

Collection Practices Acts (collectively, the “FDCPA”), 15 U.S.C. § 1692 et seq. and 32 M.R.S.A. § 11001 et seq.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the Plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (b), 15 U.S.C. § 1692k, 28 U.S.C. §§ 2201-2201 (d) and 28 U.S.C. § 1334 (b).

3. Venue is proper pursuant to 28 U.S.C. § 1391 since named Plaintiff resides in this District and the conduct complained of occurred in this District.

PARTIES

4. Plaintiff James F. Miller is a natural person residing in Gray, Maine.

5. Defendant, Carrington Mortgage Services, LLC (“Carrington”), is a limited liability corporation incorporated under the laws of Delaware. Carrington has a principal place of business in Anaheim, California. It regularly conducts business in Maine.

6. Carrington is one of the nation's largest mortgage loan servicers specializing in distressed loan portfolios.

7. Carrington markets to lenders that it is uniquely equipped to manage the heightened requirements of servicing loans in default.

8. Carrington began servicing Mr. Miller’s home mortgage loan on September 16, 2016.

9. Mr. Miller’s loan was in default at the time Carrington began servicing his loan.

10. As part of its business practice, Carrington uses the telephone and mail in the collection of debts.

11. Upon information and belief, the principal purpose of Carrington’s business is the collection of debts.

12. Carrington regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

13. These debts that Carrington regularly collects or attempts to collect are in default at the time they obtain such debts for servicing.

14. At all times relevant to this matter, Carrington was a “debt collector” as that term is defined in the FDCPA, 15 U.S.C. § 1692a(6), 32 M.R.S.A. § 11002(6).

FACTUAL ALLEGATIONS

15. On July 21, 2008, James F. Miller and his then-wife Konica K. Miller executed and delivered to Countrywide Bank, FSB a promissory note in the original principal amount of \$64,980.00 (the "Note").

16. To secure the Note, James F. Miller and Konica K. Miller executed and delivered to Countrywide Bank, FSB a mortgage in the amount of \$64,980 .00 on the property at 16 Wilder St. Washburn, ME 04786 (the “Property”), which mortgage was recorded on July 23, 2008 in the Aroostook County - Southern Registry of Deeds in Book 4605, Page 73 (the "Mortgage").

17. The Note and Mortgage were for a consumer debt; the purchase of their home.

18. In 2010, Konica and James Miller separated and started to fall behind on the Note and Mortgage (collectively the “Loan”). After this date the Loan was never current again.

19. Upon information and belief, near the end of 2011, the Mortgage was assigned to Bank of America, N.A., which began servicing the Loan.

20. In October 2011, James and Konica Miller divorced and Konica conveyed her interest in the property to James by virtue of a deed from Konica K. Miller to James F. Miller dated March 3, 2012, recorded in the Aroostook County -Southern Registry of Deeds on March 13, 2012 in Book 5031, Page 184.

21. Mr. Miller remained in the property temporarily, but was unable to keep up with the Loan payments and fell further behind.

22. In February 2012, Mr. Miller moved his residence to 13 Liberty Avenue, Gray, Maine and in April 2012, married Patricia Miller. He informed his servicer of his change of address.

23. Due to the burden of the Loan along with accumulated credit card debt, Mr. Miller filed for Chapter 7 bankruptcy protection on November 21, 2012 in the U.S. Bankruptcy Court, District of Maine, Case No. 12-21454, stating his address as 13 Liberty Ave. in Gray, Maine. The Plaintiff hereby incorporates the bankruptcy court filings in this matter. Specific docket entries are referred to as “Bankr. Doc. ___ or Bankr. Claim ___.” *See* Bankr. Doc 3.

24. Bank of America, the servicer of the Loan at the time, received notice of the filing and all subsequent filings and orders in the bankruptcy. *See e.g.* Bankr. Docs 3-1, 8.

25. Mr. Miller has not made a payment on the Loan since before filing the bankruptcy.

26. As part of his Voluntary Petition, Mr. Miller included a Chapter 7 Individual Debtor’s Statement of Intention. The Statement of Intention stated that the property at 16 Wilder St., Washburn, ME 04786 would be surrendered. *See* Bankr. Doc. 1, p. 30.

27. Mr. Miller received his bankruptcy discharge on February 20, 2013. *See* Bankr. Doc. 7.

28. The bankruptcy discharged any personal obligation Mr. Miller had on the Loan, as a result of which he did not owe any money on the Loan.

29. Upon information and belief, Defendant Carrington Mortgage Services acquired servicing of the Loan on September 16, 2016, three and a half years after the bankruptcy discharge and five years after Mr. Miller’s last payment on the loan. The Loan was in default at the time Carrington took over servicing of the Loan. *See* Exhibit 1, a page from the Customer

Account Activity Statement from Carrington showing that on October 4, 2016, the loan was still due for July 1, 2011.

30. Upon information and belief, upon acquiring the servicing rights of the Loan, Carrington received documentation and notice of Mr. Miller's bankruptcy filing, discharge, statement of surrender, and payment history from the previous servicer, Bank of America.

31. Shortly after acquiring servicing of the Loan in 2016 until the beginning of 2018, Carrington called Mr. Miller every couple of months about resolving the amounts he allegedly owed on the Loan. Each time, Mr. Miller told them he had moved out of and surrendered the house and that he had filed for bankruptcy and included the house in it, yet they continued to call. Mr. Miller blocked the number but Carrington would use a different number to get through.

32. In response to a Qualified Written Request prior to filing this suit, Carrington provided copies of notices regarding the loan sent to Mr. Miller at an address of 16 Wilderness Way, Gary Maine that was not Mr. Miller's address and which he did not receive, including:

- a. A notice under the Servicemembers' Civil Relief Act regarding "debt relief."
- b. Notices dated October 29, 2016, November 30, 2016, December 21, 2016, August 2, 2017, September 25, 2017, regarding the purchase of hazard insurance on the Property and purporting that Mr. Miller would be responsible for the payment of such insurance.

33. Upon information and belief, ownership of the Loan was assigned to Wilmington Savings Fund Society, FSB, as trustee of Sandwich Mortgage Loan Trust A by assignment recorded July 5, 2017 in Book 5676, Page 176 in the Aroostook County - Southern Registry of Deeds.

Carrington continued as the servicer.

34. On or around August 3, 2017, Mr. Miller applied for overdraft protection from Evergreen Credit Union.

35. On August 7, 2017, Mr. Miller was denied this credit from Evergreen because Carrington Mortgage was inaccurately reporting to Experian that the Loan was 180 days past due each month and that there remained a past due balance of \$47,729 and a recent balance of \$124,125 on the Loan.

36. The Loan had been discharged in Mr. Miller's bankruptcy over four years earlier and as such, Mr. Miller had no personal liability for any balance or monthly payments on the Loan.

37. It took Mr. Miller two and a half weeks of repeated phone calls and faxes to convince Experian that Carrington was reporting inaccurately.

38. Mr. Miller was able to get the credit report corrected and obtain the credit from Evergreen on August 24, 2017.

39. Upon information and belief, under its agreement with Wilmington Savings as servicer of the Loan, Carrington was responsible for directing and facilitating the foreclosures on its behalf.

40. On May 9, 2018, Carrington caused Mr. Miller to be served with a Summons and Foreclosure Complaint regarding the property.

41. The Plaintiff in the Foreclosure Action was Wilmington Savings. The first Complaint alleged that only Konica Miller was in default on the Note and in breach of the Mortgage.

42. Shortly after receiving the first Complaint, after retaining an attorney at Pine Tree Legal Assistance, Mr. Miller was able to confirm with the law firm handling the Foreclosure Action that the Plaintiff did not intend to seek any money or deficiency from Mr. Miller due to his bankruptcy discharge.

43. However, thereafter on June 26, 2018, the Plaintiff in the Foreclosure Action filed an Amended Complaint specifically seeking as relief that the Court “[f]ind James Miller a/k/a James F. Miller liable for any deficiency balance remaining due to Plaintiff after the sale of the Premises and application of the proceeds of sale.” A true and accurate copy of the Amended Complaint is attached hereto as Exhibit 2, ¶ C under “WHEREFORE” clause.

44. Again, due to the bankruptcy discharge, Mr. Miller was not personally liable for any amounts, including any deficiency balance, on the Loan. Carrington was aware of the discharge at all relevant times.

45. During the pendency of the foreclosure action, Carrington also delivered a Monthly Mortgage Statement directly to Mr. Miller at the Liberty Ave. address dated July 5, 2018. The statement included a section entitled “Explanation of Amount Due” which included a “regular Monthly Payment” of \$645.09 and “Total Payment Amount” of \$62,298.88 both in bold lettering. The statement also included a detachable “Payment Coupon” to send in with the payment that repeated the \$62,298.88 “Payment Amount” and August 1, 2018 “Payment Date.” A true and accurate copy of the statement is attached hereto as Exhibit 3 and incorporated herein.

46. The mortgage statement included a section titled “Bankruptcy Message” with an impersonal form notice that the statement is for information purposes only. Then, on page 4 of the statement, Carrington provided a “Guide to Reading Your Chapter 7 or 11 Bankruptcy Mortgage Statement” and stated that the “Payment Summary...Provides the minimum payment due for the stated month and states the date the payment is due,” and the “Explanation of Payment Amount ...Displays a summary of the payment amount due...” Carrington further explained that the “Payment Coupon” should be detached and returned with Mr. Miller’s payment. *See* Exhibit 3.

47. With further help from Pine Tree Legal Services, Mr. Miller was able to alert the law firm of the error in the Amended Complaint and they filed a Motion to Amend the Complaint on July 17, 2018, removing the request for a deficiency from Mr. Miller.

48. Shortly thereafter, in a letter dated August 1, 2018 sent directly to Mr. Miller at the Liberty Ave. address, Carrington demanded that Mr. Miller provide evidence that he had hazard insurance on the Property and stated that if he did not, Carrington would buy insurance at a cost of \$532.20 per year (“Forced Placed Insurance letter”) which he would then owe. A true and accurate copy of the Forced Placed Insurance letter is incorporated herein and attached as Exhibit 4.

49. Then, Carrington sent Mr. Miller a Monthly Mortgage Statement dated August 18, 2018 alleging a “Payment Amount” of \$63,043.97 and a “Payment Date” of September 1, 2018. The statement included a section entitled “Explanation of Amount Due” which included a “regular Monthly Payment” of \$645.09 and “Total Payment Amount” of \$63,043.97 both in bold lettering. The statement also included a detachable “Payment Coupon” to send in with the payment that repeated the \$63,043.97 “Payment Amount” and September 1, 2018 “Payment Date.” A true and accurate copy of the statement is incorporated herein and attached as Exhibit 5.

50. This statement included the same sections titled “Bankruptcy Message” and a “Guide to Reading Your Chapter 7 or 11 Bankruptcy Mortgage Statement” as the July 5, 2018 Monthly Mortgage Statement. *See Exhibits 3, 5.*

51. Mr. Miller received a Monthly Mortgage Statement from Carrington dated September 18, 2018 again containing a detachable “Payment Coupon” with a substantially increased alleged

“Payment Amount” alleged of \$66,611.36 and a “Payment Date” of October 1, 2018. A true and accurate copy of the statement is incorporated herein and attached as Exhibit 6.

52. Carrington delivered another notice demanding evidence of hazard insurance to Mr. Miller at the Liberty Ave address dated September 24, 2018 claiming he must pay for the insurance they bought for the Property in the amount of \$532.20 annually. A true and accurate copy of the notice is attached hereto as Exhibit 7 and incorporated herein.

53. On September 25, 2018, current counsel for Mr. Miller sent a letter to Carrington explaining that their attempts to collect on the Loan violated consumer protection laws. Documents from Mr. Miller’s bankruptcy case were included in the letter. Carrington received this letter on September 27, 2018.

54. Despite counsel’s September 25 letter, Carrington, in a Monthly Mortgage Statement dated October 18, 2018, again included a “Payment Coupon,” this time with a yet higher “Payment Amount” alleged of \$67,596.45 and a “Payment Date” of November 1, 2018. A true and accurate copy of the statement is incorporated herein and attached as Exhibit 8.

55. None of the Monthly Mortgage Statements, nor any other communication from Carrington, included any explanation that Mr. Miller would only have to pay the amounts requested if he wanted to retain ownership of the property.

56. Mr. Miller never requested that Carrington send him Monthly Mortgage Statements.

57. All of the notices and Monthly Mortgage Statements were addressed to both James and Konica Miller even though six years earlier they were divorced, Mr. Miller had advised Carrington of the divorce, and Mr. Miller had remarried and moved to Gray, Maine. Konica Miller had never used the Gray address.

58. There was no reason for Carrington to send these statements and notices other than to try to obtain payment on the discharged loan.

59. Either Carrington never properly processed Mr. Miller's bankruptcy filing and discharge and therefore, continued to attempt to collect on the discharged debt, or it deliberately chose to ignore the effect of the discharge.

60. No statute or regulation required Carrington to send monthly mortgage statements to Mr. Miller post-bankruptcy discharge.

61. The Foreclosure Complaint seeking a deficiency from him, the Forced Placed Insurance Letters and the Monthly Mortgage Statements caused Mr. Miller severe emotional distress and anxiety, for example that he would never be free from demands for payment of the Loan and also that somehow Carrington might have found a way of getting around the bankruptcy discharge protections.

62. Upon information and belief, Carrington does not have proper policies and procedures in place to correctly process and treat loans where the mortgagor has surrendered the property in a bankruptcy and the debt has been discharged.

CLASS ALLEGATIONS

63. This class action is brought on behalf of the Plaintiff and class members (defined below) to recover for the harm caused by the practices of Carrington in attempting to collect mortgage loan debt that has been discharged in a bankruptcy.

64. Plaintiffs sue on their own behalf and on behalf of a class of persons under Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

65. The class is defined as all persons:

- a. who have had a residential mortgage loan on property located in the state of

Maine that was serviced by Carrington; and

- b. Carrington obtained servicing of the mortgage loan when the loan was in default; and
- c. who filed for bankruptcy protection and:
 - i. surrendered the property to which the mortgage attached;
 - ii. received a discharge in bankruptcy that included discharge of the personal obligation on the note secured by such mortgage;
 - iii. has not made any payment on the mortgage loan after the commencement of the bankruptcy case; and
 - iv. who received one or more Monthly Mortgage Statements from Carrington substantially in the same form as Exhibits 3 & 5 and/or received one or more letters seeking payment of insurance premiums substantially in the same form as Exhibits 4 & 7 at any time since one year prior to the filing of this action (“Class Period”).

66. Throughout the Class Period (defined below) Carrington injured class members by communicating with them attempting to collect debts that were not owed on residential mortgage loans, misleading borrowers about amounts due on the loans, and misrepresenting payment amounts on the loans.

67. Carrington was on notice that these borrowers had discharged their personal liability on their debts but nevertheless intentionally sent them Monthly Mortgage Statements. At the top of the Monthly Mortgage Statements, Carrington provided a “Bankruptcy Message” generically acknowledging that “you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.” The message stated that the statement was sent for informational

and compliance purposes only. Despite this, the Statements included payment amounts, payment dates and an “Explanation of Amount Due.”

68. A “Guide To Reading Your Chapter 7 or 11 Bankruptcy Mortgage Statement” was enclosed with the Monthly Mortgage Statements; in at least some of the statements, the “Guide” included explanations of the “minimum payment due,” “the date the payment is due,” and the “payment amount due.”

69. The Monthly Mortgage Statements included a detachable “Payment Coupon” for the borrower to send in with a “Payment Amount” by a certain “Payment Date.”

70. The Payment Coupon did not include any type of bankruptcy disclaimer.

71. On information and belief, Carrington routinely sent letters seeking payment of insurance premiums to class members in substantially the same form as Exhibit 4 & 7.

72. On information and belief, Carrington also routinely called class members, seeking payment on these discharged debts.

73. On information and belief, Carrington routinely filed foreclosure complaints seeking payment on these discharged debts from class members.

74. The Class, as defined above is identifiable and unambiguous based on objective information and criteria.

75. The following persons shall be excluded from the Class: (a) Defendant and its owners, subsidiaries and affiliates; (b) all persons who make a timely election to be excluded from the proposed Class; (c) governmental entities; and (d) the judge(s) to whom this case is assigned and any immediate family members thereof.

76. Mr. Miller is a member of the Class.

77. All of the criteria for class certification under Fed. R. Civ. P. 23 are satisfied:

- a. The Class is so numerous that joinder is impractical. Upon information and belief, the Class comprises scores of individuals.
- b. There are questions of law and fact common to the members of the Class, which questions predominate over any individual issues. These common questions include whether Defendants are debt collectors under the FDCPA, whether the Monthly Mortgage Statements were attempts to collect a debt, whether the forced place insurance notices were attempts to collect a debt, whether these communications violated the FDCPA and the Maine Fair Debt Collection Practices Act, and whether class members are entitled to recover statutory and actual damages (and other appropriate relief) due to Defendants' violations. All of these issues are based on the same facts and legal theories for the class as for the Plaintiff. The only individual issue is the amount of any actual damages to be awarded each class member, a matter that is capable of resolution through a ministerial review of Defendant's records.
- c. The claims and defenses of the Plaintiff are typical of the claims of all members of the Class. By proving their case, the Plaintiff will simultaneously prove the case of the members of the Class.
- d. The Plaintiff will fairly and adequately represent the Class. Plaintiff is willing and able to serve as representative of the Class and has no knowledge of any possible divergent interest between himself and any member of the Class. All claims are based on the same fact pattern and legal theories and Plaintiff's interests are consistent with the interests of the class. Moreover, Plaintiff has retained counsel experienced in consumer class actions and FDCPA litigation.

- e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant Carrington.
- f. Questions of law and fact common to members of the Class predominate over any questions affecting individual members. The determinative facts and legal principles apply universally among Plaintiff and the members of the Class. The predominant legal issue in this case, which cuts across the entire Class, is whether Carrington's conduct in delivering the Monthly Mortgage Statements and other communications to borrowers was an attempt to collect a debt that constitutes harassing or abusive conduct, false, deceptive and misleading representations, and/or unfair practices.
- g. A class action is superior to other available methods for the fair and efficient adjudication of the controversy for reasons including that, due to the expense of pursuing individual litigation regarding Carrington's common course of conduct alleged herein, members of the Class would, as a practical matter, be effectively precluded from protecting and enforcing their legal rights.
- h. The claims of the individual named Plaintiff is typical of the claims of the class and do not conflict with the interests of any other members of the class in that both the Plaintiff and the other members of the class have been subject to and affected by the same conduct: Carrington's attempt to collect on a discharged debt through harassing or abusive conduct, false, deceptive and misleading representations, and/or unfair practices.

78. This putative class action meets both the requirements of Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3).

79. The Defendant Carrington has acted or refused to act on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief, as well as incidental damages, is appropriate respecting the class as a whole.

CLAIMS

VIOLATION OF THE FEDERAL AND MAINE FAIR DEBT COLLECTION PRACTICES ACTS (FDCPA)

80. The Plaintiff repeats, realleges and incorporates by reference the paragraphs above as if fully set out herein.

81. Plaintiff brings this claim on his own behalf and on behalf of each member of the Class described above.

82. Since one year prior to the filing of this suit, and ongoing for more than one year prior (“Class Period”), by example only and without limitation, Carrington violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* and the Maine Fair Debt Collection Practices Act 32 M.R.S.A. § 11001 *et seq.* (collectively the “FDCPA”), as outlined above, specifically by:

- a. Falsely representing the character, amount, and legal status of the loan debt through telephone calls, Forced Placed Insurance letters, Foreclosure Complaint, and/or Monthly Mortgage Statements (15 U.S.C. § 1692e(2); 32 M.R.S.A. § 11013(2)(B));
- b. The use of false representations and deceptive means to collect on the loan debt through telephone calls, Forced Placed Insurance letters, Foreclosure Complaints, and/or Monthly Mortgage Statements (15 U.S.C. § 1692e(10); 32 M.R.S.A. §

11013(2));

- c. Engaging in conduct, the natural consequence of which was to harass, oppress or abuse Plaintiff and class members in connection with the collection of the mortgage debt by attempting to collect the debt through the telephone calls, Forced Placed Insurance letters, Foreclosure Complaints, and/or Monthly Mortgage Statements despite knowing of the discharge in bankruptcy; (15 USC § 1692d; 32 M.R.S.A. § 11013(1));
- d. Using unfair or unconscionable means to collect or attempt to collect on the mortgage Loan that was not owed through telephone calls, the Forced Placed Insurance letters, the Foreclosure Complaint, and/or Monthly Mortgage Statements. (15 U.S.C. § 1692f; 32 M.R.S.A. § 11013(3)).

83. As a result of the conduct, actions and inactions of Carrington, Mr. Miller suffered actual damages including, without limitation, harassment, coercion, fear and anxiety, and other emotional and mental distress.

84. Mr. Miller is entitled to recover actual damages, including emotional distress damages, statutory damages, costs and attorney's fees from Carrington, and such further relief as may be just and proper.

85. Certain class members are entitled to recover actual damages consisting of monies paid in response to defendant's unlawful collection efforts.

86. Mr. Miller and the class are entitled to recover statutory damages, costs and attorney's fees from Carrington, and such further relief as may be just and proper.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

1. As to all Counts of the Complaint, certify this case as a class action and appoint the named Plaintiff to be class representatives and their counsel to be class counsel;
2. Award Plaintiff and all members of the class statutory damages of \$1,000 each pursuant to 15 U.S.C. § 1692k and 32 M.R.S.A. § 11054;
3. Award Plaintiff and all members of the class their costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k and 32 M.R.S.A. § 11054;
4. Award compensatory damages individually to Plaintiff Miller for his emotional distress damages and to all members of the class that incurred a monetary loss, including payments made on the alleged debts as a result of Carrington's violations of the FDCPA described herein; and
5. Grant Plaintiff and the Class such other and further relief as this Court finds necessary and proper.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands trial by jury on all issues so triable.

Respectfully Submitted,

On behalf of the Plaintiff

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