

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

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**PLAINTIFFS' MOTION FOR LEAVE  
TO FILE THIRD AMENDED COMPLAINT AND  
CERTIFICATE OF COMPLIANCE WITH N.D. FLA. LOC. R. 7.1 (B)**

Plaintiffs THEODORA BRYANT, MARY L. WALKER, EARNEST JACK WELCH, and BARBARA JEAN SLOCUM, individually and on behalf of all others similarly situated (collectively referred to as "Plaintiffs"), hereby move for leave to file a Third Amended Complaint pursuant to Rule 15(a), (c), and (d) Fed.R.Civ.P. and state:

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF FLA.  
TALLAHASSEE, FLA.

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1. This action was originally filed by Plaintiffs Theodora Bryant, Mary L. Walker, and Earnest Jack Welch, individually and on behalf of all others similarly situated on October 20, 1998, alleging state law claims against Defendant, Law Offices of David J. Stern, P.A.

2. The Complaint was subsequently amended on June 24, 1999, and October 5, 1999. The Second Amended Complaint (filed on October 5, 1999) asserted state law claims on behalf of Theodora Bryant, Mary L. Walker, Earnest Jack Welch, Barbara Jean Slocum, and all others similarly situated. The Second Amended Complaint also alleged violations of the federal Fair Debt Collections Practices Act ("FDCPA") on behalf of Earnest Jack Welch, Barbara Jean Slocum, and all others similarly situated.

3. Substantial discovery has been completed. The Third Amended Complaint (attached hereto as Attachment "1") contains allegations which conform to the evidence developed during discovery.

4. Two named Plaintiffs, Theodora Bryant and Mary L. Walker were inadvertently omitted from Count II which asserted violations of the FDCPA. These Plaintiffs were members of the purported class upon which the FDCPA claim was brought. The Third Amended Complaint filed with this motion seeks to correct this oversight by including all named Plaintiffs in the FDCPA claim.

5. No new parties or causes of action are added.

6. The Third Amended Complaint, in essence, adds no new causes of action for two of the already named Plaintiffs. Plaintiffs Bryant and Walker have already asserted claims against Defendants for violations of the Florida Consumer Collection Practices Act (“FCCPA”) and are members of the class as to the FDCPA claims. They now seek simply to assert claims against defendants for violations of the federal counterpart of the FCCPA, the Fair Debt Collection Practices Act (“FDCPA”). The same conduct of Defendants supports both counts.

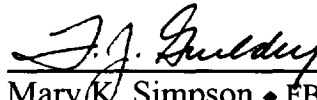
7. The Third Amended Complaint in no way prejudices the Defendants. Defendants were aware of Bryant and Walker’s claims as of October 20, 1998, when the original Complaint was filed. Additionally, Defendants are aware of the similarities of the FCCPA and the FDCPA such that a violation of the FCCPA is a simultaneous violation of the FDCPA.

8. Discovery is continuing in this case and Plaintiffs will work to provide any additional information Defendants need with respect to the Bryant and Walker federal law claims.

9. Counsel for Plaintiffs certifies that it has conferred with counsel for Defendants in a good faith effort to resolve this Motion. Defendants’ attorneys have indicated that they would like the opportunity to review and consider the proposed Third Amended Complaint before taking a position on whether or not they will consent to the amendment.

WHEREFORE the named Plaintiffs respectfully request this Court for leave to file a Third Amended Complaint, as it is attached to this motion, and that the Complaint be deemed filed as of the date of an order on this motion.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **W. WYNDHAM GEYER, JR., ESQUIRE, and STEVEN R. BRATEN, ESQUIRE**, Ruden, McClosky, Smith, Schuster & Russell, P.A., Post Office Box 1900, Fort Lauderdale, FL 33302; **DAVID M. SCHULTZ, ESQUIRE**, Hinshaw & Culbertson, 222 North La Salle Street, Suite 300, Chicago, IL 60601-1081; and **SCOTT A. FRICK, ESQUIRE**, Hinshaw & Culbertson, First Union Center, Suite 830, 100 South Ashley Drive, Suite 830, Tampa, FL 33602; by regular United States Mail this 31<sup>st</sup> day of January, 2000.



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Mary K. Simpson ♦ FBN 516848  
Thomas J. Guilday ♦ FBN 0180872  
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

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**PLAINTIFFS' THIRD AMENDED CLASS ACTION  
COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, THEODORA BRYANT, MARY L. WALKER, EARNEST JACK  
WELCH and BARBARA JEAN SLOCUM, individually and on behalf of all others  
similarly situated (collectively referred to as "Plaintiffs"), sue the Defendants, LAW  
OFFICES OF DAVID J. STERN, P.A. (hereinafter "the Law Firm") and DAVID J.  
STERN (hereinafter "Stern"), and allege:

### **JURISDICTION AND VENUE**

1. This action arises under the Fair Debt Collection Practices Act 15 U.S.C. § 1692 (1998) ("15 U.S.C. § 1692") as hereinafter more fully appears. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 1441(c) (1993).

2. Venue is proper in the Northern District of Florida because the acts, conduct and transactions complained of, occurred in the Northern District of Florida. The Law Firm and Stern transmitted correspondence and documents which are the subject of this action to the named Plaintiffs who all reside in the Northern District of Florida and the Law Firm and Stern filed foreclosure actions against the named Plaintiffs and sought to collect costs and fees to which they were not entitled in violation of 15 U.S.C. § 1692 (1998), *et seq.* and section 559, *et seq.*, *Florida Statutes (1999)*, in the Northern District of Florida.

### **PARTIES**

3. The named Plaintiffs, THEODORA BRYANT, MARY L. WALKER, EARNEST JACK WELCH and BARBARA JEAN SLOCUM all had residential mortgages which were referred to the Law Firm and Stern for collection and foreclosure proceedings. The named Plaintiffs and members of the putative class are consumers as that term is defined in 15 U.S.C. § 1692a(3) (1998) and section 559.55(2), *Florida Statutes (1999)*.

4. The Law Firm is a Florida corporation and operates business in the state of Florida as a law firm. The Law Firm's primary business is collecting consumer debts on behalf of residential mortgage lenders through collection and foreclosure actions which are filed and processed throughout the State of Florida.

5. Stern is the sole shareholder, director and officer of the Law Firm. He makes all decisions regarding debt collection procedures and policies for the Law Firm. He is aware, or should be aware, of all actions of the Law Firm which are referred to in this complaint and on behalf of the Law Firm. He authorizes and/or approves all communications and pleading forms that are utilized by the Law Firm in prosecuting foreclosure actions and collecting consumer debts.

6. The Law Firm and Stern are "debt collectors" as that term is defined in 15 U.S.C. § 1692a(6) (1998) and section 559.55(b), *Florida Statutes (1999)*.

7. The Law Firm was retained by various mortgage lenders or their servicing organizations to prosecute collection and mortgage foreclosure proceedings against the named Plaintiffs, as well as all members of the putative class. The Law Firm and Stern's agreements with such mortgage lenders or their servicing organizations – and pursuant to guidelines and policies of the lenders and their investors, insurers, and guarantors – provide that the Law Firm and Stern will comply at all times with 15 U.S.C. § 1692 (1998), *et seq.*, the federal "Fair Debt Collection

Practices Act” and with any state statutes or regulations applicable to foreclosure or eviction actions.

8. The Law Firm and Stern used the mails both in interstate and intrastate commerce for a business the principal purpose of which is the collection of debts and both Defendants regularly collect or attempt to collect debts owed or asserted to be owed or due another.

### **CLASS ACTION ALLEGATIONS**

9. Plaintiffs bring this action on their own behalf and as a class action pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3), on behalf of all persons in the state of Florida from whom the Law Firm and Stern have claimed, attempted or threatened to collect consumer debts, and in some cases did collect, attorney fee charges, costs, and expenses in connection with: (1) reinstatement or a request for reinstatement of a residential mortgage which the Law Firm and Stern were retained to collect or to pursue a foreclosure action; (2) payoff or request for payoff of a mortgage which the Law Firm and Stern were retained to pursue a foreclosure action; or (3) residential foreclosure actions which were filed by the Law Firm. All of these activities by the Defendants were taken to collect a "consumer debt," as that term is defined in section 559.55(1), *Florida Statutes (1999)* and 15 U.S.C. § 1692a(5).

10. For purposes of Count I which is brought pursuant to 15 U.S.C. § 1692, *et seq.*, the class of persons for whose behalf this action is brought includes all

persons described in paragraph 9 above from whom Defendants collected or attempted to collect debts as described herein during the period of one year prior to October 20, 1998 to the present. For purposes of Count II which is brought pursuant to section 559, *Florida Statutes (1999)*, the class of persons for whose behalf this action is brought includes all persons described in paragraph 9 above from whom Defendants collected or attempted to collect debts as described herein during the period October 20, 1994 to the present.

11. The persons from whom the Law Firm and Stern have claimed, attempted or threatened to collect fees and costs in excess of the amount allowed by law and/or in violation of the statutes cited herein constitute a class so numerous that joinder of all members is impractical. It is estimated, based on the testimony of Stern and his employees about the number of foreclosure proceedings handled by the Defendants and the standard practices utilized therein, that the number of class members is in excess of 10,000 persons.

12. The named Plaintiffs' claims are typical of the claims of the putative class, as Plaintiffs and all members of the class were subject to the same acts, as more specifically detailed and described below, by the Defendants. Each of the class members, in violation of both federal and state law, received reinstatement letters, and/or were sued in foreclosure proceedings, for attorneys' fees, charges, and costs, which were in excess of the amounts allowed by law, were not incurred by the

creditor and/or for which Defendants knew or had reason to know said fees and costs were not legitimate. The Defendants' acts were the same or similar with regard to all members of the putative class.

13. The named Plaintiffs' claims arise from the same event or practice or course of conduct by the Defendants which give rise to the claims of the absent class members, and their claims are based on the same legal theories as those of the putative class. In addition to the reasons enumerated above, the named Plaintiffs' claims are typical of the claims of the class inasmuch as they were borrowers in default on residential mortgages from whom Defendants claimed, threatened, and attempted to collect or collected costs, attorneys' fees and other amounts which were unlawful or not legitimate. The foreclosure proceedings and collection procedures utilized by the Defendants were standard procedures used in all of their foreclosure and collection proceedings. These common practices and procedures included:

A. Title Services:

(1) Charging mortgagor/borrowers \$400 for title services, broken down by \$175 title search, \$150 title exam, and \$75 title update, when the actual out-of-pocket amount incurred by Defendants was much less or non-existent.

(2) Filing false and fraudulent Affidavits of Cost with the court which attested and averred that the sum of \$325 had been expended by

Defendants for “abstracting” when, in fact, the amount expended by Defendants was less than \$325.

(3) Supporting the alleged costs for title services by providing false and fraudulent Professional Title invoices to mortgagors, mortgagors’ attorneys and the court.

B. Postage/copies/faxes:

(1) Seeking \$60 from mortgagors for copies, faxes, etc. in reinstatement and payoff letters. Defendants’ agreements with its client/lenders provided that expenses for copies, faxes were either not authorized or were included as part of the attorneys’ fee. Defendants did not seek these amounts in seeking and obtaining the final judgments with the courts. The \$60 charge bears no relation to the amount actually incurred by Defendants for copies, faxes, etc.

C. Attorney fees:

(1) Seeking attorney fees in connection with a reinstatement letter or payoff letter which exceeded the amount actually expended by Defendants in the representation of the client/lender in the case or incurred by such lender.

(2) Claiming attorney fees which exceeded the amount agreed to be paid by the client/lender to Defendants.

(3) Seeking attorney fees after a summary judgment had been granted which were in excess of the amount awarded by the court.

(4) Seeking attorney fees and costs which were not authorized under Florida law.

14. The named Plaintiffs will fairly and adequately protect the interests of the absent members of the putative class. Plaintiffs' counsel are competent and experienced in class action litigation, and have successfully prosecuted and/or defended class actions throughout the United States and in the state of Florida, and will prosecute this action vigorously. The named Plaintiffs do not have any interests which are antagonistic to, or in conflict with, members of the putative class.

15. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy, since the plaintiff class is so numerous that joinder of all members is impracticable. Moreover, as the damages suffered by each individual member of the plaintiff class may be relatively small, the expense and burden of individual litigation makes it impossible for the members of the plaintiff class individually to address the wrongs done to them. There will be no difficulty in the management of this action as a class action.

16. Common questions of law and fact exist as to all members of the plaintiff class, and predominate over any questions affecting solely individual members of the plaintiff class. Among the questions of law and fact common to the plaintiff class are:

A. Whether Defendants utilized false, deceptive or misleading representations in the collection of any debts in violation of 15 U.S.C. § 1692e, and unfair and unconscionable means to collect or attempt collection of debts in violation of 15 U.S.C. § 1692f. Defendants engaged in a consistent pattern of making false representations as to the character, status, and amount of the debt, the services it performed and costs which it incurred. Additionally, Defendants engaged in a consistent pattern of threatening, and attempting to collect amounts which were not authorized by their agreements with their clients or permitted by law. These actions occurred pursuant to consistent and routine practices of the Defendants.

B. Whether the Law Firm and Stern have threatened to collect, attempted to collect or have collected amounts from the Plaintiffs and class when Defendants knew that the debts were not legitimate or involved the assertion of purported legal rights which the Defendants knew did not exist, contrary to the provisions of section 559.72(9), *Florida Statutes (1999)*. Although Defendants were legally authorized to collect debts only as permitted by agreements with the mortgage lender retaining them, and to the extent permitted by law, Defendants have on a consistent and routine basis claimed, attempted or threatened to collect and collected debts from Plaintiffs and the class which were either not authorized or permitted by their agreements with their clients and/or were violative of controlling provisions of Florida law.

C. Whether the following practices of the Defendants violated sections 559.72(9), *Florida Statutes (1999)*, and 15 U.S.C. §§ 1692e and 1692f:

(1) Transmitting reinstatement communications to borrowers prior to or associated with mortgage foreclosure proceedings which claimed, attempted or threatened to collect or, in some cases, collected

a. charges for postage, copies, and faxes which had not been actually incurred by the Defendants or their clients, were not authorized by Defendants' client/lenders and/or were not authorized by law;

b. charges for title search, title examination and title updates which had not been incurred by the Defendants or their clients, were not out-of-pocket costs payable to third parties were supported by false and fraudulent invoices and were not allowable by agreement with the client/lender or by law;

c. charges for attorneys' fees for services which had not been performed or incurred, were not authorized or incurred by Defendants' client/lenders and/or were in excess of that permitted by Florida law.

(2) Transmitting to borrowers and filing with the court pleadings and affidavits which claimed, attempted or threatened to collect or collected:

a. charges for abstracting or title search and examination and updates which had not been incurred, were supported by false and

fraudulent invoices, were not authorized and/or incurred by Defendants' client/lenders and/or were not authorized by Florida law;

b. charges for attorneys' fees and/or costs which were in excess of amount which had been agreed to with Defendants' client/lenders and/or were in excess of amounts permitted by Florida law;

c. charges for attorneys' fees which had not been actually incurred by the Defendants' clients and/or lenders.

(3) Subsequent to or in connection with obtaining judgments of foreclosure, transmitting to borrowers reinstatement or payoff amounts which claimed, attempted or threatened to collect, or collected:

a. charges for title search, examination and updates which had not been incurred, were not out-of-pocket costs payable to third parties were supported by false and fraudulent invoices and were not incurred or allowable by agreement with the client/lender or by Florida law;

b. charges for amounts for fees and/or expenses which had not and were not submitted to or approved by the court;

c. charges for postage, copies, faxes which had not been incurred, were not authorized or incurred by client/lenders and were not authorized by Florida law;

d. charges for attorneys' fees for services which had not been performed or incurred, were not authorized or incurred by client/lenders and were in excess of that permitted by Florida law.

D. Whether in furtherance of the above-referenced practices, Defendants generated and used false invoices which represented that amounts had been paid to a third party, Professional Title and Abstract, Inc., as legitimate third-party "costs" when this had not in fact occurred. Professional Title is a Florida corporation which was organized and incorporated by Stern. Stern is the sole shareholder, officer and director. The invoices of Professional Title disclosed that the address is the same as the Law Firm and that its telephone number is the same as the Law Firm. Professional Title had no employees and had conducted no operations from January 1996 through 1999. Stern instructed his employees to provide false invoices on Professional Title letterhead for abstracting costs to its clients, mortgagors and their attorneys and the court, if there was a request for invoices related to abstracting. In reality, Professional Title provided no abstracting, title search or title examination services to the Law Firm and no money changed hands between the Law Firm and Professional Title. The purpose of these invoices was to deceive clients, mortgagors and their attorneys and the court as to the false amounts which the Law Firm and Stern were attempting to collect or collect in the foreclosure proceeding.

17. As set forth above, the Law Firm's and Stern's actions are generally applicable to all members of the class. Common questions of law and fact predominate over any questions affecting only individual members of the class. A class action is superior to other available methods for the efficient adjudication of this controversy. Accordingly, this action is maintainable pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3).

### **FACTUAL BACKGROUND**

18. The following operative facts are relative to the individual named Plaintiffs, and the same or similar procedures were used by the Defendants with regard to all members of the putative class.

### **FACTS RELATIVE TO PLAINTIFF THEODORA BRYANT**

19. On or about August 22, 1997, the Law Firm and Stern, as attorney for First Nationwide and Northwest Mortgage Service, Inc., and/or the Federal National Mortgage Association ("FNMA"), filed a foreclosure action against Viola M. Woody seeking to foreclose her homestead in Leon County Circuit Court, Case Number 97-4725. Viola Woody died on March 13, 1997. Plaintiff Theodora Bryant is Viola Woody's granddaughter. Plaintiff Theodora Bryant inherited the homestead of Viola Woody which the Law Firm and Stern sought to foreclose. Plaintiff Theodora Bryant took title to the home on January 20, 1998 through a judicial proceeding determining

the homestead of Viola M. Woody, deceased. Plaintiff Theodora Bryant lived in the home and used it for her personal use.

20. The obligation for which foreclosure proceedings were brought against Plaintiff Theodora Bryant and amounts threatened, attempted to collect or collected by Defendants were a "consumer debt" within the meaning of section 15 U.S.C. § 1692a(4) and section 559.55(1), *Florida Statutes*.

21. During the foreclosure action, the Law Firm and Stern claimed, threatened, attempted to collect or collected a debt which was not legitimate or asserted the existence of some other legal right with knowledge that the right did not exist, in violation of section 559.72(9), *Florida Statutes*.

22. During the collection and foreclosure action, the Law Firm and Stern (1) used false representations or deceptive means to collect the debt in violation of 15 U.S.C. § 1692e(10), and (2) used unfair and unconscionable means to collect the debt in violation of 15 U.S.C. § 1692f.

23. Specifically, the Law Firm and Stern violated the above-referenced statutes by acts including but not limited to the following:

A. On or about January 9, 1998, Defendants attempted to collect amounts for reinstatement of the mortgage which represented that they incurred total title abstracting costs of \$400 (see the correspondence of the Law Firm dated January 9, 1998 attached as Exhibit "A"). These amounts were neither incurred nor were they

amounts paid to third parties as costs. The Law Firm and Stern submitted the Professional Title invoice attached as Exhibit "B" to substantiate the alleged payment or incurrence of "title search/exam" costs to Plaintiff's legal counsel. These invoices were false and fraudulent. The actual out-of-pocket cost to the Law Firm and Stern was \$110.

B. On or about January 9, 1998, Defendants attempted to collect attorneys' fees in connection with reinstatement of the mortgage which were in excess of the amounts incurred, were in excess of the amount Defendants had agreed to with its lender clients and were in excess of amounts permitted by Florida law.

C. On or about January 9, 1998, Defendants attempted to collect charges for postage, copies, faxes which had not been incurred, were in excess of amounts agreed to with its client lender and/or were not permitted by Florida law.

D. On or about February 8, 1998, Defendants filed with the court and transmitted to Plaintiff affidavits in order to collect or attempt to collect attorneys' fees for services which had not been performed, were in excess of amounts which had been agreed to with its clients and were in excess of that permitted by Florida law.

E. On or about February 8, 1998, Defendants filed with the court and transmitted to Plaintiff an affidavit which attempted to collect amounts for costs in connection with abstracting which had not been incurred, were not authorized by

agreements with its clients, were not actual out-of-pocket third-party costs and were not authorized by Florida law.

F. On or about February 25, 1998, Defendants attempted to collect or collected amounts for title search and examinations which was improper on the same grounds previously stated.

G. On several occasions, amounts were sought from Plaintiff for "title update" or "gap search" which were not incurred, had not been agreed to with clients and were not permitted by Florida law.

24. As a result of these wrongful acts of Defendants, Plaintiff was unable to reinstate or pay off her mortgage thereby incurring additional charges for attorneys' fees and costs. Plaintiff ultimately paid off the mortgage paying excessive amounts for attorneys' fees, title search and examination and other costs which were not incurred, were in excess of amounts agreed to by lender clients and the Defendants and were not authorized by Florida law thereby suffering significant damage.

**FACTS RELATIVE TO PLAINTIFF MARY L. WALKER**

25. On or about October 3, 1997, the Law Firm and Stern, as attorney for the lender, Colonial Mortgage Company and/or FNMA, filed a foreclosure action against Plaintiff Mary L. Walker in Leon County Circuit Court, Case Number 97-5700.

26. The obligations for which foreclosure proceedings were brought against Plaintiff Mary L. Walker and amounts which were threatened, attempted to collect or collected by Defendants were “consumer debts” within the meaning of 15 U.S.C. § 1692a(4) and section 559.55(1), *Florida Statutes*.

27. During the foreclosure action, the Law Firm and Stern claimed, threatened, or attempted to collect or collected debts which were not legitimate or asserted the existence of some other legal right with knowledge that the right did not exist, in violation of section 559.72(9), *Florida Statutes*.

28. During the collection and foreclosure action, the Law Firm and Stern (1) used false representations or deceptive means to collect the debt in violation of 15 U.S.C. § 1692e(10), and (2) used unfair and unconscionable means to collect the debt in violation of 15 U.S.C. § 1692f.

29. The amounts which the Law Firm and Stern claimed, threatened, attempted, or collected attorneys’ fees and costs which were in excess of the amount allowed by law, were not incurred, were not paid to third parties or were not permitted by Florida law. Specifically, Defendants threatened, attempted to collect or collected the following amounts as debts:

A. On October 14, 1997, shortly after the mortgage foreclosure complaint was filed, Plaintiff requested the amount necessary to reinstate the mortgage from Defendant. On November 11, 1997, Defendant responded to the

request for reinstatement by providing the amount necessary to reinstate. (Defendants' response is attached hereto as Exhibit C.) This response constituted a threat, attempt to collect or collection of amounts as debts which were not legitimate or authorized by Florida law because:

(1) It sought payment of an amount for postage, copies and faxes which had not been incurred, was not authorized or paid by Defendants' client/lender and was not authorized by Florida law.

(2) It sought payment of amounts for title search/exam and title update which had not been incurred, had not been paid to third parties, were not authorized by its agreement with its client and were not authorized by Florida law.

(3) It sought payment of an amount for attorneys' fees which had not been incurred or performed, was in excess of amounts allowed by its lender/client and was in excess of amounts authorized by Florida law.

B. On or about February 16, 1998, Defendant filed an affidavit in support of an attorneys' fee award which claimed attorneys fees which were in excess of the amount provided in its agreement with its client/lender and was not authorized under controlling precepts of Florida law.

C. On or about February 17, 1998, Defendant filed an affidavit seeking an award of "costs" which had not been incurred, had not been paid to a third party and were not authorized by Florida law.

30. As a result of these wrongful acts, Plaintiff was unable to reinstate or pay off her mortgage. As a consequence, Plaintiff filed for bankruptcy protection thereby incurring further fees and costs. Plaintiff ultimately paid the excessive fees and costs sought by Defendants.

**FACTS RELATIVE TO  
PLAINTIFF EARNEST JACK WELCH**

31. On or about April 8, 1998, the Law Firm and Stern, as attorney for Countrywide Homes Loans, Inc. and/or FNMA, filed a foreclosure action against Plaintiff Earnest Jack Welch in Leon County Circuit Court, Case Number 98-1896.

32. The obligation for which foreclosure proceedings were brought against Plaintiff Welch and amounts threatened, attempted to collect or collected by Defendants were "consumer debts" within the meaning of 15 U.S.C. § 1692a(5) and section 559.55(1), *Florida Statutes (1999)*.

33. During the foreclosure action, the Law Firm and Stern claimed, threatened, or attempted to collect debts which were not legitimate or asserted the existence of a legal right with knowledge that the right did not exist, in violation of section 559.72(9), *Florida Statutes*.

34. During the collection and foreclosure action, the Law Firm and Stern (1) used false representations or deceptive means to collect the debt in violation of

15 U.S.C. § 1692e(10), and (2) used unfair and unconscionable means to collect the debt in violation of 15 U.S.C. § 1692f.

35. The Law Firm and Stern claimed, threatened, or attempted to collect amounts as costs and attorney fees which were not incurred, were not authorized pursuant to agreements with its client/lender or were in excess of the amount allowed by Florida law. Specifically, Defendants claimed, threatened or attempted to collect the following amounts from Plaintiff Welch:

A. Immediately after the filing of the foreclosure complaint, Plaintiff requested that Defendants provide an amount to pay for reinstatement of the mortgage. Defendant provided a reinstatement amount on April 20, 1998. This response constituted a threat, attempt to collect or collection of amounts which were not legitimate or authorized by Florida law (a copy is attached as Exhibit "D") because:

(1) It sought payment of an amount for postage, copies and faxes which had not been incurred, was not authorized or paid by its client/lender and was not authorized by Florida law.

(2) It sought payment of amounts for title search/exam and title update which had not been incurred, had not been paid to third parties, were not authorized by its agreement with its client/lender and were not authorized by Florida law.

(3) It sought payment of an amount for attorneys' fees which had not been incurred or performed, was in excess of amounts allowed by its client/lender and was in excess of the amount authorized by Florida law.

B. On or about June 15, 1998, Defendants filed an affidavit in support of an attorneys' fee award claiming attorneys' fees which were in excess of the amount provided in its agreement with its client/lender and was not authorized under controlling precepts of Florida law. The court refused to award the fees sought because they were in excess of Defendants' agreement with its client.

C. On or about June 15, 1998, Defendant filed an affidavit seeking an award of "costs" which had not been incurred, had not been paid to a third party and were not authorized by Florida law.

D. In August 1998, Plaintiff Welch again sought an amount to reinstate his mortgage obligation. On September 3, 1998, Defendant provided to Plaintiff the amounts which must be paid to reinstate his mortgage. This response constituted a threat, attempt to collect or collection of amounts which were not legitimate or authorized by law (a copy is attached as Exhibit "E") because:

(1) It sought payment of an amount for postage, copies and faxes which had not been incurred, was not authorized or paid by its client/lender and was not authorized by Florida law.

(2) It sought payment of amounts for title search/exam and title update which had not been incurred, had not been paid to third parties, was not authorized by its agreement with its client/lender and was not authorized by Florida law.

(3) It sought payment of an amount for attorneys' fees which had not been incurred or performed, was in excess of amounts allowed by its client/lender and was in excess of amounts authorized by Florida law.

36. As a result of the wrongful acts, Plaintiff was unable to reinstate or pay off his mortgage and therefore lost his residence by foreclosure sale.

**FACTS RELATIVE TO PLAINTIFF,  
BARBARA JEAN SLOCUM**

37. On or about July 16, 1998, the Law Firm and Stern, as attorney for Mellon Mortgage Company and/or FNMA, filed a foreclosure action against Plaintiff Barbara Jean Slocum in Leon County Circuit Court, Case Number 98-3952.

38. The obligation for which foreclosure proceedings were brought against Plaintiff Slocum and amounts threatened, attempted to collect or collected by Defendants were "consumer debts" within the meaning of 15 U.S.C. § 1692a(5) and section 559.55(1), *Florida Statutes*.

39. During the foreclosure action, the Law Firm and Stern claimed, threatened, attempted, to collect or collected debts which were not legitimate or

asserted the existence of some legal rights with knowledge that the right did not exist, in violation of section 559.72(9), *Florida Statutes*.

40. During the collection and foreclosure action, the Law Firm and Stern (1) used false representations or deceptive means to collect the debt in violation of 15 U.S.C. § 1692e(10), and (2) used unfair and unconscionable means to collect the debt in violation of 15 U.S.C. § 1692f.

41. The Law Firm and Stern claimed, threatened, attempted to collect or collected amounts as costs and attorneys' fees which were not incurred, were not authorized pursuant to agreements with its client or in excess of the amount allowed by Florida law. Specifically, Defendants threatened, attempted to collect or collected the following amounts as debts:

A. Prior to filing the foreclosure complaint, Defendant responded to a request from Plaintiff Slocum as to the amount necessary to reinstate the mortgage. Defendant provided a reinstatement letter to Plaintiff Slocum on July 15, 1998. This response constituted a threat, attempt to collect or collection of amounts and debts which were not legitimate or authorized by Florida law (a copy is attached as Exhibit "F") because:

(1) It sought payment of an amount for postage, copies and faxes which had not been incurred, was not authorized or paid by its client/lender and was not authorized by Florida law.

(2) It sought payment of amounts for title search/exam and title update which had not been incurred, had not been paid to third parties, were not authorized by its agreement with its client/lender and were not authorized by Florida law.

(3) It sought payment of an amount for attorneys' fees which had not been incurred or performed, was in excess of amounts allowed by its client/lender and was in excess of amounts authorized by Florida law.

B. On or about October 1, 1998, Defendant filed an affidavit in support of an attorneys' fee award claiming attorney fees which were in excess of the amount provided in its agreement with its client/lender and was not authorized under controlling precepts of Florida law.

C. On or about October 1, 1998, Defendant filed an affidavit of "costs" which had not been incurred, had not been paid to a third party and were not authorized by Florida law.

42. On or about October 7, 1998, Defendant provided a reinstatement amount to Plaintiff. This response constituted a threat, attempt to collect or collection of amounts as debts which were not legitimate or authorized by law because (a copy is attached as Exhibit "G"):

A. It sought payment of an amount for postage, copies and faxes which had not been incurred, was not authorized or paid by its client/lender and was not authorized by Florida law.

B. It sought payment of amounts for title search/exam and title update which had not been incurred, had not been paid to third parties, was not authorized by its agreement with its client/lender and was not authorized by Florida law.

C. It sought payment of an amount for attorneys' fees which had not been incurred or performed, was in excess of amounts allowed by its client/lender and was in excess of amounts authorized by Florida law.

43. On or about October 26, 1998, Plaintiff paid the amounts requested by Defendants thereby obtaining entitlement to reinstatement of her mortgage. As a result of this payment of amounts which had been improperly charged by Defendants, Plaintiff has suffered actual damages in the amount of the excess payments paid to Defendants.

**FACTS RELATIVE TO THE CLASS AS A WHOLE**

44. In addition to the activities described above, which the Defendants have admitted were standard with regard to all residential foreclosure proceedings instituted by the Defendants, it was the standard practice of the Law Firm and Stern

in transmitting reinstatement communications and in seeking to collect costs and attorneys' fees in residential foreclosure proceedings, to engage in the following acts:

A. Mortgagors were charged a flat charge, as an item of costs, for copies, postage, telephone, and federal express, when the Law Firm and Stern had not actually incurred these charges as expenses.

B. Mortgagors were charged a fee of \$75 for title updates for gap searches as an item of cost, when the Law Firm and Stern had not actually paid or incurred an obligation to pay a third party for this charge.

C. Mortgagors were charged a fee of \$175 as an item of cost for performing a title search when the Law Firm and Stern had only paid or obligated themselves to pay amounts ranging between \$45 and \$110 for this item.

D. Mortgagors were charged a fee of \$150 as a cost for performing a title examination, when the Law Firm and Stern had not paid or obligated themselves to pay any amount to a third party for this charge.

E. Mortgagors were provided false and fraudulent invoices on the letterhead of Professional Title and Abstract, Inc.

F. Mortgagors were charged attorneys' fees which were in excess of the amounts which the mortgagors were obligated to pay to the lender under the terms of the note and mortgage, and pursuant to substantive law.

G. Mortgagors were charged as an item of cost for the amounts described in paragraphs A through D above, which were in excess of the amounts the mortgagors were obligated to pay the lender under the terms of the note and mortgage, and pursuant to substantive law.

H. Mortgagors were charged attorneys' fees for services on reinstatement communications which were in excess of the actual services performed.

I. Mortgagors were charged amounts for attorneys' fees and costs which were in excess of the amounts which the lenders were obligated to pay to the Law Firm and Stern. Under the terms of the notes and mortgages, the borrowers were only obligated for the reasonable amount actually incurred by the lenders, and not the amounts charged by the Law Firm and Stern.

45. The activities described in paragraph 44 above constitute the use of false representations or deceptive means to collect or attempt to collect a debt.

46. The activities described above constitute the use of unfair and unconscionable means to collect or attempt to collect a debt.

47. The activities described above constitute a claim, attempt or threat to enforce a debt which the Defendants knew was not legitimate.

48. The activities described above constitute a claim, attempt or threat to enforce the existence of a legal right when the Defendants knew such a right did not exist.

**COUNT I**

**Violation of 15 U.S.C. § 1692a-o (1998) by the Law Firm and Stern**

49. Plaintiffs incorporate by reference and repeat the allegations in paragraphs 1 through 48, as if fully set forth herein.

50. The obligation for which reinstatement letters were sent to the named Plaintiffs and the putative class constitute a “debt” within the meaning of 15 U.S.C. § 1692a(5).

51. The obligation for which foreclosure proceedings as described above were brought against the named Plaintiffs and the putative class members constitute a “consumer debt” within the meaning of 15 U.S.C. § 1692(a)(5).

52. The Law Firm and Stern are “debt collectors” as that term is defined in 15 U.S.C. § 1692a(6).

53. The named Plaintiffs and members of the putative class are consumers as that term is defined in 15 U.S.C. § 1692a(3).

54. The Law Firm and Stern used the mails both in interstate and intrastate commerce for a business the principal purpose of which is the collection of debts and both regularly collect or attempt to collect debts owed or due or asserted to be owed or due another for a profit.

55. The practices of Defendants as alleged in paragraphs 13, 16, and 18-44 above, violate 15 U.S.C. § 1692e and 15 U.S.C. § 1692f and caused damage to the named Plaintiffs and to the class.

56. As appropriate, Plaintiffs seek recovery on their own behalf and on behalf of the class of damages as permitted pursuant to 15 U.S.C. § 1692k.

57. Plaintiffs have retained the undersigned attorneys and are obligated to pay them a reasonable fee for their services. Plaintiffs seek on their own behalf and on behalf of the class an award of attorneys' fees pursuant to 15 U.S.C. § 1692k.

58. Plaintiffs demand trial by jury as to all claims so triable.

WHEREFORE, Plaintiffs demand the following relief:

A. That the Court certify this matter as a class action pursuant to the provisions of Fed.R.Civ.P. 23.

B. That Plaintiffs and the class be awarded damages as set forth in 15 U.S.C. § 1692k.

C. That Plaintiffs and the class be awarded reasonable attorneys' fees.

D. That Plaintiffs and the class be awarded costs and such further relief as this Court deems just and proper.

**COUNT II**  
**Violation of section 559.77, *Florida Statutes (1999)***  
**by the Law Firm and Stern**

59. Plaintiffs incorporate paragraphs 1 through 48 above as if fully set forth herein.

60. The obligations for which reinstatement letters were sent to the named Plaintiffs in the putative class constitute a “consumer debt” within the meaning of section 559.55(1), *Florida Statutes (1999)*.

61. The obligations for which foreclosure proceedings were brought against the named Plaintiffs and the putative class members constitute a “consumer debt” within the meaning of section 559.55(1), *Florida Statutes (1999)*.

62. The Law Firm and Stern are “debt collectors” as that term is defined in section 559.55(6), *Florida Statutes (1999)*.

63. The named Plaintiffs and members of the class are “consumers” within the meaning of section 559.55(2), *Florida Statutes*.

64. During the reinstatement proceedings and foreclosure actions, the Defendants claimed, threatened, attempted to collect or collected a debt which was not legitimate or asserted the existence of some other legal right with knowledge that the right did not exist, in violation of section 559.72(9), *Florida Statutes (1999)*, thereby causing damage to the named Plaintiffs and to the class.

65. As appropriate, Plaintiffs seek on their own behalf, and on behalf of the putative class members, actual damages or a statutory award in the amount of \$500, whichever is greater, for each statutory violation pursuant to section 559.77, *Florida Statutes (1999)*.

66. The actions of the Defendants in claiming, threatening, attempting to collect, and collecting amounts as costs and attorneys' fees from Plaintiffs and the class they represent as previously described were intentional and fraudulent, and were willful, wanton, and committed with reckless disregard for the rights of Plaintiffs and the class they represent. It was the regular and routine practice of the Law Firm and Stern to collect excessive and unlawful costs and attorneys' fees prior to and in connection with foreclosure proceedings through transmitted deceptive and fraudulent responses to requests for reinstatement, in filing fraudulent responses to requests for reinstatement, in filing fraudulent affidavits in the courts of this state, and by substantiating certain of these costs using fraudulent invoices from a corporation set up by Stern which has no existence other than to perpetuate the fraudulent scheme on the court and members of the class. The Plaintiffs and the putative class members demand punitive damages from the Defendants in an amount sufficient to punish them for their actions and deter further misconduct.

67. Plaintiffs have retained the undersigned attorneys and are obligated to pay them a reasonable fee for their services. Plaintiffs seek an award of reasonable attorneys' fees pursuant to section 559.77, *Florida Statutes (1999)*.

68. Plaintiffs demand trial by jury as to all claims so triable.

WHEREFORE, Plaintiffs demand the following relief:

A. That the Court certify this matter as a class action pursuant to the provisions of Fed.R.Civ.P. 23.

B. That Plaintiffs and the class members be awarded damages as set forth in section 559.77, *Florida Statutes (1999)*.

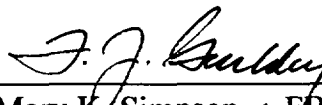
C. That Plaintiffs and the class members be awarded punitive damages.

D. That Plaintiffs and the class members be awarded a reasonable attorneys' fee as set forth in section 559.77, *Florida Statutes (1999)*.

E. That Plaintiffs and the class members be awarded costs and such further relief as this Court deems just and proper.

F. Such injunctive relief as is required to preclude further violations of the act by the Defendants as provided under section 559.77, *Florida Statutes (1999)*.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **W. WYNDHAM GEYER, JR., ESQUIRE, and STEVEN R. BRATEN, ESQUIRE**, Ruden, McClosky, Smith, Schuster & Russell, P.A., Post Office Box 1900, Fort Lauderdale, FL 33302; **DAVID M. SCHULTZ, ESQUIRE**, Hinshaw & Culbertson, 222 North La Salle Street, Suite 300, Chicago, IL 60601-1081; and **SCOTT A. FRICK, ESQUIRE**, Hinshaw & Culbertson, First Union Center, Suite 830, 100 South Ashley Drive, Suite 830, Tampa, FL 33602; by regular U. S. Mail this 31<sup>st</sup> day of January, 2000.



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