

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GREGORY A. BUFORD, SR., individually	§	
and on behalf of all others similarly situated,	§	
	§	
Plaintiff,	§	CASE NO. 3:12-cv-05288-L-BH
	§	
v.	§	
	§	
DRIVER SOLUTIONS, LLC, BRYAN K. ALSIP, TOM LANE, & PYRAMID FINANCIAL SOLUTIONS, LLC,	§	CLASS ACTION - JURY
	§	
Defendants.	§	

PLAINTIFF’S MOTION FOR CLASS CERTIFICATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Gregory A. Buford, Sr. (“Plaintiff”), Individually and on Behalf of all Others Similarly Situated, (The “Plaintiff Classes”), and files this, his Motion for Class Certification. Plaintiff respectfully moves the Court for a determination that this case may proceed as a class action pursuant to Federal Rule of Civil Procedure 23 in order to pursue claims against Defendants Driver Solutions, LLC, Bryan K. Alsip, Tom Lane, and Pyramid Financial Solutions, LLC (“Defendants”). Plaintiff would respectfully show the Court that Certification of the proposed Plaintiff Classes is proper for the following reasons:

1. This action arises from the Defendants’ violation of the Fair Debt Collection Practices Act, the Texas Debt Collection Act, and state common law claims in its attempt to collect a debt from Plaintiff.

2. Plaintiff seeks to certify Plaintiff Classes defined as follows:

National Class: All persons within the United States from whom, on or after July 13, 2010, any of the Defendants sought to collect, or did collect, a debt. This class excludes persons who reside in Marion County, Indiana.

Texas Class: All persons within the State of Texas from whom, on or after July 13, 2010, any of the Defendants sought to collect, or did collect, a debt.

Neither of the above Classes include any employees of the Defendants or the judges assigned to this action or their relatives.

3. The National and Texas Classes intend to pursue a common FDCPA claim against the Defendants under 15 U.S.C. § 1692e, 15 U.S.C. § 1692i, and 15 U.S.C. § 1692c, as well as a common claim against Defendants for Conversion and Malicious Prosecution. The Texas Class also intends to pursue claims against Defendants under the Texas Debt Collection Act, TEX. FIN. CODE § 392.304(19) for declaratory and injunctive relief.

4. Concurrent with the filing of this Motion for Class Certification, Plaintiff is filing his Memorandum of Law in Support of Class Certification (“Memorandum of Law”) and Appendix in Support of Plaintiff’s Memorandum of Law in Support of Class Certification (“Appendix”). Plaintiff respectfully asserts that class certification should be granted based upon the arguments and evidence contained in his Memorandum of Law and Appendix which are hereby incorporated into this Motion for Class Certification.

5. The four class certification requirements of Rule 23(a)(1)-(4) are satisfied in this case.

6. Plaintiff anticipates that numerosity will be satisfied in this case. Further, Plaintiff believes that the National Class will be shown to be geographically dispersed throughout the United States. The Texas Class will be shown to be geographically dispersed

throughout Texas. Plaintiff also anticipates that the names and addresses of class members are readily obtainable from Defendants and their agents, as this information is maintained in the computer database of Defendants and is easily retrievable.

7. The commonality element of Rule 23(a)(2) is satisfied because there are numerous questions of law and fact common to the Classes. The factual “core” of this action is the common, systematic and uniform conduct of the Defendants. It is believed that Defendants use a standardized collection process. In short, the Defendants’ practices for collecting debts are common in all relative and meaningful ways. In addition, the *legal* theories of each member of each of the classes are identical, and a violation as to one is a violation as to all. In other words, the claim is common, Defendants’ actions are common, and the method of calculating penalties and damages will be common. Consequently, the commonality requirement of Rule 23(a)(2) is satisfied. Common questions of law and fact for the National Class include:

- a. Whether Defendants are debt collectors as defined by the FDCPA;
- b. Whether Plaintiff and National Class Members are consumers as defined by the FDCPA;
- c. Whether Defendants were engaged in the collection of consumer debt as defined by the FDCPA;
- d. Whether Defendants violated the FDCPA Fair Venue Provision by filing lawsuits against Plaintiff and the Class Members in Marion County, Indiana;
- e. Whether Defendants violated Indiana law by filing lawsuits against Plaintiff and the Class Members in Marion County, Indiana;
- f. Whether Defendants’ garnishment of the Plaintiff’s and Class Members’ wages constituted conversion;
- g. Whether Defendants’ actions constituted malicious prosecution;

- h. Whether Plaintiff and the Class Members sustained actual damages as a result of Defendants' illegal acts and omissions as alleged in the Complaint;
- i. The scope, extent and measure of actual and/or statutory damages and equitable relief that should be awarded to Plaintiff and the Class;
- j. The amount of attorneys' fees, prejudgment interest, and costs of suit to which Plaintiff and the Class Members are entitled; and
- k. Whether the Defendants' acts and omissions were sufficiently wrongful to entitle Plaintiff and the Class Members to punitive damages.

Common questions of law and fact for the Texas Class include:

- a. Whether Defendants are debt collectors as defined by the TDCA;
- b. Whether Plaintiff and Texas Class Members are consumers as defined by the TDCA;
- c. Whether Defendants were engaged in the collection of consumer debt as defined by the TDCA;
- d. Whether Defendants garnished the Plaintiff's and Class Members' wages in violation of the Texas Constitution and Texas law;
- e. Whether Defendants garnished the Plaintiff's and Class Members' wages in violation of the TDCA;
- f. Whether Defendants employed a uniform pattern of misrepresentation and omissions in presenting "evidence" to the Marion, Indiana court that contained material misrepresentations;
- g. Whether Plaintiff and the Class Members sustained damages and losses as a result of Defendants' illegal acts and omissions as alleged in the Complaint;
- h. The scope, extent and measure of actual and/or statutory damages and equitable relief that should be awarded to Plaintiff and the Class;
- i. The amount of attorneys' fees, prejudgment interest, and costs of suit to which Plaintiff and the Class Members are entitled; and
- j. Whether the Defendants' acts and omissions were sufficiently wrongful to entitle Plaintiff and the Class Members to punitive damages.

8. The claims of the representative Plaintiff are typical of the claims of the members of each of the Classes. The Plaintiff's claims arise from the common provisions of standardized processes that are substantively identical to the processes that form the basis of all class members' claims. The Plaintiff is asserting legal claims against Defendants that are identical to those claims being asserted by absent class members against Defendants, primarily that the Defendants violated the law to the detriment of the debtors, the class members, as a group. The Plaintiff's and each class member's claims stem from the same alleged practices and course of conduct by Defendants and are all based upon the same legal theories. By proving his own claims against the Defendants, Plaintiff will necessarily prove these same claims for all members of each of the classes, thus rendering Plaintiff's claims typical of the classes. Accordingly, the Plaintiff's claims are typical of the claims of each of the class members, and the typicality requirement of Rule 23(a)(3) is satisfied.

9. Adequacy of representation as required by Rule 23(a)(4) is satisfied. The Plaintiff is a competent representative of each of the classes, and Defendants will be unable to rebut the presumption of adequate representation. Plaintiff understands the basic issues involved in this litigation and his responsibility as a class representative. Plaintiff's interests are aligned with, and not antagonistic to, the interests of the Classes. There are no differences between the Class Representative and the class members that could possibly create a conflict. Counsel for Plaintiff submits that, based upon their individual and collective experience, they are capable of handling the present litigation, and that the Court should find that the requirements of Rule 23(a)(4) are easily met in this action. Plaintiff will fairly and adequately protect the interests of each of the classes and have retained counsel experienced and capable in class action litigation, and in the

fields of law related to consumer law and debt collection. Plaintiff understands and appreciates his duties to the class under FED. R. CIV. P. 23 and is committed to vigorously protecting the rights of absent class members.

10. Finally, as discussed more thoroughly in Plaintiff's Memorandum of Law in Support of Class Certification, both Classes warrant certification under Rule 23(b)(3). Common questions of law predominate over questions affecting only individual class members. The central issues in this litigation will be the legality of Defendants' debt collection practices. That issue will involve consideration of the common and repetitive conduct of the Defendants and be resolved largely under common federal statutes. In addition, class resolution is the superior means for adjudicating the controversy. Class certification will provide efficient resolution of the claims and avoid the possibilities of repetitious litigation and inconsistent outcomes. In addition, if left to pursue individual suits, the amounts at issue would likely be too small to encourage the lone consumer to file suit. Hence, a class-wide proceeding is necessary to redress the wrongs done to class members.

11. Class certification of the Texas Class is also proper pursuant to Rule 23(b)(2). The Defendants have acted or refused to act on grounds generally applicable to this class, thereby making appropriate final injunctive relief with respect to the class as a whole.

12. Plaintiff respectfully asserts that class certification should be granted based upon the arguments and evidence contained in his Memorandum of Law and Appendix, which are both hereby incorporated into this Motion for Class Certification.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court grant his Motion for Class Certification. Plaintiff additionally prays for any and all other relief to which Plaintiff may be entitled.

Respectfully submitted,

John Howie, Jr.
HOWIE LAW, P.C.
State Bar No. 24027239
4040 N. Central Expressway
Suite 850
Dallas, TX 75204
214.622.6340
214.622.6341 - Facsimile
jhowie@howielaw.net

Janice E. Cohen
State Bar No. 04508362
Two Turtle Creek Village
3838 Oaklawn Avenue
Suite 750 ~ LB 20
Dallas, TX 75219
214.528.7977
214.528.7986 – Facsimile
jeclaw@sbcglobal.net

/s/ Walt D. Roper
Walt D. Roper
THE ROPER FIRM, P.C.
State Bar No. 00786208
3001 Knox Street
Suite 405
Dallas, Texas 75205
214.420.4520
214.856.8480 – Facsimile
walt@roperfirm.com

CERTIFICATE OF CONFERENCE

I certify that on April 29, 2014, I conferred with Ed Walton, attorney for Defendants, regarding this motion and that he stated that Defendants are opposed to the relief sought.

/s/ Walt D. Roper
Walt D. Roper

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2014, I electronically filed Plaintiff's Motion for Class Certification with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Walt D. Roper
Walt D. Roper