

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Ashanti McIntosh,

Plaintiff,

v.

**Global Trust Management, LLC,
Direct Recovery Services, LLC, and
Frank Torres,**

Defendants.

Case Number: _____

Ad Damnum: \$2,000 + Atty Fees & Costs

JURY TRIAL DEMANDED

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, Ashanti McIntosh, (“**Ms. McIntosh**”), by and through her attorneys, Seraph Legal, P.A., and complains of the Defendants, **Global Trust Management, LLC** (“**GTM**”), **Direct Recovery Services, LLC** (“**DRS**”), and **Frank Torres** (“**Torres**”) (collectively, the “**Defendants**”), stating as follows:

PRELIMINARY STATEMENT

1. This is an action brought by Ms. McIntosh against the Defendants for violations of the *Fair Debt Collection Practices Act*, 15 U.S.C. § 1692, *et. seq.* (“**FDCPA**”) and the *Florida Consumer Collection Practices Act*, Section 559.55, Florida Statutes *et. seq.* (“**FCCPA**”).

JURISDICTION AND VENUE

2. Subject matter jurisdiction for Ms. McIntosh's FDCPA claims arises under the FDCPA, 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1331.

3. Supplemental jurisdiction for Ms. McIntosh's FCCPA claims arises under 28 U.S.C. § 1367.

4. The Defendants are subject to the provisions of the FDCPA and the FCCPA and to the jurisdiction of this Court pursuant to Fed. R. Civ. P. 4(k).

5. Venue is proper in the Middle District of Florida, pursuant to 28 U.S.C. § 1391(b)(2), because the events giving rise to this cause of action occurred in this District and every party resides in this district.

PARTIES

6. **Ms. McIntosh** is a natural person residing, at all times relevant, in Tampa, of Hillsborough County, Florida, and is a "consumer" as defined by the FDCPA and the FCCPA, 15 U.S.C. § 1692a(3) and Section 559.55(8), Florida Statutes, respectively. She was previously known as **Ashanti Holloman**.

7. **GTM** is a Florida limited liability company with a principal business address of **4805 W Laurel St., Suite 300, Tampa, FL 33607**.

8. GTM's registered agent for Florida is Jamie R. Quezon, 4805 W Laurel St., Suite 300, Tampa, FL 33607.

9. GTM is registered with the Florida Office of Financial Regulation as a **Consumer Collection Agency** ("CCA"), holding license number **CCA9902589**. **SEE PLAINTIFF'S EXHIBIT A.**

10. As a licensed CCA with its principal place of business in the State of Florida, GTM knows, or should know, the requirements of the FDCPA and FCCPA.

11. **Torres** is a natural person who, on information and belief, resides at **70 Davis Blvd, Apt 9, Tampa, FL 33606**.

12. Torres is the Chief Operations Manager and Chief Compliance Officer of GTM. Through these roles, Torres is responsible for management decisions at GTM, including determining which debts should be collected and how they are collected.

13. Torres have control over the internal operating procedures of GTM and is responsible for ensuring compliance with state and federal consumer protection statutes.

14. DRS is a Minnesota limited liability company with a primary business address of **115 Waterfront Drive, Suite 1, Two Harbors, MN 55616**.

15. DRS' registered agent for Florida is Rosemary L. Rastom, 3619 S. Thatcher Ave, Tampa FL 33629.

16. DRS is registered with the Florida Office of Financial Regulation as a CCA, holding license number **CCA9903798**. **SEE PLAINTIFF'S EXHIBIT B**.

17. The Defendants are *Debt Collectors* within the meaning of the FDCPA, 15 U.S.C. §1692a(6), and the FCCPA, Section 559.55(7), Florida Statutes, in that they use instrumentalities of interstate commerce, including postal mail, both interstate and within the State of Florida, for their businesses, the principal purpose of which is the collection of debts. Additionally, the Defendants all regularly collect or attempt to collect, directly or indirectly, debts owed or asserted to be owed another.

FACTUAL ALLEGATIONS

The Debt

18. Ms. McIntosh allegedly obtained a loan (the “**Debt**”) from an internet-based payday loan company called Mobiloans, LLC (“**Mobiloans**”).

19. The Debt arose from what is commonly known as a “payday loan,” which is a short-term, unsecured loan with a high interest rate.

20. The underlying loan to Ms. McIntosh carried an interest rate in excess of 400 percent annually.

21. The Debt arose from a loan primarily for family, personal, and household purposes, specifically a payday loan for personal purposes, and meets the definitions of *Debt* under the FDCPA, 15 U.S.C. § 1692a(5), and the FCCPA, Section 559.55(6), Florida Statutes.

22. Ms. McIntosh disputes owing the Debt.

Mobiloans

23. Mobiloans is an online “payday lender” operating from the website www.mobiloans.com.

24. Mobiloans’ website states that Mobiloans makes loans at interest rates between 206% and 442% annually. **SEE PLAINTIFF’S EXHIBIT C.**

25. These figures assume that payments are made on time. Often, the effective APR charged is much higher than 442%, due to the addition of late fees or rollover fees.

26. Pursuant to Section 687.02(1), Florida Statutes, all contracts for the payment of interest upon any loan, advance of money, line of credit, or forbearance to

enforce the collection of any debt, or upon any obligation whatsoever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest, is usurious and in violation of the law.

27. Section 687.071, Florida Statutes, renders the issuing of a loan with annual interest rates greater than 45% a felony.

28. Pursuant to Section 687.071(7), Florida Statutes, **no loan made in violation of this statute shall be an enforceable debt in the State of Florida.**

29. Any person who willfully makes such a loan, in addition to criminal sanctions, forfeits the right to collect payment for the loan, as such loans are “void as against the public policy of the state as established by its Legislature.” *Richter Jewelry Co. v. Schweinert*, 169 So. 750, 758-59 (Fla. 1935).

30. Further, Mobiloans was never licensed by the Florida Office of Financial Regulation to act as a payday lender, nor was it a federally chartered bank, nor did it hold any kind of regulatory license.

31. Since the Debt arose from a payday loan which charged interest/fees exceeding 400% and was made within the jurisdiction of Florida, it thus null and void under above-cited legal authority.

32. Therefore, the Debt is unenforceable against Ms. McIntosh.

Transfer of the Debt to GTM and DRS

33. Around October 2017, the Debt was purchased by GTM.

34. On information and belief, Torres, in his managerial capacity, was responsible for making the decision to purchase the Debt.

35. The alleged balance of the loan was \$1,319.73.

36. When GTM and Torres agreed to purchase the Debt from Mobiloans, they were well aware of the illicit origins and accompanying unenforceabilityl

37. GTM and Torres purchased the Debt despite knowledge of its unenforceability and illegality, for the express purpose of attempting to collect the Debt from Ms. McIntosh using false threats, harassment, intimidation, and other similar collection methods.

38. Indeed, a large percentage of the debts GTM purchases are from Mobiloans and other similar online loan sharks.

39. These charged-off loans are often purchased in large batches for pennies on the dollar, or less.

40. Many of the debtors are unaware of the impermissible nature of these loans, and just the same are unaware the interest and fees are unenforceable as a matter of law.

41. GTM operates its own call center and employs its own debt collectors in Tampa, Florida.

42. Following its purchase of the Debt, GTM. attempted to collect the Debt from Ms. McIntosh.

43. Although GTM will sometimes use its own, in-house employees to collect a debt, it also contracts with third-party collection agencies to assist in collection on its behalf.

44. Indeed, sometime around October 2018, the Defendants assigned the Debt to DRS for collection.

45. DRS is a separate legal entity existing wholly apart from GTM.

46. In assigning the Debt to DRS for collection, GTM and Torres specifically instructed DRS to attempt to collect from Ms. McIntosh, despite knowledge that the Debt was usurious and unenforceable. GTM and Torres disclosed personal information regarding Ms. McIntosh and the Debt to DRS, including, without limitation:

- a. Ms. McIntosh's name and status as a debtor;
- b. The current creditor and original creditor of the Debt;
- c. Ms. McIntosh's address and phone number; and,
- d. The fact that Ms. McIntosh allegedly owed \$1,319.73 arising from a payday loan with Mobiloans.

47. Ms. McIntosh never consented to having her personal information disclosed to DRS or any third-party debt collector.

48. DRS is not a law office, an attorney, the creditor, nor a Consumer Credit Reporting Agency ("CRA").

49. The Debt has not been reduced to judgment.

50. No court of competent jurisdiction has authorized the communication between GTM and DRS regarding the debt's collection.

51. GTM and Torres' assignment of the Debt to DRS was for the sole purpose of its collection from Ms. McIntosh.

52. GTM and Torres therefore disclosed information regarding a consumer and her debt to a non-attorney, non-CRA third party, DRS, in connection with the collection of a debt.

53. By assigning the Debt to DRS for collection, GTM and Torres represented that the Debt's balance was not only accurate, but also that that GTM and Torres had the legal ability and authority to collect the Debt.

54. This is foundational statement initiating the Defendant's joint attempt to collect the debt from Ms. McIntosh is objectively false, as the debt was unenforceable as a matter of law under Florida's usury regulations.

55. On October 16, 2018, DRS sent Ms. McIntosh a collection email, with a headline in large, red print stating "Notice of Delinquency." **SEE PLAINTIFF'S EXHIBIT D.**

56. The email stated, "In an effort to recover their funds, our client has asked that we contact you." *Id.*

57. The email also contained a "hardship statement" as a separate .PDF document that sought to obtain information from Ms. McIntosh regarding her financial circumstances and other personal information. **SEE PLAINTIFF'S EXHIBIT E.**

58. The document clearly attempted to obtain information about Ms. McIntosh; however, the document contained no disclosure that the communication was from a debt collector or in connection with the collection of a debt. *Id.*

59. The email also prominently advertises DRS' website, www.directrecoveryservices.com. **SEE PLAINTIFF'S EXHIBIT D.**

60. DRS' website states, "If your account is in our office, it may have been already reported to the credit reporting agencies as we report all accounts to the credit

reporting agencies. This usually takes place 30-60 days after the account is placed in our office.” **SEE PLAINTIFF’S EXHIBIT F.**

61. DRS’ statement was false for several reasons.

62. DRS is not a furnisher of data to Equifax, Experian or Trans Union, which are generally considered the three major CRAs.

63. Thus, DRS has no ability to report any data to the CRAs.

64. DRS’ statement is intentionally misleading and attempts to create the false impression that the failure to pay a debt it is collecting on will adversely affect the consumer’s credit report and scores.

65. Courts have long recognized the material impact false credit reporting can have on consumers in the debt collection industry. “Debt collectors use the reporting mechanism as a tool to persuade consumers to pay, just like dunning letters and telephone calls.” *Quale v. Unifund CCR Partners*, 682 F. Supp. 2d 1274, 1278 (S.D. Ala. 2010); *Rivera v. Bank One*, 145 F.R.D. 614, 623 (D.P.R. 1993) (“[Credit reporting] is a powerful tool designed, in part, to wrench compliance with payment terms...”). A debt collector’s refusal to correct mistaken reported information can only be seen as an attempt to “tighten the screws on a non-paying customer.” *Rivera* at 623.

66. Beyond this, DRS could not legally report “all accounts” it collects on to the CRAs, because debts must be under seven years since original delinquency to report, pursuant to the Fair Credit Reporting Act (“**FCRA**”), 15 U.S.C. §1681c(a)(4).

67. DRS' website also states, "If you have been contacted by an Action Advisor it means that your account has been selected for legal action. Please understand that if you contact us you may be able to rescind the process." **SEE PLAINTIFF'S EXHIBIT F.**

68. This statement is also false and misleading.

69. DRS employs no attorneys and does not sue consumers for unpaid debts.

70. A search of public records only shows litigation involving DRS in cases in which it was a *defendant* in legal action brought under the FDCPA, FCRA, etc. by other consumers.

71. Beyond this, DRS *could not* sue Ms. McIntosh in this matter, as the debt was null and void pursuant to the applicable laws of the appropriate jurisdiction.

72. DRS' statement was an attempt to create a false impression with consumers that it not only could, but often does, resort to legal action to recover unpaid debts.

73. GTM and Torres' assignment of the Debt to DRS was in connection with the collection of a debt, and GTM and Torres instructed DRS to collect the Debt from Ms. McIntosh immediately.

74. GTM's own in-house calls were attempts to collect the Debt.

75. GTM and Torres are also liable for the acts of DRS, their hired agent. *See Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 325-26 (7th Cir. 2016) (assignees who are "debt collectors" are responsible for the actions of those collecting on their behalf).

76. Torres was personally involved in the collection efforts of GTM, and he was personally responsible for setting the policies by which such conduct was taken and for overseeing such conduct.

77. Directors of a debt collection company may be held personally liable when they “(1) materially participated in collecting a debt, (2) exercise[d] control over the affairs of [a debt collection] business, or (3) were regularly engaged, directly and indirectly, in the collection of debts.”” *Alaska Trustee, LLC v. Ambridge*, 372 P.3d 207, 224 (Alaska 2016) (citing *Del Campo v. Am. Corrective Counseling Serv., Inc.*, 718 F.Supp.2d 1116, 1127). *See also Moritz v. Daniel N. Gordon, P.C.*, 895 F.Supp.2d 1097, 1109 (W.D.Wash.2012).

78. Torres and GTM are thus jointly and severally liable for violations of the FDCPA and FCCPA.

79. Ms. McIntosh has hired the aforementioned law firm to represent her in this matter and has assigned her right to collect fees and costs to the firm.

COUNT I
VIOLATIONS OF THE FDCPA

80. Ms. McIntosh adopts and incorporates paragraphs 1 – 79 as if fully restated herein.

81. GTM and Torres violated **15 U.S.C. § 1692c(b)** when they communicated information about the alleged Debt to DRS, an unrelated third party. DRS was not an attorney for GTM or Ms. McIntosh, was not a CRA, was not the creditor, was not granted permission by a court order, and Ms. McIntosh did not consent to the communication.

82. The Defendants violated **15 U.S.C. § 1692e and 1692e(10)** when DRS, as agent for GTM and Torres, used false, deceptive, and misleading representations in connection with the collection of a debt by falsely:

- (a) representing that the Debt was enforceable when it was not because the interest rate that the purported Debt was subject to exceeded 400%, rendering the debt null and void under Florida law;
- (b) claiming that the debt would be reported to the CRAs when the Defendants knew it would not be; and
- (c) claiming legal action could be taken in the event of nonpayment when the Defendants knew it would not be and legally could not be.

83. The Defendants violated **15 U.S.C. § 1692e(2)(a)** when DRS, as agent for GTM and Torres, made false representations regarding the character or legal status of the Debt by:

- (a) falsely representing that the Debt was enforceable when it was not because the interest rate that the purported Debt was subject to exceeded 400%, rendering the debt null and void under Florida law; and
- (b) failing to disclose that the debt was unenforceable and that Ms. McIntosh could not be sued for nonpayment.

84. GTM and Torres violated **15 U.S.C. § 1692e(2)(a)** when they made false representations regarding the character or legal status of the Debt by falsely representing that the Debt was valid and legally enforceable in their own collection attempts and in their

instruction to DRS to collect the Debt from Ms. McIntosh, when the Debt was void as usurious under Florida law.

85. The Defendants violated **15 U.S.C. § 1692e(5)** when they threatened action which could not legally be taken: specifically, the collection of a debt rendered void under Florida law, and when DRS, as agent for GTM and Torres, threatened to report the debt to the CRAs, despite having no intention or ability to make such a report.

86. The Defendants violated **15 U.S.C. § 1692e(11)** when DRS, as agent for GTM and Torres, sent a communication to Ms. McIntosh, a “hardship statement,” which attempted to obtain information about Ms. McIntosh without disclosure that the request for the information was in connection with the collection of a debt by a debt collector.

87. The Defendants violated **15 U.S.C. § 1692f** when they used unfair or unconscionable means to attempt to collect the Debt, when DRS, as agent for GTM and Torres, attempted to collect a debt it knew was legally unenforceable and not owed by Ms. McIntosh, and falsely threatened legal action and credit reporting.

88. GTM’s actions were willful, intentional, and representative of its regular business practices.

WHEREFORE, Ms. McIntosh respectfully requests that this Honorable Court enter judgment against DRS, GTM and Torres, jointly and severally, for:

- a. Statutory damages of **\$1,000.00**, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- b. Unspecified actual damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. Reasonable costs and attorneys’ fees pursuant to 15 U.S.C. § 1692k(a)(3); and,
- d. Such other relief that this Court deems just and proper.

COUNT II
VIOLATIONS OF THE FCCPA

89. Ms. McIntosh adopts and incorporates paragraphs 1 – 79 as if fully restated herein.

90. The Defendants violated Section **559.72(9)**, Florida Statutes, when they asserted legal rights that do not exist, specifically, the right to collect a debt from Ms. McIntosh, both directly and via a collection agent, when they knew that the Debt was illegitimate and unenforceable due to: (a) the application of an illegally high interest rate on the principal amount of the Debt; (b) the fact that Mobiloans was never licensed as a deferred presentment provider in the State of Florida; and, (c) the right and ability to sue for the Mobiloans debt.

91. The Defendants violated Section **559.72(9)**, Florida Statutes, when they asserted that the Debt was legitimate despite knowledge to the contrary.

92. The Defendants' conduct was willful and intentional, and was engaged in with a reckless disregard for Ms. McIntosh's rights under federal and Florida law.

WHEREFORE, Ms. McIntosh respectfully requests that this Honorable Court enter judgment for her against the Defendants, jointly and severally, for:

- a. Statutory damages of **\$1,000.00** pursuant to Section 559.77(2), Florida Statutes;
- b. Unspecified actual damages pursuant to Section 559.77(2), Florida Statutes;
- c. Injunctive relief preventing the Defendants from attempting to collect the alleged Debt from Ms. McIntosh, pursuant to Section 559.77(2), Florida Statutes;

- d. Punitive damages for Defendants' intentional and flagrant violations of the FCCPA, pursuant to Section 559.77(2), Florida Statutes;
- e. Reasonable costs and attorneys' fees pursuant to Section 559.77(2), Florida Statutes; and,
- f. Such other relief that this Court deems just and proper.

JURY TRIAL DEMANDED

Ms. McIntosh demands a jury trial on all issues so triable.

Respectfully submitted on October 11, 2019, by:

/s/ Thomas M. Bonan
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EXHIBITS:

- A GTM's Florida CCA License Record
- B DRS's Florida CCA License Record
- C Screenshot of Mobiloan's Website, December 18, 2018
- D DRS Collection Email, dated October 16, 2018
- E DRS Collection Email Attachment, Hardship Statement
- F Screenshot of DRS' Website, October 3, 2019