UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

CHARLES CAGLE, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

PROCOLLECT, INC., a Texas corporation,

Defendant.

COMPLAINT FOR DAMAGES AND INCIDENTAL RELIEF

Plaintiff, Charles Cagle, an individual, on behalf of himself and all others similarly situated, sues Defendant, ProCollect, Inc., a Texas corporation, and alleges:

I. PRELIMINARY STATEMENT

1. This is an action brought pursuant to 15 U.S.C. §1692, et sequi, known more commonly as the "Fair Debt Collection Practices Act" ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. The jurisdiction of this Court arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

III. ALLEGATIONS AS TO PARTIES

3. Plaintiff, Charles Cagle ("Mr. Cagle"), is *sui juris* and a resident of Broward County, Florida.

- 4. At all times material hereto, Defendant, ProCollect, Inc. ("ProCollect"), was a Texas corporation, doing business in Broward County, Florida.
- 5. Defendant is or was engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempted to collect consumer debts alleged to be due to another in Broward County, Florida.

IV. FACTUAL ALLEGATIONS

- 6. For an extended period of time, Defendant acted as the debt collector for various residential rental apartment complex owners in the State of Florida, including but not necessarily limited to Jacksonville Student Housing, LLC, a Delaware limited liability company ("JSH").
- 7. In the course of its representation of the various apartment properties, Defendant regularly collected or attempted to collect monies from consumers for delinquent rent payments and fees under lease agreements ("Apartment Fees").
- 8. On or about August 13, 2016, Mr. Cagle entered into a Student Housing Lease Contract with JSH to rent a student apartment for the use of his son in college.
- 9. On or about August 2, 2017, Defendant sent or caused to be sent to Mr. Cagle written correspondence, known more commonly in the collection industry as a "dunning letter," for the purpose of collecting monies for Apartment Fees purportedly owed by Mr. Cagle to the Apartment ("Collection Communication").
- 10. A true and correct copy of the Collection Communication is attached hereto and incorporated by reference as Exhibit "A."
 - 11. The Collection Communication provided stated, *inter alia*, as follows:

Please note that Federal law gives you thirty (30) days from the date you receive this letter to dispute the validity of the above-referenced debt, or any portion thereof. If you do not dispute the debt within the foregoing thirty (30) day period, we will

assume the debt is valid. If you notify us in writing within the foregoing 30-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you, if applicable, and mail the same to you. In this same written notice, you may also ask us to provide you with the name and address of the original creditor, if it is different from the current Creditor referenced above.

(emphasis by Plaintiff).

V. DEFENDANT'S PRACTICES

12. It is or was the policy and practice of Defendant to send collection letters in the form of Exhibit "A" to consumers in a manner which was reasonably calculated to confuse or frustrate consumers with respect to advising consumers as to the right of consumers with respect to the validation of consumer debts under 15 U.S.C. §1692g.

VI. CLASS ACTION ALLEGATIONS

- 13. This action is brought on behalf of a class consisting of (i) all persons with addresses in the state of Florida (ii) to whom letters the same form as Exhibit "A" were sent (iii) in an attempt to collect a debt which, according to the nature of the creditor or the debt, or the records of the creditor or defendants, was incurred for personal, family, or household purposes (iv) which were not returned undelivered by the U.S. Post Office (v) during the one year period prior to the filing of the complaint in this action.
- 14. Plaintiff alleges on information and belief based on the Defendant's use of letters in the form of Exhibit "A" that the class is so numerous that joinder of all members is impractical. Based on Defendant's use of letters in the form of Exhibit "A," Plaintiff estimates that the class includes hundreds or thousands of class members.
- 15. There are questions of law or fact common to the class, which common issues predominate over any issues involving only individual class members. The common factual issue

common to each class member is that each was sent a letter in the form of Exhibit "A." The principal legal issues are whether Defendant's letters in the form of Exhibit "A" violate the FDCPA by failing to provide a validation notice which complied with the requirements of 15 U.S.C. §1692g.

- 16. Mr. Cagle's claim is typical of those of the class members. All are based on the same facts and legal theories.
- 17. Mr. Cagle will fairly and adequately protect the interests of the class. He has retained counsel experienced in handling actions involving unlawful practices under the FDCPA and class actions. Neither Plaintiff nor his counsel have any interests which might cause them not to vigorously pursue this action.
- 18. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:
- (1) The questions of law or fact common to the members of the class predominate over any questions affecting an individual member.
- (2) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- 19. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil

 Procedure is also appropriate in that Defendant has acted on grounds generally applicable to the class thereby making appropriate declaratory relief with respect to the class as a whole.
- 20. Mr. Cagle requests certification of a hybrid class of Rule 23(b)(3) for monetary damages and Rule 23(b)(2) for equitable relief.

VII. ALLEGATIONS OF LAW

- 21. At all times material hereto, Mr. Cagle was a "consumer" as said term is defined under 15 U.S.C. §1692a(3).
- 22. At all times material hereto, JSH and the other owners of apartment complexes were each a "creditor(s)" as said term is defined under 15 U.S.C. §1692a(4).
- 23. At all times material hereto, the Apartment Fees purportedly owed to JSH and the other owners of apartment complexes were a "debt" as said term is defined under 15 U.S.C. §1692a(5).
- 24. At all times material hereto, Defendant was a "debt collector" as said term is defined under 15 U.S.C. §1692a(6).
 - 25. 15 U.S.C. §1692g(a) provides, in pertinent part, the following:

Notice of Debts; Contents

Within five days after the initial communication from the consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer written notice containing:

- (1) The amount of the debt;
- (2) The name of the creditor to whom the debt is owed;
- (3) A statement that unless the consumer, within thirty days after receiving the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) A statement that if the consumer notifies the debt collector in writing within the thirty day period, the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of the judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

- (5) A statement that upon the consumer's written request within the thirty day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- 26. The conduct of Defendant violated the FDCPA, 15 U.S.C.§1692, et sequi, including but not limited to the failure to properly inform the consumer as to the consumer's rights for debt verification in a manner which was not reasonably calculated to confuse or frustrate the least sophisticated consumer in violation of 15 U.S.C. §1692g. In particular, the Defendant improperly required consumers to dispute consumer debts in order to obtain the name and address of the original creditor in a manner contrary to 15 U.S.C. §1692g(a)(5).
- 27. As a result of Defendant's conduct, Plaintiff and the class have suffered a concrete and legally cognizable injury by not receiving the disclosures mandated by Congress under the FDCPA. Accordingly, Plaintiff and the class are entitled to an award of statutory damages pursuant to 15 U.S.C. §1692k.
- 28. Plaintiff and the class are entitled to an award of costs and attorney's fees pursuant to 15 U.S.C. §1692k.

WHEREFORE, Plaintiff, Charles Cagle, an individual, on behalf of himself and all others similarly situated, requests judgment be entered in his favor and in favor of the class against Defendant, ProCollect, Inc., a Texas corporation:

- A. Declaratory judgment that Defendant's Exhibit "A" violates the FDCPA;
- B. Statutory damages pursuant to 15 U.S.C. §1692k;
- C. An award of costs and attorney's fees pursuant to 15 U.S.C. §1692k; and
- D. Such other and further relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, Charles Cagle, an individual, on behalf of himself and all others similarly situated, pursuant to Rule 38(b), Federal Rules of Civil Procedure, demands a trial by jury of all issues so triable.

Dated this 9th day of November, 2017.

Robert W. Murphy Florida Bar No. 717223 1212 S.E. 2nd Avenue

Fort Sauderdale, Florida 33316 Telephone: (954) 763-8660

Fax: (954) 763-8607 Email: rphyu@aol.com;

rwmurphy@lawfirmmurphy.com

Counsel for Plaintiff

JS 44 (Rev. 0 เมื่อเลยะรถิ่นไวโลเนซ่า อโลโน 94-DPG Docume (CILYIL COVER SHEESD Docket 11/09/2017 Page 1 of 1

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 initialing the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

of initiating the civil docket she	CC. SEE INSTRUCTIONS ON	NEXT PAGE OF THIS FORM	i) NOTICE: Attorneys Mi	USI IIIU	icate At	i Me-illeu Cases n	CIOW.		
		e, an individual, on behalf of old others similarly situated DEFENDANTS ProCollect, Inc., a Texas corporation							
(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)			County of Residence of First Listed Defendant						
			county of Mesica			LAINTIFF CASES O	NLY)		
			NOTE:	IN TH	LAND CO	ONDEMNATION C.	ASES, USE THE VED.	LOCATI	ON OF
(c) Attorneys (Firm Name, 1	Address, and Telephone Number)		Attorneys (If Kno						
Robert W. Murphy, Es Florida 33316 / Teleph	quire, 1212 S.E. 2nd A none: (954) 763-8660	venue, Fort Lauderda	ale,						
(d) Check County Where Action	on Arose: MIAMI- DADE	☐ MONROE Ø BROWARD	□ PALM BEACH □ MARTIN □	ST. LUCIE	□ INDIA	N RIVER O OKEECHO	DHEE HIGHLA	NDS	
II. BASIS OF JURISDI	ICTION (Place an "X" ii	o One Box Only)	I. CITIZENSHIP OF (For Diversity Cases On		CIPA	L PARTIES a	Place an "X" in O and One Box fo	-	
U.S. Government	•—	ral Question	•	PTF	DEF	•	Í	PTF	DEF
Plaintiff	(U.S. Government)	Not a Party)	Citizen of This State	ו 🗖	ים	Incorporated or Prinof Business In This	•	4	□4
2 U.S. Government Defendant	_	ersity p of Parties in Item III)	Citizen of Another State	□ 2	□ 2	Incorporated and Proof Business In A	•	5	5
			Citizen or Subject of a Foreign Country	□ 3	3	Foreign Nation		□ 6	□ 6
IV. NATURE OF SUIT		• •	Click here for: Nature of Suit C		•		OPT I DE	~~.~~	
CONTRACT	PERSONAL INJURY	RTS PERSONAL INJURY	FORFEITURE/PENALT 625 Drug Related Seizure			IKRUPTCY al 28 USC 158	375 False C	STATUI laims Act	
120 Marine	310 Airplane	☐ 365 Personal Injury -	of Property 21 USC 8		423 With		376 Qui Ta 3729 (a))		С
☐ 130 Miller Act ☐ 140 Negotiable Instrument	315 Airplane Product Liability	Product Liability 367 Health Care/	☐ 090 Other				400 State R	eapportio	nment
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 320 Assault, Libel & Slander	Pharmaceutical Personal Injury			PROPE 820 Copy	RTY RIGHTS	410 Antitru 430 Banks		ing
☐ 151 Medicare Act	☐ 330 Federal Employers'	Product Liability			830 Pater	ıt _	450 Commo	erce	
☐ 152 Recovery of Defaulted	Liability	☐ 368 Asbestos Personal		므	New Drug	t - Abbreviated g Application	460 Deport		4 4
Student Loans (Excl. Veterans)	☐ 340 Marine ☐ 345 Marine Product	Injury Product Liability	LABOR	ָט	840 Trade SOCIA	mark L SECURITY	Corrupt Or		
☐ 153 Recovery of Overpayment	Liability	PERSONAL PROPERTY	7 10 Fair Labor Standards		861 HIA	(1395ff)	■ 480 Consur ■ 490 Cable/5		ì
of Veteran's Benefits 160 Stockholders' Suits	☐ 350 Motor Vehicle ☐ 355 Motor Vehicle	370 Other Fraud 371 Truth in Lending	Act 720 Labor/Mgmt. Relation			c Lung (923) C/DIWW (405(g))	850 Securit		nodities/
190 Other Contract	Product Liability 360 Other Personal	380 Other Personal Property Damage	☐ 740 Railway Labor Act ☐ 751 Family and Medical		864 SSID 865 RSI (Title XVI	Exchange B90 Other S	Statutory i	Actions
☐ 195 Contract Product Liability ☐ 196 Franchise	Injury	☐ 385 Property Damage	Leave Act	_	002 1131 (403(6))	891 Agricu	ltural Acts	S
	☐ 362 Personal Injury - Med. Malpractice	Product Liability	☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc.	n			893 Enviro		
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		_		AL TAX SUITS	Act 896 Arbitra	.eiam	
210 Land Condemnation 220 Foreclosure	440 Other Civil Rights 441 Voting	Habeas Corpus: 463 Alien Detainee		_	or D	s (U.S. Plaintiff efendant)	R99 Admin		rocedure
230 Rent Lease & Ejectment	442 Employment	Sentence Solutions to Vaca	te		871 IRS USC 760	—Third Party 26	Act/Review	or Appea	al of
240 Torts to Land	443 Housing/ Accommodations	Other:					Agency De		
☐ 245 Tort Product Liability	445 Amer. w/Disabilities -	☐ 530 General	IMMIGRATION				Statutes	tutionality	y of State
290 All Other Real Property	Employment 446 Amer, w/Disabilities -	☐ 535 Death Penalty ☐ 540 Mandamus & Other	☐ 462 Naturalization Applic ☐ 465 Other Immigration	ation					
	Other	☐ 550 Civil Rights	Actions						
	448 Education	555 Prison Condition 560 Civil Detainee -							
		Conditions of Confinement							
V. ORIGIN (Place	an "X" in One Box Only) oved □ 3 Re-filed □ 4	Reinstated 5 Transfe	erred from 6 Multidist	rict _	7 Ann	cal to 8			
Proceeding from Court	State (See VI	or anothe (specif	r district Litigation (y) Transfer		Dist	Magistrate	Multidistrict 9 Litigation 9 Direct File	Appella	ded from ite Court
VI. RELATED/	(See instructions): a)	Re-filed Case	NO b) Relate	ed Case		es 💋 NO			
RE-FILED CASE(S)	JUDO	GE:			DO	CKET NUMBER	<u></u>		
VII. CAUSE OF ACTI		et sequi, Violation of	filing and Write a Brief Stat the Fair Debt Collection (for both sides to the entire	on Pra	f Cause ctices /	<i>(Do not cite jurisdici</i> Act	tional statutes un	less diver	rsity):
VIII. REQUESTED IN	CHECK IF THIS	IS A CLASS ACTION	(for both sides to try entire	casej					
COMPLAINT:	UNDER F.R.C.P		DEMAND S			HECK YES only RY DEMAND:	if demanded in Yes	complai	nt:
ABOVE INFORMATION IS	TRUE & CORRECT TO	THE BEST OF MY KNE	ATTORNEY OF RECORD						
11/09/17	,		66						
FOR OFFICE USE ONLY			/ ·						
RECEIPT #	AMOUNT IF	P JUDGE		MAG	JUDGE				

EXHIBIT "A"

ProCollect

In corporated P.O. 80x 550369 Dallas, Texas 75355-0369 (214) 341-7788 (800) 839-8186 Office Hours Mon-Thurs 8 00AM - 8:00PM (CST) Fn 8:00AM - 5:00PM (CST) Sat 8:00AM - 2:00PM (CST)

August 2, 2017

Charles Cagle

Creditor: DISTRICT ON KERNAN
Account # 1467
Customer#: 2033
Amount Due: \$2,590.56
Collection Fee: \$7.50 *
Total Due: \$2,598.06

Dear Charles Cagle

We are debt collectors. Your account with the above-referenced Creditor has been referred to us for collection.

Please note that Federal law gives you thirty (30) days from the date you receive this letter to dispute the validity of the above-referenced debt, or any portion thereof. If you do not dispute the debt within the foregoing thirty (30) day period, we will assume the debt is valid. If you notify us in writing within the foregoing 30-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment against you, if applicable, and mail the same to you. In this same written notice, you may also ask us to provide you with the name and address of the original creditor, if it is different from the current Creditor referenced above.

Please also note that the law does not require us to wait until the end of the 30-day period to continue our efforts to collect the above Total Que. However, if you notify us in writing that the debt, or any portion of the debt, is disputed, or that you request the name and address of the original creditor, the law requires us to suspend our collection efforts (litigation or otherwise) until we mail the requested information to you, at which time, we may renew our collection efforts.

Finally, please understand that this is an attempt to collect a debt. Any information obtained will be used for that purpose.

If you have any questions regarding your account or if you wish to pay your bill, please feel free to give us a call or visit us at paypoipaymentservices.com. * Collection fee is authorized by the agreement with your Creditor or state law.

Cordially,

Chat live with a representative at PayProCollect com

Curt Bond ProCollect, Inc.

Please detach and mail payment with coupon or visit PayProCollect.com to make a payment online.

><		
Name:	Charles Cagle	Check Enclosed
Account #.	1467	_
Customer#	2033	For other payment options, please call ProCollect at (214) 341-7788.
Amount Due:	\$2,598.06	
Amount Paid		
		Ver PC1-4/22/2011

UNITED STATES DISTRICT COURT

for the

Southern District of Florida						
Charles Cagle, an individual, on behalf of himself and all others similarly situated)))					
Plaintiff(s))					
V.	Civil Action No.					
ProCollect, Inc., a Texas corporation)					
Frocollect, Iric., a Texas corporation)))					
Defendant(s))					
SUMMONS IN A CIVIL ACTION						
To: (Defendant's name and address) ProCollect, Inc.						
By serving its Registered Agent: Registered Agent Solutions, Inc. 155 Office Plaza Drive, Suite A Tallahassee, Florida 32301						
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: Robert W. Murphy, Esquire 1212 S.E. 2nd Avenue Fort Lauderdale, Florida 33316 Telephone: (954) 763-8660						
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					

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

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

was re	This summons for (nanceived by me on (date)	ne of individual and title, if any)							
	☐ I personally served	the summons on the individu	on (data)	; or					
	☐ I left the summons	eft the summons at the individual's residence or usual place of abode with (name)		- [·]					
	on (date)	, a person of suitable age and discretion who resides there, on (date) , and mailed a copy to the individual's last known address; or							
		ons on (name of individual) accept service of process on b	pehalf of (name of organization)	, who is					
			on (date)	; or					
	☐ I returned the sumr	ne summons unexecuted because		; or					
	☐ Other (specify):								
	My fees are \$	for travel and \$	for services, for a total of \$	0.00					
	I declare under penalty	y of perjury that this informat	ion is true.						
Date:			Server's signature						
			Printed name and title						
			Server's address						

Additional information regarding attempted service, etc:

Print Save As... Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>ProCollect Accused of Miscommunicating Consumer's Debt Dispute Rights</u>