

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.

LARA E. MCELVEEN,
on behalf of herself and
all others similarly situated,

Plaintiff,

v.

WESTPORT RECOVERY CORPORATION and
DEBRA L. GREENBERG,

Defendants.

CLASS ACTION COMPLAINT
JURY DEMAND

1. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§1331, 1337, 1367 and 15 U.S.C. §1692k. Venue in this District is proper because Defendants are located into this District.

PARTIES

3. Plaintiff, Lara E. McElveen, is a natural person, and citizen of the State of Florida, residing in Seminole, Florida.

4. Defendant, Westport Recovery Corporation, ("Westport") is a corporation formed under the laws of the State of Florida and citizen of the State of

Florida with its principal place of business at Suite 250, 9715 West Broward Boulevard, Plantation, Florida 33324.

5. Westport is registered with the Florida Department of State Division of Corporations as a domestic corporation. Its registered agent for service of process is Robert D. Freidman Suite 250, 9715 West Broward Boulevard, Plantation, Florida 33324.

6. Defendant, Debra L. Greenberg, ("Greenberg") is a Florida attorney and believed to be a resident of Broward County, Florida and a principal of Westport.

7. Defendants regularly use the mail and telephone in a business the principal purpose of which is the collection of debts.

8. Defendants are "debt collectors" as defined in the FDCPA.

FACTUAL ALLEGATIONS

9. Plaintiff incurred an alleged debt stemming the financing of a motor vehicle which she used for personal, family or household purposes which was subsequently reduced to judgment. ("the alleged debt").

10. At some point after the alleged debt went into default, Westport acquired the debt via assignment and Greenberg represented Westport in the collection of the alleged debt.

11. Westport garnished on Plaintiff's wages.

12. On September 14, 2016 Plaintiff sent Defendants an electronic mail stating "[t]his says I owe over 42,0000. That was not the paperwork I received from the court. How is this possible! I received paperwork that stated almost 20,000.00"

13. On September 14, 2016, Greenberg acting on behalf of Westport responded to Plaintiff via an electronic mail containing a statement of the amount of the alleged debt attached as Exhibit "A", ("the statement").

14. This suit is within the FDCPA's one-year statute of limitations because the Southern District of Florida was closed last week due to a hurricane.

15. The statement alleges an amount of the debt which is false and misleading because it miscalculates the amount of interest due.

16. The statement shows that Defendant's assessed Plaintiff costs related to the garnishment prior to award by the state court.

17. The statement was the first occasion on which Defendants disclosed to Plaintiff their calculation of interest and the date of assessment of costs to Plaintiff.

COUNT I

CLASS ACTION ALLEGATIONS

18. Plaintiff incorporates the paragraphs 1 through 17.

19. This action is brought on behalf of a FDCPA class.

20. The class is defined as:

a. all natural persons having mailing address located within the State of Florida against whom either Defendant improperly assessed costs prior to authorization by the state court or improperly calculated the amount of interest due.

b. in an attempt to collect a debt incurred for personal, family or household purposes,

c. during the one-year period prior to September 14, 2017.

21. Plaintiff alleges on information and belief that the members of the class are so numerous that joinder of all members is impractical.

22. There are questions of law and fact common to the class, which common issues predominate over any issues involving only individual class members. The account of each class member was improperly assessed costs and incorrectly calculated interest. The principal issues are:

a. whether Defendants' calculation of interest and assessment of costs violate the FDCPA

b. whether Defendants are debt collectors.

23. The claims of Plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

24. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling actions involving unlawful debt collection practices under the FDCPA and class actions. Neither Plaintiff nor her counsel have any interest which might cause them not to vigorously pursue this action.

25. Certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate in that:

a. The questions of law or fact common to the members of the classes predominate over any questions affecting an individual member.

b. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VIOLATIONS OF THE FDCPA 15 U.S.C. §§ 1692e and 1692f
BROUGHT BY PLAINTIFF INDIVIDUALLY AND
ON BEHALF OF THE CLASS

26. Plaintiff incorporates the paragraphs 1 through 25.

27. Debt collectors are forbidden from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt” pursuant to 15 U.S.C. § 1692e.

28. Debt collectors are forbidden from “the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer pursuant to 15 U.S.C. § 1692e(10).

29. Debt collectors are forbidden from "the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. 15 U.S.C. § 1692f.

30. Defendants sent Plaintiff a communication which contained false representations of the amount allegedly due.

31. Defendants attempted to collect amounts not permitted by law by assessing Plaintiff's account interest not due and costs prior to authorization by the state court.

32. Therefore, Defendants violated 15 U.S.C. § 1692e as well as 1692f.

33. As a result of the FDCPA violations by Defendants, Plaintiff and the class are entitled to an award of actual and statutory damages.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of herself and the class and against Defendants for:

- a. Certification of this matter to proceed as a class action;
- b. Statutory and actual damages for Plaintiff and the Class;
- c. Attorney's fees, litigation expenses and costs of suit; and
- d. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

DONALD A. YARBROUGH, ESQ.
Attorney for Plaintiff
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Fort Lauderdale, Florida 33339
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s/Donald A. Yarbrough
Donald A. Yarbrough, Esq.
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Miramar, FL 33027
Telephone: 954-562-0907
joel@jdllawpa.com

Attorneys for Plaintiff

EXHIBIT “A”

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Print Debtor Work Card

PAGE 1

Cl# WESTPORT RECOVERY CORP.

Ac# F&G WEST

Rf# [REDACTED]

Nm1 MCELVEEN, LARA ELISE

Desk W11 Sts GOR Assignd 18820.30

Nm2 Assigned

PrincDue 14450.09

Adr [REDACTED]

L/Charge In 10.00 % 28167.58

SEMINOLE, FL 33772

L/Paymnt Attorney .00

PhN L/Letter Court .00

L/Worked Other .00

L/Trust JudInt .00

N/Review Misc .00

Judgment 03/29/99 \$19983.25

CntgcyFe .00

Tot Due 42617.68

Tot Paid 11369.41

----- TRUST HISTORY -----

Date	Batch	UI	Id	DSK	TCD	Description	Amount	Comm	NewBlnc
10/09/06	017219	JAN	W11	305	RECORDING FEE	20.00	.00	35064.57	
04/01/15	031807	RLC	W11	302	WRIT OF EXECUTION	20.00	.00	52034.75	
04/01/15	031807	RLC	W11	305	RECORDING FEE	8.00	.00	52042.75	
04/13/15	031845	JAN	W11	315	GARNISHMENT FEE	125.00	.00	52233.45	
06/09/15	031990	JAN	W11	315	GARNISHMENT FEE	10.00	.00	52555.52	
07/15/15	032067	JAN	W11	315	GARNISHMENT FEE	100.00	.00	49141.89	
09/08/15	032244	RDF	W11	006	COURT COSTS RECOVER	283.00	283.00	48915.64	
09/08/15	032244	RDF	W11	001	PRIN PMT	17.13	17.13	48915.64	
09/08/15	032244	RDF	W11	015	INT PAID	17.14	17.14	48915.64	
09/22/15	032264	RDF	W11	001	PRIN PMT	167.37	167.37	48580.89	
09/22/15	032264	RDF	W11	015	INT PAID	167.38	167.38	48580.89	
10/05/15	032308	RDF	W11	001	PRIN PMT	219.39	219.39	48142.11	
10/05/15	032308	RDF	W11	015	INT PAID	219.39	219.39	48142.11	
10/19/15	032336	RDF	W11	001	PRIN PMT	177.70	177.70	47786.70	
10/19/15	032336	RDF	W11	015	INT PAID	177.71	177.71	47786.70	
11/02/15	032375	RDF	W11	001	PRIN PMT	176.90	176.90	47432.89	
11/02/15	032375	RDF	W11	015	INT PAID	176.91	176.91	47432.89	
11/16/15	032407	RDF	W11	001	PRIN PMT	188.66	188.66	47055.56	
11/16/15	032407	RDF	W11	015	INT PAID	188.67	188.67	47055.56	
12/07/15	032443	RDF	W11	001	PRIN PMT	198.08	198.08	46659.40	
12/07/15	032443	RDF	W11	015	INT PAID	198.08	198.08	46659.40	
12/14/15	032458	RDF	W11	001	PRIN PMT	207.00	207.00	46245.40	
12/14/15	032458	RDF	W11	015	INT PAID	207.00	207.00	46245.40	
01/07/16	032498	RDF	W11	001	PRIN PMT	198.40	198.40	46203.90	
01/07/16	032498	RDF	W11	015	INT PAID	198.40	198.40	46203.90	
01/13/16	032502	RDF	W11	001	PRIN PMT	168.82	168.82	45866.25	
01/13/16	032502	RDF	W11	015	INT PAID	168.83	168.83	45866.25	
01/25/16	032518	RDF	W11	001	PRIN PMT	195.64	195.64	45474.97	
01/25/16	032518	RDF	W11	015	INT PAID	195.64	195.64	45474.97	
02/09/16	032543	RDF	W11	001	PRIN PMT	274.20	274.20	44926.57	
02/09/16	032543	RDF	W11	015	INT PAID	274.20	274.20	44926.57	
02/22/16	032617	RDF	W11	001	PRIN PMT	220.05	220.05	44486.47	
02/22/16	032617	RDF	W11	015	INT PAID	220.05	220.05	44486.47	
03/07/16	032666	RDF	W11	001	PRIN PMT	233.60	233.60	44019.27	
03/07/16	032666	RDF	W11	015	INT PAID	233.60	233.60	44019.27	
03/23/16	032705	RDF	W11	001	PRIN PMT	232.46	232.46	43554.34	
03/23/16	032705	RDF	W11	015	INT PAID	232.47	232.47	43554.34	

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04/04/16	032746	RDF W11 001	PRIN PMT	208.94 208.94 43136.46
04/04/16	032746	RDF W11 015	INT PAID	208.94 208.94 43136.46
04/18/16	032768	RDF W11 001	PRIN PMT	372.38 372.38 42391.69
04/18/16	032768	RDF W11 015	INT PAID	372.39 372.39 42391.69
05/02/16	032794	RDF W11 001	PRIN PMT	181.21 181.21 42029.26
05/02/16	032794	RDF W11 015	INT PAID	181.22 181.22 42029.26
05/19/16	032858	RDF W11 001	PRIN PMT	177.35 177.35 41974.75
05/19/16	032858	RDF W11 015	INT PAID	177.35 177.35 41974.75
05/31/16	032869	RDF W11 001	PRIN PMT	175.08 175.08 41624.59
05/31/16	032869	RDF W11 015	INT PAID	175.08 175.08 41624.59
06/14/16	032909	RDF W11 001	PRIN PMT	371.76 371.76 40881.07
06/14/16	032909	RDF W11 015	INT PAID	371.76 371.76 40881.07
06/29/16	032955	RDF W11 001	PRIN PMT	835.23 835.23 42974.05
06/29/16	032955	RDF W11 015	INT PAID	835.23 835.23 42974.05
08/10/16	033061	JAN W11 305	RECORDING FEE	20.00 .00 43172.75
08/22/16	033104	RDF W11 006	COURT COSTS RECOVER	20.00 20.00 42890.70
08/22/16	033104	RDF W11 001	PRIN PMT	155.33 155.33 42890.70
08/22/16	033104	RDF W11 015	INT PAID	155.33 155.33 42890.70
09/08/16	033172	RDF W11 001	PRIN PMT	180.48 180.48 42529.74
09/08/16	033172	RDF W11 015	INT PAID	180.48 180.48 42529.74

** End of Report **

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing 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. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I(a) PLAINTIFFS

LARA E. MCELVEEN,
on behalf of herself and
all others similarly situated,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
 (EXCEPT IN U.S. PLAINTIFF CASES) **BROWARD**

DEFENDANTS

WESTPORT RECOVERY CORPORATION and

DEBRA L. GREENBERG

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

DONALD A. YARBROUGH, ESQ. POST OFFICE BOX 11842

FORT LAUDERDALE, FL 33339, TELEPHONE (954) 537-2000

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE:
DADE, MONROE, BROWARD, ALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

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

(For Diversity Case Only)

	PTF	DEF	(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)	PTF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporation and Principal Place of Business in This State	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporation and Principal Place of Business in Another State	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 3

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Iva. 1-2 days estimated (for both sides) to try entire case Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq.

NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

A CONTRACT	A TORTS	B FORFEITURE PENALTY	A BANKRUPTCY	A OTHER STATUS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl Veterans) B <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<p style="text-align: center;">PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Pers. Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Prod. Liability <input type="checkbox"/> 368 Asbestos Personnel Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending B <input type="checkbox"/> 380 Other Personnel Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">A PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">B SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;">A FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26b USC 7609	<input type="checkbox"/> 400 States Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. B <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities /Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions* *A or B
<p style="text-align: center;">A REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure B <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p style="text-align: center;">A CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<p style="text-align: center;">B PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General* <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other* <input type="checkbox"/> 550 Civil Rights *A or B	<p style="text-align: center;">A LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations B <input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	

VI. ORIGIN

- 1. Original Proceeding
- 2. Removed from State Court
- 3. Remanded from Appellate Court
- 4. Refined
- 5. Transferred from another district (specify)
- 6. Multidistrict Litigation
- 7. Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION Yes DEMAND \$ N/A
 UNDER F.R.C.P.23

VIII. RELATED CASE(S) IF ANY

(See Instructions): JUDGE DOCKET NUMBER

DATE: September 18, 2017 SIGNATURE OF ATTORNEY OF RECORD

s/ Donald A. Yarbrough

UNITED STATES DISTRICT COURT

S/F 1-2
 REV9/94

FOR OFFICE USE ONLY: Receipt No. _____ Amount: _____

Date Paid: _____ M/1p: _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Westport Recovery Corporation, One Individual Accused of FDCPA Violations](#)
