IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HSIAO YIP, Plaintiff, v. DYNAMIC RECOVERY SOLUTIONS LLC, LVNV FUNDING LLC, AND RESURGENT CAPITAL SERVICES, LP, Defendants.	CASE NO. 1:18-CV-02586-TWT-JSA

DEFENDANTS' MOTION TO DISMISS

COME NOW Defendant LVNV Funding, LLC ("LVNV") and Defendant Resurgent Capital Services, LP ("Resurgent"), by counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), and hereby move to dismiss this action with prejudice for failure to state a claim upon which relief can be granted. In support of this Motion, Defendants rely on all filings of record and the brief filed herewith.

This 11th day of September 2018.

/s/ Mark J. Windham
Mark J. Windham
Georgia Bar No. 113194

TROUTMAN SANDERS LLP
3000 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
Telephone: 404-885-3000
Facsimile: 404-885-3900
E-mail: mark.windham@troutman.com
Counsel for Defendant LVNV Funding, LLC
and Defendant Resurgent Capital Services, LP

CERTIFICATE OF SERVICE, FONT AND MARGINS

I certify that I have on this day filed within the foregoing ***Motion to Dismiss*** and all attachments thereto by using the Court's ECF system system, which will automatically send notice of such filing to all counsel of record. I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

This 11th day of September 2018.

/s/ Mark J. Windham
Mark J. Windham
Georgia Bar No. 113194

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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HSIAO YIP, Plaintiff, v. DYNAMIC RECOVERY SOLUTIONS LLC, LVNV FUNDING LLC, AND RESURGENT CAPITAL SERVICES, LP, Defendants.	CASE NO. 1:18-CV-02586-TWT-JSA

DEFENDANTS' MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS

Defendant LVNV Funding, LLC ("LVNV") and Defendant Resurgent Capital Services, LP ("Resurgent"), by counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), submit this Memorandum in Support of their Motion to Dismiss the Complaint filed by Plaintiff Hsiao Yip with prejudice, respectfully showing the Court as follows:

INTRODUCTION

Plaintiff's suit is based on three letters—only one of which was sent to Plaintiff. Because Plaintiff suffered no concrete, particularized injury due to the

letters sent to her attorney, she lacks even standing to bring claims regarding those letters. Her contention that plain language—included on the very first page of the letter she did read— regarding the statute of limitations was not "noticeable to the least sophisticated consumer" is wrong as a matter of law. Finally, her argument that Defendants cannot include interest after the date her debt was charged off by the original creditor is based entirely on "a unique feature of the Kentucky interest statute." *See Bunce v. Portfolio Recovery Assocs., LLC*, 2014 WL 5849252, at *4 (D. Kan. Nov. 12, 2014). This case has nothing to do with Kentucky law. Accordingly, Plaintiff's Complaint fails to state a claim and should be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

Plaintiff failed to pay her debts to Washington Mutual Bank, NA ("Washington Mutual") for so long that the bank charged off the debt. (*See* Exhibit 2, p. 2).[2] LVNV acquired the debt in 2010. (*See id.*). On February 2, 2018, Defendant Dynamic Recovery Solutions, LLP ("Dynamic") sent Plaintiff a letter about the debt on behalf of LVNV ("the Dynamic Letter"). (Exhibit 1). The

[1] Defendants deny all the assertions in the Complaint, although the material allegations are taken as true for purposes of this Motion. *See Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003).

[2] The letters sent to Plaintiff and her counsel and the letter sent by Plaintiff's counsel are attached hereto as exhibits. These documents can be considered by the Court, without converting Defendant's Motion to Dismiss into a motion for summary judgment, because they are central to Plaintiff's claims and their authenticity is not in question. *See, e.g., SFM Holdings, Ltd. V. Banc of Am. Sec., LLC*, 600 F.3d 1334, 1337 (11th Cir. 2010).

Dynamic Letter provided Plaintiff with various disclosures and options to repay her past due debt. (*Id*. p. 1). Crucially, the Dynamic Letter clearly explained—on the very first page—that Plaintiff would not be sued because of the age of her debt and that if she made a partial payment it would restart the statute of limitations on her account. (*Id*.); (Compl. ¶¶47–48).

Plaintiff alleges that she read the Dynamic letter and "did not understand" the language regarding "the applicable statute of limitations, and therefore made use of legal counsel." (Compl. ¶ 76). Plaintiff's counsel sent letters to Dynamic and LVNV demanding nearly $10,000 for alleged injuries caused by the single, two-page Dynamic letter. (Exhibit 4). Resurgent responded by sending two letters to Plaintiff's counsel. (*See* Compl. ¶¶47–48); (Exhibits 2, 3). The first letter was an "account summary which provide[d] verification of [the] debt" because Plaintiff's counsel specifically requested as much. (Exhibit 2); (Exhibit 4, p. 3). The second letter provided a privacy notice and information regarding Plaintiff's legal rights. (Exhibit 3). Nowhere in her complaint does Plaintiff allege she ever saw or read the letters Resurgent sent to her attorney.

While the amount of Plaintiff's debt charged off by Washington Mutual in 2009 was $2,833.99, the letter to Plaintiff and the two to her attorney listed the account balance as $3,715.56. (*See* Exhibits 1, 2, 3). Based on these facts, Plaintiff

brings two claims for alleged violations of the Fair Debt Collections Practices Act ("FDCPA") and two claims for alleged violations of the Georgia Fair Business Practices Act ("GFBPA").

II. STANDARD OF REVIEW

A. Standing

"Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy," and as such is a Constitutional limit on federal-court jurisdiction. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016). As part of the "irreducible constitutional minimum" of standing, Plaintiff bears the burden of establishing that she suffered an injury in fact. *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992)).

"To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Spokeo*, 136 S. Ct. at 1548 (quotation marks omitted). "A 'concrete' injury must be '*de facto*'; that is, it must actually exist. *Id.* Plaintiff does not "automatically satisfy[y] the injury-in-fact requirement" simply because "a statute grants [her] a statutory right and purports

to authorize [her] to sue to vindicate that right. Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* at 1549.

B. Motion to Dismiss

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also* Fed. R. Civ. P. 8(a)(2) ("A pleading that states a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief."). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . [O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 678–79.

C. Substantive Legal Standards

Plaintiff alleges that Defendants violated the FDCPA by using a "false representation or deceptive means" when they informed her that she would not be sued on her debt because the statute of limitations had run. 15 U.S.C. § 1692e(10). She also argues Defendants knew they were making a false representation about

the amount of the debt owed because the total included post-charge-off interest. *See id.* § 1692e(2), (8); *id.* §1692f(1).

To evaluate whether a "communication violates § 1692e of the FDCPA," the Eleventh Circuit employs "the 'least-sophisticated consumer' standard." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1193–94 (11th Cir. 2010). The question is how the least sophisticated consumer, rather than a reasonable consumer, would perceive the allegedly deceitful statements. *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1174–75 (11th Cir. 1985). However, even the "'least sophisticated consumer' can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care." *LeBlanc*, 601 F.3d at 1194 (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993)). Thus, the standard still "prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness." *LeBlanc*, 601 F.3d at 1194 (quoting *United States v. Nat'l Fin. Servs., Inc.*, 98 F.3d 131, 136 (4th Cir. 1996)). Lastly, the least sophisticated consumer standard does not apply to FDCPA claims if the consumer's sophistication is irrelevant to the claim. *Jeter*, 760 F.2d at 1175.

Under Eleventh Circuit precedent, "a violation of the FDCPA constitutes a violation of the GFBPA." *Harris v. Liberty Cmty. Mgmt., Inc.*, 702 F.3d 1298, 1303 (11th Cir. 2012).

III. ARGUMENT AND CITATION OF AUTHORITY

Plaintiff lacks standing to bring any claims regarding the letters Resurgent sent her attorney because she is not alleged to have read them, much less been confused by them. Even to the extent Plaintiff does have standing to bring any of her claims, she fails to state a claim as a matter of law. The language in the Dynamic letter regarding the statute of limitations and the possible effect of a partial payment was completely accurate and would not deceive even the least sophisticated consumer. Plaintiff's contentions that Defendants misstated the amount of the debt is based on an incorrect interpretation of Georgia's prejudgment interest statue. Finally, because Plaintiff's claims under the FDCPA fail and she offers no other support for her GFBPA claims, those claims fails as well. Accordingly, the Complaint and all claims alleged should be dismissed with prejudice.

A. Plaintiff lacks standing to bring claims regarding the Resurgent Letters

As will be discussed below, in Section III(B) none of the letters violated the FDCPA or the GFBPA. But even if Resurgent's letter were somehow in violation

of either statute, Plaintiff suffered no Constitutionally recognized harm because of the letters. Whatever the merits of Plaintiff's allegations regarding the Dynamic letter, she at least alleges that she "did not understand" the language regarding the statute of limitations, "and therefore made use of legal counsel." (Compl. ¶ 76). However, there is no allegation that Plaintiff ever even saw—much less was confused by—the letters Resurgent sent to her counsel.

Plaintiff's counsel is attempting to manufacture alleged FDCPA violations out of whole cloth. He sent a letter specifically requesting verification of the debt. (Exhibit 4, p. 3). Now, he argues Resurgent violated the FDCPA by responding to his request, even though there are no allegations his client ever saw or was misled by Resurgent's letters. Plaintiff cannot simply "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." *Spokeo*, 136 S. Ct. at 1549. As this very Court has held, "absent appropriate allegations" that a plaintiff was actually "confused or misled," the plaintiff does not have Constitutional standing. *Stone v. U.S. Sec. Assocs., Inc.*, No. 1:16-CV-0371-MLB-JSA, 2018 WL 3745051, at *13 (N.D. Ga. May 31, 2018). Because the Complaint contains no factual allegation that Plaintiff read the Resurgent letters and was confused or misled by them, she has not alleged an injury-in-fact and lacks standing to bring any claims regarding those letters.

B. Plaintiff's Complaint fails to state a claim

1. The Statute of Limitations Language

The Dynamic letter clearly explains, "Because of the age of [Plaintiff's] debt, LVNV Funding LLC will not sue [her] for it and LVNV Funding LLC will not report it to any credit reporting agency." (Exhibit 1, p. 1). While Plaintiff asserts this language was not "immediately obvious," the sentence actually appears in a slightly larger typeface than the allegedly offending language suggesting various payment options to Plaintiff. (*See* Exhibit 1, p. 1). Even when applying the least sophisticated consumer standard, courts presume "a willingness to read a collection notice with some care." *LeBlanc*, 601 F.3d at 1194. Plaintiff did not even have to read the collection notice with care to see the language about the statute of limitations. It appears in ordinary typeface on the very first page of the letter. (*See* Exhibit 1, p. 1).

What's more, Plaintiff does not allege that she failed to see the language about the statute of limitations. Instead, she argues she "did not understand" this "deceptive language." (*See* Compl. ¶76). Plaintiff cannot state an FDCPA claim by baldly proclaiming she "did not understand" obvious language. The least sophisticated consumer standard still "preserv[es] a quotient of reasonableness" and "prevents liability for bizarre or idiosyncratic interpretations of collection

notices." *LeBlanc*, 601 F.3d at 1194. The message to Plaintiff was clear and unequivocal: "Because of the age of your debt, LVNV Funding LLC will not sue you for it . . . ." (Exhibit 1, p. 1). If such language qualifies as a "false representation or deceptive means" under15 U.S.C. § 1692e(10), it is difficult to conceive what language could ever be used that would be sufficiently clear.

The exact language used in the Dynamic letter has already been approved by another court in this Circuit. *Valle v. First Nat'l Collection Bureau, Inc.*, 252 F. Supp. 3d 1332, 1339–40 (S.D. Fla. 2017). Judge Robert N. Scola, Jr., held that, when read "in the context of the entire paragraph, the phrase 'will not sue you' is not false or deceptive, even from the perspective of the least sophisticated consumer." *Id*. at 1340. As Judge Scola noted, the language used by Defendant is mandated by two consent decrees with the Federal Trade Commission ("FTC") and the Consumer Financial Protection Bureau ("CFPB"). *See id.* Although not binding, "the fact that the two agencies charged with enforcing the FDCPA mandated the language used by the Defendant serves to reinforce [the conclusion] that the language does not constitute a false representation or a deceptive means of collecting the debt." *Id.* at 1341.

Plaintiff also takes issue with the fact that repayment options discussed in the Dynamic letter "might result in restarting the applicable statute of limitations."

(Compl. ¶82). But the letter explained this very issue to Plaintiff in clear and unambiguous terms: "If you make a partial payment on this account it may restart the statute of limitations on this account." (Exhibit 1, p. 1). The language is conditional because, under Georgia law, a partial payment alone is not sufficient to revive a debt. *Bingham v. Advance Indus. Sec., Inc.*, 138 Ga. App. 875, 875, 228 S.E.2d 1, 2 (1976). Plaintiff herself recognizes that a partial payment "*might* result in restarting the applicable statute of limitations." (Compl. ¶82) (emphasis added). Plaintiff's argument that Defendants "intentionally and purposefully hid" this information beggars belief. (*See* Compl. ¶83).

The least sophisticated consumer can be presumed "to read a collection notice with some care." *LeBlanc*, 601 F.3d at 1194. Even the most cursory reading of the Dynamic letter would have revealed that (1) Defendants would not sue Plaintiff for the debt because of its age, and (2) a partial payment "may restart the statute of limitations." (*See* Exhibit 1, p. 1). Two consumer financial protection agencies and a court in this Circuit have already approved the language regarding the first issue. *Valle*, 252 F. Supp. 3d at 1339–41. And the language used regarding the second issue is virtually identical to the language used by Plaintiff in her own complaint. (*Compare* Exhibit 1, p. 1 *with* Compl. ¶82). The fact that Plaintiff "did not understand" the clear and obvious language used in the Dynamic letter does not

give rise to a claim under the FDCPA—even the least sophisticated consumer would have understood that the debt was time-barred and that a partial payment could restart the statute of limitations. *See LeBlanc*, 601 F.3d at 1194; *Valle*, 252 F. Supp. 3d at 1339–41.

2. Post-Charge-Off Interest

Plaintiff also argues Defendants violated the FDCPA because they "have no right to impose statutory interest when contractual interest was waived" at the time the original creditor charged off the debt. (Compl. ¶ 73). Because Plaintiff argues Defendants could only collect the amount charged off by the original creditor, she contends that Defendants made knowingly false representations about the amount of the debt owed and attempted to collect an amount not permitted by law. (*See* Compl. ¶¶89–99); *see also* 15 U.S.C. § 1692e(2), (8); *id.* §1692f(1). Thus, the question is whether under Georgia law Defendants can collect statutory prejudgment interest on a debt that was charged off by the original creditor. Since this issue presents a purely legal question, and does not turn on the consumer's sophistication, the least sophisticated consumer standard does not apply. *Jeter*, 760 F.2d at 1175.

In support of her contention that Defendants cannot collect statutory prejudgment interest, Plaintiff relies on a Sixth Circuit decision applying Kentucky

law. *See Stratton v. Portfolio Recovery Assoc's, LLC*, 770 F.3d 443 (6th Cir. 2014). But as mentioned above that case is an aberration, turning "on a unique feature of the Kentucky interest statute." *See Bunce*, 2014 WL 5849252, at *4. To wit, Kentucky's statute provides that parties to a written contract of indebtedness "shall be bound . . . for the rate of interest as is expressed in the contract" and that "*no law of this state prescribing or limiting interest rates shall apply to the agreement*." K.R.S. § 360.010(2) (emphasis added).

Every other court to have considered the issue has held that statutory prejudgment interest is not, *ipso facto*, waived simply because the debt was charged off by the original creditor. *See Haney v. Portfolio Recovery Assocs., LLC*, 895 F.3d 974, 982–87 (8th Cir. 2016); *Walkabout v. Midland Funding LLC*, 2016 WL 1169540, at *4 (W.D. Okla. Mar. 22, 2016); *Bunce*, 2014 WL 5849252, at *3; *Grochowski v. Daniel N. Gordon, P.C.*, 2014 WL 1516586, at *3 n. 2 (W.D.Wash. Apr.17, 2014); *cf. Cavalry SPV I, LLC v. Desrosiers*, No. TTDCV095004477, 2010 WL 4227033, at *1 (Conn. Super. Ct. Sept. 20, 2010) (awarding statutory "prejudgment interest from the charge-off date" until the date of the judgment).

No court in the Eleventh Circuit has directly addressed the issue, but the Eleventh Circuit held—in an FDCPA case—that a plaintiff "was unable to produce any evidence in support of his claim that the credit card debt (balance or interest

rate) was incorrect" even though the balance included "interest [that] had been accruing since the account was charged off." *LeBlanc*, 601 F.3d at 1188–1200 (quotation mark omitted). Likewise, here, Plaintiff's allegations that the amount Defendants sought to collect included interest accrued "since the account was charged off" does not support a "claim that the credit card debt (balance or interest rate) was incorrect." *See id.*

Unlike Kentucky's prejudgment interest statute, Georgia law does not explicitly prevent the application of statutory prejudgment interest simply because the parties previously agreed to a different, contractual interest rate. *See* O.C.G.A. § 7-4-2. Rather, Georgia law provides that "the legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract." *Id.* Georgia's statute is, thus, like the Kansas, Missouri, and Oklahoma prejudgment interest statutes. *See* K.S.A. 16–201 ("Creditors shall be allowed to receive interest at the rate of ten percent per annum, when no other rate of interest is agreed upon . . . ."); Mo. Rev. Stat. § 408.020 ("Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon . . . ."); Okla. Stat. tit. 15, § 266 ("The legal rate of interest shall be six percent (6%) in the absence of any contract as to the rate of interest . . . ."). Courts have held those prejudgment interest statutes apply even when a previously

agreed upon contractual interest rate was waived because the debt was charged off. *Haney*, 895 F.3d at 982–87 (applying Missouri law); *Walkabout*, 2016 WL 1169540, at *4 (applying Oklahoma law); *Bunce*, LLC, 2014 WL 5849252, at *3 (applying Kansas law).

Finally, Plaintiff argues that Defendants could not charge any interest "without sending periodic statements pursuant to 12 C.F.R. § 226.5(b)(2)(i)." (Compl. ¶ 74). But this argument is not based on anything in the FDCPA or the GFBPA; it is based on a requirement of the Truth in Lending Act ("TILA") and Regulation Z. Plaintiff brought no claim under TILA or its regulations, and thus the regulation she cites is irrelevant. Even if she had brought such a claim, her argument is legally incorrect. As the Eighth Circuit held in *Haney*, the regulation relied on by Plaintiff is "concerned with adequately communicating contractual terms addressing interest and finance charges." 895 F.3d at 985. It does not apply to "the general communication of state law," such as a state's prejudgment interest statute. *Id.*

Because the amount Defendants sought to collect is permitted by Georgia's prejudgment interest statute, Count 2 fails as a matter of law. (*See* Compl. ¶¶89–99); *see also* 15 U.S.C. § 1692e(2), (8); *id.* §1692f(1).

3. Plaintiff's GFBPA Claims

Plaintiff's GFBPA claims are based entirely on the alleged FDCPA violations discussed above and Plaintiff's incorrect interpretation of Georgia's prejudgment interest statute. (*See* Compl. ¶¶101–09). To be sure, the Eleventh Circuit held that "a violation of the FDCPA constitutes a violation of the GFBPA." *Harris*, 702 F.3d at 1303. But because Plaintiff's arguments regarding the FDCPA and Georgia's prejudgment interest statute fail for the reasons discussed above, her GFBPA claims fail as well.

CONCLUSION

As demonstrated herein, Plaintiff's complaint is meritless. The Court should, at a minimum, dismiss any claims relating to the Resurgent letters because Plaintiff lacks even the Constitutional prerequisite of standing. She never read the letters and suffered no injury because of them. In any event, Plaintiff's claims fail on the merit. The Dynamic letter clearly explained that the statute of limitations on the debt had run and that a partial payment may restart the limitations period. Plaintiff incorrectly argues, based on Kentucky law, that Defendants cannot charge statutory prejudgment interest on a debt if it was charged off by the original creditor. Accordingly, Defendants LVNV and Resurgent respectfully requests that

the Court enter an Order dismissing Plaintiff's Complaint, and any and all claims alleged therein, with prejudice, and for such other relief as is just and proper.

This 11th day of September 2018.

/s/ Mark J. Windham
Mark J. Windham
Georgia Bar No. 113194

TROUTMAN SANDERS LLP
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600 Peachtree Street, N.E.
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E-mail: mark.windham@troutman.com
Counsel for Defendant Defendant LVNV Funding, LLC and Defendant Resurgent Capital Services, LP

CERTIFICATE OF SERVICE, FONT AND MARGINS

I certify that I have on this day filed within the foregoing ***Memorandum in Support of their Motion to Dismiss*** and all attachments thereto by using the Court's ECF system system, which will automatically send notice of such filing to all counsel of record. I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

This 11th day of September 2018.

/s/ Mark J. Windham
Mark J. Windham
Georgia Bar No. 113194

36329659

Hsiao Yip
[redacted] GA 30097-5999

DYNAMIC RECOVERY SOLUTIONS

February 2, 2018

Original Creditor: Washington Mutual Bank, NA
Original Account Number: **********9735
Current Creditor: LVNV Funding LLC
DRS Account No.: [redacted]9176
Current Balance: $3,715.56

Dear Hsiao Yip,
We have been asked to contact you by our client, LVNV Funding LLC, regarding your past due account with them. The account has been placed with our office for collection.

1. You may resolve your account for $1,486.22 if payment is received before March 19, 2018. We are not obligated to renew this offer. Upon receipt and clearance of your payment, this account will be considered satisfied and closed, and a satisfaction letter will be issued or;
2. You may resolve your account for $1,672.00 in 2 payments starting on March 19, 2018. To comply with this offer, payments should be no more than 30 days apart. We are not obligated to renew this offer. Upon receipt and clearance of these two payments of $836.00, this account will be considered satisfied and closed, and a satisfaction letter will be issued or;
3. You may resolve your account for $1,857.78 in 4 payments starting on March 19, 2018. To comply with this offer, payments should be no more than 30 days apart. We are not obligated to renew this offer. Upon receipt and clearance of these four payments of $464.45, this account will be considered satisfied and closed, and a satisfaction letter will be issued or;
4. If you are unable to accept the above offer(s), please contact our office. We take pride in working with all consumers, regardless of your current financial position.

Customer Service: 877-821-1659

http://drs.cssimpact.com/negotiator/

PO BOX 25759, GREENVILLE, SC 29616-0759

This is an attempt to collect a debt by a debt collector and any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, that you dispute the validity of the debt or any portion thereof, 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. Upon your written request within 30 days after receipt of this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Scan this code with your smartphone to pay your bill online.

The law limits how long you can be sued on a debt. Because of the age of your debt, LVNV Funding LLC will not sue you for it and LVNV Funding LLC will not report it to any credit reporting agency.

If you make a partial payment on this account it may restart the statute of limitations on this account.

PLEASE SEE THE REVERSE SIDE FOR IMPORTANT INFORMATION.
Please Detatch And Return in The Enclosed Envelope With Your Payment.

PO BOX 25759
GREENVILLE, SC 29616-0759

Payment Options: Online - visit us at http://drs.cssimpact.com/negotiator • **Money Gram** - use code 7143
PayPal - send payment to payment@gotodrs.com • **Check or Money Order** - payable to Dynamic Recovery Solutions

TO PAY BY CREDIT CARD, PLEASE COMPLETE THE SECTION BELOW	☐ VISA ☐ MasterCard	☐ Check ☐ Money Order
CARD NUMBER		EXP. DATE
SIGNATURE		SECURITY CODE
ACCOUNT # [redacted]9176	CIRCLE PAYMENT OPTION 1 2 3 4	AMOUNT

Hsiao Yip
[redacted] GA 30097-5999

DYNAMIC RECOVERY SOLUTIONS
PO BOX 25759
GREENVILLE, SC 29616-0759

PCI Security Standards Council PCI COMPLIANT

ACA INTERNATIONAL The Association of Credit and Collection Professionals

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4OA Dynamic.wfd
Page 1 of 1

EXHIBIT 1

PRIVACY NOTICE

This Privacy Notice is being provided on behalf of each of the following related companies (collectively, the "Resurgent Companies"). It describes the general policy of the Resurgent Companies regarding the personal information of customers and former customers.

Resurgent Capital Services L.P
Sherman Acquisition L.L.C.
Resurgent Capital Services PR LLC
CACV of Colorado, LLC
Sherman Originator III LLC
LVNV Funding, LLC
PYOD LLC
Anson Street LLC
CACH, LLC
Ashley Funding Services LLC
SFG REO, LLC
Pinnacle Credit Services, LLC
Sherman Originator LLC

Information We May Collect. The Resurgent Companies may collect the following personal information: (1) information that we receive from your account file at the time we purchase or begin to service your account, such as your name, address, social security number, and assets; (2) information that you may give us through discussion with you, or that we may obtain through your transactions with us, such as your income and payment history; (3) information that we receive from consumer reporting agencies, such as your creditworthiness and credit history, and (4) information that we obtain from other third party information providers, such as public records and databases that contain publicly available data about you, such as bankruptcy and mortgage filings. All of the personal information that we collect is referred to in this notice as "collected information".

Confidentiality and Security of Collected Information. At the Resurgent Companies, we restrict access to collected information about you to individuals who need to know such collected information in order to perform certain services in connection with your account. We maintain physical safeguards (like restricted access), electronic safeguards (like encryption and password protection), and procedural safeguards (such as authentication procedures) to protect collected information about you.

Sharing Collected Information with Affiliates From time to time, the Resurgent Companies may share collected information about customers and former customers with each other in connection with administering and collecting accounts to the extent permitted under the Fair Debt Collection Practices Act or applicable state law.

Sharing Collected Information with Third Parties The Resurgent Companies do not share collected information about customers or former customers with third parties, except as permitted in connection with administering and collecting accounts under the Fair Debt Collections Practices Act and applicable state law.

PO Box 510090
Livonia MI 48151-6090

RESURGENT
Capital Services

Account Number: **********9735
Original Creditor: Washington Mutual Bank, NA
Current Owner: LVNV Funding LLC
Reference ID: [redacted]1198
Balance: $3,715.56
Accountholder Name: Hsiao Yip

P8512900200644

JOHN WILLIAM NELSON
C/O THE NELSON LAW CHAMBERS, LLC
2180 SATELLITE BLVD STE 400
DULUTH, GA 30097-4927

April 3, 2018

Dear John William Nelson,

We have received a recent inquiry regarding the above-referenced account and have enclosed the account summary which provides verification of debt.

To make a payment, please contact us at the toll free number provided.

For further assistance, please contact one of our Customer Service Representatives toll-free at 1-866-464-1187.

Sincerely,

Customer Service Department
Resurgent Capital Services L.P.

Enclosure

Please read the following important notices as they may affect your rights.

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

The law limits how long you can be sued on a debt. Because of the age of your debt, LVNV Funding LLC will not sue you for it, and LVNV Funding LLC will not report it to any credit reporting agency.

Hours of Operation
8:30AM-6PM EST
Monday - Thursday
8:30AM-5PM EST Friday

Address
PO Box 10497
Greenville, SC 29603

Contact Numbers
Toll Free Phone
1-866-464-1187
Toll Free Fax
1-866-467-0960

Customer Portal
Portal.Resurgent.com

8537275-VERACS-CS

EXHIBIT 2

ACCOUNT SUMMARY REPORT

4/3/2018 10:56:36 AM

This account summary has been prepared by Resurgent Capital Services on behalf of LVNV Funding LLC. It is not a credit card or other account statement from the original creditor.

Borrower Information		Current Account Information	
Name:	HSIAO YIP	**Owner**	LVNV Funding LLC
Address:	[redacted]	**Resurgent Reference #**	[redacted]1198
City:	[redacted]	**Original Creditor**	Washington Mutual Bank, NA
State:	GA	**Account Number**	XXXXXXXXXXXX9735
Zip Code:	30097-5999	**Current Balance Due**	$3715.56
		Date of Last Payment	03/23/2009

Historical Account Information

The original creditor for this account was:	Washington Mutual Bank, NA
The origination date with original creditor was:	11/16/2006
The account charge-off date was:	11/30/2009
The account charge-off amount was:	$2,833.99
The account was acquired on or about:	07/15/2010
The account was acquired from:	Chase Bank USA, N.A.
The account balance at time of acquisition:	$2,833.99

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

PO Box 510090
Livonia MI 48151-6090

RESURGENT
Capital Services

Account Number: **********9735
Original Creditor: Washington Mutual Bank, NA
Current Owner: LVNV Funding LLC
Reference ID: [redacted]1198
Balance: $3,715.56
Accountholder Name: Hsiao Yip

P8512900200543

JOHN WILLIAM NELSON
C/O THE NELSON LAW CHAMBERS, LLC
2180 SATELLITE BLVD STE 400
DULUTH, GA 30097-4927

April 3, 2018

Dear John William Nelson,

We are providing the following information regarding the accountholder's legal rights in response to a recent communication regarding the above-referenced account.

For further assistance, please contact one of our Customer Service Representatives toll-free at 1-888-665-0374.

Sincerely,

Customer Service Department
Resurgent Capital Services L.P.

Please read the following important notices as they may affect your rights.

Unless you notify us within 30 days after receiving this notice that you dispute the validity of this debt, or any portion of it, we will assume this debt is valid. If you notify us in writing within 30 days after receiving this notice that you dispute the validity of this debt, or any portion of it, we 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 of us in writing, within 30 days after receiving this notice, we will provide you with the name and address of the original creditor, if different from the current creditor.

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

The law limits how long you can be sued on a debt. Because of the age of your debt, LVNV Funding LLC will not sue you for it, and LVNV Funding LLC will not report it to any credit reporting agency.

Hours of Operation
8:30AM-6PM EST
Monday - Thursday
8:30AM-5PM EST Friday

Address
Suite 110 MS 576
55 Beattie Place
Greenville, SC 29601

Contact Numbers
Toll Free Phone
1-888-665-0374
Toll Free Fax
1-866-467-0163

Customer Portal
Portal.Resurgent.com

8537273-COMMVAL-CS

EXHIBIT 3

PRIVACY NOTICE

This Privacy Notice is being provided on behalf of each of the following related companies (collectively, the "Resurgent Companies"). It describes the general policy of the Resurgent Companies regarding the personal information of customers and former customers.

Resurgent Capital Services L.P	LVNV Funding, LLC	Ashley Funding Services LLC
Sherman Acquisition L.L.C.	PYOD LLC	SFG REO, LLC
Resurgent Capital Services PR LLC	Anson Street LLC	Pinnacle Credit Services, LLC
CACV of Colorado, LLC	CACH, LLC	Sherman Originator LLC
Sherman Originator III LLC		

Information We May Collect. The Resurgent Companies may collect the following personal information: (1) information that we receive from your account file at the time we purchase or begin to service your account, such as your name, address, social security number, and assets; (2) information that you may give us through discussion with you, or that we may obtain through your transactions with us, such as your income and payment history; (3) information that we receive from consumer reporting agencies, such as your creditworthiness and credit history, and (4) information that we obtain from other third party information providers, such as public records and databases that contain publicly available data about you, such as bankruptcy and mortgage filings. All of the personal information that we collect is referred to in this notice as "collected information".

Confidentiality and Security of Collected Information. At the Resurgent Companies, we restrict access to collected information about you to individuals who need to know such collected information in order to perform certain services in connection with your account. We maintain physical safeguards (like restricted access), electronic safeguards (like encryption and password protection), and procedural safeguards (such as authentication procedures) to protect collected information about you.

Sharing Collected Information with Affiliates From time to time, the Resurgent Companies may share collected information about customers and former customers with each other in connection with administering and collecting accounts to the extent permitted under the Fair Debt Collection Practices Act or applicable state law.

Sharing Collected Information with Third Parties The Resurgent Companies do not share collected information about customers or former customers with third parties, except as permitted in connection with administering and collecting accounts under the Fair Debt Collection Practices Act and applicable state law.

THE NELSON LAW CHAMBERS LLC

Attorney & Counselor at Law

2180 Satellite Blvd, Suite 400, Duluth, Georgia 30097

Ph 404.348.4462
Fax 404.549.6765
Web www.nelsonchambers.com
Email john@nelsonchambers.com

JOHN WILLIAM NELSON, ESQ.
Licensed to practice in
GEORGIA, TENNESSEE,
WASHINGTON D.C.

15 March 2018

LVNV FUNDING LLC
c/o CORPORATION SERVICE COMPANY
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808

SENT VIA FEDEX OVERNIGHT
FEDEX TRACKING # 780081105461

RE: DEMAND LETTER
Violations of Georgia's Fair Business Practices Act ("FBPA") and the Fair Debt Collection Practices Act ("FDCPA")
Regarding DRS Account # [redacted]9176

Dear LVNV Funding LLC,

I represent Hsiao Yip in the above legal matter. This letter is being sent in compliance with O.C.G.A. § 10-1-399 as a demand for relief for your violation of Georgia's Fair Business Practices Act ("FBPA") and your violations of the FDCPA.

Your agent, Dynamic Recovery Solutions LLC, sent Ms. Yip a letter dated February 2, 2018 (the "February Letter") attempting to collect a debt identified by DRS Account # [redacted]9176 (the "Alleged Debt") on your behalf. However, your attempts to collect this Alleged Debt are time-barred. Further, we have reason to believe the amount of the Alleged Debt is false, misleading, and deceptive.

DEMAND FOR THE PRESERVATION OF EVIDENCE

My client demands that you, your agents, and any other legal entities working on your behalf, preserve all communications, phone call recordings, notes, memos, entries into collection software, documents prepared by you or your agents related to the above individual or this legal matter or DRS Account # [redacted]9176, and any and all other documents associated with the alleged debt at issue and my client.

My client demands that you preserve any and all documents, agreements, contracts, or any other material related to this legal matter or DRS Account # [redacted]9176 you have received or sent to Dynamic Recover Solutions LLC, Resurgent Capital Services L.P., Sherman Originator LLC, Sherman Financial Group LLC, Sherman Originator I LLC, Sherman Originator II LLC, Sherman Originator III LLC, Sherman Acquisition LLC, or any other legal entity regarding the Alleged Debt identified by DRS Account # [redacted]9176.

EXHIBIT 4

PH. 404.348.4462
FAX. 404.549.6765

Any destruction, deletion, or loss of this evidence may be viewed by the courts as spoliation of evidence.

THE IMPROPER ACTIONS OF YOUR AGENTS

The February Demand Letter seeks to collect a time-barred debt. This is acknowledged in the letter. Nevertheless, your agent sent the letter in the hopes that Ms. Yip, a consumer protected by the provisions of the FDCPA, would be misled into paying on a debt that is time-barred, pay a partial amount on a time-barred debt in order to try and restart the statute of limitations, and otherwise as an attempt to mislead, deceive, or make false representations.

Further, the natural consequence of the February Demand Letter is to harass, oppress, or abuse Ms. Yip in your and your agent's attempts to collect this time-barred debt. In addition, your attempts to collect this time-barred debt through the February Demand Letter sent by your agent are an unfair and unconscionable means to attempt to collect the Alleged Debt from Ms. Yip.

The amount Alleged Debt itself is materially false, misleading, and deceptive. The amount is incorrect. It appears to include interest on interest and post-charge off interest in violation of both Georgia and federal law. Further, Ms. Yip has never done business with you, and we believe that you do not possess the right to collect the Alleged Debt under Georgia law.

These actions by you and your agent violate the Fair Debt Practices Acts, 15 U.S.C. § 1692 *et seq.* (the "FDCPA"). Specifically, these actions violate 15 U.S.C. §§ 1692d, 1692e, and 1692f. Further, violations of the FDCPA constitute violations of Georgia's Fair Business Practices Act, O.C.G.A. § 10-1-390 *et seq.*

You and your agent's actions in violation of the FDCPA by attempting to collect the Alleged Debt violate Georgia's Fair Business Practices Act ("FBPA"), O.C.G.A. § 10-1-390 *et seq.* These violations of Georgia's FBPA have resulted in actual damages to Ms. Yip. For example, Ms. Yip has suffered emotional distress, anxiety, and has had to expend time and resources to investigate you and your agent's claims. Violations of the FBPA found to be intentional may result in exemplary damages amounting to three times any damages awarded. My client can recover her attorneys' fees and costs in bringing any successful action against you under the FBPA.

MY CLIENT'S DEMANDS

My client demands the following:

1. You cease sending Ms. Yip demand letters for the Alleged Debt.

2. You pay Ms. Yip $9,500.00 to settle her claims against you for violations of the FDCPA and Georgia's FBPA, inclusive of any and all costs and attorneys' fees.

PH. 404.348.4462
FAX. 404.549.6765

PH. 404.348.4462
FAX. 404.549.6765

DEADLINE TO RESPOND

You have 30 days from the delivery of this letter to respond or Ms. Yip will begin the process of filing suit against you for violations of Georgia's Fair Business Practices Act and violations of the FDCPA.

I look forward to hearing from you on this matter. Please call me, write me, or email me with any questions you may have. I am optimistic that we can resolve this quickly and amicably.

WILLINGNESS TO REVIEW ADDITIONAL INFORMATION

If you believe you posses any documents or information that may mitigate or explain your behavior, Ms. Yip is willing to review this information. Please feel free to provide any and all documents or information you believe explains or may mitigate your actions violating the FDCPA and Georgia's FBPA.

THIS DEBT IS DISPUTED

Ms. Yip disputes the Alleged Debt identified by DRS Account #[redacted]9176.

REQUEST FOR VERIFICATION AND VALIDATION

Ms. Yip requests verification and validation of the Alleged Debt identified by DRS Account #[redacted]9176 pursuant to 15 U.S.C. § 1692g.

CEASE ALL DIRECT COMMUNICATION WITH MS. YIP

Ms. Yip is represented by legal counsel. Cease all direct communication with Ms. Yip and direct all communication to this law firm.

Sincerely,

John William Nelson
Attorney & Counselor at Law

PH. 404.348.4462
FAX. 404.549.6765