

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Superior Court Department  
No. 2014-02684-BLS2

<u>TARA DORRIAN, on behalf of herself</u>	)
And all other persons similarly situated,	)
Plaintiff	)
	)
v.	)
	)
LVNV FUNDING, LLC,	)
<u>Defendant</u>	)

**SECOND AMENDED COMPLAINT AND REQUEST FOR JURY TRIAL**

**Introductory Statement**

Defendant LVNV Funding, LLC is engaged in the business of collecting defaulted consumer debts, primarily credit card accounts, which it purchases for pennies on the dollar. Under Massachusetts law, Defendant is considered to be a “debt collector” and therefore must obtain a license from the Commissioner of Banks (“Commissioner”) before undertaking collection activity against Massachusetts consumers. However, for years Defendant has operated as a debt collector in Massachusetts without a license, subjecting Massachusetts residents to unlawful collection activity and unlawfully obtaining substantial sums of money from them. Defendant’s conduct not only violated the rights of Massachusetts consumers, but was also criminal in nature. Plaintiff brings this action seeking disgorgement of monies unlawfully obtained by Defendant, recovery of damages resulting from Defendant’s unlawful conduct, and declaratory and injunctive relief.

## Parties

1. Plaintiff Tara Dorrian is an individual who at times relevant to this complaint has resided in East Weymouth, Norfolk County, Massachusetts.
2. Defendant LVNV Funding, LLC is a limited liability company organized under the laws of Delaware, having a principal place of business in Las Vegas, Nevada, and conducting business in the Commonwealth of Massachusetts.

## Facts Relating to Defendant's Business Practices, and Relevant Principles of Law

3. Defendant's principal business is the collection of defaulted consumer debts, as this is Defendant's principal (if not only) source of income. The debts consist primarily of credit card accounts which Defendant purchases in bulk for pennies on the dollar. "Consumer debts" are monetary obligations incurred primarily for personal, family, or household purposes. 209 CMR 18.02.
4. During times relevant to this complaint, Defendant attempted to collect defaulted consumer debts from Massachusetts consumers, directly or indirectly, in a number of ways, including but not limited to:

(a) Debts were reported to consumer reporting agencies such as Trans Union, Experian, and Equifax ("CRAs"), as obligations owed to Defendant. Credit reporting is a form of debt collection. *See* 209 CMR 18.16 (8)(debt collector prohibited from "communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed). *See, also, Brady v. Credit Recovery Co.*, 160 F.3d 64, 65-66 (1<sup>st</sup> Cir. 1998)(collector violates the Fair Debt Collection Practices Act ("FDCPA") by not informing CRA that alleged debt was disputed by consumer); *Koller v. West Bay Acquisitions, LLC.*, 2012 WL 1189481 \*5 (N.D. Cal. April 9,

2012)(“credit reporting is one of the most commonly taken steps in debt collection efforts”).

On information and belief, thousands of consumer debts allegedly owed by Massachusetts residents were reported to CRAs under Defendant’s name.

(b) Lawsuits on the debts were filed against Massachusetts residents in Massachusetts courts, with Defendant named as the plaintiff in each case. On information and belief, thousands of such lawsuits have been filed.

(c) Court judgments in favor of Defendant (usually resulting from the consumer’s default) were followed by further collection efforts, such as recording executions against consumers’ homes, filing motions to attach consumers’ bank accounts and to garnish consumers’ wages, and filing “supplementary process” complaints against consumers in Massachusetts district courts. On information and belief, thousands of such actions have been taken against Massachusetts consumers in Defendant’s name.

(d) Letters seeking payment and/or threatening collection action were sent to Massachusetts consumers by or on behalf of Defendant.

5. Under the Massachusetts licensing statute, a debt collector is defined first as “any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt.” G.L. c. 93, §24. Defendant has used and continues to use the mails, telephone lines, the electrical grid, wireless communication systems, and other instrumentalities of interstate commerce to evaluate and purchase defaulted debts for purposes of collection, to attempt to collect and to collect debts, and to engage persons and entities to assist in collecting debts for Defendant, and Defendant’s collection of the debts constitutes its principal (if not only) source of income. If Defendant sells or assigns any purchased debts, Plaintiff alleges on information and belief that this only occurs after Defendant

has determined that collection efforts are not economically viable. Accordingly, Defendant is a “debt collector” under Massachusetts law.

6. Under the Massachusetts licensing statute, a debt collector is also defined as a person “who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another.” G.L. c. 93, §24. The statute further provides that a “debt collector” does not include “a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity . . . concerns a debt which was *not* in default at the time it was obtained by the person. G.L. c. 93, §24 (emphasis supplied). In an “Industry Letter” issued June 16, 2006, the Commissioner decreed that entities which seek to collect consumer debts acquired after default – such as Defendant - are “debt collectors” under this prong of the definition. *See Gomes v. Midland Funding, LLC.*, 2012 WL 7801376 (Mass. Super. Sept. 19, 2012). The Commissioner’s position is consistent with rulings of the Federal Trade Commission and a number of federal courts in construing the identical definition of “debt collector” under the FDCPA. *See, e.g., Ruth v. Triumph Partnerships*, 577 F.3d 790, 797 (7<sup>th</sup> Cir. 2009); *FTC v. Check Investors, Inc.*, 502 F.3d 159, 173-174 (3<sup>rd</sup> Cir. 2007).

7. The Massachusetts licensing statute provides important protections for Massachusetts consumers. Before it may operate as a “debt collector,” an applicant and its officers and directors must demonstrate to the Commissioner’s satisfaction that their “financial responsibility, character, reputation, integrity and general fitness . . . are such as to command the confidence of the public and to warrant the belief that the business . . . will be operated lawfully, honestly and fairly.” G.L. c. 93, §24B(a). Thus, for example, the Commissioner may deny a license if the applicant does not have a positive net worth; has violated any state or federal law governing debt collection practices; has defaulted on a debt; has committed any dishonest or deceptive act bearing on the

applicant's fitness to function as a debt collector; or has an adverse credit history. 209 CMR 18.04(2)(a); 209 CMR 18.042(a)– (f). Debt collection licenses are issued for one-year terms (G.L. c. 93, §24B(b)), and upon request a licensee must disclose such books and records as to enable the Commissioner to determine whether it is complying with the requirements of chapter 93 and all laws and regulations covering debt collection practices in Massachusetts. G.L. c. 93, §24D.

8. A failure to comply with the Massachusetts licensing statute constitutes a *per se* violation of G.L. c. 93A, §2. G.L. c. 93, §28. Such a failure also constitutes a criminal offense. *Id.*

9. At no time relevant to this complaint was Defendant licensed as a debt collector in Massachusetts. Therefore, all of the collection activity directed at Massachusetts consumers as set forth in paragraph 4, above, violated G.L. c. 93, §§24-28 and G.L. c. 93A, §2. In addition, all such collection activity violated 209 CMR 18.16, which prohibits “the use of any false, deceptive, or misleading representation or means in connection with the collection of any debt,” and 209 CMR 18.16(5), which prohibits “the threat to take any action that cannot legally be taken.” A violation of any of the Commissioner’s regulations constitutes a *per se* violation of G.L. c. 93A, §2. 209 CMR 18.22. Finally, all actions taken by Defendant in violation of the licensing statute were criminal in nature:

Whoever fails to comply with any provisions of this section or sections twenty-four to twenty-seven, inclusive, or any regulation promulgated in accordance with the provisions of section twenty-four, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than three months, or both.

G.L. c. 93, §28. Thus, all judgments obtained by Defendant which are based on defaulted consumer debts are null and void. *See Finch v. LVNV Funding LLC.*, 212 Md. App. 748, 761, 71 A.3d 193, 200 (Md. Court Sp. Appeal 2013).

10. A large number of Massachusetts consumers against whom Defendant threatened or took collection action paid money to Defendant. In addition, many of these consumers paid money to attorneys for legal representation in defending against Defendant's actions.

11. At present Defendant continues to pursue unlicensed debt collection activity against Massachusetts consumers, causing them financial loss and other harm. Massachusetts consumers have been injured and will continue to be injured by Defendant's unlawful conduct unless this Court issues appropriate relief.

### **Facts Relating to Plaintiff**

12. Commencing in or about 2011, Defendant sought to collect from Plaintiff a defaulted consumer debt which Defendant had purchased from HSBC Bank Nevada, NA by, *inter alia*, having collection letters sent to Plaintiff and having the debt reported to consumer reporting agencies as owed to Plaintiff. Then, on or about September 24, 2013, Defendant sued Plaintiff in the Quincy District Court, Small Claims Session (docket no. 13SC3619) seeking judgment on said debt in the amount of \$3,426.26, plus court costs.

13. At the time of the collection activities set forth in paragraph 12, above, Defendant was a "debt collector" under both prongs of the definition set forth in G.L. c. 93, §24.

14. Plaintiff retained counsel to represent her in the Quincy District Court lawsuit, and paid legal fees for said representation.

15. On March 21, 2014, after hearing, judgment was entered for Plaintiff in the Quincy District Court action.

### **COUNT I: Declaratory and Injunctive Relief**

16. The allegations of paragraphs 1 - 15 are incorporated herein by reference as if fully set forth.

17. At all times relevant to this complaint Defendant was required to be licensed by the Massachusetts Division of Banks as a debt collector, but Defendant was never so licensed.

18. All actions taken by Defendant against Massachusetts residents, directly or indirectly, in attempting to collect and collecting consumer debts acquired after default, including but not limited to the actions set forth in paragraph 4, above, were unlawful. Moreover, each lawsuit filed against a Massachusetts consumer constituted a criminal act and a fraud on the court, hence each judgment awarded to Defendant is null and void.

19. Defendant's conduct caused harm to Massachusetts consumers by, *inter alia*, subjecting them to unlawful collection actions and by obtaining monies from them.

20. There is a controversy between the parties regarding the legality of Defendant's debt collection practices and the validity of court judgments obtained by Defendant.

### **Class Allegations**

21. Plaintiff brings Count I on behalf of herself and a class of other persons similarly situated. The class consists of all Massachusetts residents against whom Defendant, within four (4) years of the filing of this action, directly or indirectly took any of the actions set forth in paragraph 4, above, to collect a consumer debt acquired by Defendant after default. Excluded from the class are all past and present employees, agents, officers, and directors of Defendant, and persons who have released Defendant from liability. On information and belief, there are at least one hundred class members, making joinder impracticable.

22. There are questions of law and fact common to the class, which common issues predominate over any issues peculiar to individual class members. The principal common

issues are: (a) whether Defendant was required to be licensed as a “debt collector” in Massachusetts; (b) whether Defendant’s unlicensed collection actions violated Massachusetts law; (c) whether judgments obtained by Defendant in violation of the Massachusetts licensing statute are void; and (d) whether Defendant’s ill-gotten gains from its unlicensed collection actions are subject to disgorgement. The only individual questions involve the specific amounts of money to be awarded to each class member, which can be addressed and resolved through a ministerial review of relevant records.

23. Plaintiff’s claim is typical of the claims of class members. All claims are based on the same legal theory, and all arise from the same course of conduct.

24. Plaintiff will fairly and adequately protect the interests of all class members. Plaintiff is committed to a vigorous and successful prosecution of this action, is familiar with the legal and factual issues involved, and has retained counsel experienced in the litigation of consumer rights cases, including consumer class actions. Neither Plaintiff nor counsel have any interest or conflict that might cause them to not vigorously pursue this action.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since: (a) the financial losses suffered by a substantial number of class members are such that it would be economically unfeasible for them to individually litigate their claims; (b) the factual and legal issues common to all class members far outweigh any individual questions; (c) the prosecution of separate lawsuits by individual class members would entail the risk of inconsistent and conflicting adjudications; and (d) there will be no unusual or extraordinary management difficulties in administering this case as a class action.

WHEREFORE, Plaintiff prays that this Court enter judgment:

- (a) declaring Defendant's unlicensed debt collection activities directed against Plaintiff and the class to be in violation of Massachusetts law;
- (b) declaring all judgments obtained by Defendant against class members within four (4) years of the filing of this action to be null and void;
- (c) declaring all executions, liens, attachments, garnishments, levies, and asset seizures resulting from said judgments to be null and void;
- (d) ordering Defendant to disgorge all monies obtained from or on behalf of class members due to its unlawful collection activities;
- (e) ordering Defendant to take all necessary steps, within thirty (30) days of judgment, to have all pending lawsuits and all pending post-judgment collection actions against class members dismissed;
- (f) enjoining Defendant from attempting to collect or collecting any defaulted consumer debt in Massachusetts without a license as required by law;
- (g) ordering such further relief as shall be just and proper.

### **COUNT II: Unjust Enrichment**

26. The allegations of paragraphs 1 – 15 are incorporated herein by reference as if fully set forth.
27. Defendant has been unjustly enriched by obtaining monies from Massachusetts consumers as a result of one or more of the unlicensed and unlawful debt collection activities described in paragraph 4, above.

### **Class Allegations**

28. Plaintiff brings Count II on behalf of herself and a class of other persons similarly situated. The class consists of all Massachusetts residents from whom or on whose behalf Defendant received, within three (3) years of the filing of this action, any money toward payment of a consumer debt acquired after default (including interest, costs, and attorney's fees) resulting from any of the activities set forth in paragraph 4, whether taken directly or indirectly by Defendant. Excluded from the class are all past and present

employees, agents, officers, and directors of Defendant, and persons who have released Defendant from liability. On information and belief, there are at least one hundred class members, making joinder impracticable.

29. There are questions of law and fact common to the class, which common issues predominate over any issues peculiar to individual class members. The principal common issues are whether Defendant's unlicensed collection actions as set forth in paragraph 4 violated Massachusetts law. The only individual questions involve the specific amounts of money to be awarded to each class member, which can be addressed and resolved through a ministerial review of relevant records.

30. Plaintiff's claims are typical of the claims of class members. All claims are based on the same legal theory, and all arise from the same course of conduct.

31. Plaintiff will fairly and adequately protect the interests of all class members. Plaintiff is committed to a vigorous and successful prosecution of this action, is familiar with the legal and factual issues involved, and has retained counsel experienced in the litigation of consumer rights cases, including consumer class actions. Neither Plaintiff nor counsel have any interest or conflict that might cause them to not vigorously pursue this action.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since: (a) the financial losses suffered by a substantial number of class members are such that it would be economically unfeasible for them to individually litigate their claims; (b) the factual and legal issues common to all class members far outweigh any individual questions; (c) the prosecution of separate lawsuits by individual class members would entail the risk of inconsistent and conflicting adjudications; and (d) there will be no unusual or extraordinary management difficulties

in administering this case as a class action.

WHEREFORE, Plaintiff prays that this Court enter judgment:

- (a) awarding damages to Plaintiff and class members;
- (b) awarding interest, costs, and reasonable attorney's fees;
- (c) ordering such further relief as shall be just and proper.

**COUNT III: Violations of G. L. c. 93A**

33. The allegations of paragraphs 1 - 32 are incorporated herein as if fully set forth.

34. At all relevant times, Defendant was engaged in trade or commerce in Massachusetts within the meaning of G.L. c. 93A, §1.

35. Defendant committed unfair and deceptive acts and practices, as set forth above, in violation of G. L. c. 93A, §2. Defendant's unfair and deceptive activities included, without limitation: attempting to collect consumer debts while unlicensed in violation of G. L. c. 93, §§24-28; using false, deceptive, or misleading representations or means in connection with the collection of consumer debts in violation of 209 CMR 18.16; and threatening to take actions that cannot legally be taken in violation of 209 C.M.R. 18.16(5).

36. Defendant's unlawful conduct was knowing and/or willful within the meaning of G.L. c. 93A, §9.

37. Plaintiff and class members were injured in one or ways by Defendant, including but not limited to being subjected to unlawful collection activity, paying money to Defendant, and paying money to attorneys for professional counsel and/or representation.

38. On August 4, 2014, Plaintiff sent Defendant via certified mail, return receipt requested, a demand for relief pursuant to G.L. c. 93A, §9, which demand reasonably described the unlawful acts and practices complained of and injuries suffered. Thirty

(30) days have elapsed since Defendant's receipt of Plaintiff's demand, and Defendant has not made a reasonable written tender of settlement.

39. Defendant's refusal to make a timely, reasonable, and written tender of settlement was in bad faith with knowledge or reason to know that its conduct violated G.L. c. 93A, §2.

### **Class Allegations**

40. Plaintiff brings Count III on behalf of herself and a class of other persons similarly situated. The class consists of all Massachusetts residents against whom Defendant, within four (4) years of the filing of this action, directly or indirectly took any of the actions set forth in paragraph 4, above, to collect a consumer debt acquired by Defendant after default. Excluded from the class are all past and present employees, agents, officers, and directors of Defendant, and persons who have released Defendant from liability. On information and belief, there are at least one hundred class members, making joinder impracticable.

41. There are questions of law and fact common to the class, which common issues predominate over any issues peculiar to individual class members. Common issues include, but are not limited to: (a) whether Defendant was required to be licensed as a "debt collector" in Massachusetts; (b) whether Defendant was engaged in trade or commerce in Massachusetts; (c) whether Defendant's unlicensed collection actions violated G.L. c. 93A; (d) whether Defendant's violations of G.L. c. 93A were willful or knowing in nature; (e) whether Defendant's refusal to make a timely and written reasonable tender of settlement in response to Plaintiff's demand was in bad faith with knowledge or reason to know that its conduct violated G.L. c. 93A; (f) whether

judgments obtained by Defendant in violation of the Massachusetts licensing statute are void; (g) whether Defendant's ill-gotten gains from its unlicensed collection actions are subject to disgorgement; and (h) whether Defendant is liable for damages to class members. The only individual questions involve the specific amounts of money to be awarded to each class member, which can be addressed and resolved through a ministerial review of relevant records.

42. Plaintiff's claims are typical of the claims of class members. All claims are based on the same legal theory, and all arise from the same course of conduct.

43. Plaintiff will fairly and adequately protect the interests of all class members. Plaintiff is committed to a vigorous and successful prosecution of this action, is familiar with the legal and factual issues involved, and has retained counsel experienced in the litigation of consumer rights cases, including consumer class actions. Neither Plaintiff nor counsel have any interest or conflict that might cause them to not vigorously pursue this action.

44. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since: (a) the financial losses suffered by a substantial number of class members are such that it would be economically unfeasible for them to individually litigate their claims; (b) the factual and legal issues common to all class members far outweigh any individual questions; (c) the prosecution of separate lawsuits by individual class members would entail the risk of inconsistent and conflicting adjudications; and (d) there will be no unusual or extraordinary management difficulties in administering this case as a class action.

WHEREFORE, Plaintiff requests that this Court enter judgment:

- (a) ordering Defendant to disgorge all monies received from Plaintiff and class members as a result of its unlawful collection activities;

- (b) awarding damages equal to amounts paid by Plaintiff and class members for legal advice and representation in defending against Defendant's unlawful collection activities;
- (c) doubling or trebling all amounts of money awarded to Plaintiff and class members;
- (d) declaring all judgments obtained by Defendant against class members within four (4) years of the filing of this action to be null and void;
- (e) declaring all executions, liens, attachments, garnishments, levies, and asset seizures resulting from said judgments to be null and void;
- (f) ordering Defendant to take all necessary steps, within thirty (30) days of judgment, to have all pending lawsuits and all pending post-judgment collection actions against class members dismissed;
- (g) enjoining Defendant from attempting to collect or collecting any defaulted consumer debt in Massachusetts without a license as required by law;
- (h) awarding interest, costs, and reasonable attorney's fees;
- (i) ordering such further relief as shall be just and proper.

PLAINTIFF REQUESTS TRIAL BY JURY.

Plaintiff, by her attorneys:

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**Certificate of Service**

I hereby certify that a copy of the foregoing has been served on Defendant's counsel via first class mail, postage prepaid, on the date below.

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Dated: