called New Century Financial Services, Inc. had purchased the account. I had never heard of New Century.
8. I represented myself in that case and I filed an answer on September 6, 2011.

10. I received a letter dated September 7, 2011 from Pressler. A true copy of the letter is attached as **Exhibit C**. I received it within a few days after September 7, 2011.
11. While Pressler's case against me was still pending, I went to see Mr. Stern. At his request, I gave him whatever materials I could find concerning the collection case.
12. With my consent, Mr. Stern is pursuing claims against Pressler and Pressler, LLP on my behalf and on behalf of Natalie A. Williams which include asking the Court to let me and Ms. Williams act as representatives for the class of people whose claims are similar to ours.
13. I am not aware of any interest I have which would conflict with the interests of the class.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January 10, 2013


ALAN J. SETNESKA

EXHIBIT A

7 2011

PRESSLER and PRESSLER, LLP
COUNSELLORS AT LAW
7 Entin Rd.
Parsippany, NJ 07054-5020
(973) 753-5100 Ext. 5100
Attorney for Plaintiff

Debit Account # 148275 SUPERIOR COURT
Using reference # 112326493

P & P FILE NO. S258431

L1572-11

Plaintiff
NEW CENTURY FINANCIAL SERVICES, INC.
vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MERCER COUNTY
Docket No.
CIVIL ACTION
COMPLAINT

Defendant

ALAN J SETNESKA

Plaintiff having a principal place of business at: 110 S. JEFFERSON ROAD SUITE 104
WHIPPANY, NJ 07981 says:

1. It is now the owner of the defendant(s) CITIBANK SOUTH DAKOTA, N.A. account
number 5121079640375975 which is now in default. There is due the plaintiff from
the defendant(s) ALAN J SETNESKA the sum of \$15,219.30 plus interest from
04/08/2011 to 06/03/2011 in the amount of \$11.68 for a total of \$15,230.98.

WHEREFORE, plaintiff demands judgment for the sum of \$15,230.98 plus accruing
interest to the date of judgment plus costs.

I certify that the matter in controversy is not the subject of any other court
action or arbitration proceeding, now pending or contemplated, and that no other
parties should be joined in this action.

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff
By: s/Ralph Gulko
Ralph Gulko

EXHIBIT B

Alan J. Setneska
153 Hickory Corner Road
East Windsor, NJ 08520
(609) 448-0707

RECEIVED
SEP 08 2011
Sen Regan
SEPT 8 2011
DEPUTY CLERK OF COURT

NEW CENTURY FINANACIAL)
SERVICES, INC.)

Plaintiff,)

vs.)

ALAN J. SETNESKA,)

Defendant.)

SUPERIOR COURT OF NEW JERSEY)
LAW DIVISION)
MERCER COUNTY)

DOCKET NO: L - 001502 - 11)

CIVIL ACTION)
ANSWER)

I, Alan J. Setneska, Defendant, answers the plaintiff's complaint as follows:

1. Defendant did not receive the proper documentation necessary to be notified to be sued in the Law Division of the Superior Court of New Jersey. The complaint, Case Information Statement (CIS) and TAN must be served with the summons on all parties. The CIS was not served.
2. COMPLAINT - Denied: Defendant lacks the knowledge or information sufficient to form a belief as to the truth of the allegations regarding the alleged debt. According to the FDCPA 15 U.S.C. §1692, Plaintiff needs to establish that Defendant is liable for the alleged debt.

WHEREFORE, the defendant demands judgment dismissing the complaint with costs.

AFFIRMATIVE DEFENSES

1. This Complaint is not substantiated with proper evidence supporting the Plaintiff's claims, as required by Federal Rules of Civil Procedure, Rule 26(a)(1), regarding initial supporting documentation.
2. The Plaintiff lacks standing to sue the Defendant, since at no time did the Defendant cause any harm to the Plaintiff: (a) the Defendant has never had any sort of relationship, business or otherwise, with the Plaintiff; (b) at no time did the Defendant become indebted to the Plaintiff; (c) as such, the Defendant has no obligation to the Plaintiff, monetary or otherwise.
3. The Defendant claims Lack of Privity as Defendant has never entered into any contractual arrangements with the Plaintiff.
4. The Plaintiff has not proven that it has acquired the alleged account from Citibank South Dakota, N.A.

5. The Plaintiff has not proven that it is the real successor-in-interest. The Defendant demands proof of ownership specifically that the alleged account is the legal property of the Plaintiff with all of the original creditor's rights and privileges intact.
6. The Plaintiff's claims are barred by the Statute of Frauds since any contract or agreement alleged in the Complaint falls within a class of contracts or agreements required to be in writing. Any alleged contract or agreement by Plaintiff is not in writing nor signed by Defendant.
7. The Defendant alleges that the granting of the Plaintiff's demand in the Complaint would result in Unjust Enrichment, as the Plaintiff would receive more money than the Plaintiff is entitled to receive.
8. The Plaintiff's alleged damages are limited to real or actual damages only. Plaintiff has not provided a bill of sale with the purchase price of the alleged account. Debt Collectors purchase consumer accounts for pennies on the dollar. However, Plaintiff claims the damage in the amount of \$15,230.98 plus accruing interest to the date of judgment plus costs.
9. The Plaintiff admits voluntarily purchasing the alleged account, causing the Plaintiff's damages to its own self, therefore Plaintiff is barred from seeking relief for such self-inflicted damages.
10. The Defendant reserves the right to plead other affirmative defenses that may become applicable and/or available at a later time.
11. The Defendant reserves the right to submit counterclaims that may become applicable and/or available at a later time.


The Defendant requests this case be dismissed with prejudice along with any further relief the court deems just and proper.

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in the action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I further certify that this answer was served on all parties after the Order was returned on the motion that had been filed. .

Dated: September 6, 2011


Alan J. Setneska
Defendant

CERTIFICATION OF SERVICE

I certify that on September 6, 2011, I sent a copy of the Answer to the following parties
by:

REGULAR MAIL

New Century Financial Services, Inc.
c/o Pressler and Pressler, LLP
7 Entin Road
Parsippany, NJ 07054-5020
Attorney for Plaintiff

Date: September 6, 2011



Alan J. Setneska
Defendant

EXHIBIT C

MAURICE H. PRESSLER(1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

MITCHELL L. WILLIAMSON
THOMAS M. BROGAN
RALPH GULKO
JOANNE L. D'EURIZIO
CHRISTOPHER P. ODOGBILI

PRESSLER AND PRESSLER, L.L.P.

COUNSELLORS AT LAW
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NY Office
305 Broadway
9th Floor

New York, NY 10007
Off: (516)222-7929
Fax: (973)753-5353

Reply to [X] NJ Office [] NY Office

DALE L. GELBER
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OFFICE HOURS:

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09/07/11

ALAN J SETNESKA
153 HICKORY CORNER RD
EAST WINDSOR, NJ 085202417

P&P FILE #: S258431
Docket # L -001502-11

Re: NEW CENTURY FINANCIAL SERVICES, INC. v. ALAN J SETNESKA
Superior Court of New Jersey: Law Division MERCER County

Dear ALAN J SETNESKA :

You are hereby offered a significant savings on your CITIBANK SOUTH DAKOTA, N.A. account 5121079640375975 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . As you probably know, this office has filed a lawsuit against you in which the amount claimed is \$15,498.44 . This includes costs and other amounts the creditor is seeking. If you can make a payment of \$12,398.75 , 80 % of the amount claimed by Thursday, September 22, 2011 , it will be accepted as settlement in full, a savings to you of \$3,099.69 from the amount claimed in the lawsuit.

This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau. If you are unable to pay the 80 %, we can accept \$3,874.61 down (25 % of the full balance) and enter into acceptable arrangements on the remaining 75 % when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number S258431 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After September 22, 2011 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Plaintiffs, Natalie A. Williams, Alan J.
Setneska and all others similarly situated

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>NATALIE A. WILLIAMS and ALAN J. SETNESKA, individually and on behalf of all others similarly situated, Plaintiffs,</p> <p>vs.</p> <p>PRESSLER AND PRESSLER, LLP, Defendants.</p>	<p>Case 2:11-cv-07296-KSH-PS</p> <p>DECLARATION OF PHILIP D. STERN, ESQ.</p>
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I, Philip D. Stern, declare:

1. I am an attorney at law and represent the Plaintiffs in this action. I make this Declaration in connection with Plaintiffs’ motion for class certification.
2. This Declaration contains two categories of information. First, it addresses the factors under Fed. R. Civ. P. 23(g) for my appointment as class counsel. Second, I authenticate attachments related to this motion.

I. Fed. R. Civ. P. 23(g) Factors

3. Fed. R. Civ. P. 23(c)(1)(A) requires that an order certifying a class action must appoint class counsel under Fed. R. Civ. P. 23(g), which requires that the Court consider four factors. I address each of those factors seriatim.
4. The first consideration is “*the work counsel has done in identifying or investigating potential claims in the action.*”
 - 4.01. I interviewed both Ms. Williams and Mr. Setneska to address the information I concluded was necessary for me to make a professional judgment as to whether claims existed under the Fair Debt Collection Practices Act.
 - 4.02. I reviewed all documents provided to me by both Ms. Williams and Mr.

Setneska.

- 4.03. I discussed the factual background of the collection case against Ms. Williams with John Ukegbu, Esq., an attorney who had assisted Ms. Williams with that case.
- 4.04. As Mr. Ukegbu's thought was that Pressler had filed a time-barred claim and that a four-year statute applied, I also researched the issue raised in such cases as *Ford Motor Credit Co. v. Arce*, 348 N.J. Super. 198 (App. Div. 2002).
- 4.05. As part of my investigation in this matter, I searched PACER for other cases brought against Pressler asserting FDCPA claims, paying particular attention to whether the claims I anticipated filing here has been filed in other cases. I did not find any filed action in which the class claims asserted here were alleged. One of the cases I looked at was filed in this District and was entitled *Derricote v. Pressler & Pressler, LLP* and designated by Case 3:10-cv-01323-PGS-DEA ("Derricote Matter"). I concluded that there were two items from the Derricote Matter that are involved here:
 - (1) First, there was a filed affidavit by Jeffrey Esposito who asserted that he was Director of Operations for New Century Financial Services, Inc. and described New Century's business. That information relates to this case because one characteristic of the proposed class is that the offending letter was sent by Pressler in connection with a lawsuit it filed on behalf of New Century. I have attached the relevant page of that affidavit at Exhibit Page 62.
 - (2) Second, Pressler filed a copy of its letter to Derricote, which appears to use the same template as the one used to create the letters sent to Plaintiffs. I have attached the document at Exhibit Page 63. The letter is dated September 23, 2009. At his deposition, one of Pressler's limited partners, Steven P. McCabe, testified that he approved the form of the letter sometime in 2009. See Exhibit Page 23 at transcript page 18, line 6.
- 4.06. Regarding identification of the class size and class members, Pressler provided responses to two interrogatories. Pressler identifies 75 class members as having received the same form letter during the class period, 32 of whom New Century never reported any information to any credit

bureaus. In response to Plaintiffs' request (Interrogatory 7) that Pressler explain how it identified those class members, it stated:

All electronically stored client files were searched with the limiting parameters of date (limited to the defined class period and wherein New Century Financial Services, Inc. was the client) to identify those accounts where a "post answer" settlement letter had been sent. All accounts were identified by the county wherein the suit was venued, the date an answer was filed and the date the "post answer" settlement letter was sent. Those accounts were then reviewed to see (a) whether they had been reported to a credit bureau by New Century Financial Services, Inc. and (b) if the sentence "Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau" was included in the letter.

5. The second consideration is "*counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action.*"

5.01. I have been certified as the sole class counsel or as co-class counsel in the following cases:

- (1) *Anderson v. Rubin & Rothman, LLC*, Case 2:07-cv-03375 (E.D.N.Y., Hon. Sandra J. Feuerstein)
- (2) *Anderson v. Nationwide Credit, Inc.*, Case 2:08-cv-01016 (E.D.N.Y., Hon. Leonard D. Wexler)
- (3) *Gravina v. Client Services, Inc.*, Case 2:08-cv-03634, (E.D.N.Y., Hon. Leonard D. Wexler)
- (4) *Seraji v. Capital Management Services, LP*, Case 1:09-cv-00767 (D.N.J., Hon. Douglas Arpert)
- (5) *Krug v. Forster, Garbus & Garbus*, Case 2:08-cv-03504 (D.N.J., Hon. Michael A. Shipp)
- (6) *Sygmund Williams v. Palisades Collection, LLC*, Docket BER-L-001604-11 (N.J.Super., Hon. Robert C. Wilson)
- (7) *Krug v. Brachfeld*, Docket GLO-000419-11 (N.J.Super., Hon. Eugene J. McCaffrey, Jr.)
- (8) *Nicholas v. CMRE Financial Services, Inc.*, Docket BER-L-4336-11 (N.J.Super., Hon. John J. Langan, Jr.)
- (9) *Krug v. Focus Receivables Management, LLC*, Docket BER-L-4337-11 (N.J.Super., Hon. John J. Langan, Jr.)
- (10) *Thomas C. Williams v. The CBE Group, Inc.*, Case 2:11-cv-03680-PS

(D.N.J., Hon. Patty Shwartz)

- 5.02. All of those cases, like the present matter, involved claims arising under the FDCPA. Two of the cases, #6 and #10, above, involved the same violation alleged in this case, 15 U.S.C. § 1692e(10), which involves false or misleading statements made in an attempt to collect a debt.
 6. The third consideration is “counsel's knowledge of the applicable law.”
 - 6.01. My knowledge and experience with the FDCPA is relatively new for someone being in the private practice of law since 1984. Until 2007, my practice and legal experience was primarily involved with business and real estate – both transactional and litigation work. Much of my litigation experience involved representation of all sorts of businesses including commercial banks, real estate investment groups, and a title insurance company.
 - 6.02. Between 2004 and 2007, I began to handle more and more collection defense cases, which allowed me to regularly observe what debt collectors were doing. In 2007, I began handling FDCPA cases. By the beginning of 2008, virtually all of my time was focused on handling FDCPA cases or defending debt collection lawsuits, with the majority of my time being spent on the FDCPA cases. Based on my recent review of cases on PACER in which I appeared as an attorney, I have been counsel in over 100 FDCPA cases. As a result of my involvement in those cases, I have researched and written numerous briefs on FDCPA issues.
 - 6.03. In 2009, I joined the National Association of Consumer Advocates, a non-profit association of attorneys and consumer advocates committed to representing consumers’ interests.
 - 6.04. I attended the National Consumer Law Center’s (NCLC) three-day Consumer Rights Litigation Conference in 2007 (Washington, DC), 2009 (Philadelphia), 2010 (Boston), 2011 (Chicago) and 2012 (Seattle).
 - 6.05. I have also attended NCLC’s three-day Fair Debt Collection Training Conference in 2010 (Jacksonville), 2011 (Seattle) and 2012 (New Orleans). At the 2012 Conference, I was presenter at the Advanced Fair Debt Collection Practices Conference.
 7. The fourth consideration is “the resources that counsel will commit to representing the class.”
 - 7.01. I have been and continue to be committed to having sufficient resources to represent the class.
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- 7.02. Thusfar, I have advanced the costs for filing fees, the expert witness fees (\$2,500 alone), and costs for the depositions of the parties and a third party witness.
- 7.03. I would expect that there will be costs for noticing the 75 class members, as well as the costs involved for trial – all of which I am prepared to cover.
8. The Court may also “consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.”
- 8.01. I received my bachelor's degree from the University of Pennsylvania in May 1981 and graduated the Benjamin N. Cardozo School of Law in May 1984. I was admitted to practice before the State and Federal Courts in New Jersey on December 20, 1984. I am also admitted in the District of Columbia, the Courts of Appeals for the Third Circuit and for the Ninth Circuit, and the United States District Court for the Western District of New York.
- 8.02. From September 1984 through January 1995, I worked for two law firms focusing on business-oriented litigation, including employment, environmental, land use, non-consumer collections and matters involving the enforcement of contracts. At one of those firms, Stern, Dubrow & Marcus, P.C., I worked closely with Morris Stern, now a Bankruptcy Judge in this District. Despite our common last names, Judge Stern and I have no familial relationship. Much of my work involved pleadings, motions, trials and appeals.
- 8.03. In 1994, I taught Appellate Advocacy, as an adjunct professor, at Seton Hall Law School. In October 2011 and March 2012, I taught a CLE class to lawyers employed by Legal Services of New Jersey regarding strategies in defending debt buyer collection actions.
- 8.04. In 2012, I was designated a Top Legal Mind by *Inside New Jersey* magazine. As long as Martindale-Hubbell has rated me, I have had a rating of AV – it's highest – with a peer rating of 5.0 out of 5.0.
- 8.05. No ethics complaints have ever been filed against me. No one has ever moved for sanctions against me for violating Fed. R. Civ. P. 11 or the New Jersey counterpart, R. 1:4-8, nor have I ever been held in contempt. In the spirit of full disclosure:
- (1) I was recently informed that, for the first time in my career, an ethics grievance was filed against me, authored by a lawyer at

Pressler and Pressler, LLP. Under New Jersey Court Rule 1:20, a grievance is merely an allegation of unethical conduct subject to dismissal, declination or further investigation.

- (2) Two months *after* an FDCPA case against Pressler brought by me on behalf of another client was settled and dismissed with prejudice, Pressler moved for sanctions against me and my client, asserting that affidavits filed in connection with an interlocutory motion (which was pending when the case was settled and, therefore, never decided) were submitted in bad faith. That motion is presently scheduled to be heard on January 16, 2013.

9. The foregoing establishes that I am suitable to be appointed class counsel.

II. Attachments

10. By way of explanation, I identify 64 pages of exhibits. Since these exhibits are a mixture of documents, for ease of reference, they have been paginated as "EXHIBIT PAGE 1" through "EXHIBIT PAGE 63." They are referred to here by abbreviation; for example, Ex37 means the page labeled EXHIBIT PAGE 37.
 11. Ex1 is page 2 of Pressler's responses to Plaintiffs' interrogatories.
 12. Ex2 through Ex10 are transcript pages from the deposition of Ralph Gulko.
 13. Ex11 through Ex19 are transcript pages from the deposition of Marko Galic.
 14. Ex20 through Ex27 are transcript pages from the deposition of Steven P. McCabe.
 15. Ex28 through Ex39 are copies of exhibits marked and used at the depositions of Messrs. Gulko, Galic and McCabe. More specifically:
 - 15.01. Ex28 was marked as P-5.
 - 15.02. Ex29 was marked as P-4.
 - 15.03. Ex30 is a one-page letter which was the first page of P-8. The enclosures with that letter are omitted here because those enclosures were individually identified as P-6, P-7, and P-9.
 - 15.04. Ex31-Ex32 was marked as P-6.
 - 15.05. Ex33-Ex34 was marked as P-9.
 - 15.06. Ex35-38 was marked as P-7.
 16. Ex39 is a page from Pressler's supplemental discovery responses as ordered by the Court in ECF Doc. 20.
 17. In Ex39, Pressler responded to the Court's requirement that it produced all non-privileged documents in its collection files. The response identified "*Williams documents numbered 1 through 26.*" Those documents were produced
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electronically which each document being a separate PDF-type file. The file named "(5) Freeman's Answer 1_7_11.pdf" consists of two pages and appears at Ex40-Ex41.

18. Ex42-Ex61 is the Declaration of Evan Hendricks, Plaintiffs' expert, which includes his curriculum vitae.
19. Ex62 is the first page of the Affidavit of Jeffrey Esposito which I found on PACER as having been filed as ECF Doc. 18-19 at ECF Page ID 124 the Derricote Matter. See ¶4.05(1), *supra* at page 2.
20. Ex63 is a document which, according to PACER, was filed by Pressler in the Derricote Matter. See ¶4.05(2), *supra* at page 2.
21. After the Exhibits had been prepared, it was recognized that one page from McCabe's deposition transcript had been inadvertently omitted. That page appears as Ex64.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January 11, 2013

s/Philip D. Stern

PHILIP D. STERN

3. Did you send the letter to Plaintiff, a copy of which is annexed to the Complaint as Exhibit 1, in an attempt to collect all or part of the Obligation?

RESPONSE: *Exhibit 1 appears to be a copy of a letter dated November 11, 2011 sent on that date to one Natalie Freeman. The remainder of this interrogatory would appear to be an improper attempt to impose on Defendant a duty to characterize the nature of a document which speaks for itself and may be subject to a multiple interpretations and legal analysis.*

4. Did you file the document, a copy of which is annexed to the Complaint as Exhibit 2, in an attempt to collect all or part of the Obligation?

RESPONSE: *Exhibit 2 appears to be a copy of a complaint filed on December 17, 2010 in the Superior Court of New Jersey, Law Division Hudson County, New Jersey. The remainder of this interrogatory would appear to be an improper attempt to impose on Defendant a duty to characterize the nature of a document which speaks for itself and may be subject to a multiple interpretations and legal analysis.*

5. Did you send the letter to Plaintiff, a copy of which is annexed to the Complaint as Exhibit 4, in an attempt to collect all or part of the Obligation?

RESPONSE: *Exhibit 4 appears to be a copy of a letter dated January 1, 2012 sent on that date to one Natalie Freeman. The remainder of this interrogatory would appear to be an improper attempt to impose on Defendant a duty to characterize the nature of a document which speaks for itself and may be subject to a multiple interpretations and legal analysis.*

6. During the Class Period, how many recipients with an address in New Jersey were sent a letter created from the Template in an attempt to collect a debt owned by New Century Financial Services, Inc.?

RESPONSE: *Objection, this interrogatory is vague and ambiguous in that it is premised on assumptions without evidentiary support. Without waiver of this or any other pertinent objections, letter similar to the one annexed to the complaint as Exhibit 4 which included the sentence "Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau." were sent to seventy-five (75) recipients during the time period December 17, 2010 through March 19, 2012. In thirty two (32) instances the account in question had not been reported to the credit bureaus by New Century Financial Services, Inc.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Action No. 2:11-cv-07296 (KSH) (PS)

NATALIE A. WILLIAMS and	:	
ALAN J. SETNESKA,	:	
individually and on	:	
behalf of all others	:	DEPOSITION OF:
similarly situated,	:	
	:	RALPH GULKO
Plaintiffs,	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLC,	:	
	:	
Defendant.	:	

T R A N S C R I P T of the
proceedings as taken stenographically by and before
ANN P. CONLON, a Notary Public and Certified Court
Reporter of the State of New Jersey, at the offices
of Pressler & Pressler, 7 Entin Road, Parsippany, New
Jersey, on Monday, October 15, 2012, commencing at
11:34 a.m.

ANN P. CONLON
Certified Court Reporter
12 Sneider Road
Warren, New Jersey 07059
(732) 748-8998
nancita@juno.com

1 A P P E A R A N C E S:

2

3

4 PHILIP D. STERN, ESQ.

5 697 Valley Street #2D

6 Maplewood, NJ 07040

7 908.379.7500

8 ATTORNEY FOR PLAINTIFFS

9

10

11 PRESSLER & PRESSLER

12 7 Entin Road

13 Parsippany, NJ 07054

14 973.753.5100

15 BY: MITCHELL L. WILLIAMSON, ESQ.

16 MICHAEL J. PETERS, ESQ.

17 ATTORNEYS FOR DEFENDANT

18

19

20

21 * * * * *

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1 RALPH GULKO,
 2 having been duly sworn according
 3 to law, testified as follows:
 4
 5 EXAMINATION BY MR. STERN:
 6 Q. Good morning, Mr. Gulko. My name is
 7 Philip Stern and I'm representing Natalie Williams,
 8 formerly known as Natalie Freeman, and Alan Setneska
 9 with respect to a complaint that's been filed against
 10 Pressler & Pressler. Have you read the complaint or
 11 the amended complaint?
 12 A. No.
 13 Q. Do you have any understanding as to
 14 what the nature of the lawsuit is about?
 15 A. No.
 16 Q. What's your understanding of the
 17 reason why you're appearing this morning?
 18 A. **I don't know. You haven't asked me**
 19 **any questions yet.**
 20 Q. You have no idea what this is about?
 21 Is that what you're saying?
 22 A. **I've never reviewed the file, no.**
 23 Q. Do you have any understanding about
 24 what this proceeding is about?
 25 A. No.

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1 Q. How did you find out that you would
 2 need to be here today?
 3 A. **Mr. Williamson notified me.**
 4 Q. And without telling me the substance
 5 of it, did you discuss with Mr. Williamson what the
 6 reason for your appearing here today would be?
 7 MR. WILLIAMSON: I'm going to let him
 8 answer, but you're real close to attorney-client
 9 privilege. I'll let him give a yes or no answer.
 10 A. **I'm sorry, I don't understand the**
 11 **question.**
 12 MR. STERN: Can you repeat the
 13 question, please?
 14 (The question is read by the reporter.)
 15 A. **I don't understand your question.**
 16 MR. WILLIAMSON: Object to form as
 17 well.
 18 Q. Did Mr. Williamson explain to you any
 19 reason why you would be appearing today?
 20 MR. WILLIAMSON: Objection. Answer it
 21 to the best of your ability.
 22 A. **I don't understand what you mean by**
 23 **"reason." I mean, I'm guessing at what you're asking**
 24 **me and I don't want to guess.**
 25 Q. Do you have any understanding about

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1 why you're here today?
 2 A. **I'm being deposed.**
 3 Q. Do you have any idea as to what the
 4 subject matter of the deposition is intended to be?
 5 A. **It's my understanding that you are**
 6 **deposing me as a fact witness as to the work I do on**
 7 **behalf of this law firm.**
 8 Q. Are you admitted to practice law?
 9 A. **Yes.**
 10 Q. In what jurisdictions?
 11 A. **New Jersey, New York, and**
 12 **Pennsylvania.**
 13 Q. Where did you graduate law school?
 14 A. **Rutgers in Camden.**
 15 Q. Do you remember the year?
 16 A. **1978.**
 17 Q. Since that time, has your full-time
 18 employment been engaged in the private practice of
 19 law?
 20 A. **Yes.**
 21 Q. Can you run through chronologically
 22 where you've worked since you graduated law school?
 23 A. **I served a one-year clerkship for the**
 24 **Honorable Amos Saunders in Paterson, Superior Court**
 25 **of New Jersey. After the clerkship, I worked for the**

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1 **law firm of Celentano & Stadtmauer in Clifton. Then**
 2 **I worked for the law firm of Eichenbaum, Cantowitz**
 3 **and Leff beginning in May of 1980. The firm became**
 4 **Eichenbaum, Kantrowitz, Leff & Gulko in 1986, and**
 5 **then seven years ago I withdrew from that law firm**
 6 **and associated myself with this law firm.**
 7 Q. Just so I'm clear, 2005 is when you
 8 started working with Pressler & Pressler?
 9 A. **Yes, August, 2005.**
 10 Q. Other than your license to practice
 11 law in the three states you mentioned, do you hold
 12 any vocational or professional licenses?
 13 A. **Other than the practice of law?**
 14 Q. Right, for those three states.
 15 A. **Well, there are federal court licenses**
 16 **in those states, but other than that, no.**
 17 Q. From the time you began working at
 18 Celentano & Stadtmauer, has your practice been
 19 primarily related to the collection of defaulted
 20 debts?
 21 A. **Yes.**
 22 Q. Has that been limited or focussed with
 23 respect to consumer debts or both consumer and
 24 commercial debts?
 25 A. **Both, but primarily consumers.**

8

1 **Q.** What was the position for which you
 2 were hired when you first came to Pressler &
 3 Pressler?
 4 **MR. WILLIAMSON:** Objection to form.
 5 You can answer.
 6 **A. I was hired as an associate attorney**
 7 **for the firm.**
 8 **Q.** Has your position changed since you
 9 began working at Pressler & Pressler?
 10 **A. No.**
 11 **Q.** Do you report to any other attorney in
 12 the office?
 13 **A. I am subject to the partners.**
 14 **Q.** Is there any particular individual who
 15 is your immediate supervisor?
 16 **A. I don't understand your question as to**
 17 **"immediate supervisor."**
 18 **Q.** Is there any one individual who has
 19 primary responsibility for overseeing your work?
 20 **A. I don't know about responsibility. I**
 21 **have at times spoken with all the partners. If**
 22 **there's one partner who you ask over the years do I**
 23 **speak with more about my work than other partners,**
 24 **that would be Mr. Felt, Gerald Felt.**
 25 **Q.** Who are the other partners?

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1 **A. Mr. McCabe, Mr. McDermott and there's**
 2 **Mr. Pressler.**
 3 **Q.** Please describe the work that you
 4 perform currently for Pressler & Pressler.
 5 **A. Currently, my work consists of**
 6 **pleading and document review and approval.**
 7 **Q.** So would it be fair to say that your
 8 work is limited to cases that have been pending in
 9 court?
 10 **MR. WILLIAMSON:** Objection, form.
 11 **MR. STERN:** I'll withdraw the
 12 question.
 13 **Q.** Would it be fair to say that your work
 14 focuses on matters that are either being filed in
 15 court or have already been filed in court matters?
 16 **A. My work consists of whatever work is**
 17 **given to me by the firm to review.**
 18 **Q.** You said pleading and document review
 19 and approval. Do you recall that testimony?
 20 **A. Yes.**
 21 **Q.** Pleading and review obviously, by
 22 definition, pleading is referring to matters that are
 23 pending in court, correct?
 24 **A. Or about to be.**
 25 **Q.** Okay. And would document review

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1 relate to matters that have not been or are not about
 2 to be filed in court?
 3 **A. About to be.**
 4 **Q.** Okay. So document review would
 5 include matters that are about to be filed?
 6 **A. Yes.**
 7 **Q.** With respect to the courts in which
 8 the matter is filed or about to be filed, are those
 9 courts courts of the state of New Jersey?
 10 **A. Yes, and Pennsylvania.**
 11 **Q.** And what about New York?
 12 **A. I do not presently do New York review.**
 13 **Q.** Can you estimate how much of your time
 14 is spent doing your work with respect to matters
 15 filed or about to be filed in New Jersey as opposed
 16 to matters that are filed or about to be filed in
 17 Pennsylvania?
 18 **A. The majority of my time is spent on**
 19 **New Jersey.**
 20 **Q.** Mr. Gulko, I'm showing you what's been
 21 marked as P-10. Do you know what P-10 is?
 22 **A. It appears to be a complaint that was**
 23 **filed by this office through JEFIS with the Hudson**
 24 **County Special Civil Part.**
 25 **Q.** Mr. Gulko, I'm showing you what's been

11

1 marked as P-11 and I'll represent to you that Mr.
 2 Williamson provided my office with P-11. Do you
 3 agree that P-10 and P-11 are substantially the same
 4 document?
 5 **A. It would appear so.**
 6 **Q.** If you want to, take a moment and
 7 review it, because I want to ask you about this. It
 8 appears the only difference that I've been able to
 9 see between the two is that there's a typed signature
 10 on P-10 and not on P-11. So I want to ask you about
 11 that in a moment, but I want to give you an
 12 opportunity to review it to see if there's any other
 13 differences.
 14 **A. Well, there are differences to the**
 15 **extent that this would appear -- this appears to me**
 16 **to be our -- P-11 appears to be our file copy and**
 17 **P-10 appears to be a copy of what was filed with the**
 18 **court. Because of the information received on the**
 19 **top and the file date as well as the docket number**
 20 **itself, this document appears to have come from the**
 21 **court and this is the document before it was sent to**
 22 **the court.**
 23 **Q.** And just for purposes of the record,
 24 the document that you said appears to have been
 25 recorded is P-10?

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1 asking about signature. I think we're going to be
 2 here for another half hour. You need to sign up so
 3 that your typewritten -- your S/ constitutes --
 4 MR. STERN: Right, is your signature.
 5 MR. WILLIAMSON: Well, as a JEFIS
 6 filer, your S/ constitutes --
 7 MR. STERN: Okay.
 8 MR. WILLIAMSON: Just to cut to the
 9 chase.
 10 MR. STERN: Right, I don't want to
 11 belabor the point.
 12 (The witness re-enters the room.)
 13 **Q.** Mr. Gulko, are you a JEFIS filer?
 14 **A.** **The law firm is a JEFIS filer.**
 15 **Q.** So are you saying you are not a JEFIS
 16 filer?
 17 **A.** **I don't understand your question.**
 18 **Q.** All right. Do you have authority to
 19 file complaints through the JEFIS system?
 20 **A.** **I have authority to approve or**
 21 **disapprove complaints that are presented to me,**
 22 **which, if approved, are JEFISed, yes.**
 23 **Q.** Do you have an understanding as to
 24 what effect the typewritten S/ has on the complaint?
 25 **A.** **I don't understand your question.**

17

1 **Q.** Do complaints which you file require
 2 you to sign it?
 3 **A.** **In the computer, yes.**
 4 **Q.** What do you mean by in the computer?
 5 **A.** **I either approve it or don't approve**
 6 **it upon my review of the proposed complaint that's**
 7 **presented to me in my work. After I have reviewed it**
 8 **and if I am satisfied that the complaint should be**
 9 **filed in the manner that it's presented to me, I**
 10 **imprint GD for good in the computer and hit enter.**
 11 **If for any reason I don't want the**
 12 **complaint filed, I enter NG in the computer and hit**
 13 **enter and then the complaint is kicked back to**
 14 **wherever I want it to go for further action.**
 15 **Q.** Do complaints filed with the courts of
 16 the state of New Jersey require a signature of the
 17 attorney filing the complaint?
 18 **A.** **Could you repeat that question?**
 19 **Q.** Yes. Do complaints filed with the
 20 courts of the state of New Jersey require a signature
 21 of the attorney filing the complaint?
 22 **A.** **What do you mean by "signature"? I've**
 23 **already testified that in Law Division matters I sign**
 24 **the complaint in ink and that in Special Civil Part**
 25 **matters I approve the complaints which are**

18

1 **transmitted electronically through the JEFIS system,**
 2 **and that is why it appears as it does.**
 3 **Q.** Is your approval of a complaint
 4 different from your signing the complaint?
 5 **A.** **On the JEFIS matters? Is that your**
 6 **question?**
 7 **Q.** Yes, I'm asking with respect to the
 8 JEFIS matters.
 9 **A.** **When I approve a matter for Special**
 10 **Civil Part, once it is approved by me in the**
 11 **computer, it is JEFISed to whichever court I want it**
 12 **to be filed.**
 13 **Q.** I'm showing you what's been marked as
 14 P-14. Do you recognize P-14?
 15 **A.** **I see it.**
 16 **Q.** Do you recognize it?
 17 **A.** **It looks like a Law Division complaint**
 18 **prepared by this office.**
 19 **Q.** And does your signature appear on that
 20 complaint?
 21 **A.** **As an S slash.**
 22 **Q.** And to your knowledge, was that
 23 complaint filed in that form with the Superior Court
 24 of New Jersey?
 25 **A.** **Law Division complaints are filed in**

19

1 **multiple. There is what I would call the original**
 2 **complaint, which has my signature in ink, and then**
 3 **there's at least one copy filed with it which has the**
 4 **S/F to allow the court upon receipt of the complaint**
 5 **and the filing fee to stamp the court receipt date**
 6 **and the docket number. And then the S/ copy is**
 7 **returned to us and we use that copy to issue out a**
 8 **summons to the sheriff for service.**
 9 **Q.** Based upon the explanations you just
 10 gave about your practice, are you able to say with
 11 respect to P-14 that P-14 is the copy that you
 12 received back from the Superior Court?
 13 **A.** **Oh, I don't know that, because there's**
 14 **no court received date or docket number. If you're**
 15 **asking me what I think this is looking at the four**
 16 **corners of P-14, I would say much as I said in P-11,**
 17 **that this is our file copy of the complaint as it was**
 18 **prepared. Looking at P-14, I couldn't testify**
 19 **whether this document has been or ever was filed,**
 20 **because there's no file stamp and no docket number.**
 21 **Q.** Was there an original of the complaint
 22 represented by P-14 which contained your wet ink
 23 signature?
 24 **A.** **I've already testified to that, sir.**
 25 **Would you like me to repeat my testimony to you?**

24

1 a compromise, I'm going to have him review the files
 2 to the point that the complaint was filed, no
 3 further. That's it, he's not going to look at
 4 anything else and he's not going to testify about
 5 anything else.
 6 MR. STERN: But the fact that he's not
 7 able to testify as to whether the Setneska complaint,
 8 for example, was filed --
 9 MR. WILLIAMSON: Fair enough. I'll
 10 have him review the notes, the files, to the extent
 11 to the time when these two were filed.
 12 MR. STERN: Okay.
 13 MR. WILLIAMSON: And not beyond.
 14 MR. STERN: Okay. I assume we'll take
 15 a break at some point.
 16 (A discussion is held off the record.)
 17 BY MR. STERN:
 18 Q. Mr. Gulko, referring back again to
 19 P-14, is the inclusion of the typed signature with
 20 the S/ intended to represent that you had signed the
 21 complaint.
 22 A. **It is intended or was intended by me**
 23 **to be an additional copy to the original complaint**
 24 **that was signed by me. That would have been**
 25 **submitted to the court for filing and the assignment**

25

1 **of a docket number.**
 2 Q. Mr. Gulko, I'm showing you what's been
 3 marked as P-9. Do you recognize P-9?
 4 A. **It says it's an affidavit of Ralph**
 5 **Gulko, and on the second page it bears a signature**
 6 **that I recognize to be mine.**
 7 Q. Would you take a moment and read to
 8 yourself the affidavit? Let me know when you're
 9 done?
 10 Do you see on the second page there is
 11 a jurat?
 12 A. **Yes.**
 13 Q. That indicates that it was signed on
 14 the 2nd day of April, 2012?
 15 A. **Yes.**
 16 Q. Do you recall signing this affidavit
 17 on or about April 2nd, 2012?
 18 A. **I have no present recollection.**
 19 Q. Is there anything stated in the
 20 affidavit which you believe to be inaccurate?
 21 A. **No.**
 22 Q. Is there anything stated in the
 23 affidavit which you believe to be untrue?
 24 A. **No.**
 25 Q. Is there anything stated in the

26

1 affidavit which you would like to change today?
 2 A. **No.**
 3 Q. Refer, if you will, please, to
 4 paragraph number two in P-9.
 5 A. **Yes.**
 6 Q. Do you see that that refers to
 7 describing a first step with respect to new retail
 8 consumer collection claims?
 9 A. **Yes.**
 10 Q. Can you describe from the point in
 11 time that the initial notice letter goes out until
 12 the time that you would approve a complaint for
 13 filing, what happens with respect to the claim?
 14 A. **I don't see the file until the**
 15 **complaint is presented to me for approval or**
 16 **disapproval as stated in paragraph three, that step.**
 17 **The presentation of the proposed complaint is not**
 18 **presented to me until at least 35 days after the**
 19 **mailing of the initial notice letter.**
 20 Q. So you have no involvement with
 21 respect to the claim until a complaint is presented
 22 to you for approval?
 23 A. **That's correct.**
 24 Q. When a complaint is presented to you,
 25 it's already been prepared? Someone has drafted the

27

1 complaint, correct?
 2 A. **It's been prepared for my review, yes.**
 3 Q. Do you know who prepares the
 4 complaint?
 5 A. **Not personally, no.**
 6 Q. Are there individuals with designated
 7 job titles or job functions who have responsibility
 8 for preparing the complaints that are presented to
 9 you?
 10 A. **I don't know who the individuals are.**
 11 **There are departments that prepare this pursuant to**
 12 **forms that are within our computer system.**
 13 Q. Do you know if the complaints are
 14 prepared by an attorney at Pressler & Pressler?
 15 MR. WILLIAMSON: Objection, form.
 16 A. **I don't understand your question.**
 17 Q. How do you find out that a complaint
 18 has been prepared for your approval?
 19 MR. WILLIAMSON: Objection to form.
 20 You keep using the word "prepared." I'm not clear
 21 what that word means. I think that's the problem.
 22 Q. A complaint is presented to you for
 23 approval.
 24 A. **For review.**
 25 Q. For review. And either approval or

1 disapproval, correct?

2 **A. Correct.**

3 **Q.** How is the complaint created?

4 MR. WILLIAMSON: Objection to form. I
5 want to cut to the chase. Are you asking him how it
6 gets drafted?

7 MR. STERN: Drafted, prepared,
8 created, whatever. How does it get to him in that
9 form? He's presented with something he calls a
10 complaint.

11 MR. WILLIAMSON: I don't mean to speak
12 for him, but I think he testified he's presented with
13 a draft complaint.

14 **Q.** Mr. Gulko, are you presented with a
15 draft complaint?

16 **A. Here is how my work is presented to
17 me. Complaints are either Special Civil Part for
18 purposes of being JEFISed upon approval or they're
19 Law Division complaints for purposes of being signed
20 and filed with the court manually.**

21 **The Special Civil Part complaint, the
22 daily work for my review comes in a computer printout
23 of file number and case name. When I work it on my
24 computer, the file is brought up on a double-screen
25 computer. On the right side of the screen is the**

1 **collection program that contains all the information
2 on the case that is pertinent for me to review, and
3 on the left side of the screen is the actual document
4 itself.**

5 **For instance, P-11 is what I would
6 actually see on the left side of my screen.
7 Likewise, P-14 is what I would -- well, P-14 comes
8 up, but since it's physically presented to me for
9 signing, my eyes are on the paper document, but it
10 does also come up because the computer pulls it up.**

11 **Q.** Okay. So the left side is the
12 document that you're reviewing.

13 **A. Yes.**

14 **Q.** The complaint. Do you know how that
15 document is created?

16 **A. At a point in time, a department
17 responsible for creating that work creates it. The
18 computer pulls the information, the variable
19 information in what is, for the lack of a better
20 form, a template computer complaint document. It
21 merges it. The work then comes to me on a daily
22 basis and I review it as to all aspects for approval
23 or disapproval.**

24 **Q.** In the course of what you do, you
25 approve complaints that are prepared on behalf of New

1 Century Financial Services?

2 **A. New Century Financial Services is a
3 client that I recognize to be a client of this
4 firm's, yes.**

5 **Q.** On the right screen, you said there is
6 information about the file?

7 **A. Yes.**

8 **Q.** Do you know how that information is
9 entered into your system?

10 **A. It is my understanding that we receive
11 files both electronically and manually depending on
12 the client. For New Century it would be electronic.
13 The information is received electronically by the
14 computer. It's set up. If it's a manual client, as
15 would be typical in our medical and veterinary
16 claims, we have a setup department where they take
17 the information and they input it into the collection
18 program that we use.**

19 **Q.** We can limit ourselves to what happens
20 with respect to New Century.

21 **A. Mm-hmm.**

22 **Q.** Okay?

23 **A. Mm-hmm.**

24 **Q.** I need a verbal response.

25 **A. Yes.**

1 **Q.** Please correct me if I'm wrong. I
2 believe you testified that you look at the document
3 on the left screen and you look at pertinent
4 information or relevant information for purposes of
5 the complaint on the right screen. Is that a fair
6 statement as to what you do?

7 **A. Yes.**

8 **Q.** When you're reviewing a complaint
9 that's prepared for New Century, what information on
10 that right screen are you looking for?

11 **A. The initial screen, which is the
12 computer program that I'm looking at, has the
13 Pressler file number, the claim name of both the
14 debtor and the plaintiff, the debtor's address, the
15 debtor's Social Security number, the debtor's date of
16 birth, the account number, the date of referral, the
17 referral balance, the amount referred.**

18 **There will be on the lower half of the
19 screen what's called the note set, which will have
20 information and a default pops up to the most recent.
21 So therefore the note set information can vary as to
22 what was last done on the case, last communications,
23 whatever.**

24 **The screen has the date of the initial
25 demand letter. It will also have any payments that**

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1 MR. STERN: There's no speaking
 2 objections.
 3 MR. WILLIAMSON: Come on. We're just
 4 wasting time.
 5 MR. STERN: I'm not wasting time.
 6 MR. WILLIAMSON: Yeah, you are,
 7 because you're going in an area that has nothing to
 8 do with the allegations in the complaint.
 9 Answer the question, please.
 10 (The question is read by the reporter.)
 11 **A. No.**
 12 **Q.** The answer is no, you were not aware
 13 of that?
 14 **A. No.**
 15 **Q.** Mr. Gulko, are you able to state the
 16 amount of time you spend reviewing a complaint on
 17 behalf of New Century?
 18 **A. It depends on the particular account.**
 19 **Q.** Can you give an approximation of sort
 20 of the least amount of time and the most amount of
 21 time you generally spend?
 22 **A. The least amount of time would be less**
 23 **than a minute. The most amount of time could be two,**
 24 **three, four, five minutes.**
 25 **Q.** You testified earlier that when you

85

1 start your day you're provided a computer printout,
 2 which is a list of the files in which you need to
 3 review the complaints?
 4 **A. Yes.**
 5 **Q.** With respect to when you're reviewing
 6 New Century accounts, generally your list only
 7 includes New Century?
 8 **A. No.**
 9 **Q.** So your list will be mixed in terms of
 10 who the clients are?
 11 **A. Yes.**
 12 **Q.** Do you know who generates that list?
 13 **A. The department in the firm that is**
 14 **responsible for generating the complaint list.**
 15 **Q.** Is there a name for that department?
 16 **A. We call it the SAC department for**
 17 **summons and complaint.**
 18 **Q.** In connection with your reviewing and
 19 approving complaints for New Century, do you review
 20 the agreement between New Century and the entity from
 21 whom it acquired the accounts?
 22 **A. No, especially since I may not have**
 23 **that. There may not be anything to review as to that**
 24 **particular question.**
 25 **Q.** Would it be relevant in your review of

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1 complaints on behalf of New Century as to whether
 2 there was a choice of law provision in the credit
 3 card agreement?
 4 **A. That could be relevant.**
 5 **Q.** Would it be relevant as to whether or
 6 not there was an arbitration agreement in the credit
 7 card agreement?
 8 **A. That could be relevant also.**
 9 **Q.** In connection with your review and
 10 approval of complaints on behalf of New Century, do
 11 you make a determination as to whether a default has
 12 occurred?
 13 MR. WILLIAMSON: Excuse me. Could you
 14 read that again?
 15 (The question is read by the reporter.)
 16 **A. Well, part of the placement**
 17 **information is that the client is alleging that**
 18 **there's a default. I can determine from the**
 19 **placement information when the last payment was. So**
 20 **merely by the passage of time, it can confirm to me**
 21 **the client's position, the client's allegation that**
 22 **there is a default.**
 23 **Q.** I understand that you're relying upon
 24 the information that the client is giving you. I'm
 25 asking you whether you make any independent

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1 evaluation as to whether the account is in default.
 2 MR. WILLIAMSON: I'm going to object
 3 to the word "evaluation." Do you mean investigation?
 4 That makes sense, the other way doesn't. Because
 5 he's answered that already.
 6 MR. STERN: I'll withdraw the
 7 question.
 8 **Q.** Do you make an inquiry into any
 9 information beyond what the client has given you as
 10 to whether a default has occurred?
 11 **A. I'm unclear about your question. Let**
 12 **me repeat my prior answer. The client places a claim**
 13 **with us because of claims that the account is in**
 14 **default. It gives me a date of last payment. So I'm**
 15 **able to -- if they were to send me a claim today and**
 16 **it said that a hundred dollars was last paid**
 17 **yesterday, I'm going to kick that back saying what's**
 18 **going on here. But if they send me a claim and they**
 19 **claim it's in default and in the placement**
 20 **information it says that a hundred dollars was last**
 21 **paid June 20th, 2010, then there's nothing in there**
 22 **for me to disbelieve that this account is not in**
 23 **default as my client advises me.**
 24 **Q.** So you rely upon your client advising
 25 you that the claim is in default?

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1 were worked out, then it's fairly easy to give it a
 2 quick look and know that you're okay in regard to
 3 those changes.
 4 Q. Okay.
 5 A. Looking at new matters, I am reviewing
 6 in totality, as I do on every case, as I did on every
 7 case. I'm looking for all the information for, as
 8 you said earlier, meaningful attorney review.
 9 Q. Is there anyone else at Pressler &
 10 Pressler who performs the same function as you do
 11 with respect to reviewing and approving complaints?
 12 A. For New York, yes. Mitchell Zipkin
 13 approves New York complaints.
 14 Q. So it would be fair to say that all or
 15 virtually all of the complaints filed in New Jersey
 16 or Pennsylvania are reviewed and approved by you?
 17 A. Yes, while I'm here. When I am on
 18 vacation, Mr. Felt switches the work, because you
 19 can't let it sit a week or more. He switches the
 20 work over to another attorney who is also trained to
 21 do complaint review, and those complaints go out
 22 under that attorney's name. Then when I come back,
 23 it's switched over again.
 24 Q. To your knowledge, are there records
 25 contained of the number of complaints that you review

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1 on a daily basis?
 2 A. Well, I'm given the feed list and I go
 3 through it in a day, so of course I know how many I
 4 go through in a day.
 5 Q. Are the feed lists generally the same
 6 length in terms of number of complaints?
 7 A. No, they vary from day to day.
 8 Q. What do they vary from?
 9 A. Well, the variance can go from as
 10 little as a hundred or less to as much as hundreds a
 11 day. If you're asking what my average is, how much
 12 do I see mostly? I would say between three and four
 13 hundred a day.
 14 Q. Does it ever get as high as a thousand
 15 in a day?
 16 A. Yes.
 17 Q. Two thousand?
 18 A. I don't recall that high, no.
 19 Q. And you generally get through your
 20 list every day? If you're working the full day,
 21 you're getting through your list?
 22 A. Yes. The new list is given to me in
 23 the afternoon. So I'll work a little in the
 24 afternoon and I finish it up the next day. So if the
 25 list is given to me first thing in the morning, then

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1 I can get it all done in a day. So I don't want to
 2 mislead you. Sometimes on a clock, I'm doing it into
 3 the next day, but that's not a problem for me. I
 4 don't in any way feel stressed or behind the eight
 5 ball by that.
 6 Q. I understand. Talking only about
 7 JEFIS-filed complaints, do you know how much time
 8 expires after you approve a complaint until when it
 9 gets filed?
 10 A. No, but it's easy enough to find out.
 11 If I know the date that I approve a complaint, then I
 12 can go to another screen called the BDF screen and it
 13 gives me the date that it was JEFISed. So even
 14 though I don't have personal knowledge as we speak,
 15 it's not something that's hidden from me. I can find
 16 that out.
 17 Q. And to your knowledge, once you
 18 approve it there's a department that handles then the
 19 JEFIS filing?
 20 A. Yes.
 21 Q. Do you have any reason to believe that
 22 it's more than several days from the time that you
 23 approve it until the time that it's filed?
 24 A. No, they're pretty quick about it.
 25 (A brief recess is taken.)

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1 Q. Mr. Gulko, I apologize, I know there
 2 have been comments about me going over stuff that's
 3 been gone over, but I want to wrap up on a couple of
 4 things.
 5 If systems are working correctly, the
 6 information contained in the complaint should be
 7 identical to the information that's in your placement
 8 information.
 9 A. Unless it's been reviewed and vetted
 10 for corrections and also for changes, additional
 11 information that has come in after the date of
 12 placement to the date of presentation to me for
 13 approval.
 14 Q. I understand your answer, and I may
 15 not have been clear with my question.
 16 A. Okay.
 17 Q. What I'm talking about is, the
 18 complaint gets prepared and it contains information
 19 about the defendant and about the claim.
 20 A. Yes.
 21 Q. That information about the debtor and
 22 about the claim should be identical to the
 23 information that you have as the placement
 24 information.
 25 A. If we have not determined it to be

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Action No. 2:11-cv-07296 (KSH) (PS)

NATALIE A. WILLIAMS and	:	
ALAN J. SETNESKA,	:	
individually and on	:	
behalf of all others	:	DEPOSITION OF:
similarly situated,	:	
	:	MARKO GALIC
Plaintiffs,	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLC,	:	
	:	
Defendant.	:	

T R A N S C R I P T of the
proceedings as taken stenographically by and before
ANN P. CONLON, a Notary Public and Certified Court
Reporter of the State of New Jersey, at the offices
of Pressler & Pressler, 7 Entin Road, Parsippany, New
Jersey, on Friday, October 12, 2012, commencing at
1:47 p.m.

ANN P. CONLON
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16 MICHAEL J. PETERS, ESQ.

17 ATTORNEYS FOR DEFENDANT

18

19

20

21 * * * * *

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1 asking him if he knows what Pressler & Pressler does.
 2 I don't know that that's appropriate.
 3 MR. STERN: He can answer the question
 4 if he knows. I don't see that there's a basis for
 5 objection.
 6 Q. Go ahead, answer the question.
 7 MR. WILLIAMSON: To the best of your
 8 ability, answer the question.
 9 A. **This is the initial demand letter that**
 10 **Pressler sends saying this is the account you have**
 11 **and it sends the FTCPA language.**
 12 MR. WILLIAMSON: I'll have a
 13 continuing objection that he's not a representative
 14 of Pressler & Pressler.
 15 MR. STERN: Obviously.
 16 MR. WILLIAMSON: And any testimony he
 17 gives as to what Pressler & Pressler does is based on
 18 his understanding as a third party.
 19 Q. Are these letters, P-2 and P-3,
 20 authorized by New Century to be sent by Pressler &
 21 Pressler?
 22 A. **Yes.**
 23 Q. Do you see in the first sentence of
 24 P-2 that it says, "This is to notify you that your
 25 account with GE Capital Regular Walmart, account

25

1 number," I'll skip the account number, "has been
 2 purchased by New Century Financial Services, Inc. and
 3 has been placed with the firm of Pressler & Pressler
 4 for collection."
 5 A. **I see it, yes.**
 6 Q. Is the statement, the last part of
 7 that sentence, correct that the account has been
 8 placed by New Century with Pressler & Pressler for
 9 collection?
 10 A. **Yes.**
 11 Q. I'm going to ask you with respect to
 12 P-3, if you look at the first paragraph, which is
 13 also the first sentence of that letter, is it also
 14 true with respect to P-3 that the account described
 15 in that letter was placed by New Century with
 16 Pressler & Pressler for collection?
 17 A. **Yes.**
 18 Q. When New Century purchased the account
 19 that's in P-2, did someone make a decision as to
 20 whether to send that account to Pressler & Pressler?
 21 A. **Yes.**
 22 Q. Who made that decision?
 23 A. **Just that's the overall decision that**
 24 **we place every account that we purchase to Pressler &**
 25 **Pressler.**

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1 Q. So there was no specific decision made
 2 as to that account. Instead it was a matter of the
 3 way in which New Century operates, correct?
 4 A. **Yes.**
 5 Q. I think as you mentioned before,
 6 everything gets sent to Pressler & Pressler?
 7 A. **Yes.**
 8 Q. I'm showing you what we've marked as
 9 P-6. Have you seen P-6 before?
 10 A. **Yes.**
 11 Q. Do you know what it is?
 12 A. **Yes.**
 13 Q. What is it?
 14 A. **It's an affidavit of Marko Galic.**
 15 Q. Is that you?
 16 A. **Yes, it is.**
 17 Q. How many pages is it?
 18 A. **It is two pages.**
 19 Q. At the end of the second page, towards
 20 the end of the second page there's a signature that
 21 appears above the signature line, Marko Galic.
 22 A. **Yes.**
 23 Q. Is that your signature?
 24 A. **It is.**
 25 Q. Do you recall signing P-6?

27

1 A. **I do.**
 2 Q. What do you recall about signing P-6?
 3 A. **I prepared this affidavit with Mr.**
 4 **Williamson and I reviewed the affidavit and signed**
 5 **it.**
 6 Q. And you drafted the affidavit?
 7 A. **With Mr. Williamson.**
 8 Q. You received assistance from Mr.
 9 Williamson on the draft?
 10 A. **Yes.**
 11 Q. What did you understand was the
 12 purpose of you signing that affidavit?
 13 A. **The purpose of me signing this**
 14 **affidavit was to show how we obtained the account and**
 15 **how we report to credit bureaus, and that this**
 16 **particular account was deleted from the credit**
 17 **report.**
 18 Q. Which account?
 19 A. **The account for Natalie Freeman.**
 20 Q. So the account for Natalie Freeman
 21 Williams was originally reported to credit bureaus by
 22 New Century?
 23 A. **No. I'm sorry if I misspoke. We show**
 24 **how we delete and how we handle credit reporting, et**
 25 **cetera.**

28

1 **Q.** So there's no credit reporting done on
 2 Ms. Williams' account?
 3 **A. No.**
 4 MR. WILLIAMSON: Objection to form.
 5 **Q.** Take a moment and review, if you
 6 would, the affidavit. Actually, read the affidavit
 7 to yourself and let me know when you're done.
 8 **A. Okay.**
 9 **Q.** Is there anything you would like to
 10 change in terms of any of the statements that you
 11 made in the affidavit?
 12 **A. No.**
 13 **Q.** So as you sit here today, everything
 14 is true and accurate that's in that affidavit?
 15 **A. Yes.**
 16 **Q.** Turning your attention to paragraph
 17 nine, it states that there are only three codes our
 18 company reports?
 19 **A. Yes.**
 20 **Q.** Code 93?
 21 **A. Yes.**
 22 **Q.** "Assigned to collections" is the first
 23 item listed.
 24 **A. Yes, code 93.**
 25 **Q.** Then code 62, "paid in full"?

29

1 **A. Correct.**
 2 **Q.** And code DA, to delete.
 3 **A. Yes.**
 4 **Q.** What's your understanding of what
 5 information appears in someone's credit report when
 6 you reported code 93?
 7 **A. Well it says it's assigned to**
 8 **collections. It says New Century Financial Services,**
 9 **it has the original creditor, it has original account**
 10 **number, and it says, "sent to collections."**
 11 **Q.** So for someone that you've reported
 12 on, it would show that New Century is reporting that
 13 there's money owed, there's credit due?
 14 **A. Yes.**
 15 **Q.** It would show the balance that New
 16 Century believes is due?
 17 **A. Yes.**
 18 **Q.** It would show who the original
 19 creditor was?
 20 **A. Yes.**
 21 **Q.** It would have the account number from
 22 the original creditor?
 23 **A. Yes.**
 24 **Q.** And it would somehow indicate that
 25 that was assigned to New Century for purposes of

30

1 collections?
 2 **A. I think it just says, "assigned to**
 3 **collections."**
 4 **Q.** Is there a regular period of time that
 5 New Century reports information to credit bureaus?
 6 MR. WILLIAMSON: Objection, form.
 7 **A. A regular period of time?**
 8 **Q.** When is the information given to the
 9 credit bureaus?
 10 **A. When we purchase the portfolio, we**
 11 **wait two months to put that information on the credit**
 12 **bureau.**
 13 **Q.** For those accounts that you've
 14 assigned code 93, if nothing changes, do you have to
 15 continue to report the account?
 16 **A. Yes. It gets reported on the first of**
 17 **each month.**
 18 **Q.** So after the 60-day period of those
 19 accounts that are reported, they're reported and then
 20 the first of every month following that until there's
 21 a change, they get reported as code 93?
 22 **A. Yes.**
 23 **Q.** And those reportings would then only
 24 change to one of two things, right? Code 62 or code
 25 DA?

31

1 **A. Correct.**
 2 **Q.** When would it change to code 62?
 3 **A. When we received notification that an**
 4 **account is paid in full.**
 5 **Q.** And who do you receive that
 6 notification from?
 7 **A. From the attorneys, Pressler &**
 8 **Pressler.**
 9 **Q.** And when do you change the code to DA?
 10 **A. When we receive information that the**
 11 **account was disputed or that an answer was filed.**
 12 **Q.** What's your understanding of what
 13 information -- as to -- withdraw. What's your
 14 understanding as to the information that's reported
 15 on someone's credit report following a report of a
 16 code DA?
 17 **A. My understanding is that it gets**
 18 **reported on the first of the month. When we report**
 19 **code DA, the credit bureau goes in there and deletes**
 20 **that trade line completely.**
 21 **Q.** So it would not show up at all on
 22 someone's credit report?
 23 **A. I think the next cycle it would show**
 24 **up. I think it might take two weeks or so.**
 25 **Q.** It's just a matter of being processed?

32

1 **A. Yes.**

2 **Q.** But it's a matter that's being done?

3 **A. Yes.**

4 **Q.** So once the credit bureau processes

5 the code DA, the fact that that account was shown as

6 assigned to collection by New Century does not appear

7 on the consumer's credit report at all?

8 **A. Does not appear at all.**

9 **Q.** Okay. Are you aware that with respect

10 to Natalie Freeman, also known as Natalie Williams,

11 that she filed an answer to a complaint?

12 **A. I'm aware.**

13 **Q.** Are you aware that Alan Setneska filed

14 an answer to a complaint?

15 **A. I am aware.**

16 **Q.** Are you aware as to whether the

17 account in Alan Setneska's name was ever reported to

18 the credit bureaus?

19 **A. I can't recall.**

20 **Q.** I think you've already stated that Ms.

21 Freeman's account was not reported, correct?

22 **A. Correct.**

23 **Q.** After Mr. Setneska's account had been

24 reported, would New Century have sent a code DA once

25 New Century found out that he had filed an answer?

33

1 **A. Yes.**

2 **Q.** And would New Century have submitted a

3 code DA for all accounts in which it was advised that

4 the debtor had filed an answer to the complaint?

5 **A. Yes.**

6 **Q.** How does New Century find out that an

7 answer to the complaint has been filed?

8 **A. It's automated.**

9 **Q.** What's your understanding, how does

10 the automated system work?

11 **A. The automated system is when the**

12 **attorneys get a dispute or an answer is filed, they**

13 **flag that dispute or that answer and that information**

14 **is transferred to us to that account.**

15 **Q.** How is that information transferred?

16 **A. Electronically.**

17 **Q.** Is it a connected computer system or

18 is it by e-mail?

19 **A. I'm not a programmer. I can't answer**

20 **that.**

21 **Q.** But your understanding is that that

22 information is essentially instantaneous?

23 **A. Yes.**

24 **Q.** So that once Pressler & Pressler

25 records in the system that an answer has been filed,

34

1 that information is communicated to New Century?

2 **A. Yes.**

3 **Q.** And then New Century automatically,

4 the first of the next month, reports DA for that

5 account?

6 **A. That's also automated for the first of**

7 **the month, so yes.**

8 **Q.** So it's an automated process?

9 **A. Yes.**

10 **Q.** So the only reason why -- well, if an

11 account were reported and continued to be reported

12 after an answer was filed, there would only be two

13 possibilities as to why that occurred. One is that

14 the DA code had not yet been sent and deleted by the

15 credit bureau or there was somehow some mistake in

16 the entry of a coding?

17 MR. WILLIAMSON: Objection to form.

18 **A. I don't believe -- I believe the DA**

19 **code goes no matter what. It doesn't have to wait**

20 **until the first of the month.**

21 **Q.** So the DA code goes as soon as you

22 find out?

23 **A. That's my understanding, yeah.**

24 **Q.** And what's the basis of your

25 understanding?

35

1 **A. I believe Jeff told me that before,**

2 **because he helped set it up.**

3 **Q.** And again, I just want to go back,

4 you're authorized on behalf of New Century to testify

5 as to its practices with respect to credit reporting?

6 **A. Yes.**

7 **Q.** I'll show you what's been marked as

8 P-4. Do you know what P-4 is?

9 **A. Yes.**

10 **Q.** What is P-4?

11 **A. It's a settlement letter that our**

12 **counsel sends to a consumer.**

13 **Q.** Is that letter authorized by New

14 Century?

15 **A. It is.**

16 **Q.** And this letter offered a reduced

17 amount for Ms. Freeman to pay compared to the amount

18 that was claimed by New Century, correct?

19 **A. Yes.**

20 **Q.** How is it determined what amount would

21 be offered?

22 **A. The attorneys determine it.**

23 **Q.** And they've been authorized by New

24 Century to make that determination?

25 **A. Correct.**

36

1 **Q.** And do you see that in P-4 there is a
 2 deadline for making the settlement payment of January
 3 25th, 2011?
 4 **A.** **Yes.**
 5 **Q.** Who determines what that deadline date
 6 should be?
 7 **A.** **Counsel.**
 8 **Q.** And that's authorized by New Century?
 9 **A.** **It is.**
 10 **Q.** Does New Century receive a copy of
 11 this letter at or about the time it was sent?
 12 **A.** **How do you mean?**
 13 **Q.** Do you see this letter P-4 is dated
 14 January 12th, 2011?
 15 **A.** **Yes.**
 16 **Q.** Did New Century receive a copy of P-4
 17 at or shortly after January 12th, 2011?
 18 **A.** **Receive a copy as in a copy? I don't**
 19 **understand your question.**
 20 **Q.** A copy of the letter, P-4.
 21 **A.** **But you're asking if they sent this**
 22 **out to Natalie Freeman and sent a copy to New**
 23 **Century?**
 24 **Q.** Well, go ahead, answer that question.
 25 **A.** **No.**

37

1 **Q.** There's an electronic copy of P-4
 2 that's created by Pressler & Pressler, correct?
 3 MR. WILLIAMSON: Objection.
 4 **Q.** Does New Century have access to see
 5 that letter?
 6 MR. WILLIAMSON: Objection. I'm going
 7 to direct him not to answer.
 8 **Q.** When did New Century find out that
 9 this settlement offer was made to Natalie Freeman?
 10 MR. WILLIAMSON: Objection to the
 11 form. You can answer.
 12 **A.** **I generally don't look at it on an**
 13 **account by account basis. We have hundreds of**
 14 **thousands of accounts.**
 15 **Q.** Did Pressler & Pressler inform New
 16 Century that this offer was made contained in P-4?
 17 **A.** **No.**
 18 **Q.** Is there a way that New Century could
 19 find out whether an offer was made?
 20 **A.** **Yes.**
 21 **Q.** How could it find that out?
 22 **A.** **We could access the attorney's system**
 23 **for audit.**
 24 **Q.** So you have access to Pressler &
 25 Pressler's records to some extent?

38

1 **A.** **Yes, to our records, yes.**
 2 **Q.** At least to the extent of being able
 3 to see the settlement letter.
 4 **A.** **What letters they sent, yes.**
 5 **Q.** So if New Century wanted to know
 6 whether a settlement letter was sent, they could just
 7 check by gaining access to those records in the
 8 Pressler & Pressler system?
 9 **A.** **Yes.**
 10 **Q.** To your knowledge, is there anything
 11 that Pressler & Pressler does affirmatively to let
 12 you know that the settlement letter was sent?
 13 MR. WILLIAMSON: Objection. You can
 14 answer.
 15 **A.** **No.**
 16 **Q.** Was P-4 sent by Pressler & Pressler
 17 with the authority of New Century Financial?
 18 MR. WILLIAMSON: Objection, form.
 19 **A.** **Yes.**
 20 **Q.** I'd like you to look at the second
 21 paragraph in P-4.
 22 **A.** **Yes.**
 23 **Q.** Do you see that it says, "This payment
 24 will satisfy the pending lawsuit"?
 25 **A.** **Yes.**

39

1 **Q.** And this payment is referring to the
 2 settlement payment that's offered in the first
 3 paragraph, correct?
 4 **A.** **Yes.**
 5 **Q.** And the next sentence, "Proof that the
 6 debt has been paid will be sent to the court and a
 7 copy to you so that you can advise the credit
 8 bureau."
 9 **A.** **Yes.**
 10 **Q.** Do you know at what point in the
 11 collection process Pressler & Pressler sent this form
 12 of settlement letter?
 13 **A.** **Yeah, I think it was after the summons**
 14 **was sent, after litigation started.**
 15 **Q.** Do you know if it was before or after
 16 an answer was filed?
 17 **A.** **I'm not sure.**
 18 **Q.** Do you know whether New Century
 19 authorized Pressler & Pressler to send it before or
 20 after an answer is filed?
 21 **A.** **They're authorized to send the**
 22 **settlement letters whenever they want to send the**
 23 **settlement letters.**
 24 **Q.** So it's at their discretion with your
 25 authority?

40

1 **A. Yes.**
 2 **Q.** Does New Century advise Pressler &
 3 Pressler as to what accounts New Century has reported
 4 to the credit bureaus?
 5 **A. No.**
 6 **Q.** Is that information available to
 7 Pressler & Pressler?
 8 **A. I'm not sure.**
 9 **Q.** Based on your knowledge as to credit
 10 reporting, what, if anything, would happen to a
 11 consumers's credit report if they sent a copy of the
 12 proof that the debt has been paid from Pressler &
 13 Pressler to the credit bureau?
 14 MR. WILLIAMSON: Objection, form.
 15 **A. That the credit bureaus would update**
 16 **that as paid if it wasn't already on the credit**
 17 **report.**
 18 **Q.** New Century would report it as paid if
 19 a payment was made in accordance with this letter,
 20 correct?
 21 **A. Correct.**
 22 **Q.** You would send code --
 23 **A. 62.**
 24 **Q.** So that would be automatically done?
 25 **A. Yes.**

41

1 **Q.** If an account was not reported, what
 2 would happen to a consumers's credit report if they
 3 sent proof that the debt has been paid?
 4 MR. WILLIAMSON: Objection.
 5 **A. It wouldn't help with our trade line**
 6 **since it wasn't there if it wasn't reported, but it**
 7 **could help possibly with another trade line if a**
 8 **prior debt buyer had the account and put it on there**
 9 **or if the original creditor is still on the credit**
 10 **report.**
 11 **Q.** What's the basis for your knowledge as
 12 to that?
 13 **A. Because I've looked at several credit**
 14 **reports, many credit reports, and I've seen original**
 15 **creditors. When we're not on it, we didn't report**
 16 **it.**
 17 **Q.** Can you name an original creditor that
 18 you saw on a credit report, it doesn't matter whose,
 19 on a credit report where New Century had not reported
 20 the trade line?
 21 **A. Yes, GE Capital is one.**
 22 **Q.** So let's take GE Capital. What
 23 effect, to your knowledge, would sending proof that
 24 the debt has been paid that's described in the
 25 letter, P-4, to the GE Capital trade line?

42

1 MR. WILLIAMSON: Can you repeat that
 2 question?
 3 MR. STERN: Let me withdraw the
 4 question.
 5 **Q.** Do you see in P-4, in that second
 6 sentence in the second paragraph it says, "proof that
 7 the debt has been paid."
 8 **A. Yes.**
 9 **Q.** Do you have any knowledge as to what
 10 that proof consists of?
 11 **A. Yes.**
 12 **Q.** What does it consist of?
 13 **A. Well, the attorneys would send a paid**
 14 **in full letter stating it's paid in full, it**
 15 **references a docket number, send a stipulation of**
 16 **dismissal, warrant satisfaction.**
 17 **Q.** So that proof, the letter indicates
 18 that it would be sent to the court, right?
 19 **A. Yes.**
 20 **Q.** And then a copy of that proof would be
 21 sent to the debtor.
 22 **A. Correct.**
 23 **Q.** And the purpose of sending it to the
 24 debtor is, as it says, so that you can advise the
 25 credit bureau, correct?

43

1 **A. Yes.**
 2 **Q.** And it's your understanding that -- I
 3 want to make sure I'm understanding you correctly.
 4 It's your understanding that whatever that proof
 5 consists of, that if the consumer sends that to the
 6 credit bureau where New Century has not reported any
 7 trade line, that that proof will affect the trade
 8 line reported by the original creditor?
 9 **A. That's its purpose.**
 10 **Q.** What's purpose?
 11 **A. The letter's purpose.**
 12 **Q.** Is to do what?
 13 **A. Is to get it to the consumer so the**
 14 **consumer can send it to the credit bureaus to help**
 15 **them raise their score. If something is on the**
 16 **credit report showing it's delinquent, they can send**
 17 **it to the credit bureau saying, I paid this, please**
 18 **mark it as paid.**
 19 **Q.** How do you know that that in fact
 20 occurs?
 21 **A. I don't know that occurs.**
 22 MR. WILLIAMSON: Objection. What
 23 occurs?
 24 MR. STERN: What he was describing.
 25 **Q.** Do you understand what I'm talking

44

1 about, what occurs?
 2 **A. Yes.**
 3 **Q.** And just to clarify, what you're
 4 saying occurs is that the proof that Pressler &
 5 Pressler sends a copy of to the consumers, the
 6 consumers sends to the credit bureau, and that then
 7 affects, to the consumers's benefit, the information
 8 reported by the original creditor.
 9 **A. That's my understanding of what**
 10 **happened after consumers sent that information to the**
 11 **credit bureaus, yes.**
 12 **Q.** And that information that you just
 13 described a few moments ago is included in a letter
 14 saying that it was paid in full?
 15 **A. Yes.**
 16 **Q.** A stipulation of settlement?
 17 **A. Yes.**
 18 MR. WILLIAMSON: Objection, it
 19 mischaracterizes his testimony. He testified it
 20 could include several things. Those were examples of
 21 what it could also include.
 22 MR. STERN: Would you mark this is as
 23 P-7?
 24 (Exhibit P-7, Pressler & Pressler
 25 documents, is marked for identification by the

45

1 reporter.)
 2 **Q.** I'll show you what's been marked as
 3 P-7.
 4 MR. STERN: Mr. Williamson, would you
 5 stipulate that P-7 consists of documents that you
 6 sent to me?
 7 MR. WILLIAMSON: You would have to
 8 show me where they came from before I do that.
 9 MR. STERN: Let's mark this as P-8.
 10 (Exhibit P-8, Pressler & Pressler
 11 documents, is marked for identification by the
 12 reporter.)
 13 **Q.** I'll show you what's been marked as
 14 P-8.
 15 MR. WILLIAMSON: Okay, I'll stipulate
 16 for the record that these are copies of documents
 17 which I sent to Mr. Stern, and which I represented in
 18 the letter I sent to Mr. Stern, I wrote, "I've also
 19 enclosed a copy of the documents sent to court when
 20 the matter is settled."
 21 And this was my letter to Mr. Stern
 22 and these were meant to be examples of different
 23 types of things that could be sent to the court by

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1 Pressler & Pressler. I don't see that there's any
 2 indication that Mr. Galic had anything to do with
 3 that.
 4 **Q.** I'm showing you what has been marked
 5 as P-7.
 6 MR. WILLIAMSON: P-7 is a part of P-8.
 7 P-7 constituted the letters that I just referred to.
 8 **A. Okay.**
 9 **Q.** Is P-7 examples of the type of things
 10 that you understood Pressler would send as proof that
 11 the debt has been paid?
 12 **A. Yes.**
 13 **Q.** And those are the things that are
 14 described in P-4? In other words, P-4 refers to
 15 proof that the debt has been paid in the second
 16 sentence of the second paragraph.
 17 **A. Yes.**
 18 **Q.** P-7 represents the types of things
 19 that would have been sent?
 20 **A. Yes.**
 21 **Q.** Are you aware of any other types of
 22 documents that would have been sent?
 23 MR. WILLIAMSON: Objection. Sent to
 24 who?
 25 MR. STERN: Sent to the consumers.

47

1 **Q.** Any other kind of proof, the copy of
 2 which would have been sent to the consumer for
 3 advising the credit bureaus?
 4 **A. Yes.**
 5 **Q.** What other kind of documents?
 6 **A. It's a letter probably drafted by a**
 7 **paralegal that says your account is paid in full, and**
 8 **I believe it has -- that's it. It says it's paid in**
 9 **full. I don't see it here, though.**
 10 **Q.** Is there any other documents?
 11 **A. Not to my knowledge.**
 12 **Q.** Okay. Have you seen the letters that
 13 you just described, the paralegal's letter saying
 14 that the account is paid in full?
 15 MR. WILLIAMSON: Objection. You're
 16 asking him to testify as to Pressler & Pressler
 17 procedures.
 18 MR. STERN: No. I'm asking him if he
 19 had seen the letters that he just described. That's
 20 what I asked him.
 21 **A. Yes, I have.**
 22 **Q.** When you say drafted by a paralegal, a
 23 paralegal at Pressler & Pressler?
 24 **A. I think that's who drafted the letter.**
 25 **Q.** Are those letters that you've seen on

48

1 Pressler & Pressler letterhead?
 2 **A. Yes.**
 3 MR. WILLIAMSON: Objection. Again,
 4 he's not here to testify as to --
 5 MR. STERN: I asked him what he knows.
 6 MR. WILLIAMSON: You can ask him what
 7 his understanding is so for the record it's clear
 8 that it's just his understanding.
 9 **Q.** So your understanding is that if any
 10 one of these documents that are included in P-7 had
 11 been sent to Ms. Freeman had she accepted the offer
 12 and paid it on time, that if she sent that to the
 13 credit bureaus, they would have then done something
 14 with her trade line reported by GE Capital?
 15 **A. Yes. Not all these, just to be clear,**
 16 **because it looks like some of these are just a**
 17 **stipulation of settlement. This is an arrangement to**
 18 **pay, so this doesn't mean it's paid.**
 19 **Q.** Well, which of the items in P-7 do you
 20 think would have affected Ms. Freeman's GE Capital
 21 trade line?
 22 **A. The last one, "You are hereby directed**
 23 **to satisfy of record the judgement in the above**
 24 **matter."**
 25 MR. WILLIAMSON: Do you want to

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1 identify the document you're referring to for the
 2 record?
 3 **A. Yes, the last document in P-7, the**
 4 **warrant for satisfaction of judgement.**
 5 **Q.** Have you ever seen any circumstance
 6 where a document like any of those, any of the ones
 7 that are in P-7, have been sent to a credit bureau
 8 where New Century has not reported the trade line and
 9 the letter has effected a positive change for the
 10 consumer with respect to the original creditor?
 11 **A. What you're asking, I can't see the**
 12 **consumer sending a letter. We've told consumers that**
 13 **this letter could help you, yes.**
 14 **Q.** You said we've told them. I thought
 15 New Century doesn't contact --
 16 **A. A consumer may contact New Century**
 17 **because New Century is showing up on their credit**
 18 **report as a judgement.**
 19 **Q.** Okay.
 20 **A. We do not report that judgement.**
 21 **Q.** What do you tell the consumer?
 22 **A. We tell them did you receive a letter**
 23 **from Pressler & Pressler when you paid it. They say**
 24 **yes. I say, you can forward that letter to the**
 25 **credit bureaus and that could help.**

50

1 **At this point the New Century trade**
 2 **line is not on there or it's on there as paid**
 3 **already, but they're talking about the judgement**
 4 **specifically.**
 5 **Q.** So they contact New Century and you
 6 advise them that they can send the letter from
 7 Pressler & Pressler to the credit bureau?
 8 **A. Yes.**
 9 **Q.** And then if they do that, it will
 10 positively affect?
 11 **A. I tell them it may possibly affect. I**
 12 **do not work for the credit reporting agencies.**
 13 **Q.** Well, why would you say that it may?
 14 **A. Because the credit reporting agencies**
 15 **from my knowledge are supposed to, when they receive**
 16 **a letter referencing a docket number saying it's paid**
 17 **and they have an open judgement on the credit report,**
 18 **are supposed to satisfy the judgement after they do**
 19 **an investigation.**
 20 **Q.** How does that affect the trade line
 21 reported by the original creditor?
 22 **A. It doesn't by the original creditor.**
 23 **That's for the judgement. That's what we're talking**
 24 **about now.**
 25 **Q.** Oh, so you're only talking about, of

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1 the documents in P-7, it would only have a positive
 2 effect if there's a judgement on the credit record?
 3 **A. Speaking about the warrant of**
 4 **satisfaction of judgement. But in general, if say GE**
 5 **Capital is on the credit report, New Century is not**
 6 **because we never reported it, and the person**
 7 **satisfies a debt through Pressler & Pressler.**
 8 **Pressler & Pressler can send a letter to them that**
 9 **they can send to the credit bureaus to possibly**
 10 **satisfy the GE Capital trade line. We can't**
 11 **guarantee them anything, it's up to the credit**
 12 **bureaus. But they can send that letter.**
 13 **Q.** Have you ever seen a circumstance
 14 where that has happened?
 15 **A. I wouldn't know. We would have to run**
 16 **the person's credit report again and I wouldn't do**
 17 **that because it's paid already.**
 18 **Q.** And what's the basis for your saying
 19 that it may positively affect the trade line reported
 20 by GE Capital?
 21 **A. Because in my history of passing**
 22 **people along to the credit reports with these**
 23 **letters, they haven't called back and said it wasn't**
 24 **taken off or removed. They would have complained.**
 25 **That's their whole purpose is to mark it paid or get**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Action No. 2:11-cv-07296 (KSH) (PS)

NATALIE A. WILLIAMS and	:	
ALAN J. SETNESKA,	:	
individually and on	:	
behalf of all others	:	DEPOSITION OF:
similarly situated,	:	
	:	STEVEN P. MC CABE
Plaintiffs,	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLC,	:	
	:	
Defendant.	:	

T R A N S C R I P T of the
proceedings as taken stenographically by and before
ANN P. CONLON, a Notary Public and Certified Court
Reporter of the State of New Jersey, at the offices
of Pressler & Pressler, 7 Entin Road, Parsippany, New
Jersey, on Friday, October 12, 2012, commencing at
3:45 p.m.

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18

19

20

21 * * * * *

22

23

24

25

8

1 **A. Yes, I can.**
 2 **Q.** Please do.
 3 MR. WILLIAMSON: Objection, relevance,
 4 but you can answer.
 5 **A. The first employment I had was with --**
 6 **it was called at that time the State Office of Legal**
 7 **Services, which was the predecessor to Legal Services**
 8 **of New Jersey. At the time I worked for that**
 9 **department or that agency, that entity, it was**
 10 **located as part of the Department of Community**
 11 **Affairs, so I was a state employee.**
 12 **My immediate supervisor and mentor**
 13 **there was a Melville DeSoto Miller, who was the**
 14 **president of LSNJ, and after working with him for a**
 15 **year, he departed the State Office of Legal Services**
 16 **and became the director of Middlesex County Legal**
 17 **Services. I joined Middlesex County Legal Services,**
 18 **and for the approximate next ten years I was a staff**
 19 **attorney. And then the next made-up job title was**
 20 **senior staff attorney, but I represented low income**
 21 **consumers usually, an individual. I also did quite a**
 22 **bit of divorce work.**
 23 **Then I went into private practice. I**
 24 **spent a year with my private practice in Westfield,**
 25 **New Jersey. I then became a partner in a law firm in**

9

1 **Jersey City, Miller, Menaker & McCabe. The next firm**
 2 **I joined was also as an associate, Mackenzie, Welt,**
 3 **Duane & Maher. They're what's generally known as a**
 4 **banking firm in Elizabeth, New Jersey.**
 5 **And after that I became associated**
 6 **with and then joined this firm to the present date.**
 7 **Q.** And what year did you join this firm?
 8 **A. I'm going to think out loud, if you**
 9 **don't mind. My youngest son was born in '84 and it**
 10 **was November of '84, so it was February of '85 is my**
 11 **approximate recollection.**
 12 **Q.** What positions have you held at
 13 Pressler & Pressler?
 14 **A. Two positions, associate and limited**
 15 **partner.**
 16 **Q.** Currently you're a limited partner?
 17 **A. That's correct.**
 18 **Q.** What services do you provide currently
 19 as a limited partner?
 20 MR. WILLIAMSON: Objection, relevance.
 21 **Q.** Basically, what do you do? What do
 22 you do as a limited partner?
 23 MR. WILLIAMSON: Objection, relevance.
 24 Do you want me to explain to you why I'm objecting
 25 and maybe you can clarify? It might help.

10

1 MR. STERN: Go ahead, if it's quick.
 2 MR. WILLIAMSON: Are you asking what
 3 he does as a partner or are you asking what he does
 4 as an attorney here? What does he do all day?
 5 That's what you really want to know, what are his
 6 activities?
 7 **Q.** I do want to know what your activities
 8 are.
 9 MR. WILLIAMSON: Not limited as a
 10 partner.
 11 MR. STERN: Well, that's his position
 12 that he holds is a limited partner. So all his
 13 activities are in connection with his position as a
 14 limited partner.
 15 MR. WILLIAMSON: Okay, I think we
 16 clarified it.
 17 MR. STERN: Whether it's
 18 administrative, whether he's arguing in court or
 19 drafting documents.
 20 **Q.** Go ahead.
 21 **A. My present duties right now, what I**
 22 **usually do is review payments made by the firm to**
 23 **clients and vendors, review checks that are written,**
 24 **and after I review them I sign them if I approve.**
 25 **I work with groups of paralegals.**

11

1 **When I say groups, I work with a number of individual**
 2 **paralegals who answer letters and phone calls from**
 3 **debtors, and I review the files with those**
 4 **paralegals, sign the letters as drafted, don't sign**
 5 **the letters as drafted, try to set up general formats**
 6 **for responding to the letters.**
 7 **I take part in meetings every week to**
 8 **review the smooth operations of the office, to review**
 9 **any issues that there are regarding changes of law,**
 10 **changes of procedure. I spend quite a bit of time**
 11 **keeping up with recent developments in consumer**
 12 **credit law.**
 13 **I guess in general terms that's what I**
 14 **do.**
 15 **Q.** Are you involved in the management of
 16 any particular debt collection cases?
 17 MR. WILLIAMSON: Objection.
 18 **Q.** Do you understand the question?
 19 **A. Yes, I do.**
 20 MR. WILLIAMSON: I'm going to withdraw
 21 the objection.
 22 **A. Could you read back the question?**
 23 (The question is read by the reporter.)
 24 **A. Only in a -- if I can explain it to**
 25 **you or make it clear, only in a consultive fashion.**

16

1 I'm now showing you P-4 and P-5. Are
 2 you familiar with those documents?
 3 **A. Yes.**
 4 **Q.** Is P-4 based upon a template?
 5 **A. Yes.**
 6 **Q.** Is P-5 based on the same template as
 7 P-4?
 8 **A. I have to say that, amazingly, I can't**
 9 **answer that question, or at least amazingly to me,**
 10 **because if I can refer to them as the Freeman**
 11 **letters, both have an aspect to them asking -- not**
 12 **asking, but it has an individual's first name and**
 13 **then the initial as their last name. The Setneska**
 14 **letters do not, but that important detail aside,**
 15 **they're probably the identical form.**
 16 **Q.** So the best you're able to tell as you
 17 sit here today, they're the same form?
 18 **A. Yes.**
 19 **Q.** P-4 and P-5 are based upon the same
 20 form?
 21 **A. Yes.**
 22 MR. WILLIAMSON: Oh, I see. This is
 23 not here. That's the difference.
 24 MR. STERN: I see, okay.
 25 MR. WILLIAMSON: Do you want to say

17

1 for the record what the difference is?
 2 **A. I'll try again, excuse me. Natalie**
 3 **Freeman's letter dated 1/12/11 says in a sentence**
 4 **fragment that's after the first three full**
 5 **paragraphs, "Thank you, Kevin V. - Paralegal,**
 6 **Extension 5368." That same sentence fragment is on**
 7 **P-2.**
 8 **Q.** And would you contrast that to P-3 and
 9 P-5?
 10 **A. Yes, they do not have that single line**
 11 **in them.**
 12 **Q.** Which identifies the paralegal?
 13 **A. Yes.**
 14 **Q.** P-2 and P-3 you referred to as the FD
 15 letter.
 16 **A. That's correct.**
 17 **Q.** Do you have a name for the P-4 and P-5
 18 letters?
 19 **A. Yes, in general terms we would call**
 20 **this a settlement letter.**
 21 **Q.** Do you know who prepared the form or
 22 the template for the settlement letter?
 23 **A. My answer to you is this. I don't**
 24 **know who drafted the document but I do know who**
 25 **approved the use of the document.**

18

1 **Q.** Okay. Who approved the use of the
 2 document?
 3 **A. I did.**
 4 **Q.** Do you know when you approved the use
 5 of the document?
 6 **A. I know it was in 2009. I can't**
 7 **remember the exact date.**
 8 **Q.** What was your understanding of the
 9 function that the settlement letter was to be used
 10 for at the time when you approved it?
 11 **A. The reason the letter is drafted is to**
 12 **offer to consumers, or to debtors as they are in**
 13 **these instances, an offer of settlement whereby they**
 14 **can resolve a claim against them for less than the**
 15 **full value, and it also has a follow-up design, which**
 16 **is to be a reminder to the debtor that this is the**
 17 **procedure that's there and sometimes hopefully will**
 18 **be a reminder that they can resolve the matter in a**
 19 **mutually agreeable fashion if that's their wish.**
 20 **Q.** Was it your understanding that the
 21 settlement letter would be used under particular
 22 circumstances?
 23 **A. Yes.**
 24 **Q.** What were those circumstances?
 25 **A. These circumstances are simple and it**

19

1 **really is explained by the informal name we give to**
 2 **this letter. This is a post-suit prejudgement**
 3 **settlement letter. Both of these documents, if I can**
 4 **refer to them, bear a docket number. They contain**
 5 **the amount of the claim and then they give various**
 6 **methods of payment should the debtor wish to call our**
 7 **office and settle it, so to change a lawsuit into a**
 8 **settled agreement.**
 9 **Q.** Let's just try to hone down a little
 10 bit on the post-suit prejudgement. So to be more
 11 particular, a post-suit would be after a lawsuit has
 12 been instituted, correct?
 13 **A. That's correct.**
 14 **Q.** A prejudgement would be before the
 15 court made a determination as to the merits of the
 16 case?
 17 **A. That is correct.**
 18 **Q.** Was the intent that that letter --
 19 well, a lawsuit is commenced upon the filing of a
 20 complaint, correct?
 21 **A. That is correct.**
 22 **Q.** And after the filing of the complaint,
 23 a summons and complaint have to be served upon the
 24 defendant, correct?
 25 **A. That is correct.**

20

1 **Q.** Was it intended that the settlement
 2 letter be used after the complaint had been filed but
 3 before there had been service of process?
 4 **A. No. As a matter of fact, there's a**
 5 **reference to that in the letter, just because so many**
 6 **things happen in litigation that we formed this over**
 7 **time. We say, "As you probably know, this office has**
 8 **filed a lawsuit." Our assumption is that they have**
 9 **been served. It wouldn't make much sense to send the**
 10 **letter and let it be the first thing. We probably**
 11 **received at least a return of service from the court**
 12 **through whatever method.**
 13 **So the answer to your question I think**
 14 **is no, we wouldn't send it before the service, we**
 15 **would wait for a period of time.**
 16 **Q.** Would it be sent after there's been
 17 service or process but before the defendant has filed
 18 a response to the complaint?
 19 **A. Yes. I mean, that wasn't the**
 20 **mandatory criteria, but yes, it would be.**
 21 **Q.** That is a possible use of the
 22 settlement letter?
 23 **A. Yes.**
 24 **Q.** From the discovery responses, my
 25 understanding is something like 75 of these letters

21

1 went out in a period of a little more than a year.
 2 Is it fair to say that 75 represents a very small
 3 percentage of the number of cases that your firm
 4 files?
 5 **A. Yes.**
 6 **Q.** And I think it was also limited, that
 7 number was limited to cases that were filed on behalf
 8 of New Century Financial. So would it also be fair
 9 to say that the 75 represents a relatively small
 10 percentage of the cases that your office files on
 11 behalf of New Century?
 12 **A. That's correct.**
 13 **Q.** How was it decided which cases would
 14 receive a settlement letter?
 15 **A. I was not able to determine that. I**
 16 **couldn't gather a pattern, to be very honest with**
 17 **you. I made an inquiry, but I couldn't decide how**
 18 **one particular file receives a letter and another**
 19 **particular file didn't. I was able to see what our**
 20 **exact -- if you think of it or to clarify for you,**
 21 **because of the huge number of cases we file every**
 22 **year, we do things assisted by a computer program or**
 23 **I guess a number of computer programs.**
 24 **The criteria were that the file**
 25 **contained a docket number, which obviously we could**

22

1 **not have until a suit was filed. We have a field or**
 2 **an entry for the residence of the debtor, which we**
 3 **refer to as the HA or home address, and that is**
 4 **continually monitored routinely to be good or no**
 5 **good.**
 6 **And the last thing, we have a field**
 7 **for judgement, which is a very complicated field.**
 8 **It's the amount the judgement was entered for, the**
 9 **amount of the particular costs that were added either**
 10 **by application to the court or through the court**
 11 **granting it itself.**
 12 **So we needed a good home, that is the**
 13 **street address, we needed a docket number, and we**
 14 **needed no judgement. And then there was one other**
 15 **field that I was able to determine, and that field is**
 16 **that there was not an attorney on the file. I can**
 17 **speculate as to why we did that, but from my**
 18 **experience here, the attorney/non-attorney would not**
 19 **be a reason the letter would be sent or not sent.**
 20 **So with all of that being said, the**
 21 **answer to your question is no, I could not determine**
 22 **how it was that that number was filed or mailed.**
 23 **Q.** Explain to me a little more, the no
 24 attorney on file field, that was a criterion in order
 25 for someone to be able to use this letter?

23

1 **A. Yes. In other words, if someone**
 2 **directed that a settlement letter be sent, it would**
 3 **not be sent if the party had an attorney.**
 4 **Q.** If the defendant --
 5 **A. The debtor, yes.**
 6 **Q.** Okay.
 7 **A. We enter a code for every attorney who**
 8 **ever contacts the office, whether by phone only or in**
 9 **writing, and again, the computer terminology, it**
 10 **populates a field for the file, and if that field was**
 11 **populated, the letters didn't go out on that.**
 12 **Q.** Was the sending of the letter
 13 determined by a computer program that was set up with
 14 certain parameters obviously or criteria or was there
 15 a human who made a decision as to each letter as to
 16 whether it would go?
 17 **A. My investigation led me to conclude**
 18 **that it was done on an ad hoc basis by an employee of**
 19 **our firm.**
 20 **Q.** What level of employee made that
 21 decision?
 22 **A. I believe it was done at the paralegal**
 23 **level.**
 24 **Q.** Okay.
 25 **A. Although it may have been one step up,**

24

1 **which to be very honest with you, even though I**
 2 **attended so many meetings, it was either a manager or**
 3 **a supervisor.**
 4 **Q.** On the paralegal level?
 5 **A. Yes, on the paralegal level.**
 6 **Q.** Have you looked at the 75 instances
 7 where the letter was sent?
 8 **A. No, I haven't.**
 9 **Q.** So you don't have any knowledge as to
 10 the circumstances that the other letters were sent,
 11 other than the two in this case?
 12 **A. No. I -- no. The answer to your**
 13 **question is no.**
 14 **Q.** I'll ask the next question which
 15 you're going to tell me you don't know, which is
 16 fine. So you don't know whether the letter was sent
 17 to any of those 75 prior to them filing an answer to
 18 the complaint?
 19 MR. WILLIAMSON: Objection.
 20 **Q.** Or stated the other way around, do you
 21 know whether any of those 75 were sent prior to the
 22 recipient's file of an answer?
 23 **A. Because I didn't look at the 75, I**
 24 **cannot answer that question.**
 25 **Q.** Okay. Is that information that your

25

1 office would have?
 2 **A. Well --**
 3 MR. WILLIAMSON: Objection to form.
 4 **Q.** The information as to whether the
 5 letter was sent prior to the filing of an answer.
 6 MR. WILLIAMSON: Okay.
 7 **A. If I can answer it as precisely as I**
 8 **can, I don't think we could perform a computer search**
 9 **that could do that, but if someone spent the time to**
 10 **look at the list, if a list was sent to you, someone**
 11 **could review the list and I think could determine**
 12 **what person decided to send it and very often under**
 13 **what circumstances.**
 14 **One of the things that we attempt to**
 15 **do, and, parenthetically, I mentioned it at a meeting**
 16 **and I mentioned it to an attorney today, is that when**
 17 **our office, when any office such as ours is involved**
 18 **in so many activities every day at so many levels,**
 19 **it's very important to document what happens. And to**
 20 **quote one of the partners here, the time to do it is**
 21 **now, not later.**
 22 **So every file, I believe, if someone**
 23 **took the time to look at each one, I think every**
 24 **file, we might be able to determine the**
 25 **circumstances. But the answer is no.**

26

1 **Did you ask me could it be done or has**
 2 **it been done?**
 3 **Q.** No, whether you have the information,
 4 whether you have the records that you could
 5 determine.
 6 **A. We have every file in our office. It**
 7 **consists of both pieces of paper and also computer**
 8 **records and images. There would be indicators in the**
 9 **file that would lead us to pretty accurately**
 10 **determine why it was sent on a given case, why that**
 11 **letter was used.**
 12 **Q.** I think you went a little broader,
 13 which is fine, but I was asking whether there are
 14 records to reflect whether or not the letter was sent
 15 after an answer had been filed. So I assume from
 16 your answer that you just gave, yes, those records
 17 would exist. It could be looked up and may have to
 18 be on a case-by-case basis rather than running a
 19 computer search.
 20 **A. That is correct.**
 21 **Q.** Have you seen the declaration of Eman
 22 Hendricks, an expert that was retained by plaintiffs
 23 in this case?
 24 **A. To be precise, I believe I may have**
 25 **had it read to me rather than actually physically**

27

1 **reading it myself, but I am aware that there's an**
 2 **expert report supplied by the plaintiffs.**
 3 **Q.** Okay. Did you also review the answer
 4 that was filed by your office?
 5 **A. I did not.**
 6 **Q.** The decision as to whether to send the
 7 settlement letter, is that made entirely by someone
 8 working at Pressler & Pressler as opposed to, to give
 9 us a contrast, as opposed to input from the client?
 10 **A. I believe your question is asked in**
 11 **general terms, and the general answer to that**
 12 **question is maybe yes, maybe no.**
 13 **Q.** My understanding from having taken Mr.
 14 Galic's testimony earlier is that, at least with
 15 respect to New Century, that the discretion over
 16 sending letters such as P-4 and P-5 is left to your
 17 office. Is your understanding consistent with his?
 18 **A. That's entirely believable. In other**
 19 **words, if Marko said it's so, it is so. We have**
 20 **clients that --**
 21 MR. WILLIAMSON: I'm going to object
 22 there. I think that's limited to New Century. What
 23 other clients I don't think is appropriate to discuss
 24 at this point.
 25 MR. STERN: I don't think it's

32

1 consists of. I haven't asked you a question yet.

2 **A. Good. I thought maybe I dozed off for**

3 **a second.**

4 **Q.** I want to make sure you understand

5 what I'm focusing on.

6 **A. Yes.**

7 **Q.** Do you have an understanding as to

8 what that proof consists of?

9 **A. Yes.**

10 **Q.** What's your understanding?

11 **A. A stipulation of dismissal.**

12 **Q.** Anything else?

13 **A. That's the document that**

14 **overwhelmingly will demonstrate to the clerk of the**

15 **court that the matter has been ended, that the**

16 **lawsuit has been resolved. So I quite frankly, in a**

17 **post-suit prejudgement settlement letter, I can't**

18 **imagine what the document would be other than a**

19 **stipulation of dismissal, although I'm quite**

20 **confident that there might be something else. But**

21 **that's the only one that comes to my mind.**

22 **Q.** Okay. I think you said it was 2009

23 when you approved this?

24 **A. I believe I said 2009.**

25 **Q.** In 2009, did it contain the language

33

1 in the first two sentences in the second paragraph?

2 **A. Yes.**

3 **Q.** Was there a previous form of this

4 letter in 2009?

5 **A. Yes.**

6 **Q.** Do you know whether the language in

7 the first two sentences came from the prior version

8 or whether that was new language?

9 **A. I'm sorry, but I can't recall that.**

10 **In my review of the letter at the time, and even**

11 **currently, I was focusing on other issues. I can't**

12 **recall whether those particular two sentences were**

13 **in.**

14 **Q.** Okay. The settlement letter was

15 intended to be sent on behalf of the firm?

16 **A. Correct, on behalf of our firm's**

17 **client.**

18 **Q.** On behalf of the firm's client but

19 from the firm.

20 **A. That's correct.**

21 **Q.** So on behalf of the firm, the firm had

22 I guess collectively some intent as to what these

23 words were to mean.

24 **A. Yes.**

25 **Q.** Was there an intent in the last phrase

34

1 of that second sentence? "So that you can advise the

2 credit bureau," was there an intent that that act of

3 advising the credit bureau would provide some benefit

4 to the defendant from having settled in accordance

5 with the terms of the letter?

6 MR. WILLIAMSON: Objection to form.

7 **Q.** You can answer.

8 MR. WILLIAMSON: I don't understand

9 it, but okay, if he understands it.

10 **A. This firm has been representing**

11 **creditors for many, many decades. We, that is to say**

12 **this firm realizes that when people have an unpaid**

13 **debt and they're involved with an attorney, very**

14 **often one of their concerns is what's commonly known**

15 **as their credit rating. For my career at this firm,**

16 **I speak with debtors all the time. Debtors ask me**

17 **legal advice about their credit rating. If it's not**

18 **legal advice I guess it's personal advice.**

19 **And I've always been in the**

20 **unfortunate position of saying, I can't really give**

21 **you guidance about it, but we know that this is a**

22 **subject that's of interest to debtors and we've put**

23 **it in. The general reason this letter is sent is to**

24 **resolve a lawsuit.**

25 **Q.** That's your answer?

35

1 **A. That's my answer.**

2 **Q.** You identified that the proof that the

3 debt has been paid will be sent to the court can

4 consist of a stipulation of settlement --

5 **A. Stipulation of dismissal.**

6 **Q.** Stipulation of dismissal. And in

7 accordance with this letter, a copy of the

8 stipulation of dismissal would be sent to the

9 defendant.

10 **A. That's correct.**

11 **Q.** And then the defendant would take that

12 copy and send it to the credit bureau.

13 **A. They're able to so that you can. You**

14 **are able to.**

15 **Q.** Right. Without trying to be silly,

16 but there's plenty of things they can do with a

17 stipulation of dismissal. This letter identified one

18 particular thing they can do with it?

19 **A. Yes.**

20 **Q.** Which is to advise the credit bureau.

21 **A. That's correct.**

22 **Q.** I would presume, I'm asking you to

23 confirm or deny, that by stating that you can advise

24 the credit bureau, the intent was to let the

25 defendant believe that the stipulation of dismissal

36

1 being sent to the credit bureau would benefit the
 2 consumer in some way.

3 MR. WILLIAMSON: Objection. You're
 4 asking him to speculate what might be in somebody's
 5 mind?

6 MR. STERN: I'm not speculating.

7 Q. Can you confirm or deny that that was
 8 what was intended?

9 A. **Would you please read back the**
 10 **question?**

11 (The question is read by the reporter.)

12 A. **Please excuse my long silence in not**
 13 **answering or my hesitation. I wonder if you could**
 14 **rephrase the question for me.**

15 Q. Sure. A stipulation of dismissal
 16 received by a defendant who has complied with the
 17 settlement terms in this letter.

18 A. **Yes.**

19 Q. That defendant can do any of numerous
 20 things with that stipulation of dismissal, one of
 21 which is sending it to the credit bureau.

22 A. **That's correct.**

23 Q. The letter here only mentions sending
 24 it to the credit bureau.

25 A. **That's correct.**

37

1 Q. I presume that when this letter was
 2 approved that there was some intent as to why you
 3 identified that option of the plethora of other
 4 options that a defendant had of what they could do
 5 with the stipulation of dismissal, and that's why the
 6 letter states that you can advise the credit bureau.

7 A. **If I can generally comment on the**
 8 **structure of the letter, it contains an offer. It**
 9 **contains the words "significant savings," and it**
 10 **specifically gives precise figures, 80 percent. It**
 11 **gives the amount of the savings in the Setneska**
 12 **letter, \$3,099.69. It is the intent of the letter to**
 13 **offer incentives to settlement.**

14 **We believe that it is always of**
 15 **interest to debtors that they pay the least amount of**
 16 **money to resolve a claim against them and that they**
 17 **at the end of the day always have their credit rating**
 18 **be as good as it can be under the circumstances.**

19 **So this is one of the options or one**
 20 **of the incentives given. We don't expect people to**
 21 **settle a case for no reason. We expect people to act**
 22 **in their own best interest, so we suggest to them**
 23 **that our client has these incentives for them, pay**
 24 **less money and report it to the credit bureau.**

25 Q. Okay. I'm going to rephrase it a

38

1 little bit and ask if you agree. So one of the
 2 incentives from settling is to send this information
 3 to the credit bureau. Let me withdraw it.

4 One of the incentives from settling
 5 would be sending the stipulation of dismissal to the
 6 credit bureau?

7 A. **The exact words of it is "so that you**
 8 **can." It's to suggest to them that that is an**
 9 **option. You said there was a plethora of things they**
 10 **could do with it, the stipulation of dismissal, and I**
 11 **don't mean to be disrespectful in any way. I can't**
 12 **think of many uses for it except to show that a debt**
 13 **has been paid. And sending the letter to the**
 14 **consumer credit reporting agencies will show that a**
 15 **debt has been paid.**

16 Q. Okay.

17 A. **The letters also -- there's no**
 18 **question, we say in the letter, we give the exact**
 19 **account. We give the Citibank for Mr. Setneska's**
 20 **letter, which is P-5, we give Citibank, South Dakota,**
 21 **account number such and such.**

22 Q. And in P-4, there's similar
 23 information with respect to Ms. Freeman's account.

24 A. **That's correct.**

25 Q. So I may have had a hard time getting

39

1 there, but I think there's no dispute here that the
 2 intent of the language regarding the ability of the
 3 consumer to send the letter to the credit bureau is
 4 that that information would benefit the defendant
 5 with respect to whatever information is on their
 6 credit reports.

7 MR. WILLIAMSON: Asked and answered,
 8 objection. Read back his last answer. I think he
 9 answered that.

10 MR. STERN: Well, asked and answered,
 11 it's an objection. If he can answer the question,
 12 let him answer the question.

13 A. **I can save sometime if you'll allow**
 14 **me. My undergraduate degree was in English and my**
 15 **legal career involves not only trying cases and doing**
 16 **appeals but also writing the brief that goes along**
 17 **with that. And I think that my answer, I tried to be**
 18 **very precise with my answer and I hope the way it was**
 19 **phrased answers it.**

20 Q. Okay. Do you have any experience
 21 either with litigation or studying the Fair Credit
 22 Reporting Act?

23 A. **Yes, but that is -- yes, but I must**
 24 **advise you that my experience is much less than what**
 25 **the Fair Debt Collection Practices Act is. I'm aware**

MAURICE H. PRESSLER(1930-2002)
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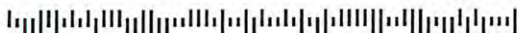
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09/07/11

ALAN J SETNESKA
153 HICKORY CORNER RD
EAST WINDSOR, NJ 085202417

P&P FILE #: S258431
Docket # L -001502-11

Re: NEW CENTURY FINANCIAL SERVICES, INC. v. ALAN J SETNESKA
Superior Court of New Jersey: Law Division MERCER County

Dear ALAN J SETNESKA :

You are hereby offered a significant savings on your CITIBANK SOUTH DAKOTA, N.A. account 5121079640375975 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . As you probably know, this office has filed a lawsuit against you in which the amount claimed is \$15,498.44 . This includes costs and other amounts the creditor is seeking. If you can make a payment of \$12,398.75 , 80 % of the amount claimed by Thursday, September 22, 2011 , it will be accepted as settlement in full, a savings to you of \$3,099.69 from the amount claimed in the lawsuit.

This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau. If you are unable to pay the 80 %, we can accept \$3,874.61 down (25 % of the full balance) and enter into acceptable arrangements on the remaining 75 % when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number S258431 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After September 22, 2011 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.



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GINA M. LO BUE

* NY State License Only

OFFICE HOURS:
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Friday: 8am-7pm
Saturday: 9am-2pm

01/12/11



NATALIE FREEMAN
271 CHAPEL AVE APT 2
JERSEY CITY, NJ 073052911

P&P FILE #: F96305

Re: NEW CENTURY FINANCIAL SERVICES, INC. v. NATALIE FREEMAN
Docket # DC-031425-10
Superior Court of New Jersey: Law Division HUDSON Special Civil Part

Dear NATALIE FREEMAN :

You are hereby offered a significant savings on your GE CAPITAL - REGULAR WAL-MART account C77W03423244788 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . As you probably know, this office has filed a lawsuit against you in which the amount claimed is \$790.58 . This includes costs and other amounts the creditor is seeking. If you can make a payment of \$592.94 , 75 % of the amount claimed by Tuesday, January 25, 2011 , it will be accepted as payment in full, a savings to you of \$197.64 from the amount claimed in the lawsuit.

This payment will satisfy the pending lawsuit. Proof that the debt has been paid will be sent to the court and a copy to you so that you can advise the credit bureau. If you are unable to pay the 75 %, we can accept \$197.65 down (25 % of the full balance) and enter into acceptable arrangements on the remaining 75 % when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5368 or anyone in my department at 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number F96305 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After January 25, 2011 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

Thank you, KEVIN V - Paralegal EXT - 5368

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.



MAURICE H. PRESSLER (1930-2007)
SHELDON H. PRESSLER

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STEVEN P. McCABE
LAWRENCE J. McDERMOTT, JR.

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APRIL 2, 2012

Philip D. Stern & Associates, LLC
Attorneys at Law
697 Valley Street, Suite 2d
Maplewood, NJ 07040

Re: Natalie A. Williams vs Pressler & Pressler, LLP
United States Court for the District of New Jersey (Newark)
Civil Case Number: 2:11-cv-07296 (KSH)(PS)
P&P File Number P151618

Dear Mr. Stern:

As discussed in chambers during our conference on March 26, 2012, annexed hereto are the Affidavits of Ralph Gulko, Esq. detailing what are his procedures prior to approving a summons and complaint for filing with the court and the Affidavit of Marko Galic, a representative of New Century Financial Services, Inc. ("NCFSI") regarding NCFSI's policies regarding reporting accounts to the credit bureaus. I have also enclosed a copy of the documents sent to court when a matter is settled.

Very truly yours,
PRESSLER & PRESSLER, LLP

s/Mitchell L. Williamson

Mitchell L. Williamson

MLW/MW

Hon Patty Shwartz, U.S.M.J.
U.S. P.O. Courtroom 10
U.S. Courthouse
50 Walnut Street
Newark, N.J. 07101



5. It is my understanding that a lawsuit was thereafter filed on December 17, 2010 entitled New Centurv Financial Services, Inc. v Natalie Freeman, in the Superior Court of New Jersey, Hudson County, Law Division, Special Civil Part, docket no. DC-031425-10 and that subsequent to service of the complaint an answer was filed by Ms. Freeman.

6. During the litigation NCFSI was advised that Ms. Freeman would qualify as a hardship case and based on that fact and the small amount in controversy a business decision was made to dismiss the case. It is my understanding that the aforementioned lawsuit was dismissed with prejudice on June 3 2011.

7. NCFSI reports to the three (3) major credit bureaus (Transunion, Equifax and Experian) once a month on the 1st of the month.

8. After we have owned the account for 60 days, we first report the account. We have certain basic criteria which must be met before an account is reported, such as amount due, address that is in the country, cannot be disputed, bankrupt, deceased or if in suit have an answer filed. Only the primary account holder will be reported.

9. There are only three (3) codes our company reports: Code 93 (assigned to collections), Code 62 (Paid in Full), or Code DA (to Delete).

10. If an account falls outside of our reporting criteria after it has been reported, we immediately delete our trade line on the next reporting cycle.

11. We also have signed up for an online service called E-OSCAR, which allows us to receive disputes and updates on a daily basis from all 3 credit bureaus.


Marko Galic

Sworn to and subscribed before me
this 2nd day of April, 2012
as his free and voluntary act and deed
for the purposes set forth above.


(Notary Public)

ERIC SOMBERS
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 24, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

===== :
 :
 NATALIE A. WILLIAMS individually, :
 and on behalf of all others similarly :
 situated :
 :
 Plaintiff :
 :
 vs. :
 :
 PRESSLER & PRESSLER, LLP, :
 :
 Defendant :
 :
 ===== :

2:11-cv-07296 (KSH)(PS)

AFFIDAVIT OF
RALPH GULKO, ESQ.

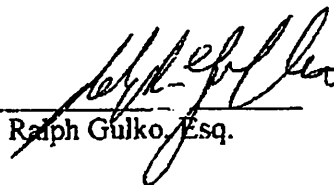


State of New Jersey: :
: SS
County of Morris :

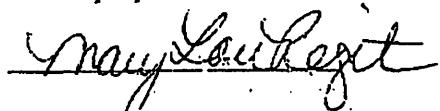
I, Ralph Gulko, Esq., of full age and under oath do state:

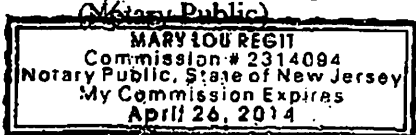
1. I am a practicing attorney at law in the States of New Jersey, New York and Pennsylvania. New Jersey since December 1978, Pennsylvania since December 1980 and New York since November 1996. . Since August 2005 I have been associated with the New Jersey law firm of Pressler and Pressler, LLP. ("Pressler") with offices located at 7 Entin Road, Parsippany, New Jersey, attorneys for Defendant Pressler. Prior to my association with Pressler, I was a partner with the New Jersey law firm of Eichenbaum, Kantrowitz, Leff and Gulko, ("EKLG") which specialized in retail collections. I was with EKLG from May 1980 through August 2005. I am familiar with the facts of this case and the underlying matter and I make the following statements from personal knowledge and a review of Pressler's files.
2. When new retail consumer collection claims are received by Pressler from their clients, the first step is to send the "Initial Notice letter" pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 ("FDCPA") to the named account holder(s).
3. After thirty five (35) days if no disputes are received and/or the Initial Notice letter is not returned as undeliverable, the claim is prepared for suit.
4. The proposed complaints are then reviewed for their service and filing.

5. I review each proposed complaint in its entirety. I make sure all information contained in the Summons and Complaint ("SAC") is the same information that was received by the client. I also review the file notes on the account to ascertain whether there have been any changes in that information due to post-referral credits and/or address changes.
6. I further review the account to confirm all changes are current. If there are other accounts for the debtor I will check those claims and look at any documents related to that claim. I further check for any credit reports that have been obtained to confirm correct and updated information.
7. If documents are to be attached to the SAC, such as a medical bill, I review those to be sure the document(s) is(are) the correct one to use, and that all private information has been redacted.
8. Generally, the SAC must be correct in all respects in order to be approved. This includes name, address, county of venue, amount, the cause of action alleged in the body of the complaint, the statute of limitations, and anything else that would give me any cause or reason to reject the SAC.
9. I look to see if there is any reason to reject it, such as an intervening bankruptcy filing. Even a late payment will cause me to reject it for purposes of redoing the SAC to reflect the new and now lower balance.
10. Finally if the SAC is "good" I approve it for filing. If I find what I perceive to be a "problem" I return it to the originating department for review with my reasons for rejection.


Ralph Gulko, Esq.

Sworn to and subscribed before me
this 2nd day of April, 2012
as his free and voluntary act and deed
for the purposes set forth above.





MAURICE H. PRESSLER (1930-2002)
SHELDON H. PRESSLER

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01/26/12

HUDSON Special Civil Part
SPECIAL CIVIL CASE MGMT OFFICE
595 NEWARK AVE, ROOM 711
JERSEY CITY, NJ 07306

Re: NEW CENTURY FINANCIAL SERVICES, INC. vs [REDACTED]

Superior Court of New Jersey: Law Division
HUDSON Special Civil Part
Docket Number [REDACTED]
P&P File No [REDACTED]
Balance \$667.37

TEAM B FEE: NO FEE ITEM

Dear Clerk:

The above captioned matter is currently scheduled for trial on Friday, January 27, 2012.

Please mark the case settled. The Stipulation of Settlement has been forwarded to our adversary for signature. Upon receipt of a fully executed Stipulation of Settlement, it will be forwarded to the Court for filing.

Thank you for your attention to this matter.

Very truly yours,

PRESSLER and PRESSLER, LLP

S/ DARREN H. TANAKA
DARREN H. TANAKA

cc: [REDACTED]
[REDACTED]
[REDACTED]



MAURICE H. PRESSLER (1926-2007)
SHELDON H. PRESSLER

GERARDO J. FELT
STEVEN P. MCCAGE
LAWRENCE J. McDERMOTT, JR.

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FRANCIS K. GRIMES (NJ & PA)
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Friday: 9am-7pm
Saturday: 9am-2pm

01/27/12

Re: NEW CENTURY FINANCIAL SERVICES, INC. vs. [REDACTED]
Superior Court of New Jersey: Law Division
HUDSON Special Civil Part
Docket No. [REDACTED]
P&P FILE NO [REDACTED]

Dear [REDACTED]

Enclosed please find original and two (2) copies of the Stipulation of Settlement.

Kindly sign the original and a copy where indicated by the "X". Return them by return mail in the postage-paid envelope so that we may file it with the Court.

The immediate return is necessary even though your payment may not be due until a future date; Wednesday, February 01, 2012. If you fail to immediately return the Stipulation of Settlement, we will have to continue with our collection efforts.

Please keep the last copy for your records.

Very truly yours,

PRESSLER and PRESSLER, LLP

S/Rita E. Ayoub

Rita E. Ayoub

Enclosures

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.



[REDACTED]

P&P File # [REDACTED]

PRESSLER AND PRESSLER, L.L.P.

COUNSELLORS AT LAW

7 Entin Rd.

Parsippany, NJ 07054-5020

(973) 751-5100

Attorney for Plaintiff

NEW CENTURY FINANCIAL SERVICES, INC.

Plaintiff

vs.

[REDACTED]
Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
HUDSON Special Civil Part
Docket No. [REDACTED]

CIVIL ACTION

STIPULATION OF SETTLEMENT

Dated: 01/26/12

It is hereby stipulated and agreed that this case be settled upon the following terms:

The defendant(s) shall pay to Pressler and Pressler, L.L.P, attorneys for Plaintiff the sum of \$400.00 (Settlement) to be paid at the rate of \$100.00 per month beginning 02/01/12 due on or before the 1st of each month thereafter until the balance is paid in full. If default, plaintiff will proceed and enforce the full original amount which is now \$667.37 plus interest less credit given for any payments made. Once this matter has been settled in full, we will file a Stipulation of Dismissal with the court and will provide the defendant with a settled in full letter referencing the original creditor and account number.

The case in the meantime to be marked "settled".

In the event of default under the terms of this settlement, the plaintiff may, on 5 days written notice, accompanied by a Certification showing the balance still due, move for an Order for the entry of judgment, and the defendant(s) consent to the entry of judgment, for the amount stated to be due in the Certification, unless the same is disputed by presentation of a Certification to the Court by the defendant(s). Notices to enforce shall be served upon the defendant(s) at the address below. Any change of address shall be on written notice to Attorneys for Plaintiff.

PRESSLER and PRESSLER, LLP
BY S/Rita E. Ayoub
Rita E. Ayoub
Attorneys for Plaintiff

02 / ___ /12 X

Dated: [REDACTED]
[REDACTED]
[REDACTED]

P&P FILE NO [REDACTED]

TEAM B FEE: NO FEE ITEM

PRESSLER and PRESSLER, LLP
Counsellors At Law
7 Entin Rd.
Parsippany, NJ 07054-5020
1-973-753-5100

Attorneys for Plaintiff

Plaintiff

LVNV FUNDING LLC

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUDSON Special Civil Part
DOCKET NO [REDACTED]

vs.

CIVIL ACTION

Defendant(s)

WARRANT FOR SATISFACTION
OF JUDGMENT

[REDACTED]

TO THE CLERK OF THIS COURT:

You are hereby directed to satisfy of record, the judgment in the above matter.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 04/03/12

PRESSLER and PRESSLER, LLP
Attorneys for Plaintiff

By: S/Rita E. Ayoub
Rita E. Ayoub

to net worth is not appropriate at this time. Defendant recognizes that at a later date its' outside accounting firm may be required to testify but not at this time.

IT IS FURTHER ORDERED that, with respect to Plaintiffs' Interrogatories Nos. 21, 22, and 23, no later than July 13, 2012, the defendant shall provide the plaintiffs with the number of Complaints Ralph Gulko signed on December 17, 2010, and signed from December 13, 2010 through December 17, 2010, that were ultimately filed in New Jersey courts. Complaints that were not filed should not be included in these figures. No further response will be required;

RESPONSE: *On December 17, 2010 Ralph Gulko signed 335 complaints which were subsequently filed in New Jersey Courts. On December 13, 2010, Mr. Gulko signed 609 complaints, on December 14 2010 he signed 517, on December 15, 2010 he signed 128 and on December 16, 2012 he signed 335. All of the complaints were subsequently filed in the New Jersey courts.*

IT IS FURTHER ORDERED that, with respect to Plaintiffs' Request for the Production of Documents No. 8, no later than **July 13, 2012**, the defendant shall provide the plaintiff with copies of audio recordings of the named plaintiffs in their possession, custody or control;

RESPONSE: *See Williams phone calls dated 1/24/11 – 2/9/11 – 3/24/11 – 3/28/11 and 2x 3/29/11. See Setneska phone call dated 6/23/11. Phone calls are being produced via CD mailed out on June 13, 2012 to Counsel.*

IT IS FURTHER ORDERED that, with respect to Plaintiffs' Request for the Production of Documents No. 9, in accordance with the defendant's agreement to do so, as reflected on ECF No. 18 at 7, no later than **July 13, 2012**, the defendant shall provide a **certification** that states that a diligent search was conducted for documents embodying policies/practices/procedures concerning the "settlement" letter of the type sent to the plaintiff but none have been found, or produce such documents; and

RESPONSE: *See Annexed Certification of Counsel*

IT IS FURTHER ORDERED that, with respect to Plaintiffs' Request for the Production of Documents No. 16, no later than **July 13, 2012**, the defendant shall produce: (1) all non privileged documents from its collection files for each named plaintiff; and (2) if any documents are withheld based upon the assertion of the attorney-client privilege or work product rule, a log identifying such documents in accordance with the requirements of L. Civ. R. 34.1.

RESPONSE: *See Williams documents numbered 1 through 26 and Setneska documents numbered 1 through 45. By Agreement of the parties reached during a telephonic conversation on July 12, 2012, the Setneska documents produced were limited in time to the period from the opening of the file through December 31, 2011. Due to their volume documents are being produced via CD mailed out on June 13, 2012 to Counsel.*

Superior Court Of New Jersey
Law Division, Special Civil Part

PRESSLER & PRESSLER, LLP
Plaintiff's Name
7 ENTIN ROAD
Street Address
PARSIPPANY NJ 07054-502
Town, State, Zip Code
(973) 753-5100
Telephone Number

HUDSON County
Docket No. DC-031425-10

vs.

NATALIE FREEMAN
Defendant's Name
271 CHAPEL AVENUE APT. 2
Street Address
JERSEY CITY NJ 07305
Town, State, Zip Code
(212) 222-7207
Telephone Number

CIVIL ACTION

Answer

Check the appropriate statement or statements below which set forth why you claim you do not owe money to the plaintiff.

- (1) The good or services were not received.
- (2) The goods or services received were defective.
- (3) The bill has been paid.
- (4) I/We did not order the goods or services.
- (5) The dollar amount claimed by the plaintiff(s) is incorrect.
- (6) Other - Set forth any other reasons why you believe money is not owed to the plaintiff(s). (You may attach more sheets if you need to.)

* THIS LAWSUIT I FIND TO BE FRIVOLOUS BECAUSE IT'S FROM A DEBT I BELIEVE TO BE AT LEAST 10 YEARS OLD - AND TO SEEK PAYMENT AFTER THE STATUTE OF LIMITATIONS AROUND THE HOLIDAYS I FIND TO BE MALICIOUS.

Trial by jury requested; an extra \$50 check or money order is enclosed.

At the trial Defendant requests:

An interpreter:

An accommodation for a disability:

Yes No
Yes No

Indicate Language:

Requested accommodation:

NOT APPLICABLE
DAYCARE FOR 8 MONTH BABY

I certify the matter in controversy is not the subject of any other court action or arbitration proceeding now pending or contemplated, and that no other parties should be joined in this action.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I further certify that this answer was served on all other parties within 35 days of the date the summons and complaint were mailed to me as indicated on page 2 of the summons.

Dated: 01/07/2011

Natalie A. Williams
Defendant's Signature

NATALIE A. WILLIAMS
Defendant's Name - Type or Printed

NATALIE A. WILLIAMS
271 CHAPEL AVENUE, 2ND FLOOR
JERSEY CITY, NJ 07305-2911

PREPAID MAIL PERMIT NO. 3000
JERSEY CITY, NJ 07310



c/o RALPH GULKO
PRESSLER & PRESSLER, LLP
7 ENTIN ROAD
PARSIPPANY, NJ 07054-5020

07054+5020



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

NATALIE A. WILLIAMS and ALAN)	
SETNESKA, individually and on behalf)	Case No.: 2:11-cv-07296-KSH-PS
of all others similarly situated)	
)	
Plaintiffs,)	
)	
)	
)	
vs.)	
)	(Amended Class Action)
PRESSLER & PRESSLER, LLP,)	
)	
Defendants)	
)	
)	

DECLARATION OF EVAN HENDRICKS

1. I make this declaration as an expert in the field of fair credit reporting as it pertains to principles of Fair Information Practices. (See attached CV, and section on "Qualifications & Background," below.)
2. I have been retained by Plaintiff's counsel to provide expert opinion testimony on the interrelated issues in this case of credit reporting, consumer reporting agencies (a.k.a., credit bureaus) and the Fair Credit Reporting Act as they pertain to Defendants' conduct and to debt collection.

Summary of Opinions

3. Defendant made false representations and used deceptive means when it advised Plaintiffs in its collection letter, "Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau."
4. Defendant's representations were false and its means were deceptive because it gave Plaintiffs and similarly situated consumers the false impression that providing the letter or communicating its contents to credit bureaus would improve their credit report/creditworthiness. This declaration will explain why Defendant's statements concerning credit bureaus are false and deceptive.
- 5.

Legal Foundation

6. The legal foundation for the opinions expressed in this Declaration are more fully set forth in the Plaintiffs' Amended Complaint.
7. For example, 15 U.S.C. § 1692e(10) of the Fair Debt Collection Practices Act (FDCPA) prohibits debt collectors such as Defendants from, "Using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10).
8. It is worth noting that Section 1692e(16) of the Fair Debt Collection Practices Act (FDCPA) prohibits debt collectors such as Defendants from making, "The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act."
9. It is also worth noting that Section 1692e(8) prohibits collectors from, "Communicating or threatening to communicate to any person credit information which is known or which should be known to be false ..."
10. The FDCPA recognizes that debt collection and credit reporting are inextricably intertwined, as one court wrote several years ago, credit reporting is a "powerful tool designed, in part, to wrench compliance with payment terms." (Rivera v. Bank One, 145 F.R.D. 64, 623 (D.P.R. 1993)).
11. The importance of credit bureaus is underscored by the fact that credit bureaus receive information on consumers' payment histories – both negative and positive – from nearly all major creditors and collectors, and then sell that information in the form of credit reports to nearly all major creditors. It's a rather simple formula: positive information improves a consumer's credit report and credit score, while derogatory information damages a consumer's credit report and credit score.
12. Defendant's letter makes the false and deceptive representation that providing the letter or communicating its contents to credit bureaus would improve the Plaintiffs' credit reports/creditworthiness by somehow convincing the credit bureaus to improve the status the debt at issue. The representation is false and deceptive in part because it is in contravention as to how the credit reporting system actually works.

U.S. Credit Reporting System & Defendant's Misrepresentations

13. The industry standard in the U.S. credit reporting system is that "furnishers" (i.e., creditors and collectors) furnish consumer information to consumer reporting agencies ("CRAs" or "credit bureaus"). The CRA then compiles and assembles that consumer information into "consumer reports." The CRA then sells the consumer reports to "users," but only to those users that have a "permissible purpose," as defined by the Fair Credit Reporting Act.

14. The standard industry information flow is ongoing, with major furnishers typically furnishing consumer data electronically, on a monthly basis. CRAs only accept routine updates from established furnishers.
15. Importantly, if the status of a consumer's collection account ("tradeline") that was previously furnished to a CRA changes, as it did in the case of Plaintiffs, the furnisher is legally required to update the information it furnishes to the CRAs. To wit:

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the *person knows or has reasonable cause to believe* that the information is inaccurate. {Emphasis added.} [15 U.S.C. § 1681s-2]

16. Thus, in Plaintiffs' cases, Defendant was legally obligated to "advise the credit bureau" of any changes in the their tradelines – provided that it had furnished information regarding those tradelines previously.
17. If Defendant previously had furnished information regarding those Plaintiffs' tradelines, and Plaintiffs acted on Defendant's letter and so advised the CRA, the CRA would not have updated Plaintiff's tradelines. Again, this is because CRAs only accept regular updates directly from established furnishers.
18. However, had Defendant not previously furnished information to CRAs regarding Plaintiffs' tradelines, then there would be no information for the CRA to update.
19. We can see then, that regardless of whether Defendant furnished information on the Plaintiffs' tradeline, Defendant's representations regarding credit bureaus were false and deceptive.

Background on FCRA

20. In the Fair Credit Reporting Act (FCRA), Congress explicitly recognized the tremendously important role that credit bureaus play in terms of both the general economy and consumers. This is how the Statute begins:

§ 602. Congressional findings and statement of purpose [15 U.S.C. § 1681]

(a) *Accuracy and fairness of credit reporting.* The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

21. To ensure that all entities engaged in any type of credit reporting, Congress broadly defined "consumer reporting agencies":

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

22. Similarly, Congress broadly defined "consumer reports":

(1) In general. The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 604 [§ 1681b].

23. The vital importance that Congress ascribed to credit bureaus underscored the serious reasons why it included a specific prohibition against collectors making false representations regarding credit bureaus.

The U.S. Credit Reporting Landscape

24. Sitting atop the U.S. credit reporting system are the three major national credit bureaus – Equifax, Experian and TransUnion ("The Big Three Credit Bureaus."). They are of such importance that Congress, in the 2003 Amendments to the FCRA, known as the FACT Act, mandated that they provide consumers, upon request, with one free credit report per year.

25. The Big Three Credit Bureaus receive monthly updates from nearly all major creditors on consumers' payment histories. They assemble and compile this information in databases that maintain files on more than 220 million American consumers. The Big Three Credit Bureaus then sell this information in the form of credit reports to thousands upon thousands of creditors, debt collectors, employers, insurers, landlords and others with a "permissible purpose."
26. When consumers apply for credit – mortgages, re-financing, auto loans, credit cards, home equity loans or other installment loans – the creditor will "pull" the consumer's credit report directly from one or all of the Big Three Credit Bureaus, or through a reseller that serves as a middleman. Thus, the credit reporting system serves as an important gatekeeper for the credit-granting system.
27. An additional factor is that because of advance information technology, combined with credit scoring algorithms created by such companies as FICO, the consumers' creditworthiness can be reduced to a three-digit number, allowing for computer-to-computer "decisioning" with minimal human involvement.

Consumer Awareness

28. Because most Americans have applied for either mortgages, re-financing, auto loans, credit cards or installment loans, there is a general awareness among U.S. consumers that there exists a credit reporting system, and that it is used to vet credit applications, and that nonpayment of bills will be reported to the credit bureaus and possibly harm future efforts to obtain credit.
29. While there is growing public awareness about the credit reporting system, it is by no means universal – particularly when it comes to the details. According to a July 2003 survey by the Consumer Federation of America, "Only 25 percent of Americans – and less than 20 percent of those with incomes below \$35,000 – said they knew what their credit score was. But only three percent of Americans could, unprompted, name the three main credit bureaus-Experian, Equifax, and Trans Union-that provide both lenders and consumers with information from credit reports. Forty-three percent of Americans (35 percent of those with incomes below \$35,000) said they had obtained a copy of their credit report from the three credit bureaus in the past two years."
30. A March 2005 General Accounting office report concluded that the public's understanding of credit reports and credit scores was improving, but that a federal education campaign was needed to better inform those segments of the population that remain unfamiliar with the systems. The report found that 60 percent of respondents had seen their credit reports, most often because they were making a large purchase or refinancing a loan. Most of these consumers said that they understood their reports. However, about half (53 percent) did not know that information could stay on their report for 7 or 10 years (General Accounting Office, "Credit Reporting Literacy:

Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts" (GAO-05-223). www.gao.gov/new.items/d05223.pdf.)

Conclusion: Defendants' Misrepresentation

31. Defendants' letter has the strong potential to exploit consumers' general awareness of the role that credit bureaus play in impacting their creditworthiness, while at the same time taking advantage of the fact that many consumers don't know the details of "who does what" in the credit reporting industry.
32. Thus, it was reasonable for consumers who received Defendant's letters to be deceived into believing the letters would somehow help them with a CRA.

Materials Reviewed

33. In addition to the sources cited in this Declaration, I have reviewed the Amended Complaint and the attached Exhibits, and the Affidavits of Marko Galic and Ralph Gulko.

Background & Qualifications

34. Since 1977, credit reporting issues, and the Federal and State laws governing them, have been an integral part of my professional life as an editor and publisher of a specialized newsletter, and for the past decade as an expert witness appearing before courts and Congress, and as an expert consultant to governmental, corporate and non-profit organizations. This is because the principles underlying the Federal Fair Credit Reporting Act (FCRA) are consistent with the "Fair Information Practices" principles (FIPs) that are at the core of most information-privacy laws. In fact, the FCRA (1970) was the first U.S. information-privacy law, preceding the Privacy Act of 1974, which governs federal agencies use of personal data.¹ A primary goal of the FIPs and the FCRA is to ensure that people are treated equitably and fairly when information about them from a third-party record serves as the basis for an organizational decision about them. FIPs and the FCRA attain this goal by creating *rights* for individuals in relation to information about them held by third parties, and by imposing *obligations* on those third parties in regards to the collection, use, maintenance and disclosure of personal information. FIPs and FCRA recognize that ensuring privacy, defined as individuals maintaining reasonable control over their personal information,² has value, and that depriving people of such control. (invading privacy) is damaging.

¹ Fair Information Practices principles, and their link to the FCRA, Privacy Act, and numerous other national and foreign privacy laws, is explained in Personal Privacy In The Information Age: The Report of the Privacy Protection Study Commission. (July 1977; GPO Stock No. 052-003-60305)

² See U.S. Dept. Of Justice v. Reporters Committee, 489 U.S. 749 (1989), "To begin with, both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person."

35. My expertise in credit reporting stems from several of my professional activities, including: (1) Editor/Publisher of a specialty news reporting service that covers credit reporting; (2) author of the book Credit Scores and Credit Reports: How The System Really Works, What You Can Do (Privacy Times 2004), and co-author of a book with a chapter on credit reporting; (3) an expert witness qualified by the federal courts in Fair Credit Reporting Act litigation; (4) an expert on credit reporting who has testified before Congress on numerous occasions, including four hearings in 2003, and who has testified twice before the California legislature in regards to legislation on the use of financial data; and (5) an expert consultant to government agencies and private corporations, and (6) a member of the Consumer Advisory Council of Experian, one of the three national Credit Reporting Agencies (CRAs).
36. Since 1981, I have been Editor/Publisher of *Privacy Times*, a biweekly, Washington-based newsletter that reports on privacy and information law, including the Fair Credit Reporting Act. The newsletter ranges from 8-12 pages, 23 issues per year. This means that in this newsletter (and its three-year predecessor), I have researched, written, edited and published an estimated 2,000 pages relating to information law and policy, including Congressional and State legislative actions, judicial opinions, technology developments, industry trends and actions, executive branch policies and consumer news. By my conservative estimate, at least 20 percent of my professional work since 1977 has concerned issues relating to consumer reporting and personal financial information. These endeavors have allowed me to accumulate a specialized body of knowledge in relation to the collection, use and disclosure of credit report data and personal financial information, and the standards governing them. *Privacy Times* is a subscription-only newsletter. The readers are generally the attorneys and specialists within government agencies, corporations, law firms, universities and public interest groups that are responsible for issues relating to freedom of information and privacy laws, including the FCRA and similar State statutes.
37. I am author of the book, Credit Scores and Credit Reports: How The System Really Works, What You Can Do, 3rd Ed. (Privacy Times 2007). The book has 23 Chapters, 399 pages and 415 footnotes. As the title indicates, it describes how the credit scoring and credit reporting systems work and what consumers can do to obtain their reports, read and understand them, correct errors in them and enforce their rights. I also am co-author of Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd Edition, Southern Illinois University Press, 1990), which has a chapter on credit reporting. I was also a contributor to Fair Credit Reporting, 6th Ed. (National Consumer Law Center, 2006), the leading manual for FCRA practitioners.
38. Since the early 1990s, I have served as an expert witness in numerous FCRA cases and have been qualified by the federal courts.³ As an expert witness, I have had the

³ See, for example, Adelaide Andrews v. TRW, Inc., 225 F.3d 1063 (9th Cir. 2000). Although the trial judge qualified me, the 9th Circuit, in reversing part of her opinion in favor of defendant, ruled that she overly limited the scope of my testimony as to the prevalence of identity theft and its impact on credit report accuracy and integrity. "In making that determination the jury would be helped by expert opinion on the prevalence of identity theft, as the district court would have been helped if it had given consideration to the Plaintiff's witnesses on this point before giving summary judgment," the 9th Circuit panel wrote.

opportunity to read thousands of pages of deposition testimony by consumer reporting agency officials and by credit grantor personnel responsible for reporting data to CRAs. This is significant because CRAs and credit grantors do not openly discuss or publish information on their procedures and practices for handling personal data. In fact, CRAs typically consider such procedures and practices to be proprietary and/or trade secrets. To my knowledge, the best (and possibly only) sources for finding candid descriptions of CRAs' and credit grantors' procedures and practices in relation to credit reporting data are the depositions of CRA and credit grantor employees in FCRA litigation.

39. I have testified before Congress on numerous occasions, including the Congress's only FCRA oversight hearing in 2007, held by the House Financial Services Committee, entitled, "Credit Reports: Consumers' Ability to Dispute and Change Information."⁴ I also testified on four occasions in 2006 and 2005 (see attached CV).

In 2003, I testified twice before the Senate and twice before the House, including the July 10, 2003 Senate Banking Committee hearing, "The Accuracy of Credit Report Information and the Fair Credit Reporting Act;"⁵ and the June 12, 2003 House Financial Services Subcommittee on Financial Institutions & Consumer Credit hearing, "The Role of FCRA in the Credit Granting Process."⁶

40. From 2002 – 2004, I served on the Consumer Advisory Council of Experian (formerly TRW), a national CRA and vendor of other information services. The Council meets twice a year to advise the company on a host of credit reporting, marketing and other privacy-related topics. Since August 1998, I have served under contract as a member of the Social Security Administration's Panel Of Privacy Experts advising the agency on a host of issues. In 2002, the U.S. Postal Service retained me under contract to review its re-writing of its Privacy Act notices to ensure they were understandable to the public and consistent with the Privacy Act's goals of ensuring FIPs. In 1990, Equifax, another national CRA, published "The Equifax Report on Consumers In the Information Age," a nationwide opinion survey and analysis by Louis Harris and Associates and Prof. Alan F. Westin. The report listed me as a privacy expert to whom the authors expressed appreciation for my advice on survey coverage.

/s/ Evan D. Hendricks

Evan D. Hendricks

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⁴ www.house.gov/apps/list/hearing/financialsvcs_dem/ht061907.shtml

⁵ http://banking.senate.gov/03_07hrs/071003/index.htm

⁶ <http://financialservices.house.gov/hearings.asp?formmode=detail&hearing=229>.

Evan D. Hendricks

CURRICULUM VITAE

Professional Activities

1981- Present **Editor/Publisher of *Privacy Times***

Since 1981, I have been Editor/Publisher of *Privacy Times*, a biweekly, Washington-based newsletter that reports on privacy and information law, including the Fair Credit Reporting Act (FCRA). The newsletter ranges from 8-12 pages, 23 issues per year. Thus, I have researched, written, edited and published many articles on Congressional and State legislative actions, judicial opinions, industry trends and actions, executive branch policies and consumer news as they related to the FCRA.

1992 – Present Expert Witness

Qualified by the federal courts in FCRA and identity theft cases. (Complete list attached). I have read extensive deposition testimony by credit bureau and credit grantor personnel. This is significant because CRAs and credit grantors do not openly discuss or publish information on their procedures and practices for handling personal data, and the best (and possibly only) sources for finding candid descriptions of CRAs' and credit grantors' procedures and practices in relation to credit reporting data are the depositions of CRA and credit grantor employees in FCRA litigation.

1998 – 2008 Privacy Expert Consultant, U.S. Social Security Administration

Regularly review policies and practices in relation to the collection, use and disclosure of personal data and Social Security numbers and provide feedback and recommendations.

2002 – 2004 Member, Experian Consumer Advisory Council

Along with other Council members, I provide an outsider's view on credit reporting, marketing and other privacy issues.

July – October 2002 Consultant to U.S. Postal Service

Working with the USPS's Chief Privacy Officer, I assisted in reviewing and editing the re-write of the USPS's Privacy Act notices, with an emphasis on "Plain English."

Evan Hendricks P.O. Box 302 Cabin John, MD 20818
(301) 229 7002 (301) 229 8011 [fax] evan@privacytimes.com

Recent Testimony Before Congress & The FTC

“Keeping Score on Credit Scores: An Overview of Credit Scores, Credit Reports and their Impact on Consumers,” House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit Hearing, March 24, 2010.¹

“What Borrowers Need to Know About Credit Scoring Models and Credit Scores,” House Financial Services Subcommittee on Oversight, July 29, 2008.²

“Credit Reports: Consumers’ Ability to Dispute and Change Information,” House Financial Services Committee, June 19, 2007.³

“Privacy in the Commercial World II,” House Energy & Commerce Subcommittee On Commerce, Trade, and Consumer Protection, June 20, 2006⁴

“Financial Data Protection Act of 2005,” House Financial Services Subcommittee on Financial Institutions and Consumer Credit, November 9, 2005⁵

“Credit Card Data Processing: How Secure Is It?” House Financial Services Subcommittee on Oversight and Investigations, July 21, 2005⁶

“Identity Theft: Recent Developments Involving the Security of Sensitive Consumer Information,”⁷ Senate Banking Committee, March 15, 2005

“The Accuracy of Credit Report Information and the Fair Credit Reporting Act,” Senate Banking Committee, July 10, 2003⁸

“The Role of FCRA in the Credit Granting Process,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, June 12, 2003⁹

“Database Security: Finding Out When Your Information Has Been Compromised,” Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Nov. 4, 2003¹⁰

“Fighting Fraud: Improving Information Security,” House Financial Services Subcommittee on Financial Institutions & Consumer Credit, and Oversight, April 3, 2003¹¹

¹ http://www.house.gov/apps/list/hearing/financialsvcs_dem/fihrn_03242010.shtml

² http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr072908.shtml

³ www.house.gov/apps/list/hearing/financialsvcs_dem/ht061907.shtml

⁴ <http://archives.energycommerce.house.gov/rearchives/108/Hearings/06202006hearing1938/hearing.htm>

⁵ <http://financialservices.house.gov/archive/hearings.asp@formmode=detail&hearing=425.html>

⁶ <http://financialservices.house.gov/archive/hearings.asp@formmode=detail&hearing=407.html>

⁷ http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=7f294169-4375-4e9e-8e29-f418b82e7f4b

⁸ http://banking.senate.gov/03_07hr/071003/index.htm

⁹ <http://financialservices.house.gov/archive/hearings.asp@formmode=detail&hearing=229.html>

¹⁰ http://judiciary.senate.gov/hearings/testimony.cfm?id=983&wit_id=2790

¹¹ <http://financialservices.house.gov/archive/hearings.asp@formmode=detail&hearing=202.html>

“Information Flows: The Costs and Benefits to Consumers and Businesses of The Collection and Use of Consumer Information,” Federal Trade Commission, National Workshop, June 18, 2003

Books

Credit Scores and Credit Reports: How The System Really Works, What You Can Do [3rd Edition] (Privacy Times, 2007)

Your Right To Privacy: A Basic Guide To Legal Rights In An Information Society (2nd Edition, Southern Illinois University Press, 1990), (Includes a chapter on credit reporting)

Former Secrets: Government Records Made Public Through The Freedom of Information Act (Campaign For Political Rights, 1982)

International Lectures

24th International Conference of Data Protection & Privacy Commissioners (Cardiff, Wales – Presentation published in conference proceedings, 2002)

The 23rd International Conference of Data Protection Commissioners (Paris, La Sorbonne – Presentation published in conference proceedings, 2001)

The 22nd Annual Conference on Data Protection (Venice, Italy -- 2000)

The 16th Annual Conference on Data Protection (The Hague, The Netherlands -- 1994).

In the 1980s, served as an expert consultant to both the Privacy Commissioner of Canada and Privacy Commissioner of Australia.

Presentations/Instruction At Recent CLE & Professional Seminars

“From Credit Scores & Credit Reports To Info Security: Why Personal Data Matters,” Financial Planning Conference for Maine Professionals; Finance Authority of Maine and Maine Securities Bureau; Nov. 15, 2011; Portland, Maine. [CLE & CPE]

“Credit Scores, Credit Reporting & The FCRA: Why Jury Verdicts Keep Rising,” ABA General Practice, Solo & Small Firm Division 2011 National Solo & Small Firm Conference October 21-22, 2011; Denver, CO.

“Key Privacy Statutes - FCRA and Background Check Problems,” Conference on Effective Consumer Privacy Enforcement, Univ. of California-Berkeley Samuelson Law, Technology & Public Policy Clinic. Oct. 13-14, 2011. Berkeley, Calif.

“Annual FCRA Conference,” National Association of Consumer Advocates. May 20-21, 2011. Memphis, Tenn.

“91st Annual New York Meeting,” Commercial Law League of America (CLLA)
November 12, 2010

“2010 NCLC Consumer Rights Litigation Conference,” National Consumer Law Center.
November 13, 2010. Boston, Mass.

“26th Annual Consumer Bankruptcy Course,” State Bar of Texas. June 3, 2010. Dallas.

“Consumer Protection Law Comm. Representing Main Street: A Consumer Law Primer”
Florida Bar Association; June 26, 2009. Orlando.

“Second Law and Information Society Symposium: Enforcement, Compliance and Remedies in
the Information Society,” Presenter, “Credit Report Cases – Effective Remedies?” Center on
Law and Information Policy (CLIP), Fordham Law School, New York, May 29-30, 2008.)¹²

“The 1st Annual Privacy Law Scholars Conference,” Presenter, “Assessing Privacy Harm: How
can victims of privacy violations prove that they have been harmed? The George Washington
University Law School, Washington, DC, June 12-13, 2008.”¹³

“11th Annual Consumer Financial Services Litigation,” Practicing Law Institute, March 20-21,
2006 (New York City)

“Bankruptcy Roundtable,” and, “Fair Credit Reporting Act Roundtable,” National Consumer
Law Center, October 27, 2005

“Advanced Consumer Litigation,” Texas Bar CLE, Feb. 10-11, 2005

“Financial Privacy Litigation,” (Impact of FACT Act), Practicing Law Institute,
February 28- March 1, 2005 (New York City)

“The New FACT Act: Challenge & Oppty.,” Privacy & American Business, Feb. 9-10, 2004

“Understanding the FACT Act And The Impact of Multi-Agency Rulewriting Process,”
Glasser LegalWorks, Sept. 28-29. 2004

“12th Annual National Conference,” National Credit Reporting Association, Nov. 10-12, 2004

Professional Societies

Past President & Board Member, American Society of Access Professionals www.accesspro.org

Industry Certification

¹² <http://law.fordham.edu/ihtml/eventitemPP.ihtml?id=37&idc=8943&template=clip>

¹³ <http://privacyscholars.com>

FCRA Certification, National Credit Reporting Association (www.ncrainc.org).

Media

In addition to being a paid consultant and special guest on CNN's IMPACT news in 1996, I am quoted regularly by major and small newspapers (including The Washington Post, New York Times, Wall Street Journal, Chicago Tribune, Los Angeles Times, Newsweek and Money Magazine), regarding issues of privacy generally and the privacy implications of consumer reporting specifically. I have appeared on National Public Radio, PBS NewsHour with Jim Lehrer, ABC Nightline and World News Tonight, NBC Nightly News, CBS Evening News, CNN News Watch, CNBC, MSNBC, Fox News, various local affiliates, and the Oprah Winfrey Show and Geraldo, regarding these issues as well.

Education

Bachelor of Arts, Columbia College, Columbia University, New York, N.Y. (1979)

Testimony & Expert Reports

Within recent years, I have testified at trial, or been deposed as an expert, in the following cases:

Andrews v. Trans Union Corp. et al., Case No. 96-7369, (USDC-C.D. Calif.), concerning theft-of-identity and consumer report inaccuracies. Expert report, deposition, trial testimony. Judge Lourdes Baird presiding. The U.S. Court of Appeals for the Ninth Circuit specifically found that my opinion on the prevalence of identity theft was relevant to the reasonableness of CRA procedures. (see 225 F.3d 1063 (2000)).

Angela P. Williams vs. Equifax Information Services, LLC, et al., Circuit Court for the Ninth Judicial Circuit, Orange County Florida. Credit Reporting. Expert disclosure and report. Deposition. Trial Testimony. Judge George A. Sprinkel IV presiding.

Eric Robert Drew vs. Equifax Information Services, LLC, et al., U.S. District Court for the Northern District of California, Case No. CV 07-00726-SI. Expert report, Deposition, Trial Testimony. Judge Susan Illston presiding.

Direct Data Solutions, Inc., v. Bailey & Associates Advertising, Inc.: Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida; Case No.: 07-9322 CA 09. Judge Jerald Bagley presiding.

Brenda F. Campbell v. Experian: U.S. District Court for the Western District of Missouri (No. 07-2514). FCRA. Expert report, deposition. Trial Testimony. Judge Nanette K. Laughrey presiding.

Laura Jones v. Capital One: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case 09-14499-BFK, Chapter 7. Post-bankruptcy credit reporting. Expert report. Trial Testimony. Judge Brian F. Kenney presiding, said from the bench:

“Before we begin with Mr. Hendricks, a brief disclosure. I had a case a few years ago. Mr. Hendricks may recall that I was representing a creditor in which Mr. Hendricks was identified as an expert witness in the Eastern District of Virginia. I believe it was the Sloane case, Mr. Hendricks. I took Mr. Hendricks' deposition and I subsequently moved to exclude him as an expert in the case on a Daubert challenge. I lost the Daubert challenge. The court allowed him to testify as an expert witness; and I will say, during the course of his deposition and the Daubert challenge, I learned quite a bit about credit reporting. Just in the interest of full disclosure, I'll disclose that to the parties.”

In Re: MicroBilt Corp. et al., U.S. Bankruptcy Court for the District of New Jersey (Trenton Div.); Case No. 11-18143 (MBK). Deposition, Trial Testimony. (I was retained by MicroBilt counsel Bruce Luckman, who in previous years as counsel for TransUnion, unsuccessfully opposed me with a Daubert challenge in the Sandra Cortez case (see below).

Harold & Beryllin Gamby v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Michigan [Southern Div.] (CV-06-11020-MO). FCRA, identity theft. Expert report. Deposition. Trial Testimony. Judge Marianne O. Battani presiding.

Deborah Adams v. National Engineering Service Corp./Verifications Inc.: U.S. District Court for the District of Connecticut. 3:07-cv-01035-JCH. FCRA. Expert report, deposition. Trial Testimony. Judge Warren W. Eginton presiding.

Rebecca L. Valentine. v. Equifax Credit Information Services, et al.: U.S. District Court for the District of Oregon; No. CV 05-801-JO. FCRA, identity theft. Expert report. Deposition. Trial Testimony. Judge Robert E. Jones presiding.

Nicole Robinson vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports. Deposition. Trial Testimony Judge Walter H. Rice presiding.

Suzanne Sloane vs. Equifax Information Services, LLC, et al., U.S. District Court for the Eastern District of Virginia (Alexandria Div.), Case No. CIV 1:05 cv 1272. Expert reports. Deposition. Trial Testimony Judge Leonie M. Brinkema presiding.

Matthew Kirkpatrick v. Equifax, LLC, U.S. District Court for District of Oregon, (Slip. Op. CV-02-1197-MO. FCRA Expert report. Trial Testimony. Judge Michael W. Mosman presiding.

Sandra Cortez vs. Trans Union, LLC., U.S. District Court for the Eastern District of Pennsylvania: No. 2:05 -cv—05684-JF. FCRA. Expert Report. Daubert Hearing. Trial Testimony. Senior Judge John P. Fullam qualified me to testify at trial.

Patricia Holmes vs. TeleCheck Intl., Inc., U.S. District Court for the Middle District of Tennessee (Nashville Div.). FCRA. Expert report. Deposition. Trial Testimony. Chief District Judge Todd J. Campbell presiding.

Dennis F. Hollidayoke v. JBL Mortgage Services, Inc., et al: Circuit Court for Anne Arundel County, Maryland; No. 02C10155944. Trial Testimony. Judge Paul A. Hackner presiding.

Tracy Terry v. Cheryl Shepard, Eve Shepard, Frank Ferro, and STAR Consulting, LLC, CAL08-03428 -- In the Circuit Court for Prince George's County, Maryland, Michele D. Hotten, Associate Judge presiding. Breach of contract. Damage to credit. Trial testimony. September 22, 2009.

Federal Trade Commission vs. Accusearch, Inc., et al., U.S. District Court for the District of Wyoming, Case No. 06CV0105-D. FTC Section 5. Expert Report. U.S. Magistrate Judge William C. Beaman rejected Defendant's motion to exclude my testimony.

Eddie Silva, et al. v. Haynes Furniture Co., Inc.: U.S. District Court for the Eastern District of Virginia: No. 4:04CV82. FCRA. Fairness hearing testimony. Judge Walter D. Kelley, Jr. presiding.

Joi Helmes v. Wachovia Bank N.A.: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case No: 01-81277-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

Alex Campos and Michael York v. ChoicePoint Services, Inc.: U.S. District Court for the District of Georgia (Atlanta), Civ. Action No. 1-03-CV-3577-WSD. FCRA. Expert Declaration. Fairness hearing testimony. Judge William S. Duffey, Jr. presiding.

Denis W. Stasulis v. Suntrust: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria), Case No: 04-12542-RGM, Chapter 7. Post-bankruptcy credit reporting. Expert report. Deposition. Trial Testimony. Judge Robert G. Mayer presiding.

Dwayne Perry, et al. v. FleetBoston Financial Corp.: U.S. District Court for the Eastern District of Pennsylvania: No. 04-507. FCRA. Expert Report. Fairness hearing testimony. Judge Berle M. Schiller presiding.

Tammy Cochran v. C&M Motors, LLC, dba I-10 Toyota, et al: U.S. District Court for the Central District of California, No. CV-03-3568FMC. FCRA. Expert Report. Trial Testimony Judge Florence-Marie Cooper presiding.

Myra Coleman v. Trans Union LLC, CA4: 98-CV-169B-B (USDC-Mississippi) FCRA. Expert report, deposition, trial testimony. Judge Neal B. Biggers presiding.

Arthur Spengler v. Sears Roebuck & Co., Case No. C-03-0557. (Circuit Court, Wicomico County, Maryland). Tort, Interference with Business Relationships. Trial Testimony. Judge D. Davis qualified me as expert on credit scoring, credit reporting and FCRA-related issues.

Judy C. Thomas v. Trans Union LLC, U.S. District Court for the District of Oregon; Case No. 00-1150-JE. FCRA. Expert report, deposition, trial testimony. Magistrate Judge John Jelderks presiding.

Scott E. Campbell v. G.E. Capital Auto Lease, Circuit Court For St. Mary's County, Maryland, Case No. 99-522. FCRA, invasion of privacy. Expert report, deposition. Judge Karen Abrams qualified me to testify, but the case settled one week before trial.

Franklin F. Grizzard, Jr. v. Trans Union, L.L.C., & Equifax Information Services L.L.C., et al.: U.S. District Court for the District of Virginia (Richmond Div.); Nos. 04-CV-625 & 04-CV-626, respectively. Expert report. Affidavit. Deposition. On the eve of trial, Judge Richard Williams rejected Defendant's motion to disqualify me. The case settled shortly thereafter.

Catherine Smith, et al. v. Progressive Corporation, et al.: U.S. District Court for the Middle District of Florida (Gainesville), Case No.1:00-CV-210-MMP. Expert Report, Declaration of Value, Fairness Hearing testimony. Judge Maurice M. Paul presiding.

Franklin E. Clark, et al. v. Experian, et al.: U.S. District Court for the District of South Carolina, Case Nos. 8:00-1217-22, 8:00-1218-22, 8:00-1219-22. Affidavit, Supplemental Affidavit (both affidavits were admitted into evidence without objection). Judge Cameron McGowan Currie presiding.

First Carolina Bank v. Charles S. McCue, et al.: In The Court of Common Please, Fourteenth Judicial Circuit, State of South Carolina, County of Beaufort. Civil Action No: 07-CP-07-03027. Deposition.

Maria Pintos v. Pacific Creditors Assoc., et al.: U.S. District Court for the Northern District of California [Oakland Div.] C 03-5471 CW. Expert report. Deposition.

Marie Ann Fuges v. Southwest Financial Services, LTD: U.S. District Court for the Eastern District of Pennsylvania (No 09-699). Expert report. Deposition.

Alisha Wilkes v. Experian Information Solutions, et al.: U.S. District Court for the Eastern District of Virginia (CV- 1:10-cv-01160-CMH -TRJ). Expert report. Deposition.

Serena Beachley v. PNC Bank N.A.: U.S. District Court for the District of Maryland [Northern Div., Case No. CCB-10-1774. Expert report. Deposition.

In re: Pammalla Shannon Uplinger v. Rees Broome, P.C.,: U.S. Bankruptcy Court for the Eastern District of Virginia (Alexandria Div.); Case No. 90-13129-RGM. Expert report. Deposition.

Jose Soto v. Capital One Auto Finance, et al.: U.S. District Court for the District of Western Washington (2:08-cv-01838-RSM). Expert report, deposition.

Terri N. White, Jose Hernandez, et al. v. Experian Information Solutions, et al.: USDC-Central Dist. Of California; Case No. 05-cv-1070- DOC (MLGx). Declarations, Deposition.

Tara Andrews v. Equifax Information Solutions, Inc., et al.: U.S. District Court for the Western District of Washington; (No. 2:09-CV-00817-JJC). Expert report. Deposition.

Michelle Jansen v. Equifax Credit Information Services, et al.: U.S. District Court for the District of Oregon; No. 05-CV 0385-BR. Expert report. Deposition.

James Byrd v. TransUnion LLC, Experian Information Solutions, Inc., Equifax Credit Information Services, LLC: U.S. District Court for the District of South Carolina [Columbia Div.]. Expert report. Deposition.

David L. Jackson v. Trans Union, et al.: U.S. District Court for the District of Oregon.

FCRA. No. CV-08-0060-MO. Expert report. Deposition.

Richard Chakejian v. Equifax Information Services, LLC.: U.S. District Court for the Eastern District of Pennsylvania; No. 07-2211. Bruce A. Summerfield v. Equifax Information Services, LLC.: U.S. District Court for the District of New Jersey; No. 08-1450. FCRA. Expert reports. Consolidate deposition.

Marlos Uzzell v. Experian Information Systems, Trans Union, et al.: U.S. District Court for the Eastern District of Pennsylvania (No. 2:08-CV-02538-CMR). Expert report. Deposition.

Baxter Robinson v. Chase Mortgage Services, Inc., et al.: U.S. District Court for the District of South Carolina (Charleston Div.) (2:08-cv-02087-PMD). Expert report, deposition.

Risa Joyce Deutsch v. Arrow Financial Services LLC, et al.: U.S. District Court for Middle the District of Florida [Tampa]; No. 8:08-cv-01469. Damage to credit. Expert report, deposition.

Michael D. Scott, et al. v. Graphic Center, CalPERS, et al.: Superior Court of the State of California, County of Los Angeles. Case No. BC390593397636. Data breach. Declaration.

Christopher K. Jung v. Trans Union, et al.: U.S. District Court for the Eastern District of Pennsylvania (No. 07-2514). Expert report, deposition.

Robert Saindon v. Equifax Information Services, et al.: U.S. District Court for the Northern District of California (08-cv-01744 WHA). Expert report, declaration. Deposition.

Christina Lee v. TransUnion, et al.: U.S. District Court for the District of Oregon (CV-07-0998-MO). Expert report, deposition.

Emelia Pasternak v. TransUnion, et al.: U.S. District Court for the Northern District of California. Case No. 4:07-cv-04980-CW Expert report, deposition.

Stacy Fiano v. Experian Information Solutions, et al., U.S. District Circuit Court of the Southern District of Florida 9:08-cv-80555. Expert report, deposition.

Alana Valerie Sheldon v. Trans Union, LLC., LVNV Funding, LLC, & Resurgent Capital Services L.P.: U.S. District Court for the District of Maryland; 8:08-cv-00057-PJM. Expert report, deposition.

In Re: Cellphone Termination Fee Cases, Superior Court of the State of California, Alameda County, JCCP No. 4332. Deposition.

Karl Benedikt v. ChoicePoint, Inc.: U.S. District Court for the District of New Jersey [Newark Vicinage]; 07-2569. Expert report, deposition.

Abdirizak Gayre v. CSC Credit Services, Inc., Equifax Information Services, LLC, and Afni, Inc.: U.S. District Court for the District of Minnesota (C.A. No. 07-CV-0622 [JRT/FLN]). FCRA. Expert report, deposition.

Erin Ayles v. Experian Information Solutions, Inc.: U.S. District Court for the Eastern District of Virginia (Alexandria Division); 1:07cv 662. Expert report, deposition.

Maria D. v. Comcast Corp., Sacramento Superior Court, Case No. 03AS05745. Deposition.

Terri N. White, et al. v. Experian Information Solutions, Inc., U.S. Dist. Ct. Central Dist. Of Calif. – Case No. 05-cv-1070- DOC (MLGx); Lead Case. Expert declarations. Depositions.

In Re: Farmers Insurance Co., Inc., FCRA Litigation, U.S. District Court for the Western District of Oklahoma, Case No. CIV 03-158-F. FCRA. Expert report, deposition.

Steven E. Beck v. Equifax Information Services, et al.: U.S. District Court for the Eastern District of Virginia: No. 1-05cv347. FCRA. Expert report, deposition.

Mary Ann Whiteker, et al. v. Chase Bank, et al.

Ford Motor Credit Co. v. Sudesh Agrawal, Court of Common Pleas, Cuyahoga Country, Ohio; Case No. CV04536588. Credit reporting and credit scoring. Deposition.

Larry Alabran v. Capital One Services, Inc.: U.S. District Court for the Eastern District of Virginia (Richmond Division); Case No. 3:04-CV-935. Expert report, deposition.

Gail Cope v. MBNA American Bank NA: U.S. District Court for the District of Oregon; No. 04-CV-493-JE. Expert report, deposition.

Robert Gordon Peoples v. Experian Services Corp., et al.: U.S. District Court for the Central District of California: No. CV-04-1378 CAS (Ex). Expert report. Deposition.

Lottie Robertson v. Experian Information Services, Inc. & Capital One Bank: U.S. District Court for the Eastern District of Michigan (Southern Div.) No. 04-72308. Expert report. Deposition.

Barbara A. Harris v. Experian Information Solutions, Inc., and Equifax Credit Information Services, Inc.: U.S. District Court for the District of Oregon, Civil No. 01-1728-JE. FCRA. Expert reports. Deposition

Bruce Danielson v. Experian Information Solutions: U.S. District Court for the Northern District of Texas, Case No: 3-04CV-1722N. FCRA. Expert report. Deposition.

Stacy Lawton Guin, et al. v. Brazos Higher Education Service Corporation, Inc.: USDC-Minnesota – No. CV 05-668 RHK/JSM. Negligence. Security Breach. Affidavit. Deposition.

Anthony Chin v. State Dept. Federal Credit Union: Circ. Ct. Prince George's County (Maryland); Civ. Act. No. CAL04-12778; Tort. Deposition. Trial testimony.

James M. McKeown v. Sears Roebuck & Co., et al.: U.S. District Court for the Western District of Wisconsin, Civil No. Case No. 03-CV-0528 C. Expert Report, deposition.

Paulette Field v. Trans Union LLC, et al., Case No. 01 C 6390 (USDC-N.D. Illinois - Eastern Div. FCRA. Expert report. Deposition.

Earle E. Ausherman, et al. v. Bank of America Corporation et al.: U.S. District Court for the District of Maryland, Civil Action No. MJG-01-438. FCRA. Expert report. Deposition.

Jesse Klco v. Elmhurst Dodge, U.S. District Court for the Northern District of Illinois (Eastern Division) Civil Action No. 01 C 0433. FCRA. Expert report, deposition.

(David & Ruthie Keefner v. Webb Ford, Inc. & Deon L. Willis.: U.S. District Court for the Northern District of Illinois (Eastern Division), Civil Action No. 02C-4643. FCRA. Expert report. Deposition.

Anthony & Alethea Preston v. MGIC, U.S. District Court for the Middle District of Florida (Ocala), Case No. 5:03-cv-111-Oc-10GRJ. FCRA. Expert report, deposition.

Bruce Butcher and Pam Butcher v. Chase Manhattan Bank, U.S.A., Inc., U.S. District Court for District of South Carolina, Case No. 8:03-3184-26. FCRA. Expert report, deposition.

Karen Nienaber, et al. v. Citibank (South Dakota) N.A.: U.S. District Court for the District of South Dakota [Southern Div.}; Civ. No. CIV 04-4054. Declaration relied upon by court in settlement hearing.

FEE

My fee is \$300 per hour for preparation, consulting trial testimony, plus reasonable travel time, plus travel costs and expenses; \$400 per hour, or a minimum of \$1,200 per day, for deposition testimony, plus reasonable travel time, plus travel costs and expenses.

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

	:	
	:	
DERENE DERRICOTTE,	:	2:10-cv-01323 (PGS)(ES)
	:	
Plaintiff	:	
	:	
vs.	:	AFFIDAVIT OF
	:	JEFFREY ESPOSITO
PRESSLER & PRESSLER, LLP,	:	IN SUPPORT OF
	:	DEFENDANT’S MOTION FOR
Defendant	:	SUMMARY JUDGMENT
	:	

State of New Jersey: _____
 : SS
County of Morris : _____

I, Jeffrey Esposito, of full age and under oath do state:

1. I am the Director of Operations for New Century Financial Services, Inc. (“NCFSI”) and am familiar with its books, records and recordkeeping procedures. I am authorized to offer this Affidavit in support of Defendant’s Motion for Summary Judgment.

2. NCFSI is a buyer of distressed debt. Through its agents it purchases portfolios of defaulted credit card and other accounts either directly or indirectly from the original credit issuer.

3. On or about August 5, 2009 NCFSI acquired a portfolio of defaulted accounts from Sherman Acquisition, LLC. (“Sherman”) which included an account in the name of the instant Plaintiff, Derene A Clarke-Derricotte. (A true and accurate copy of the August 5, 2009 Bill of Sale between Sherman and NCFSI is annexed hereto as Exhibit “A”)

4. At the time of the purchase, NCFSI received the following information: a Bill of Sale between Citibank (South Dakota), National Association (“Citibank”) and Sherman Originator, LLC dated April 4, 2007 which comprises the chain of title to the Plaintiff’s defaulted Sears Premium account. (A true and accurate copy of the Bill of Sale between Citibank and Sherman Originator, LLC is annexed hereto as Exhibit “B.”) NCFSI also received an Affidavit from Joe Mazzoli, Director of Sherman Financial Group, LLC attesting to the relationship between Sherman Acquisition and Sherman Originator. (A true and accurate copy of the Mazzoli Affidavit dated April 24, 2008 is annexed hereto as Exhibit “C.”)

MAURICE H. PRESSLER(1930-2002)
SHELDON H. PRESSLER

GERARD J. FELT
STEVEN P. MCCABE
LAWRENCE J. MCDERMOTT, JR.

MITCHELL L. WILLIAMSON
JAMES D. PADGETT
THOMAS M. BROGAN
RALPH GULKO
JOANNE L. D'AURIZIO
MICHAEL ROSS*
STEVEN P. BANN

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CRAIG S. STILLER*
CHARLES E. TEMPLO
LORI R. CETANI
DARYL J. KIPNIS
THOMAS M. KRICK
MATTHEW M. DURKAN

* NY State License Only
OFFICE HOURS:
Monday-Thursday: 8am-9pm
Friday: 8am-7pm
Saturday: 9am-2pm

09/23/09



DERENE CLARKE-DERRICOTTE A/K/A DERENE A CLARKE AKA
CERENE A DERRICOTTE
81 HIXON PL
SOUTH ORANGE, NJ 070791814

P&P FILE #: C206365

Dear DERENE CLARKE-DERRICOTTE A/K/A DERENE A CLARKE AKA CERENE A DERRICOTTE :

You are hereby offered a significant savings on your SEARS PREMIER CARD account 5049941117744380 now owned by NEW CENTURY FINANCIAL SERVICES, INC. . You now owe \$1,991.92 . If you can make a payment of \$1,493.94 , 75 % of the balance by Sunday, October 11, 2009 , it will be accepted as payment in full, a savings to you of \$497.98 .

This will satisfy the debt owed to our client. Proof that the debt has been paid will be sent to you so that you can advise the credit bureau. If you are unable to pay the 75 %, we can accept \$497.98 down (25% of the full balance) and enter into acceptable arrangements on the remaining 75% when you call this office.

If there are any special circumstances that need to be considered or you wish to pay by phone, please call the office toll free at 1-888-312-8600 Ext 5105 . Mail your check payable to NEW CENTURY FINANCIAL SERVICES, INC. , write file number C206365 and enclose in the postage paid envelope or complete the credit card authorization form at the bottom of this letter. You must act swiftly to accept these offers. **Please Note:** After October 11, 2009 this offer may be null and void. We are not obligated to renew this offer. This offer does not apply to payments or arrangements to pay made prior to this notification.

For faster processing, pay by phone using a check, credit card (MasterCard, Visa or American Express) or debit card with a Visa or MasterCard logo. Payments can also be made on our website www.paypressler.com, or by Western Union. Please call them at 1-800-325-6000 for the nearest agent and mention code city: (Pressler, State: NJ).

Name as it appears on Credit Card _____/Street # & Zip _____
Expires ____/____ Credit Card # _____/Security Code _____
Amount \$ _____ Signature _____

THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

4

1 STEVEN MCCABE,
 2 having been duly sworn according
 3 to law, testified as follows:
 4
 5 MR. WILLIAMSON: Before we start, I'm
 6 going to make a similar comment as I made at the
 7 beginning of the prior deposition, and I believe Mr.
 8 McCabe is here in response to the order on informal
 9 application which we marked as P-1 dated July 5th,
 10 2012, to discuss the matters identified in that order
 11 and he's not here for any other purpose. And any
 12 questions which go outside, too far outside the
 13 guidelines set by this order will be objected to and
 14 he will be directed not to answer.
 15 MR. STERN: We'll see what happens as
 16 we go, but Mr. McCabe was identified in accordance
 17 with the court's direction that someone be
 18 identified.
 19 MR. WILLIAMSON: Yes.
 20 MR. STERN: I thought in terms of our
 21 discussion, because in Rule 26 disclosures Mr. Felt
 22 was also identified, and I was under the impression
 23 from what we talked about that we would call Mr. Felt
 24 only if we needed to cover matters that were not
 25 covered by the other deponents from Pressler.

5

1 So I thought you were indicating that
 2 we probably would have everything covered between Mr.
 3 McCabe and Mr. Galic, but if you're telling me now
 4 that's not the case, maybe when we get done with this
 5 we may need Mr. Felt's deposition. I didn't know you
 6 would take such a strict limitation. I thought Mr.
 7 McCabe was being offered, but let's see where it
 8 goes. I understand he's being offered for this, but
 9 I didn't understand that that meant that this was the
 10 exclusivity as to what he was going to testify to.
 11 MR. WILLIAMSON: Well, I'll certainly
 12 try to be somewhat flexible, and again, try not to
 13 object where no objection is necessary. So we'll see
 14 what you ask before I go any further.
 15 MR. STERN: Okay.
 16
 17 EXAMINATION BY MR. STERN:
 18 Q. Mr. McCabe, my name is Philip Stern.
 19 I believe we've met before.
 20 A. Yes, we have.
 21 Q. And I'm representing Natalie Williams,
 22 formerly known as Natalie Freeman, and Alan Setneska
 23 who have filed a lawsuit against Pressler & Pressler
 24 for claims arising of Fair Debt Collection Practices
 25 Act. Have you had an opportunity to review that

6

1 complaint?
 2 A. Yes, I have.
 3 Q. So you have an understanding as to
 4 what the lawsuit generally is about?
 5 A. Yes, I do.
 6 Q. Where did you attend law school?
 7 A. I went to Rutgers Law School in
 8 Newark.
 9 Q. When did you graduate?
 10 A. I graduated in 1971.
 11 Q. Are you admitted to practice in any
 12 jurisdiction?
 13 A. The Federal and State Courts of New
 14 Jersey and the Third Circuit Court of Appeals.
 15 Q. Were you admitted to practice in the
 16 state of New Jersey shortly after your graduation
 17 from Rutgers Law School?
 18 A. Yes, almost immediately after.
 19 Q. Do you hold any professional or
 20 vocational licenses other than your admission to the
 21 bar or those courts?
 22 A. No.
 23 Q. Have you participated as a panelist on
 24 any continuing legal education courses or workshops?
 25 A. Yes.

7

1 Q. What were the subject matter of those
 2 workshops?
 3 A. I've been practicing since 1971, and
 4 I've had the honor to appear in seminars and
 5 workshops in many places on many subjects. Most of
 6 my professional career I've been involved in issues
 7 related to the extension of credit to consumers.
 8 I've lectured, I've presented workshops to the
 9 National Consumer Law Center on class actions. I've
 10 presented workshops to the New Jersey Superior Court
 11 judges at the yearly meetings that they have I think
 12 in the fall on the issue of awarding interest in
 13 judgement and non-judgement cases and the factors the
 14 courts might consider.
 15 I think I've actually given or at
 16 least been a member of a panel on an FDCPA seminar,
 17 but I'm not positive of that. Usually it's on
 18 consumer credit issues and also on general
 19 litigation.
 20 Q. Have you been engaged in the private
 21 practice of law as your full-time employment since
 22 you were admitted to the bar?
 23 A. Yes.
 24 Q. Can you run through what your
 25 employment has been?

PHILIP D. STERN & ASSOCIATES, LLC
ATTORNEYS AT LAW
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorneys for Plaintiffs

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

NATALIE A. WILLIAMS and ALAN J.
SETNESKA, individually and on behalf of
all others similarly situated,
Plaintiffs,

vs.

PRESSLER AND PRESSLER, LLP,
Defendants.

Case 2:11-cv-07296-KSH-PS

**ORDER GRANTING
CLASS CERTIFICATION**

This matter having been opened to the Court on Plaintiffs' motion for class certification under Fed. R. Civ. P. 23, and the Court having read and considered the papers submitted and the oral arguments of counsel, and

The Court finds that: the proposed class consists of 75 members; there is at least one common issue of fact or law between the Plaintiffs' claims and the proposed class's claims; that the central legal issue in Plaintiffs' claims are the same as those of the class such that the Plaintiffs' claims are typical of the class; that Plaintiffs have no conflicting interests with the class; that proposed class counsel has undertaken sufficient work to identify and investigate the class claims, is experienced in handling class actions, is knowledgeable in the substantive law applicable to this case, and has committed the resources necessary to prosecute this case as a class action; that class members have not expressed an interest for controlling separate individual actions, that no other actions

have been identified concerning the controversy raised in this action, that it is desirable to litigate the class claims in this District, and there are no difficulties anticipated in the management of the proposed class such that common questions of law and fact predominate over any individualized questions and a class action is superior to other methods for the fair and efficient adjudication of the class claims.

And the Court having concluded that the requirements for class certification under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) have been met,

And the Court having further concluded that requirements for appointment of class counsel under Fed. R. Civ. P. 23(g) have been met;

NOW, THEREFORE, THE COURT HEREBY:

1. Certifies this action as a class action.
2. Defines the class as:

Each natural person who was named as a defendant in a complaint filed by PRESSLER in the Superior Court of New Jersey on behalf of New Century Financial Services, Inc. who were sent a letter after filing an answer to the complaint which letter was not returned to PRESSLER by the postal service and was substantially similar to Exhibits 4 and 7 and contained the sentence *“Proof that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau”* excluding, however, such persons who, prior to the date that this action is certified to proceed as a class, either:

- A. died,
 - B. filed for bankruptcy,
 - C. filed a claim against PRESSLER in any action or arbitration alleging that PRESSLER violated the FDCPA, or
 - D. signed a release of claims against PRESSLER.
3. Defines the class claims as:

All causes of action arising from letters sent by PRESSLER to Class members which letters were substantially similar to Exhibits 4 and 7 attached to the Amended Complaint and contained the sentence *“Proof*

that the debt has been paid will be sent to the court and copy to you so that you can advise the credit bureau.”

4. The Class Period is the continuous period beginning December 17, 2010 and ending on the date the Amended Complaint was filed.
5. Appoints Philip D. Stern, Esq. as class counsel.
6. Class counsel shall move for approval of notice to the class within __ days.

SO ORDERED:

Honorable Katharine S. Hayden, U.S.D.J.