

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Vincent A. LaMonaca,

Plaintiff,

v.

FirstStates Financial Services Corp.,

Defendant.

No. 1:18-cv-11829-NLH

Answer to Plaintiff's Complaint with Affirmative Defenses

AND NOW, comes Defendant, FirstStates Financial Services Corp. (hereinafter "Defendant"), by and through its undersigned counsel, and responds to the allegations of Plaintiff's Complaint as follows:

I. Introduction

1. Paragraph 1 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 1 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

II. Jurisdiction and Venue

2. Paragraph 2 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 2 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

3. Paragraph 3 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 3 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

III. The Parties

4. Admitted upon information and belief.

5. Admitted in part, denied in part. It is admitted that Defendant is a Pennsylvania corporation. The remainder of the allegations contained in Paragraph 5 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required.

IV. Factual Allegations

6. Admitted.

7. After a reasonable investigation, Defendant is without sufficient information to form a belief as to the truth of the matter asserted in Paragraph 7 of Plaintiff's Complaint. As such, the averments are denied and strict proof thereof is demanded.

8. After a reasonable investigation, Defendant is without sufficient information to form a belief as to the truth of the matter asserted in Paragraph 8 of Plaintiff's Complaint. As such, the averments are denied and strict proof thereof is demanded.

9. Admitted.

10. Denied.

11. Admitted.

12. Admitted. By way of further response, the City of Chester has passed an ordinance authorizing the collection of "reasonable costs of the use of emergency rescue tools, equipment, and materials; ... and personnel hours involving any hazardous material, environmental, fire safety, and/or rescue incident or operation, including vehicular accidents." Article 99, attached hereto as Exhibit "A".

13. Denied as stated.

14. Paragraph 14 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 14 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

15. Denied.

16. Admitted. The document attached to Plaintiff's Complaint is a writing that speaks for itself. Defendant denies any characterization of that writing, or part thereof, that is imputed by Plaintiff.

17. Denied.

18. Paragraph 18 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 18 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

19. Paragraph 19 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 19 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

20. Paragraph 20 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 20 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

21. Paragraph 21 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 21 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Paragraph 26 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 26 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

27. Denied.

28. Paragraph 28 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 28 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

29. Paragraph 29 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 29 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

V. Class Allegations

30. Paragraph 30 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 30 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

31. Paragraph 31 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 31 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

32. (a)-(o). Paragraph 32(a)-(o) of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 32(a)-(o) of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

33. Paragraph 33 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 33 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

34. Paragraph 34 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 34 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

35. Paragraph 35 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 35 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

36. Paragraph 36 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 36 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

VI. Claims

Count One

37. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

38. Paragraph 38 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 38 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

39. Paragraph 39 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 39 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

40. Paragraph 40 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 40 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

41. (a)-(g). Paragraph 41(a)-(g) of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 41(a)-(g) of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

42. Paragraph 42 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 42 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

43. Paragraph 43 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 43 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Two

44. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

45. Paragraph 45 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 45 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

46. Paragraph 46 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 46 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

47. Paragraph 47 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 47 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

48. Paragraph 48 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 48 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

49. Paragraph 49 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 49 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

50. Paragraph 50 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 50 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

51. Paragraph 51 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 51 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Three

52. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

53. Paragraph 53 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 53 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

54. Paragraph 54 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 54 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

55. Paragraph 55 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 55 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

56. Paragraph 56 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 56 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

57. Paragraph 57 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 57 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

58. Paragraph 58 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 58 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

59. Paragraph 59 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 59 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Four

60. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

61. Paragraph 61 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 61 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

62. Paragraph 62 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 62 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

63. Paragraph 63 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 63 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

64. Paragraph 64 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 64 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

65. Paragraph 65 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 65 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

66. Paragraph 66 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 66 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Five

67. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

68. Paragraph 68 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 68 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

69. Paragraph 69 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 69 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

70. Paragraph 70 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 70 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

71. Paragraph 71 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 71 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

72. Paragraph 72 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 72 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

73. Paragraph 73 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 73 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

74. Paragraph 74 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 74 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Six

75. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

76. Paragraph 76 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 76 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

77. Paragraph 77 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 77 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

78. Paragraph 78 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 78 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

79. Paragraph 79 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 79 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Seven

80. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

81. Paragraph 81 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 81 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

82. Paragraph 82 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 82 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

83. Paragraph 83 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 83 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Eight

84. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

85. Paragraph 85 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 85 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

86. Paragraph 86 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 86 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

87. Paragraph 87 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 87 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Nine

88. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

89. Paragraph 89 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 89 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

90. Paragraph 90 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 90 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

91. Paragraph 91 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 91 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Count Ten

92. All of the responses contained in the foregoing paragraphs of this Answer are incorporated by reference herein as if the same were set forth at length.

93. Paragraph 93 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 93 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

94. Paragraph 94 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 94 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

95. Paragraph 95 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 95 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

96. Paragraph 96 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 96 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

VII. Jury Trial Demand

97. Paragraph 97 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that Paragraph 97 of Plaintiff's Complaint does contain an averment of fact, the same is denied and strict proof thereof is demanded.

VIII. Prayer for Relief

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

Affirmative Defenses

Defendant reserves the right to assert any and all applicable defenses to Plaintiff's claims. Without limiting the generality of the foregoing, and without regard to whether the defenses set forth below are affirmative defenses within the meaning of FED. R. CIV. P. 8(c), and without conceding that any such defense must be set forth in its Answer, Defendant states as follows:

First Affirmative Defense

Plaintiff's Complaint fails to set forth a claim, in whole or in part, upon which relief can be granted.

Second Affirmative Defense

The Notice attached to Plaintiff's Complaint does not contain any false representations, or deceptive or misleading misrepresentations.

Third Affirmative Defense

The Notice attached to Plaintiff's Complaint does not contain any attempt to collect any amount not expressly authorized by and agreement creating a debt or by law.

Fourth Affirmative Defense

The Notice attached to Plaintiff's Complaint does not contain any language that overshadowed or contradicted the validation notice required by 15 U.S.C. § 1692g.

Fifth Affirmative Defense

At all times material hereto, the actions of Defendant were appropriate under the circumstances and based upon a reasonable good-faith belief that they were justified under the law.

Sixth Affirmative Defense

Any violation of the FDCPA (which violation Defendant denies) was unintentional and resulted from a "bona fide error." See 15 U.S.C. § 1692k.

Seventh Affirmative Defense

If Defendant violated the FDCPA (which violation Defendant denies), Plaintiff has incurred no actual damages as a result of these purported violations as to her debts.

Eighth Affirmative Defense

Defendant acted in good faith with respect to Plaintiff and fully complied with the FDCPA.

Ninth Affirmative Defense

Plaintiff is precluded from recovering statutory damages against Defendant in the absence of any showing that Defendant violated the FDCPA.

Tenth Affirmative Defense

Some or all of the claims asserted against Defendant are barred by the applicable statute of limitations, including the one-year statute of limitations for violations of the FDCPA. See 15 U.S.C. § 1692k(d).

Eleventh Affirmative Defense

Plaintiff's claims are not an appropriate subject for a class-action.

Twelfth Affirmative Defense

Plaintiff is not an appropriate class representative.

Thirteenth Affirmative Defense

Defendant asserts any and all additional defenses recognized and not specifically set forth above.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, together with costs, disbursements, and attorney's fees under, *inter alia*, 42 U.S.C. §§ 1988, 1927 and FED. R. CIV. P. 11, and such further relief that the Court should deem just and equitable.

DEASEY, MAHONEY & VALENTINI, LTD.



By: _____

Henri Marcel, Esquire
Lauren M. Steins, Esquire
1601 Market Street, Suite 3400
Philadelphia, PA 19103
Phone: (215) 587-9400
Fax: (215) 587-9456
Email: hmarcel@dmvlawfirm.com
lsteins@dmvlawfirm.com

Attorneys for Defendant

Date: 10.1.2018

Certificate of Service

I, Lauren M. Steins, hereby certify that on the date set forth below, I did cause a true and correct copy of the foregoing Answer to Plaintiff's Complaint with Affirmative Defenses to be filed with the Court's ECF/PACER electronic filing system, where it was available for immediately viewing and download to:

James A. Francis, Esquire
David A. Searles, Esquire
FRANCIS & MAILMAN, P.C.
100 South Broad Street, Suite 1902
Philadelphia, PA 19110



Lauren M. Steins, Esquire

Date: 10.1.2018

Exhibit

“A”

BILL NO. 5

(\$50.00), plus the costs of prosecution, not to exceed three hundred dollars (\$300.00), plus the costs of prosecution, for each day that said violation shall continue.

- C. Any person who, when having caused or having failed to prevent a false alarm that as a result of their on-site investigations, is determined by the Chester Police Department, the Chester Fire Department or other affected public safety agency, to have been malicious in nature (known as a "Malicious Pull"), upon conviction thereof shall be subject to a fine of not less than five hundred dollars (\$500.00), plus the cost of prosecution.
- D. Any person who, after receiving notice, written or oral, from the Chester City Police, the Chester City Fire Department or other affected public safety agency that Police Officers, Emergency Personnel or other municipal officials, have responded to THREE (3) false alarms as defined in this Article, at the same location, during a consecutive twelve (12) month period, and then when having caused or permitted a FOURTH (4th) or subsequent false alarm condition in that same consecutive twelve (12) month period, and at that same location shall, upon conviction thereof, be sentenced to pay a fine of not less than three hundred dollars (\$300.00), plus costs of prosecution, for each false alarm occurring after the third false alarm in said consecutive twelve-month period.
- E. For the purpose of determining the total number of false alarms; repeated alarms in a twenty-four (24) hour period, (a calendar day) at the same location, shall be deemed as one (1) false alarm.

Section 2. New Article 933 Entitled "Service Cost Recovery." The Code of the City of Chester is hereby amended by adding the following new Article 933 entitled "Service Cost Recovery:"

ARTICLE 933

SERVICE COST RECOVERY

SECTION 1: FINDINGS AND INTENT

- A. **Findings** - The City of Chester recognizes that the duties of the Chester Fire Department require the use of specialized emergency rescue tools and equipment, emergency rescue materials, hazardous material abatement equipment, and hazardous abatement materials during their emergency responses. The City of Chester also recognizes that the costs of the maintenance and replacement of this equipment added to the replacement costs of damaged or expended materials places an increasing financial burden on the City of Chester.
- B. **City Council Intent** - It is intended to grant the City of Chester the authority to seek recovery of all reasonable costs of responding to such emergency incidents, as allowed by applicable law.

SECTION 2: DEFINITIONS. As used in this Article, the following words and phrases shall have the meanings given to them in this section:

Reasonable Costs - The reasonable costs incurred by the City pursuant to the Rate Schedule for recovery of costs for the Chester City Fire Department.

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SECTION 3: RECOVERY OF COSTS

- A. The City of Chester is hereby authorized to recover reasonable costs of the use of emergency rescue tools, equipment and materials; hazardous material abatement tools and equipment, hazardous abatement materials; and personnel hours involving any hazardous material, environmental, fire safety, and/or rescue incident or operation, including vehicular accidents.
- B. A Rate Schedule of reasonable costs, for the aforementioned tools, equipment, materials and hourly rates for personnel, shall be set by the Chester Fire Department from time to time, and shall only be applied to the recovery of costs arising out of incidents that occurred subsequent to the setting of the rate schedule. A copy of this rate schedule shall be on file for review at the business offices of Chester City.
- C. The reasonable costs outlined above may be recovered from any identified insurance carrier or person or persons, directly by the City or by an attorney, or through a third-party billing service acting as a contracted authorized agent for the collection of such costs. In addition to the reasonable costs as set forth in the above-mentioned Rate Schedule, the City, or an attorney, or the third-party billing service shall hereby be authorized to collect, in addition to the reasonable costs, reasonable interest and administration fees for collecting the said costs and fees.
- D. In the event that any insurance carrier or person or persons should fail to pay any bill or invoice within thirty (30) days of the mailing or delivery of such notice of charges, the City, or an attorney, or the third-party billing service who mailed or delivered the bill or invoice may enforce the provisions of this Article by filing a civil action at law in a court of competent jurisdiction for the collection of any amounts due to the City, together with statutory interest, court costs, collection fees and associated reasonable attorney's fees.

SECTION 4: REQUIREMENTS TO PAY FOR REASONABLE COSTS

- A. Any insurance carrier or person shall be liable for the reimbursement of reasonable costs incurred by the City, as outlined in this Article, unless that person has paid to the City of Chester a tax which funds, at least in part, the services which the Chester Fire Department provides
- B. The City shall not be obligated to pursue collection efforts against any insurance company or person in the event that the City's reasonably determines that collection efforts will not be successful or that the costs of collection will exceed the amount due hereunder..

Section 3. **EFFECTIVE DATE.** This Article shall be effective immediately upon its adoption.

Section 4. **SEVERABILITY.** Should any section, subsection, sentence, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the ordinance in its entirety or any part thereof, other than that so declared invalid.

Section 5. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

BILL NO. 5

ENACTED AND ORDAINED THIS ___ DAY OF _____, 2012.

2012. WE HEREBY CERTIFY that this Ordinance passed Council this ___ day of _____, A.D.


MAYOR

Attest: 
CITY CLERK