

## Student Legal Services

Enrollment Management & Student Affairs

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1825 SW Broadway

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www.pdx.edu/sls



March 28, 2013

Representative Paul Holvey, Chair  
Consumer Protection and Government Efficiency  
Committee Services Office  
900 Court St. NE, Room 453  
Salem, OR 97301

Re: Support for Consumer Credit Fairness Act: HB 2826-1

Dear Chair Holvey and Committee Members:

My name is Lynn Clark. I am the Assistant Director of Student Legal Services at Portland State University. We are a free legal service funded by student fees as a service to PSU students who are enrolled for at least 4 undergraduate credits or 3 graduate credits. This bill will provide important protections to PSU students. This bill will provide important protections for PSU students.

Because the age of the average PSU student is older, and because many people are returning to school later in life during this economic downturn, our office sees more consumer debt issues than the average student legal service office. During the 2011-2012 fiscal year, 9% of our cases dealt directly with the sorts of issues addressed by the Consumer Credit Fairness Act. Between 2010 and 2012, we opened 206 files related to debtor creditor issues. Of these, 134 did not pursue the matter further or were coached to self-remedy and 72 were resolved. Of those that were resolved, in 15, the debt buyer could establish no legitimate claim whatsoever, 25 settled before filing in court, 23 settled after filing in court, and we prevailed in court in 9 cases. We were able to reduce the amount claimed to be owed by the students by \$81,807.54. Without access to free legal services, it is likely these students would have paid more than they should have to resolve these disputes.

In the majority of cases we see, students are being sued for old debts that they are not even sure they owe. Because the debt has been purchased by a third party, the student has no idea if the debt buyer even has a right to sue on the debt. Because the debt buyers never provide verification of the debt or an accounting with the complaint, the student has no idea how the debt buyer came to the amount they are attempting to collect.

When a student comes to us, in some cases we coach them to immediately send a letter to the opposing law firm asking them to verify the debt. In other cases, we send the debt verification letter ourselves. More often than not, the opposing law firm does not have the debt verification in their possession, even though they have filed suit. In one case where the student sent their own debt verification request, the law firm responded with a one page letter saying they had reviewed

the documentation and the student owed the debt. An unsophisticated, unrepresented party might believe that this is sufficient proof of the debt, when it is not.

In other cases, we ask for debt verification after suit has been filed and for 10 days' notice before filing a default. In response, no debt verification is provided. Instead, the debt buyer's attorney requires an answer be filed within 10 days and sends a request for production asking the defendant to admit to the debt.

When we do seek formal discovery, some debt buyer law firms do not respond. If they do, the documentation they provide is often insufficient to prove the validity of the debt. When the court issues a notice to the debt buyer that it will dismiss the suit for want of prosecution, the debt buyer often asks the court for additional time to obtain documentation of the underlying debt before dismissing the lawsuit. If the debt buyer is not able to come up with the documentation, they will dismiss the suit, file again, and hope to come up with the documentation at a later time. We know from personal experience that attorneys for debt buyers are filing lawsuits based only on the word of their client that the debt is owed. This bill would prevent that from happening.

In those cases where the debt buyer does produce documentation of the debt, the documentation rarely, if ever, includes the original contract, and often consists solely of a "robo-signed" affidavit of questionable origin claiming that the debt buyer bought the debt. I can think of no reason why a debt buyer, suing for breach of contract, should not have to provide proof of the contract on which they are suing. Just because federal law may not require some creditors to maintain copies of contracts for more than two years does not mean the creditor cannot be required by state law to keep documentation of the contract for the entire statute of limitations period they set in the contract.

We have seen several cases where the debt buyer is suing on a time barred debt. Without access to free legal services, a consumer might be lulled into making a payment, thereby starting the statute of limitations running all over again. Debt buyers prey on the ignorance of unrepresented parties to collect debts that the debt buyer cannot prove it has a right to collect on. Reputable law firms might agree to dismiss a time barred claim when this is brought to their attention. The less than reputable ones will not, attempting to extract an agreement not to file an unlawful debt collection suit in exchange for dismissing a suit they should not have filed in the first place.

Sometimes students have had default judgments taken against them. In some cases, it is their own fault, in other cases, it is not. Whatever the case is, I am amazed by the differing amounts of proof required by court clerks and judges to enter a default judgment. Some judges require nothing more than a robo-signed affidavit that the debt is owed. Others require all the evidence that would be required by this law. This inconsistency is unfair to the consumer and would be eliminated by this bill.

The Consumer Credit Fairness Act addresses all these problems.

Representative Paul Holvey, Chair  
Consumer Protection and Government Efficiency  
March 28, 2013  
Page 3 of 3

- If a student receives a 30 day notice from the debt buyer or their attorney and all of the supporting verification required by this law, they can bring it to us and we will know to advise whether this is a legitimate debt and what to do about it.
- If a student is sued and they bring us the complaint and the complaint includes documentation required by the statute to establish the debt, we have all the information we need to be able to answer the complaint or settle the debt.
- If a consumer fails to respond to a complaint after being served, defaults are granted only after providing the required proof of the underlying debt. If the default was the result of identity theft or mistaken identity and was entered against the wrong person, that person will be able to obtain a copy of the court file that will enable them to unravel a default that was taken against the wrong person. All of these protections are good for the consumer and are good for the courts.

These protections are good for the debt buyers and their attorneys too. There are reputable debt buyers and attorneys who collect debts for debt buyers. They collect legitimate debts from individuals who truly owe the debt and have all the necessary evidence proving their right to do so. For these debt buyers and their attorneys, the playing field will be leveled. They won't be forced to compete against debt buyers and law firms who cut corners and bring lawsuits before they have documentation in their possession to establish the debt.

For these reasons, Portland State University Student Legal Services urge you to pass the Consumer Protection Fairness Act out of committee. I have attached examples of the debt collections practices that I have discussed in this testimony.

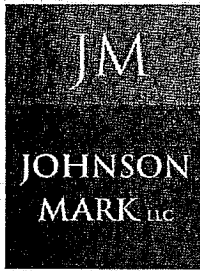
Thank you for your time and consideration of this important legislation.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Lynn M. Clark', with a large, stylized flourish at the end.

Lynn M. Clark

Encl.



**ATTORNEYS AT LAW**  
Payment Processing Center  
P.O. Box 7811  
Sandy, Utah 84091-7811  
Toll Free: 866.356.3838  
Fax: 877-288-5701

Offices Located in:  
Draper, Utah  
Newberg, Oregon  
Meridian, Idaho  
West Lake Village, California

January 24, 2013



RE: Request for Debt Verification  
Account No. 4388642678867394  
JM File No. 523849

Per your request, and in compliance with 15 U.S.C. § 1692g(b), we are providing verification of the debt in question. The purpose of 15 U.S.C. § 1692g(b) is to avoid collecting a debt from the wrong person or attempting to collect amounts that have already been paid.

In response to your request we have reviewed any information provided by you and have compared it with the information provided by our client and/or obtained during our investigation of your account. Based on said review, we have determined that you owe the amount stated on the attached statement.

If you believe that there is some mistake regarding your identity or the amounts owing, please provide any additional information and documents that will help us identify and resolve the question.

Enclosed with this letter is a statement providing information sufficient to match you with our files and records.

**JOHNSON MARK LLC**

*This is an attempt to collect a debt. Federal and State law prohibit certain methods of debt collection and require that we treat you fairly. Please view our website at <https://jmlaw.pro/disclosure.aspx> to review your rights under Federal and State Law.*



/ 10008

\* 5 2 3 8 4 9 - L V D \*

## Account Detail

DEBTOR NAME:

CURRENT ADDRESS:

PHONE:

SSN:

DATE OF BIRTH:

BALANCE SOUGHT:

Principal/Charge-Off Balance:	\$3,769.91
Court and Service Costs:	\$215.00
Less Payments Made (if any):	<u>\$0.00</u>
Current Balance:	\$3,984.91

CREDITOR:

CAPITAL ONE BANK (USA), N.A.

ACCOUNT REF. NO:

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR WASHINGTON COUNTY

MIDLAND FUNDING, LLC,

Case No. C126896CV

Plaintiff,

vs.

COMPLAINT  
(For Breach of Contract)  
Section 15(1)(a), Chapter 595,  
Oregon Laws 2011

[REDACTED]

Defendant.

**FOR A CLAIM LESS THAN \$10,000**  
**SUBJECT TO MANDATORY ARBITRATION**  
**TOTAL CLAIM: \$9,548.62**

Plaintiff alleges:

**BREACH OF CONTRACT**

**1.**

Plaintiff for good and valuable consideration has purchased Defendant's Wells Fargo Bank, N.A. credit card account and contract.

**2.**

Defendant, an individual residing in Washington County Oregon, entered into a contract with Wells Fargo Bank, N.A. for a credit card. The credit card was issued under the account number

[REDACTED]

**3.**

Wells Fargo Bank, N.A. performed its obligations under the terms of the contract and supplied the Defendant with a credit card, and thereafter Defendant used the credit card and became indebted thereunder.

**4.**

Defendant has failed and refused in the obligation under the terms of the contract by

Daniel N. Gordon, P.C.  
Attorney and Counselor at Law  
4023 W 1<sup>st</sup> Ave / P.O. Box 22338  
Eugene, OR 97402  
Phone: (541) 342-2276 Fax: (541) 343-8059 Email: info@dngordonpc.com

1 discontinuing payment. The Defendant's credit card account was charged off for delinquency on  
2 March 31, 2012.

3 5.

4 Defendant is indebted to Plaintiff in the sum of \$9,548.62, which includes principal and interest,  
5 plus interest at the rate of 9% per annum from March 31, 2012 until paid. Plaintiff is also entitled to  
6 actual costs, with interest thereon at the rate of 9% per annum from the date of judgment until paid.

7 6.

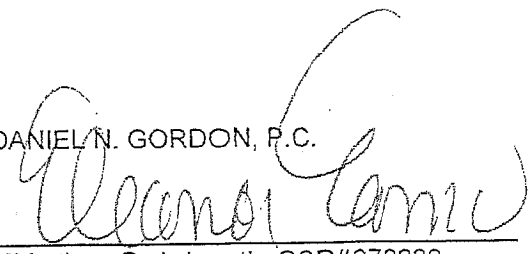
8 The Court should authorize Plaintiff and its attorneys to contact third persons and entities for  
9 the purpose of collecting its judgment entered in this court. The Court should also authorize  
10 Plaintiff and its attorneys to reveal the existence of Defendant's debt to such third persons and  
11 entities.

12 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 13 1. The sum of \$9,548.62, which includes principal and interest, plus interest at the rate of 9%  
14 per annum from March 31, 2012 until paid;
- 15 2. Plaintiff's costs and disbursements incurred herein, with interest thereon at the rate of 9%  
16 per annum from the date of judgment until paid;
- 17 3. Authorize Plaintiff, its agents, attorneys and assigns to contact third persons and entities  
18 for the purpose of collecting its judgment entered in this court and to reveal the existence  
19 of Defendant's debt to such third persons and entities.

20 Dated this 29 day of October, 2012.

21 DANIEL N. GORDON, P.C.

22   
23 \_\_\_\_\_  
24 [ ] Matthew R. Aylworth, OSB#070930

25 [ ] Eleanor Tami, OSB#105214

26 of Attorneys for Plaintiff

27 Trial Attorney not yet appointed  
28

Daniel N. Gordon, P.C.  
Attorney and Counselor at Law  
4023 W 1<sup>st</sup> Ave / P.O. Box 22338  
Eugene, OR 97402  
Phone: (541) 342-2276 Fax: (541) 343-8059 Email: info@dngordonpc.com

**Exhibit 1**

**BILL OF SALE**

This Bill of Sale ("Bill of Sale") is entered into this 22<sup>nd</sup> day of May, 2012 by and between Midland Funding LLC, as Buyer, and Wells Fargo Bank, N.A., as Seller.

Pursuant to the terms of an Agreement for Purchase and Sale of Charged-off Accounts (the "Agreement") dated as of October 13, 2011 and executed by Buyer and Seller, and this Bill of Sale, Buyer hereby purchases and accepts, and Seller hereby sells, assigns, transfers, conveys and delivers to Buyer, all its rights, interest and title in and to the Accounts listed on the attached Schedule A. The Agreement is incorporated herein and made a part hereof as if fully set forth. In the event of a conflict between the terms of this Bill of Sale and those of the Agreement, the terms of the Agreement shall prevail. All terms defined in the Agreement shall have the same meaning as given in the Agreement when used in this Bill of Sale.

With respect to information for the Accounts listed in Computer File, to the best of Wells Fargo's knowledge, all of the information contained in Wells Fargo's Accounts Information (a) constitutes Wells Fargo's own business records regarding the Accounts and (b) accurately reflects in all material respects the information about the Accounts in Wells Fargo's possession. All of Wells Fargo's Accounts Information has been kept in the regular course of Wells Fargo's business, and was made or compiled at or near the time of the event and recorded by (or from information transmitted by) a person (i) with knowledge of the data entered into and maintained in Wells Fargo's business records or (ii) who caused the data to be entered into and maintained in Wells Fargo's business records. It is the regular practice of Wells Fargo's business to maintain and compile such data.

Seller: Wells Fargo Bank, N.A.

Buyer: Midland Funding LLC

Number of Accounts:  

Outstanding Gross Balance of Accounts:  

List of Accounts attached hereto as Schedule A

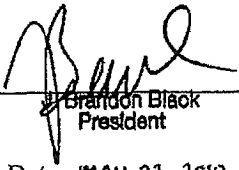
Cut-Off Date: May 15, 2012

Closing Date: May 22, 2012



BUYER.

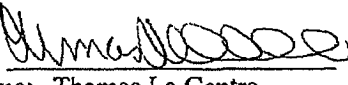
MIDLAND FUNDING LLC

By:   
Name: Brandon Black  
Title: President  
Signature Date: MAY 23, 2012

Approved by Legal

SELLER.

WELLS FARGO BANK, N.A.

By:   
Name: Thomas La Centra  
Title: EVP - Operations  
Signature Date: May 16, 2012

Field Field Data

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Account Number	
Primary Name	
Primary SSN	
Primary Address 1	
Primary City	
Primary State	
Primary Zip Code	
Primary Home Phone	
Current Balance	9548.62
Charge Off Amount	9548.62
Charge Off Date	3/31/2012
Open Date	11/30/2006
Last Payment Amount	245
Last Payment Date	9/5/2011

Data printed by Midland Credit Management, Inc. from electronic records provided by Wells Fargo Bank, N.A. pursuant to the Bill of Sale / Assignment of Accounts transferred on or about 05/22/2012 in connection with the sale of accounts from Wells Fargo Bank, N.A. to Midland Funding LLC.

**Daniel N. Gordon, P.C.**

Attorneys and Counselors at Law  
Serving the Pacific Northwest

4023 W 1<sup>st</sup> Avenue  
P.O. Box 22338  
Eugene, OR 97402  
Phone 541-342-2276  
Toll Free 800-311-8566



September 5, 2012

**Daniel N. Gordon**  
Licensed in Oregon, Washington, and Idaho

**Matthew R. Aylworth**  
Licensed in Oregon, Washington, and Idaho

**Eleanor Tami**  
Licensed in Oregon and Washington

Dear

This firm has been retained with the authority to file a lawsuit against you for a debt owed by you to Midland Funding LLC, purchaser of your WELLS FARGO BANK, N.A./CORE PLATINUM debt; but at the time of the writing of this letter, no decision has been made whether or not we will file a law suit.

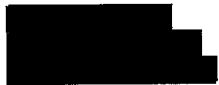
Demand is hereby made upon you for payment in the sum of \$9920.62.

Unless you notify this office within thirty days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within thirty days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

At this time, no attorney has personally reviewed the particular circumstances of your account. However, if you fail to contact this office, your account will be reviewed by an attorney to determine whether to exercise the authority given to this firm to sue you or whether not to exercise that authority and to return the file to our client.

This communication is from a debt collector. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

**DANIEL N. GORDON, P.C.**



Original Creditor  
WELLS FARGO BANK,  
N.A.  
CORE PLATINUM

Original Account Number

Reference Number



6011287795

We will gladly accept your payment by Visa, MasterCard or Discover.

Total Amount Due: \$9920.62

Total Amount Enclosed: \_\_\_\_\_

Mail Payments To:

**Daniel N. Gordon P.C.**  
P.O. Box 22338  
Eugene, OR 97402

To make a payment online visit [www.dgordonpc.com](http://www.dgordonpc.com).

CARD NUMBER	3 DIGIT CODE FROM BACK OF CARD
SIGNATURE	EXPIRATION DATE
PRINTED NAME	I AUTHORIZE THE CREDIT CARD PAYMENT FOR THE AMOUNT SHOWN BELOW
	PAYMENT AMOUNT
	\$

JOHNSON MARK LLC  
901 N Brutscher Street, D PMB 401 • Newberg, OR 97132  
Phone: 1-866-356-3838 • Fax (503) 538-2588 • court@jmlaw.pro

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

MIDLAND FUNDING LLC,  
Plaintiff,  
vs.  
[REDACTED]  
Defendant.

**NOTICE OF STIPULATED DISMISSAL AND  
GENERAL JUDGMENT**

Case No. 1301-00673  
Judge:

COME NOW the undersigned parties, who jointly stipulate and move the Court to enter a Judgment of Dismissal with prejudice and without an award of costs, attorney fees, or prevailing party fees as this matter has been resolved outside of Court.

As part of the terms of this stipulated dismissal and in exchange for the Plaintiff's agreement to the same, the Defendant [REDACTED] himself, his heirs, successors, legal representatives and assigns, do hereby release, acquit, and forever discharge Plaintiff and all of its affiliates, parents and/or subsidiary corporations including, without limitation, its representative managing partners, officers, directors, shareholders, employees, agents, assigns, successors, servants, insurers, and representatives (including its attorneys and Johnson Mark), together with any and all other persons, firms and/or corporations who are or might be liable, from any and all claims, liabilities, demands, suits, and causes of action of every nature and kind, cross-claims or counterclaims, whether known or unknown, in law or in equity, whether or not such claims were or could have been brought or raised in this instant matter, or as a result of any sale, assignment, or transfer of or collection activities related to the debt and/or account at issue in this litigation, including without limiting the generality of the foregoing, those claims expressly raised in the instant matter, those claims,

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if any, raised in any cross-claims or counterclaimed, those arising out of or relating to the facts, circumstances, or occurrences surrounding the instant matter, and those arising out of, relating to or resulting from the facts, circumstances, or any Fair Debt Collection Practices Act (FDCPA) claims or any other claims related to the debt or the debt collection of the account at issue in this matter that were or could have been brought or raised in this instant matter up to and including the date of the entry of dismissal in this matter. Plaintiff agrees that it will no longer collect on, assign, disclose, transfer, and/or sell the account at issue in this litigation.

DATED: this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Daniel R. Wilkinson  
OSB# - 110172  
\_\_\_\_\_  
William McMillen  
OSB# - 070314  
*Attorney for Plaintiff*

DATED: this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[REDACTED] *Defendant*

DATED: this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Lissa K Kaufman, Attorney for Defendant

