

IN THE COUNTY COURT, 18th  
JUDICIAL CIRCUIT, IN AND FOR  
BREVARD COUNTY, FLORIDA

CASE NO.:

Zero-se-

J

Plaintiff,

vs.

VANTIUM CAPITAL COMPANY  
d/b/a STRATEGIC RECOVERY GROUP,  
AND JOHN DOE LOAN OWNER, INC.

Defendant.

FILED  
CLERK OF  
BREVARD CO. FL.  
2010 NOV 29 P 4: 25  
SCOTT FELLIS  
Not Suitable for Imaging

COMPLAINT

COMES NOW The Plaintiff, J \_\_\_\_\_ by and through the undersigned counsel,  
sues the Defendant, Vantium Capital Company a foreign corporation d/b/a Strategic Recovery  
Group, and alleges

1. This is an action for damages less than \$2,499.99, exclusive of interest, costs and attorney's fees.
2. At all times material hereto, Defendant, Vantium Capital Company d/b/a Strategic Recovery Group (hereafter Vantium) was a foreign profit corporation with its principal place of business in and headquarters in Plano Texas, that conducts business in State of Florida.
3. The Plaintiff is a resident of Brevard County, Florida and owns a home in Brevard County which is his and his spouse's primary residence
4. Upon information and belief Strategic Recovery is a loan servicer that services the 2<sup>nd</sup> mortgage or HELOC upon \_\_\_\_\_ s primary residence. As such Vantium Capital d/b/a Strategic Recovery Group falls within the Securities and Exchange Commission's (SEC) definition of a loan servicer. In the alternative Strategic is a third party bill collector subject to the FDCPA.
5. The Plaintiff's good faith basis for his belief that Vantium d/b/a Strategic Recovery (hereafter Vantium) is a loan servicer and third part bill collector is based upon Plaintiff's receipt of a March 5, 2010 letter wherein Vantium demanded payment of a debt that originated from a second mortgage on Plaintiff's residence. The March 5, 2010 letter is attached as exhibit 1.

6. The subject second mortgage was a debt included and discharged by a Chapter 7 Bankruptcy petition.
7. The second mortgage loan was originally made by Willshire Bank.
8. Vantium did not lend money to the Plaintiff.
9. Vantium's March 5, 2010 letter was written in an intentionally vague manner such that it was not apparent to the Plaintiff whether Vantium bought the subject debt or was merely attempting to collect on the debt for a third party.
10. In its capacity as a loan servicer, Vantium, acts as a third party debt collector for the owner of mortgage on the Plaintiff's home. Vantium for purposes of the Fair Debt Collection Practices Act (hereafter FDCPA) is a debt collector.
11. The owner of the second mortgage on the Plaintiff's home (if it is not owned by Vantium), Defendant, John Doe Loan Owner, Inc., is unknown because Vantium, unlawfully refused to furnish said information upon written request of [redacted]'s undersigned counsel.
7. On or about March 17, 2010, the Plaintiff, through his undersigned counsel sent correspondence to the Defendant via fax and U.S. Mail, that requested validation of the debt pursuant to the Fair Debt Collection Practices Act (hereafter FDCPA). The letter was also sent as a Qualified Written Request (QWR) pursuant to the Real Estate Settlement Practices Act (RESPA). A copy of the subject letter and fax confirmation are attached hereto as exhibit 2.

#### **COUNT I – VIOLATION OF RESPA**

8. RESPA establishes the requirements for how a mortgage loan servicer or lender must conduct its post-closing servicing of the loan.
8. Twelve 12 U.S.C. §2605(e) details the duties and statutory obligations of a loan servicer or lender in receiving and responding to borrower written inquiries.
9. Under RESPA if a servicer receives a qualified written request (QWR) the servicer must acknowledge receipt of the QWR within twenty (20) days.
10. A QWR is "a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

11. The Subject correspondence was a QWR under RESPA because it
  - (a) Identified the subject borrower
  - (b) Identified the subject loan
  - (c) Included a statement of the reasons the borrower believed the account to be in error., (i.e., payments not being credited and collection by entity other than original lender or servicer).
  
12. Prior to July 22, 2010, Pursuant to 12 U.S.C. §2605(e)(2) not later than sixty days after receipt of the QWR and servicer shall:
  - (C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--
    - (i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and
    - (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower

The Dodd Frank amendment subsequent reduced this time from answering the QWR to 30 days.
  
13. On April 6, 2010, Vantium acknowledged receipt of the undersigned counsel's March 17, 2010 letter. The response stated " We will be reviewing your correspondence and will provide a response to you shortly." The April 6, 2010 acknowledgement is attached hereto as exhibit 3.
  
14. Vantium never followed up on its promise to provide a response shortly. Vantium failed to furnish the identity of the owner of the debt as required by RESPA and TILA. Vantium further failed to verify the debt.
  
15. Prior to July 22, 2010, Pursuant to 12 U.S.C. §2605(f), Whoever fails to comply with any provision of RESPA shall be liable to the borrower for any amount equal to the sum of (a) any actual damages to the borrower and (b) any additional damages that the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section in the amount not to exceed \$1,000.00.

The Dodd Frank Amendment increased the amount of statutory damages on RESPA violation occurring after July 22, 2010 from \$1,000 to \$2,000.00.
  
16. The Plaintiff was damaged by the Defendant's failure to comply with RESPA.

### COUNT III – VIOLATION OF TILA

Plaintiff realleges paragraphs One to Seven above.

17. The Qualified Written Request sent on March 17, 2010 requested that disclose the identity of the current owner of the note and mortgage.
18. Vantium is obligated disclose the identity of the owner of the note and mortgage under the amendments to the Truth In Lending Act. In the alternative, Vantium's March 5, 2010, letter stated "Also upon your written request within the thirty day
19. John Doe Loan Owner Inc., is required to disclose its identity under TILA.
20. Vantium is the agent of John Doe Loan Owner Inc.
21. Notice of the request for identity of the owner of the loan is imputed to the loan owner because notice to the agent of the loan owner is imputed to the loan owner.
22. Vantium failed or refused to disclose the owner of the note.
23. John Doe Loan Owner Inc., failed or refused to disclose its identity.
24. Plaintiff is entitled to damages from Vantium for its violations of TILA
25. Plaintiff is entitled to damages from John Doe Loan Owner Inc. for its violations of TILA.

### COUNT IV. – VIOLATION OF THE FDCPA

Plaintiff realleges paragraph One to Seven above.

26. The U.S. Fair Debt Collection Practices Act (hereafter FDCPA) prohibits the use of false or misleading representation in connection with the collection of a debt. Specifically 15 U.S.C. 1692e sets forth:

#### **1692e. False or misleading representations**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

- (2) The false representation of—  
(A) the character, amount, or legal status of any debt; or  
(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

27. Vantium in its capacity as a loan servicer or debt collector, is engaged in the collection of a debt for an unknown third party. As such \_\_\_\_\_ is a debt collector is a covered entity that must comply with the FDCPA.
28. On or about March 5, 2010 sent Plaintiff a demand for payment of \$57,847.52 or for settlement thereon. .
29. The letter of March 5, 2010, 2010 is attached hereto as Exhibit 1.
30. The letter of March 5, 2010 was an unlawful attempt to collect a debt that was discharged in bankruptcy, in violation of the Bankruptcy Courts discharge order and in violation of the FDCPA.
31. Pursuant to the FDCPA Vantium was required to provide verification of the debt after receipt of timely request of the undersigned counsel.
32. Pursuant to the FDCPA and the terms of the March 5, 2010 letter Vantium was required to identify the original creditor.
33. Vantium failed to verify the debt in violation of the FDCPA and failed to identify the original creditor and explain whether Vantium owned the debt or was merely acting as a third party bill collector.
34. Plaintiff suffered actual damages including stress, aggravation and mental anguish from Vantium 's violations of FDCPA.
35. In the alternative Plaintiff is entitled to statutory damages of up to \$1,000 for the violation of the FDCPA.

**WHEREFORE**, the Plaintiff, J( \_\_\_\_\_ demands judgment for damages together with interest, costs and attorney's fees pursuant to Florida Statutes, §§559.77, RESPA 12 U.S.C. §2605, and TILA, and the FDCPA legal assistants' fees pursuant to §57.104 Florida Statutes, and costs pursuant to §92.231, Florida Statutes and §57-041, Florida Statutes, and any and all further relief as this Court deems just and proper, and further demands a trial by jury on all issues.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Defendant herein through service of process.

  
**SHUSTER & SABEN, LLC**

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RICHARD SHUSTER, ESQUIRE

Fla. Bar No.: 045713

540 North Harbor City Blvd

Melbourne, Florida 32901

Telephone: 321-622-5040

Toll Free: 877-511-7829

Fax Number: 321-259-3255

Attorney for Defendants



P.O Box 61026  
Anaheim, CA 92803  
R016 - WLNDEFNC

J  
Melbourne FL 329

15-0105



3/5/2010

Client: ML Wholly Owned Charge-Offs  
Balance: 57847.52

Re: Loan Number: 9078

Dear J

Your account referenced above has been transferred to Strategic Recovery Group by ML Wholly Owned Charge-Offs for collection. Because you have failed to recognize your responsibilities involving this debt, we are forced to send you this DEMAND for settlement. Unless you dispute this debt as provided below, please forward a check for the entire balance within thirty (30) days. Failure to do so will result in our taking appropriate collection action.

Unless you notify this office within thirty (30) days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty (30) days from receiving this notice, this office will obtain verification of this debt or obtain a copy of a judgment against you and mail you a copy of such verification or judgment. Also upon your written request within the thirty day period, we will provide you with the name and address of the original creditor, if it is different from the current creditor.

Until the indebtedness is paid in full, or you send us a notice disputing the validity of the debt, or we receive written notification with verification that a Bankruptcy Stay Order or an Order of Discharge has been entered regarding this account, we will diligently continue all available collection alternatives. Please mail the balance owed, or contact us at 1-866-344-3314.

We can be reached Monday through Friday, 7AM to 9PM (CST).

We accept check over the phone free of charge. However, if you decide to mail your payment, please make your check or money order payable to: SRG

Regular Mail Address:  
Vantium Capital Inc- SRG  
P.O Box 202646  
Dallas, TX 75320-2646

Overnight Delivery:  
Wells Fargo LockBox  
Attn BOX 202646  
2975 Regent Blvd.  
Irving, TX 75063  
Reference: Vantium Capital Inc- SRG

Sincerely,

Strategic Recovery Group  
Recovery Specialist

THIS IS AN ATTEMPT TO COLLECT A DEBT.  
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

Exhibit 1

\*\*\*\*\*  
\*\*\* FAX TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

JOB NO. 1298  
DESTINATION ADDRESS 19726443356  
PSWD/SUBADDRESS  
DESTINATION ID  
ST. TIME 03/17 09:16  
USAGE T 00' 23  
PGS. 1  
RESULT OK

THE LAW OFFICES OF  
**SHUSTER & SABEN, L.L.C.**  
540 NORTH HARBOR CITY BLVD.  
MELBOURNE, FLORIDA 32935

PHONE (321) 622-5040 • FAX (321) 259-3255

March 17, 2010

VIA MAIL & FAX 972-644-3356  
Vantium Capital Inc. - Strategic Recovery Group  
ATTN: Steven Salinas  
P.O. Box 202646  
Dallas, TX 75320-2646

Re: LOAN NUMBER 907  
Our Case: CITIMORTGAGE, INC. v. J  
Case No.: 05-2008-CA-072  
Our Client: \_\_\_\_\_  
Your Client: ML Wholly Owned Charged-Offs

To Whom It May Concern:

Please be advised that our law firm represents J|\_\_\_\_\_ regarding your attempts to collect a debt allegedly owned to the above-referenced lender or debt buyer. As you may know, your alleged debt is associated with a second mortgage on our client's home. CitiMortgage has already filed suit against our client with respect to the first mortgage, and this law firm is defending the subject lawsuit.

On behalf of our client we hereby dispute the validity of the debt and demand validation of same. Pursuant to RESPA, please also identify the current owner of the note and mortgage, all prior owners of the note and mortgage, the current loan servicer, and all prior loan servicers.

All future contact relative to this debt must take place solely through this office. Pursuant to the FDCPA, and Florida's debt collection statutes do NOT call our client or send written communications to our client's home.

**Exhibit 2**

THE LAW OFFICES OF  
**SHUSTER & SABEN, L.L.C.**  
540 NORTH HARBOR CITY BLVD.  
MELBOURNE, FLORIDA 32935  
PHONE (321) 622-5040 • FAX (321) 259-3255

March 17, 2010

VIA MAIL & FAX 972-644-3356  
Vantium Capital Inc. - Strategic Recovery Group  
ATTN: Steven Salinas  
P.O. Box 202646  
Dallas, TX 75320-2646

**Re:** LOAN NUMBER 907878  
**Our Case:** CITIMORTGAGE, INC. v. J  
**Case No.:** 05-2008-CA-072  
**Our Client:** J  
**Your Client:** ML Wholly Owned Charged-Offs

To Whom It May Concern:

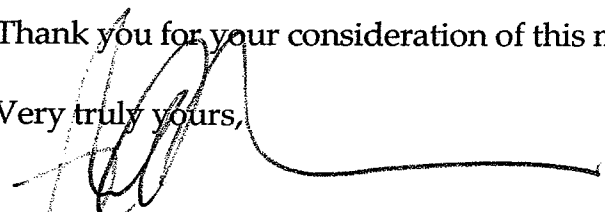
Please be advised that our law firm represents J regarding your attempts to collect a debt allegedly owned to the above-referenced lender or debt buyer. As you may know, your alleged debt is associated with a second mortgage on our client's home. CitiMortgage has already filed suit against our client with respect to the first mortgage, and this law firm is defending the subject lawsuit.

On behalf of our client we hereby dispute the validity of the debt and demand validation of same. Pursuant to RESPA, please also identify the current owner of the note and mortgage, all prior owners of the note and mortgage, the current loan servicer, and all prior loan servicers.

All future contact relative to this debt must take place solely through this office. Pursuant to the FDCPA, and Florida's debt collection statutes do NOT call our client or send written communications to our client's home.

Thank you for your consideration of this matter.

Very truly yours,

  
Richard Shuster, Esq.  
RS/oh



**STRATEGIC**  
RECOVERY GROUP  
A VANTILUM CAPITAL COMPANY

Richard Shuster, Esq.  
540 North Harbor City Blvd.  
Melbourne, FL 32935

Tuesday, April 06, 2010

Re: Loan # 907

J

Dear Richard Shuster, Esq.,

This letter will serve as acknowledgement that we received your correspondence regarding the above referenced account.

We will be reviewing your correspondence and will provide a response to you shortly. Should you have any questions or concerns in the meantime, please feel free to contact us at telephone number 866-344-3314.

Sincerely,

*Phillip Livingston*

Phillip Livingston – VP of Collections

Strategic Recovery Group

6500 International Parkway • Suite 1500 • Plano, TX 75093 • (866) 344-3314 Fax (972) 644-3356

**Exhibit 3**