



## Start To Finish Winning Against Midland Funding Aka Jdb!

Started By brjmhome6 , Jan 28 2009 02:17 PM

*Midland Funding.*

Page 1 of 12

OFFLINE brjmhome6

Posted 28 January 2009 - 02:17 PM

I'll provide a brief summary to get ya up to speed:

Midland funding approx. 2 months back filed a complaint with 2 counts. 1 count is "FOR MONEY LOANED" and the 2nd count is for "ON ACCOUNT". I do not want to post too much detailed information about this suit for obvious reasons but the amount they're suing for is under \$1000. I am not being sued by the original creditor though, I am being sued by a junk debt buyer (midland funding) on behalf of their attorney.

So I and my spouse appeared in court & watched 95% of all the defendants suffer a default judgment. Basically what happens is the court clerk / bailiff calls all the names on the docket. When you hear your name and you say "here", their lawyer just found out they aren't getting a default judgment out of you (at least not yet) b/c you actually chose to show up & since 99% of the time they don't have the evidence it takes to win a judgment in a bench trial they will respond by saying "second call" as opposed to "ready for trial".

After all the names are announced the judge leaves the room and all the lawyers are seated at 4 tables in the corral (in front of the court). 1 by 1 the lawyers call up the people they're suing and the court allows these lawyers at this point to harass each and every defendant in an attempt to pressure them into waiving their right to a bench trial & signing a consensual default judgment. Pretty sweet deal for the lawyers eh??

Don't even have to prove a case...just pressure people who don't know any better and disgustingly I watched one by one people signing away their rights without so much as a whimper. It about made me want to puke. As soon as we were served with the complaint, I immediately searched & found this site where I obtained a nice Debt Validation letter coupled with an order to cease & desist. I know at the point you're being sued dv is useless but since this complaint is the first demand for payment i've received I figured i'd still give it a shot.

By the way, on the complaint they included an "exhibit" which is apparently their proof that a contract exists which is nothing more than an acct # & a total \$\$ with the defendants name.....very laughable. Anyways when our name was called, we approached the lawyers corral & snidely the attorney looked at the file & saw the cease & desist order & immediately pulled out a "waiver" which she asked my spouse to sign so we could "talk".

I instructed my spouse to decline in front of the attorney & said since your client has not been able to comply with the debt validation, we have nothing to discuss. She tried to cut me off in the midst of speaking as a lame attempt to annoy me since I ruined her little hot streak of defaults...she looked at us as if we were stupid for not wanting to talk to her. It was the first time in my life I truly felt like somebody tried to insult my intelligence but then again, most people are stupid so I guess I can see their angle working most of the time.

So we turned to walk away and she stopped us and rudely said, "well do you want a copy of your continuance date or not"....as I smiled politely, I said that'd be great. They continued it for 1 month to try to maneuver a default judgment out of us & I will explain in detail how they do this. (just showing up for court as a defendnat isn't enough!). About a week later, we were served with a request for production of papers & things as well as a request for written interrogatories. These are fancy words for discovery which they use for 2 purposes to win. The production of papers is basically a list of papers they want you to produce such as correspondence you've had with the original creditor or collection agency and basically any other piece of paperwork under the sun that might prove their case.

So in a nutshell, they're basically saying..."hey, MR. defendant...since we don't actually have any evidence against you

to win in front of a judge right now....would you be so kind as to incriminate yourself by sending us these documents that we don't have & can't prove that you have....sooo if you could just be a doll & send those documents right over that'd be just great!". Now the purpose this serves for the plaintiff is that two pronged: 1: if your responses in any way indicate your assumption that the debt is yours, you just screwed yourself (such as disputing the amount etc....you just admitted the debt is yours, now you're just disputing amount). 2: if you fail to comply with the request for production of documents within the 30 days as required by law, the plaintiff will file for a motion for default judgment & they will win b/c you failed to comply. In 99% of cases, this motion for production of papers will win their case by nailing 1 of those 2 points. YOU MUST COMPLY AND YOU MUST NOT ADMIT ANYTHING. MAKE THEM PROVE THEIR CASE! So here is my response to their production for documents:

OFFLINE brjmhome6

Posted 28 January 2009 - 02:18 PM

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

ASSOCIATE JUDGE DIVISION

STATE OF MISSOURI

MIDLAND FUNDING LLC, ASSIGNEE OF )

XXXXXX )

)

) Case No: XXXXXXXXX

Plaintiff, ) Division: 11

)

Vs )

) RESPONSE TO PLAINTIFF'S REQUEST FOR ) PRODUCTION OF DOCUMENTS

JANE DO )

)

Defendant. )

Responding Party: Defendant Jane Doe

Demanding Party: Plaintiff MIDLAND FUNDING LLC

Responding party, Jane J. Doe, the Defendant in the above cause, makes the following response to Plaintiff's First Request For Production of Documents on 1/1/00. Defendant responds to the requests in the order in which they appear in Plaintiff's Request for the Production of Documents.

- 1) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 2) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 3) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 4) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 5) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 6) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 7) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 8) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 9) Defendant is unaware of any such documents and therefore cannot produce said documents.
- 10) Defendant will produce the requested documents, copies of which accompany this response.

Jane J. Doe

By: \_\_\_\_\_

Jane J. Doe, Defendant

9999 Pine street

Your City, St. 88888

999-999-9999

CERTIFICATE OF SERVICE

The undersigned certifies that the above documents were served on all parties in the above cause by depositing an original and one copy in the U.S. Mail, postage prepaid, in an envelope addressed to: xxxxxxxx, on 1/1/00.

\_\_\_\_\_

More in the next post....

OFFLINE brjmhome6

Posted 28 January 2009 - 02:25 PM

Sorry the format got really jumbled when I copied & pasted from ms word but you get the context of what needs to be stated in that response. Now I will show you how I complied with the request for interrogatories & admissions. Remember, if you don't respond within 30 days (or as your states laws requires), all allegations the plaintiff makes are accepted as FACT without ANY PROOF. You MUST comply & respond. The questions they ask are along the lines of, "A contractual agreement between Plaintiff and Defendant existed where Plaintiff loaned xx amount of money to Defendant & defendant defaulted"....obviously that is something you don't want to allow to be accepted as factual without any proof so you MUST COMPLY! Here is my response:

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
ASSOCIATE JUDGE DIVISION  
STATE OF MISSOURI  
MIDLAND FUNDING LLC, ASSIGNEE OF )  
xxxXXXXXXXX )

)

) Case No: 111111111

Plaintiff, ) Division: 11

)

Vs )

) RESPONSE TO PLAINTIFF'S FIRST SET OF ) REQUEST FOR ADMISSIONS AND ) INTERROGATORIES

JANE DOE )

)

Defendant. )

Defendant, appearing pro se, for its Response to Plaintiff's First Set of Request for Admissions and Interrogatories states as follows: All Answers correspond to the numbered paragraphs of the Complaint. All allegations of the Complaint are denied unless expressly admitted herein.

REQUEST ONE DENIED - INTERROGATORY ONE: Defendant at this time does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained therein, and leaves the Plaintiff to provide proof. Defendant demands strict proof thereof.

REQUEST TWO ADMITTED:

REQUEST THREE DENIED - INTERROGATORY THREE: Defendant is at this time without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein, and leaves the Plaintiff to provide proof. Defendant demands strict proof thereof.

REQUEST FOUR DENIED - INTERROGATORY FOUR: This request calls for admission of matter defendant has denied and thus it is improper.

REQUEST FIVE DENIED - INTERROGATORY FIVE: This request calls for admission of matter defendant has denied and thus it is improper.

REQUEST SIX DENIED - INTERROGATORY SIX: This request calls for admission of matter defendant has denied and thus it is improper.

REQUEST SEVEN DENIED - INTERROGATORY SEVEN: This request calls for admission of matter defendant has denied and thus it is improper.

REQUEST EIGHT DENIED - INTERROGATORY EIGHT: This request calls for admission of matter defendant has denied and thus it is improper

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REQUEST NINE DENIED - INTERROGATORY NINE: This request calls for admission of matter defendant has denied and thus it is improper.

REQUEST TEN DENIED - INTERROGATORY TEN: Defendant at this time does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained therein, and leaves the Plaintiff to provide proof. Defendant demands strict proof thereof.

REQUEST ELEVEN DENIED - INTERROGATORY ELEVEN: Defendant at this time does not have sufficient knowledge or information to form a belief as to the truth of the allegation contained therein, and leaves the Plaintiff to provide proof. Defendant demands strict proof thereof.

Jane J. Doe

By: \_\_\_\_\_

Jane J. Doe, Defendant

9999 Pine Street

City, St. 99999

999-999-99999

CERTIFICATE OF SERVICE

The undersigned certifies that the above documents were served on all parties in the above cause by depositing an original and one copy in the U.S. Mail, postage prepaid, in an envelope addressed to: LAW OFFICES address to law office etc.... 100 ST. LOUIS, MISSOURI 63132, on 1/1/00.

\_\_\_\_\_

OFFLINE brjmhome6

Posted 28 January 2009 - 02:37 PM

Now many states require that you file an "ANSWER" to the complaint within 20 days or 30 days by means of filing with the court clerk. If you do not file your answer all of the allegations in their complaint are accepted as fact...you do not want this. You must file an answer to the complaint. Fortunately in my state, all you have to do is appear in court which qualifies as an answer to the complaint whereas in many other states, you actually have to file an answer with the court which makes getting a default judgment easier for the JDB b/c most people suck at paperwork. Here is a copy of my answer that may help you out but please observe your local civil court rules as each state varies.

OFFLINE brjmhome6

Posted 28 January 2009 - 02:37 PM

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

ASSOCIATE JUDGE DIVISION

STATE OF MISSOURI

MIDLAND FUNDING LLC, ASSIGNEE OF )

XXXXX )

)

) Case No: 999999

Plaintiff, ) Division: 99

)

) ANSWER TO COMPLAINT / AFFIRMATIVE

Vs ) DEFENSE(S)

)

JANE DOE )

)

Defendant. )

ANSWER OF THE PLAINTIFF

Defendant, appearing pro se, for its reply to the Complaint naming MIDLAND FUNDING LLC Plaintiff as follows: All answers correspond to the numbered paragraphs of the Complaint(s). All allegations of the Complaint(s) are denied unless expressly admitted herein.

ANSWERS TO COUNT 1

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55.07.
2. Admit.
3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55.07.
4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule

55-07.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55-07.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55-07.

#### ANSWERS TO COUNT 2

1. As to the incorporated reference of paragraph 1 of count 1 Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment. As to the incorporated reference of paragraph 2 of count 1: Defendant has previously Admitted that averment.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55-07.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55-07.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55-07.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment per Rule 55-07.

#### DEFENSES

1. Midland Funding LLC has not proven that they are authorized and licensed to collect claims for others in the State of Missouri, or solicit the right to collect or receive payment of a claim of another.

2. Midland Funding LLC has not proven that they were retained by XXXXX as it's representative in this matter.

3. Midland Funding LLC has not proven that XXXXX is the real party in interest. Defense demands proof of ownership specifically that the alleged account is still the legal property of XXXXX with all of the original creditor's rights and privileges intact.

4. Plaintiff's Complaint violates the Statute of Frauds as the purported contract or agreement falls within a class of contracts or agreements required to be in writing. The purported contract or agreement alleged in the Complaint is not in writing and signed by the Defendant or by some other person authorized by the Defendant and who was to answer for the alleged debt, default or miscarriage of another person.

5. Plaintiff failed to state a claim upon which relief can be granted. Plaintiff's Complaint and each cause of action therein fail to state facts sufficient to constitute a cause of action against the Defendant for which relief can be granted.

6. Midland Funding LLC has provided no sworn statement testifying to the accuracy or validity of their recollection of the alleged account.

7. Defendant reserves the right to plead other affirmative defenses that may become applicable and/or available at a later time, (for example, if a real party in interest is established for alleged account).

8. Defendant claims Lack of Privity as Defendant has never entered into any contractual or debtor/creditor arrangements with the Plaintiff.

9. Defendant reserves the right to submit counterclaims that may become applicable and/or available at a later time, (for example, if a real party in interest is established for alleged account) including, but not limited to, violations of the Federal Truth in Lending Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act.

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

Further the defendant sayeth not.

By the Defendant acting pro se.

Dated: 1/15/09

Jane J. Doe

By: \_\_\_\_\_

Jane J. Doe, Defendant

Your address & phone number

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OFFLINE Lecasbas

Posted 28 January 2009 - 02:43 PM

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Looks like a lot of good info here but the first post is hard to read due to no paragraphing. My eyes have a hard time finding the beginning of the next line when I reach the end of the previous line.

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OFFLINE brjmhome6

Posted 28 January 2009 - 02:44 PM

## CERTIFICATE OF SERVICE

The undersigned certifies that the above documents were served on all parties in the above cause by depositing an original and one copy in the U.S. Mail, postage prepaid, in an envelope addressed to: LAW OFFICES AND THEIR ADDRESS HERE, on 1/1/00.

The whole process of these Junk Debt Buyers suing in civil court & using the process of discovery to obtain default judgments is an enormous perversion of the justice system. They hope you'll either cave in get scared & sign a default judgment, you won't comply & they'll get a default judgment, or you'll incriminate yourself by providing documents or statements to support their case that they otherwise could not win without (i.e. DON'T GIVE THEM ANYTHING...DON'T LAWYERS ALREADY MAKE ENOUGH MONEY? WHY MAKE THEIR JOB EASIER?). Now we turn the tables on the dirtbag lowlife JDB. The neat thing about discovery is it's a 2 way street. As a Defendant, you can direct a motion for production of documents and things directed to the Plaintiff which would obviously include a request for the original signed contract between the plaintiff & the defendant (which they won't have)...etc.... you get the point. They then have 30 days to comply with that request & if they don't comply you can then file for a motion to dismiss due to the plaintiff's non-compliance with the discovery process. If you don't get the dismissal right then and there, you file a motion to compel discovery which is a court order for the Plaintiff to produce said documents. Obviously they can't produce them so about a week after you file the motion to compel if the plaintiff hasn't already done the smart thing & dropped the case, you file another motion for dismissal with prejudice & you'll get it. But i'm getting ahead of myself here, read on and you'll see my production of documents directed to the plaintiff.

OFFLINE brjmhome6

Posted 28 January 2009 - 02:46 PM

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

ASSOCIATE JUDGE DIVISION

STATE OF MISSOURI

MIDLAND FUNDING LLC, XXXXX )

)

) Case No: 99999

Plaintiff, ) Division: 99

)

vs )

)

JANE J DOE )

)

Defendant. )

REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO

PLAINTIFF MIDLAND FUNDING LLC

COMES NOW Defendant JANE DOE, pursuant to Civil Rule 58.01, and requests Plaintiff, Midland Funding LLC to produce the following documents for inspection and copying at the law offices of Plaintiff's attorney, ADDRESS HERE within thirty (30) days or as counsel may mutually agree.

## DEFINITIONS

The following definitions are to be used in responding to the following interrogatories.

A. "Plaintiff," means MIDLAND FUNDING LLC, ASSIGNEE OF XXXXX, or any agent, employee, officer, director, or any other person acting on its behalf.

B. "Defendant" means, JANE DOE an individual.

C. "Document," means all original writings of any nature or all copies thereof, regardless of whether or not such copies differ in any way from the originals, in your possession or control, wherever located, and includes, but is not limited to, contracts, agreements, records, memoranda, handwritten notes, working papers, letters of correspondence, invoices, statements, purchase orders, bills of lading, minutes and reports.

D. "Credit Application", means the Original Signed Application bearing Defendant's signature for any contract between Plaintiff and Defendant or Defendant and XXXXXX.

DOCUMENTS TO BE PRODUCED

1. ALL documents evidencing any communication between Plaintiff and Defendant in connection with the Agreement described in Plaintiff's Petition, including letters and correspondence.
2. The alleged credit application from Account Numbers (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999 bearing the defendant's signature;
3. The alleged credit agreement from Account Numbers (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999 that states interest rate, grace period, terms of repayment, et cetera;
4. Itemized statements or credit card statements from Account Numbers (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999 that demonstrate how the alleged amount of \$1000.00 was calculated;
5. A contract, agreement, assignment, or other means demonstrating that Midland Funding LLC had the authority and capacity, and was legally entitled to collect on the alleged debt from Account Number (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999;
6. Letter(s) sent to defendant by Midland Funding LLC, demonstrating an attempt to collect on the alleged debt, Account Numbers (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999;
7. A notarized statement, if presently existing or otherwise, by a person with original knowledge of the alleged debt, as it was constituted, and who can testify, or be so interrogated in a deposition, that the alleged debt was incurred legally;
8. Any and all further documents that you believe establish that plaintiff had an outstanding account or debt related to Account Numbers (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999;
9. Any further documentation, beyond what has been previously requested, that clearly establishes defendant's liability and/or responsibility to the alleged debt;
10. Any and all written communication, received by the plaintiff and/or plaintiff's attorney from the defendant, regarding the reporting of the alleged account to any credit reporting agency, as well as plaintiff's and/or plaintiff's attorney accessing of defendant's credit report(s).
11. Any and all communications from plaintiff and/or plaintiff's attorney to the defendant explaining why plaintiff and/or plaintiff's attorney may have reported the alleged debt to any credit reporting agency, as well as obtaining defendant's credit report(s);
12. Any and all credit report(s) plaintiff and/or plaintiff's attorney obtained from any credit reporting agency concerning the defendant;
13. Any and all notes, memoranda, or likewise, be they handwritten, computerized, or typed, regularly kept in the normal transaction and business of collecting debts, that relate to the defendant and/or Account Numbers (MIDLAND Acct#) 99999999 and (XXXXX Acct#) 99999999999999;

Jane J. Doe

By: \_\_\_\_\_

Jane. J. Doe, Defendant

Your address & phone number

OFFLINE brjmhome6

Posted 28 January 2009 - 02:51 PM

#### CERTIFICATE OF SERVICE

The undersigned certifies that the above documents were served on all parties in the above cause by depositing an original and one copy in the U.S. Mail, postage prepaid, in an envelope addressed to: LAW OFFICES ADDRESS, on 1 /1/00.

My next court date is mid february & 1 day before court, the 30 days expires on the production of documents directed to the plaintiff. On that day i will file a motion to compell. The next day we appear in court, I will hand the judge a motion to dismiss & watch a lawyer get embarrassed (hopefully).

Now all of these documents I sent certified mail with return receipt. I filed every single document with the court & sent the plaintiff 2 copies & retained a copy of each for myself. As long as you document EVERYTHING and comply with EVERYTHING & you demand evidence before any admission, you'll be just fine. Remember, these people are nothing more than debt collectors wearing shiny shoes that know how to file paperwork. DO NOT BE INTIMIDATED! Remember, JDB's are the lowest form of life on earth & should be treated as such. I encourage anybody going through this court facilitated harassment to do your homework & above all, demand proof and accept nothing less!

OFFLINE brjmhome6

Posted 28 January 2009 - 03:43 PM

If you're in the position of being sued I know how you feel and this all seems overwhelming but it is easily managed by a sharp individual. Each state has a particular way that they want a motion formatted which you can find on your states supreme court website...they list all the civil court rules there. What I did was simply copy the JDB's own format & used it as a template for my motions (gotta love MS word)...that gets that tough part out of the way & I thank them for that 😊

When you do some reading here, you'll see how people respond to these requests from the plaintiff & all you have to do is copy their format & insert your motion in the body of the text. Trust me, it makes the task of filing a motion much less daunting when you have a header / footer template already setup. For instance, with their motion for production of documents and things, I copied almost exactly their motion & redirected it back to them (obviously some important things must be modified first such as which documents you want them to produce) which was really pretty easy. Remember this formula next time you deal with an attorney:

50% of lawyering is intimidation, 40% paperwork, & 10% law.

Once you deal with the intimidation you're pretty much halfway there! Personally I live in a large city with a high crime rate so douche bag attorneys with snotty attitudes aren't exactly the ingredients of fear for me.

OFFLINE Lecasbas

Posted 29 January 2009 - 03:13 PM

**Quote**

immediately searched & found this site where I obtained a nice Debt Validation letter coupled with an order to cease & desist. I know at the point you're being sued dv is useless but since this complaint is the first demand for payment i've received I figured i'd still give it a shot.

I know the sticky above says so but a DV is never useless.

The DV is a requirement of the FDCPA which requires identification of the appropriate debtor with the appropriate debt.

You can take your attempt for DV (of which the JDB or CA usually never answers or answers sufficiently) into the court room as evidence of attempting to resolve the matter out of court. This tips the judge off that you are a serious contender to the issue at hand.

I did this once and the judge started to grill the CA as if the judge were my own lawyer. If you get the court on your side that's 90 percent of the battle.

Then, if you have Counterclaims, you can cite the unanswered DV attempts as violations of the FDCPA.

Besides, if you decline to not DV just because you received a summons then the CA is not bound by the FDCPA to validate after the 30 days is up. You have pointed out where the CA, et alia, set the system up against the alleged debtors...well, here's the reverse set up against the CA.

So, I disagree that DV is useless once in court.

The rest of your thread is an interesting comprehensive tale of the collection circus. We had a thread here recently where the judge apparently was sick of the fast food justice and has started denying default judgments.

Thank you for the paragraphs.

OFFLINE brjmhome6

Posted 29 January 2009 - 04:02 PM

It was indeed a circus. To see literally hundreds of people being taken advantage of by 4 lawyers representing the



same dirt-bag clients was too much for me. It was really like I was on some legal drama episode it was so surreal that so much money was changing hands without even a fight out of these defendants. They constantly request continuances trying to draw out the court case so you'll hopefully default. I've read that dv is not useful after a lawsuit has been filed but I do agree with you....if the lawsuit is the first time you've received a demand for payment from a CA then under the FDCPA, your dv request technically is still valid which is why I did make an attempt. I faxed a copy of the dv request w/ the order to cease & desist which obviously I cannot prove the received in the same manner I could if I had sent it certified mail but nonetheless, when we arrived in court, the lawyer acknowledged she could not speak with us b/c there was a cease & desist on file so they DID receive it. They just chose not to respond b/c they don't have anything. One question I have for the pros here is if you have a cease & desist in effect & their attorney tries to mediate with you by means of offering up a default plea, does this constitute an FDCPA violation? I was under the impression that a solicitation for a plea bargain would constitute "contact" which would in turn be a violation of the FDCPA, right? I've still got a copy of their offer for default which I will bring into court if I do indeed have a violation to collect on. BTW, this happened at the 2nd court date...apparently the 2nd lawyer (or paralegal) we spoke with initially ignored the cease & desist & tried to solicit my wife out of a signature for a default judgment. After their lawyer explained what she was trying to solicit I reminded her of the cease & desist order & she then suddenly remembered that she wasn't supposed to be talking to us. What do ya think? Is that offer "proof" that a violation took place?

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OFFLINE Lecasbas

Posted 29 January 2009 - 05:20 PM

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About the only way I know to verify a cease and desist would be to receive a written response acknowledging the cease and desist from the intended recipient.

A CMRRR verifies that an envelope was received by the JDB from the consumer. It would be up to the JDB to verify what was in the envelope.

Your personal testimony and letters you sent would be corroborating evidence.

The key thing is to document everything.

Start perusing the FDCPA to match up violations with activity of the JDB and jot down notes to research later.

Start with 809, validation of debt, if you have sent a DV at all just to see what the JDB may be doing wrong.

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OFFLINE admin

Posted 09 February 2009 - 04:38 PM

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This is great stuff.

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OFFLINE OMGWhatHaveIdone

Posted 10 February 2009 - 03:33 AM

*admin said*

This is great stuff.

Since it's so very well detailed, perhaps it should be considered a sticky 😊

The thread gets my vote for it!

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OFFLINE brjmhome6

Posted 17 February 2009 - 05:33 PM

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Update as promised:

2/17 case dismissed by plaintiff w/o prejudice (scumbags)

My wife and I appeared today for the 3rd time (continued twice by plaintiff) & low and behold, our name was not called. At this point, the plaintiff's time allowed by the court to respond to my discovery request (request for

documents & things to plaintiff) has expired by 2 days (32nd day since certificate of service filed w/the court). After speaking with the court bailiff, I was informed that the plaintiff had dropped the complaint. I informed the bailiff I wanted to go to trial & did not want to accept a dismissal if I could help it (you can't as a defendant). She left a note for the liar...oops I mean lawyer. She waited till we were the last ones in the room & called us up to speak. After locating our file she immediately informed us that she had already filed a motion to dismiss with the court w/o prejudice (of course) & the case was over. I asked if there was anything I could do to pursue the trial & she informed me there wasn't. All in all, we won but not the way I wanted to win. I intend to file a civil suit against the plaintiff alleging 2 fdepa violations & anything else I can legitimately throw on there & flip the tables.

Before my wife & I were called up, there was a guy in the same situation as us but he apparently wasn't as good at paperwork as me 😞 I sat in the front row so I could hear the "mediation" that was happening (he was acting pro-se as well). Basically I listened as he inquired as to why the lawyers office hadn't complied with his discovery request & the lawyer kept lying & saying she hadn't received it & she wasn't aware of this & she'd have to check back at the office & get back to him. I overheard enough to know that he did not have his answer filed with the court **\*\*STRIKE 1\*\*** he did not have his request for discovery filed & notarized with the court **\*\* STRIKE 2\*\*** Instead of reading the readily available rules of civil procedure for the state of missouri to insure his discovery requests were valid (certificate of service w/court clerk & notarization of document **\*\*STRIKE 3 YOUR OUT!!**

The lawyer kept basically lying to him b/c she didn't have any legal obligation to comply with his discovery requests but she of course isn't going to tell him to be a good boy & file his paperwork properly so the court can force her to do her job. He sat there & threatened (calmly) to file a motion to compel & that the sol had expired so the complaint was not valid. Basically this guy had an idea of what had to be done but got things all jumbled up. His debt was from another state which the sol was only 4 years or something....missouri is 10 years (ugly I know). The SOL that applied to you is the jurisdiction in which you currently reside....not where you use to reside therefore when this fella moved to missouri, he got the shaft on the SOL deal which allowed his creditor to now sue him. For one thing, SOL is something you use as an affirmative defense in your answer to the complaint, NOT in mediation. Long story short, READ YOUR RULES OF CIVIL PROCEDURE.....DUHHHHH! I assure you, it's not rocket science & you can win if you have the knowledge to do so.

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OFFLINE brjmhome6

Posted 17 February 2009 - 05:35 PM

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Anyhow, in missouri....before you can file a motion to compel, the law indicates that the party filing the motion has to make an attempt to contact the plaintiff/defendant for production of the requested documents etc...this basically just means you have to give their office a call & ask. At the same time, you send them a fax documenting the communication so you have proof to show the court you not only filed your request for production of documents and things but you also made a notable attempt to contact the plaintiff prior to being forced to ask the court to grant your motion to compel. The following is the letter I typed up this morning prior to leaving for court which I intended to give to their attorney prior to filing my motion to compel tomorrow.

Jane Doe  
9999 pim Street  
City, state. zip  
February 17, 2009  
lawyers name, Attorney for  
Plaintiff, Clients name  
Address

Mr. Douchebag attorney:

This communication is a follow up to my previous Request for a Production of Documents and Things on civil case no. 000001 which was served upon your office by means of certified mail with a certificate of service filed with the court dated January 15th 2009. As of today, February 17th, I have received no response from your office regarding this request which I, as a Defendant, am entitled to per Missouri Civil Rule 58.01.

This communication is my final effort to receive the cooperation of your office in this matter to inspect and copy the requested documents so that both parties may proceed forward in this case before the court. Should you fail to comply with this request, I will be forced to exercise my rights as a Defendant under Missouri Rule 61.01(d) & file a motion to compel with the court to receive your compliance with the rules of Discovery. I look forward to hearing from your office.

Sincerely,  
XXXXXXX

Date: 2/17/2009

OFFLINE brjmhome6

Posted 17 February 2009 - 08:32 PM

I just got the mail today & I received their response to my request for production of documents & things. It looks like they filed the response 3 days prior to the expiration of their allowed response time....by the skin of their teeth 😬

Here's how they responded:

COMES NOW Plaintiff, Midland Funding, LLC, by and through its counsel, Douche bag & Douche bag, pursuant to Missouri Rules of Civil Procedure, and for their responses to Defendant's First Request For Production of Documents Directed to Plaintiff states the following:

1-13. Copies of any and all documents in Plaintiff's care, custody and control are attached hereto and incorporated by reference in response to Defendant's Request for Production of Documents.

Signed, w/certificate of service stamp etc.....

The documents they include are laughable at best which is apparently the same thought their lawyer had a few days ago when my file came across the desk. It was basically just a few statements w/acct numbers & 1 chain of custody sale but absolutely nothing that would prove their allegations were valid. I got a little wink & nod from their attorney when I asked if they were gracious enough to dismiss w/prejudice 😬 Good feeling for the little guy!

Now my thinking here is to expand my little experience with a civil suit against the JDB...indulge me if you will:

If the JDB here was unable to prove that my wife owned this account & bailed out of the lawsuit prior to being embarrassed at trial in open court, i'd imagine they wouldn't be in a good position to defend a lawsuit for reporting fraudulent negatively damaging information to the credit reporting agencies.

What do you think? My assumption is that they would be looking at a \$1000 violation for each listing on each CRA file + court costs & punitive damages deemed necessary and reasonable by the court. I could be jumping the gun here but I would imagine they would not have any defense that could win with...if no agreement exists to be brought into evidence, what defense is there?

We shall see as I fully intend to research & file suit. Thanks to the DCCRS community for all of the support & assistance that has gotten me this far. When people join together in a community to share information for the greater good, as you've all seen, good things happen.

+1 for the little guy!

OFFLINE OMGWhatHaveIdone

Posted 18 February 2009 - 06:40 PM

I believe that you would be suing for violation of the FDCPA, correct? If so, then it would \$1000 per *action* and in this case, no matter how many times it was reported to the CRA's, the most you'd get out of this would be \$1000 because it's not *per violation* but *per action*.

If you're suing under the FCRA, then it would be per violation.

OFFLINE admin

Posted 18 February 2009 - 08:32 PM

**OMGWhatHaveIdone said**

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Per action is under the FCRA. It's per incident under the FDCPA. Many violations can occur per incident.

Legal Issues → Is There a Lawyer in the House →  
 Midland Funding, LLC vs my pregnant wife  
 Started by 88gambit , 02 Oct 2013 Midland Funding

10 replies  
 420 Views 1stStep  
 03 Oct 2013

Legal Issues → Is There a Lawyer in the House →  
 Midland sue me,I answered,now to Hearing.What should I do Before  
 Hearing?  
 Started by rightfullynotyours , 19 Sep 2013 Midland Funding

**HOT** 41 replies  
 1,268 Views rightfullynotyours  
 01 Nov 2013

Credit Repair Forums → Collections →  
 Midland Dunning Letter or Settlement Offer, TL Deleted once  
 Started by TexanNCali , 06 Sep 2013 Midland Credit Management and 3 more...

7 replies  
 619 Views admin  
 11 Sep 2013

Credit Repair Forums → Collections →  
 Midland Credit Management Account Review Inquiries on CR...No  
 collection  
 Started by TexanNCali , 22 Aug 2013 Midland Funding and 2 more...

9 replies  
 648 Views TexanNCali  
 10 Sep 2013

Legal Issues → Is There a Lawyer in the House →  
 Johnson Mark LLC and Midland Funding  
 Started by SickofdebtSLC , 22 Aug 2013 Johnson Mark, Midland Funding and 4  
 more...

**HOT** 73 replies  
 2,261 Views racecar  
 13 Sep 2013