

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CHRIS BEITLER, on behalf of himself and
all others similarly situated,

Plaintiff,

CASE NO.:

v.

CREDIT ONE BANK, N.A.,

Defendant.

_____ /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1. COMES NOW the Plaintiff, Chris Beitler, on behalf of himself and all others similarly situated, by and through his undersigned counsel, and alleges Defendant, Credit One Bank, N.A. (“Credit One Bank”), engaged in a uniform pattern and practice, the purpose of which was to collect an unlawful debt in stark violation of the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55 *et seq.* (“FCCPA”).

JURISDICTION AND VENUE

2. Jurisdiction and venue for purposes of this action are appropriate and conferred by 28 U.S.C. §1331 and 28 U.S.C. § 1367.

3. The alleged violations described in the Complaint occurred while Plaintiff was in West Palm Beach, Florida.

PARTIES

4. Plaintiff is a natural person, and citizen of the State of Florida, residing in West Palm Beach, Florida, and is a “consumer” as defined in 15 U.S.C. § 1692(a)(3) and Florida Statute § 559.55(8).

5. Defendant, Credit One Bank, is a corporation which was formed in Nevada with its principal place of business at 585 Pilot Road, Las Vegas, NV 89119, and conducting business in the State of Florida and across the United States.

FACTUAL ALLEGATIONS

6. Plaintiff is an “alleged debtor.”

7. The alleged debt arose out of a credit card transaction with Defendant related to a Credit One Bank credit card account that was primarily used for Mr. Beitler’s personal, family, or household purposes.

8. The Defendant has filed claims and counterclaims to collect debts on behalf of itself.

9. The Defendant regularly files claims and counterclaims to collect debts.

10. The Defendant is in the business of filing claims and counterclaims and collecting debts.

11. The alleged debt that is the subject matter of this complaint is a “consumer debt” as defined by Florida Statute § 559.55(6) as it relates to Plaintiff’s credit card account that was primarily used for Mr. Beitler’s personal, family, or household purposes.

12. On December 29, 2016, Plaintiff filed a lawsuit against Credit One Bank in the Southern District of Florida asserting violations under the TCPA and FCCPA.

13. Nearly one month later, by letter dated January 19, 2017, Plaintiff was notified that his credit card account with Credit One Bank, ending in 0413, with a balance in the amount of \$991.00 was sold on or about January 17, 2017, and all rights thereunder assigned to a new owner, LVNV Funding, LLC. (Attached hereto as Exhibit A)

14. Despite selling and assigning all of their rights to the amounts due on the credit card account, four months later, on May 18, 2017, Credit One Bank filed a Counter-Claim against Plaintiff in AAA Case No. 01-17-0001-4954, in an effort to collect the same \$991.00 alleged debt that was previously sold and assigned to a new owner. (hereinafter referred to as “the Counter-Claim”).

15. The Counter-Claim filed by Credit One Bank seeks to collect an alleged debt when Defendant knew Plaintiff no longer owed any money to Credit One Bank as the debt was previously assigned, sold and Credit One Bank has no further rights to the debt or to enforce the debt.

16. Furthermore, Defendant seeks to collect an alleged debt that Defendant knows is not owed by Plaintiff, as the amount is based on unlawfully incurred fees and interest.

17. Upon information and belief, Defendant routinely files claims and counter-claims similar to that filed against Plaintiff with the sole purpose of harassing alleged debtors like Plaintiff into paying debts they do not owe.

18. Further, the Counter-Claim brought by Defendant subjected Plaintiff to litigation unlawfully and unnecessarily, which caused significant stress, embarrassment, anxiety, and emotional distress.

19. The Counter-Claim was filed as a form of harassment and to leverage a settlement in Plaintiff’s original lawsuit against Credit One Bank.

20. All conditions precedent to bringing this action have been satisfied.

COUNT I
Violation of the FCCPA by Defendant

21. Plaintiff incorporates Paragraphs one (1) through twenty (20).

22. At all times relevant to this action Defendant is subject to and must abide by the law of Florida, including Florida Statute § 559.72.

23. Defendant has violated Florida Statute § 559.72(7) by willfully engaging in conduct which can reasonably be expected to abuse or harass the debtor or any member of his family.

24. Defendant violated Florida Statute § 559.72(9) by attempting to enforce a debt when Defendant knew that the debt is not legitimate or assert the existence of some legal right when Defendant knew that right does not exist.

25. Defendant's actions have directly and proximately resulted in Plaintiff's prior and continuous sustaining of damages as described by Florida Statute §559.77.

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendants for statutory damages, punitive damages, actual damages, costs, interest, attorney fees, enjoinder of future illegal conduct, and any other such relief the court may deem just and proper.

CLASS ALLEGATIONS

26. Plaintiff restates each of the allegations in all other paragraphs as if fully stated herein.

27. Plaintiff, individually and on behalf of all others similarly situated, brings the above claims on behalf of a Class.

28. In this case, Plaintiff seeks to certify classes and sub-classes, subject to amendment, as follows:

29. The Proposed Class consists of:

(1) All persons in the United States (2) against whom the Defendants have filed a claim or counterclaim in any legal proceeding (3) where Defendant Credit One Bank sold and/or assigned its rights to pursue the counterclaim either prior to asserting the counterclaim, or after the counterclaim was asserted and where Defendants continued to pursue the claim after such sale and/or assignment, (4) within 2 years of the date of filing this complaint.

30. Excluded from the Proposed Class are any persons that have already been released as part of a prior release or judgment.

31. Defendant has caused the Class actual harm, not only because the Class was subjected to the aggravation that necessarily accompanies responding to a lawsuit, but also because said class members incur legal fees and costs in defending such claims.

32. Plaintiff seeks to represent and is a member of the Class. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, the Judge to whom this action is assigned, and any member of the Judge's staff and immediate family, and any claims for personal injury, wrongful death and/or emotional distress.

33. Plaintiff is presently unaware of the exact number of members in the Class, but based upon the size and national scope of Defendant's business, Plaintiff reasonably believes that the class members' number at a minimum is in the thousands based upon the number of cases in which Defendants are involved in court and in arbitral proceedings.

34. Plaintiff and all members of the Class have been harmed by Defendant's actions.

35. This Class Action Complaint seeks money damages and injunctive relief.

36. The joinder of all class members is impracticable due to the size and relatively modest value of each individual claim.

37. The disposition of the claims in a class action will provide substantial benefits to both the parties and the Court in avoiding a multiplicity of identical suits, and will avoid conflicting or inconsistent results or judgments with respect to identical transactions, parties and causes of action. The class can be easily identified through records maintained by Defendant.

38. There are questions of law and fact common to the members of the Class, which common questions predominate over any questions that affect only individual class members. Those common questions of law and fact include, but are not limited to:

- a) Whether Defendant engaged in a pattern of pursuing claims after Credit One Bank had sold or assigned their interest in such claims;
- b) Whether Defendant's conduct was knowing, willful, or malicious;
- c) Whether Defendants' actions violated the FCCPA;
- d) Whether injunctive relief is appropriate; and,
- e) The amount of damages to which Plaintiff and the class are entitled.

39. As a person against whom Defendant asserted a claim which had been previously sold and assigned, Plaintiff asserts claims that are typical of the members of the Class.

40. Plaintiff will fairly and adequately represent and protect the interests of the Class, and Plaintiff does not have an interest that is antagonistic to any member of the Class.

41. Plaintiff has retained counsel experienced in handling class action claims involving violations of federal and state consumer protection statutes such as the FDCPA and FCCPA.

42. A class action is the superior method for the fair and efficient adjudication of this controversy.

43. Class-wide relief is essential to compel Defendant to comply with the FDCPA and FCCPA. The interest of class members in individually controlling the prosecution of separate

claims against Defendant is small because the statutory damages in an individual action for violation of these statutes are small relative to the time, effort, and resources necessary to maintain an individual action.

44. Management of these claims is likely to present significantly fewer difficulties than are presented in many class claims because the liability of the Defendant can be readily ascertained from the records in the Defendant's possession.

45. Defendant has acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the class as a whole appropriate.

46. Moreover, Plaintiff alleges that the violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and favor of the Class, and against Defendant for:

- a) A declaration that Defendant's practices described herein violate the FCCPA;
- b) An injunction requiring Defendant not to assert or continue to pursue claims where the right to pursue such claims have been sold and/or assigned;
- c) An injunction requiring Defendant to dismiss all pending claims asserted against any member of the class where the right to pursue such claims have been sold and/or assigned;
- d) An injunction requiring Defendant to file quarterly reports of third party audits with the Court on its system and procedures implemented to avoid asserting claims against any member of the class where the right to pursue such claims have been sold and/or assigned;
- e) An award of actual damages in an amount to be proven at trial;

- f) An award of statutory damages for Plaintiff and each Class member pursuant to the FCCPA in an amount to be determined by the Court;
- g) An order certifying this action to be a proper class action pursuant to Federal Rules of Civil Procedure 23, establishing the appropriate Classes and any Sub-classes the Court deems appropriate, finding that Plaintiff is a proper representative of the Classes, and appointing the lawyers and law firm representing Plaintiff as counsel for the Classes;
- h) Awarding costs of suit and reasonable attorneys' fees; and,
- i) Such further and other relief the Court deems reasonable and just.

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all others similarly situated, demands a trial by jury.

Respectfully submitted,

s/ William Peerce Howard

William "Billy" Peerce Howard, Esquire
Florida Bar No. 0103330
Billy@TheConsumerProtectionFirm.com
THE CONSUMER PROTECTION FIRM, PLLC
210-A South MacDill Avenue
Tampa, FL 33609
Telephone: (813) 500-1500
Facsimile: (813) 435-2369
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Chris Beitler, on behalf of himself and all others similarly situated;

(b) County of Residence of First Listed Plaintiff Palm Beach (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) William "Billy" Peerce Howard, Esq. The Consumer Protection Firm, PLLC 210-A S. MacDill Ave., Tampa, FL 33609 (813) 500-1500

DEFENDANTS

Credit One Bank, N.A.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fla. Stat. § 559.55 et seq.

Brief description of cause: Violations of the FCCPA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD /s/William Peerce Howard, Esq

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

CHRIS BEITLER, on behalf of himself and all others similarly situated

Plaintiff(s)

v.

CREDIT ONE BANK, N.A.

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Credit One Bank, N.A.
c/o Robert DeJong, President/CEO
585 Pilot Road
Las Vegas, NV 89119

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: William "Billy" Peerce Howard, Esq.
210-A South MacDill Avenue
Tampa, FL 33609

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset



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CHRISTOPHER BEITLER
CO ATTY STEFAN ALCAREZ
210A S MACDILL AVE
TAMPA FL 33609-3131

January 19, 2017

RE: NOTICE OF SALE OF YOUR CREDIT CARD ACCOUNT

Dear CHRISTOPHER BEITLER:

Credit One Bank ("Credit One") is notifying you that your credit card account ending in 0413 ("Account") with a balance in the amount of \$991.00 was sold on or about January 17, 2017, and has since been assigned to the new Account owner referenced below. **This letter is not an attempt to collect a debt and is for Account information purposes only.**

LVNV Funding, LLC
P.O. Box 10497
Greenville, SC, 29603
(888) 665-0374

Unless otherwise notified by the new Account owner, all future inquiries regarding this Account should be directed to LVNV Funding, LLC.

Credit One will request that the major credit reporting agencies change Credit One's tradeline to reflect the status of this Account as charged-off and sold. This status may take up to 60 days to be reflected in your credit report.

Sincerely,

Credit One Bank, N.A.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Credit One Bank Hit with Class Action Over Counter-Claim to Collect Sold-Off Debt](#)
