

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

CASE NO.:

MITCHELL DEDELMAN
2011 FEB 18 P 4: 59
CLERK OF CIR. CT.
BREVARD CO. FL.

J

Plaintiff,

vs.

VERICREST FINANCIAL, INC. AND
JOHN DOE LOAN OWNER,

Defendants.

05-20 11SC 138

XXXX-XX

COPY - ORIGINAL WAS FILED

COMPLAINT

COMES NOW The Plaintiff, J _____, by and through the undersigned counsel, sues the Defendants, Vericrest Financial, Inc. (hereafter Vericrest) and John Doe Lown Onwer, and alleges:

1. This is an action for damages less than \$2499.00, exclusive of interest, costs and attorney's fees.
2. At all times material hereto, Defendant, Vericrest Financial, Inc. (hereafter Vericrest) was a foreign corporation, incorporated in Delaware with a principal place business in Oklahoma City, Oklahoma. Vericrest) conducts business in State of Florida and maintained agents for the transaction of its customary business in 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. Vericrest is a loan servicer that services the mortgage upon J _____'s primary residence. Vericrest falls within the Securities and Exchange Commission's (SEC) definition of a loan servicer.
5. In the alternative, Vericrest owns the note and mortgage on Plaintiff's residence and is the owner of the debt and is not servicing the loan for a third party. The plaintiff is without knowledge as to whether Vericrest is the owner of the note and mortgage on Plaintiff's home or is merely a third party servicer because Vericrest failed to provide such information in response to the qualified written request submitted to by Plaintiff's counsel to the Defendant.

6. It its capacity as a loan servicer, Vericrest acts as a third party debt collector for the owner of mortgage on the Plaintiff's home. Vericrest for purposes of the Fair Debt Collection Practices Act (hereafter FDCPA) is a debt collector.
7. The owner of the mortgage on the Plaintiff's home, Defendant, John Doe Loan Owner, Inc., is unknown because Vericrest, unlawfully refused to furnish said information upon written request of plaintiff's undersigned counsel.
8. On or about December 28, 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 1.

COUNT I – VIOLATION OF RESPA

9. RESPA establishes the requirements for how a mortgage loan servicer or lender must conduct its post-closing servicing of the loan.
10. 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.
11. Under RESPA if a servicer receives a qualified written request (QWR) the servicer must acknowledge receipt of the QWR within twenty (20) days.
12. 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.
13. The Subject correspondence was a QWR under RESPA because it
 - (a) Identified the subject borrower
 - (a) Identified the subject loan
 - (b) Identified the subject property
 - (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).

14. Prior to July 22, 2010, Pursuant to 12 U.S.C. §2605(e)(1)(A) a loan servicer SHALL provide a written response acknowledging receipt of the correspondence within 20 days. The Dodd-Frank Financial Reform Bill amended RESPA to require acknowledgement of a QWR within 5 days. See <http://www.nclc.org/dodd-frank/nclc-rpts-ccu-jul-aug-2010-web.pdf>
15. Vericrest failed to acknowledge receipt of the Qualified Written Request (QWR) within twenty days or in the alternative for QWR served sent after July 22, 2010 within five (5) days.
16. Prior to July 22, 2010, Pursuant to 12 U.S.C. §2605(e)(2) not later that 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.

17. Vericrest further failed to respond to the qualified written request or provide any of the information sought in the request. Among the information that was not included was the identity of the note owner.
18. 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.

19. The Plaintiff was damaged by the Defendant's failure to comply with RESPA.

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.

**COUNT II – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES
ACT (FCCPA)**

Plaintiff realleges Paragraphs One to Eight as set forth above.

20. Plaintiff's financial obligation to pay the mortgage on his home is a consumer debt as defined by F.S. 559.55(1).
21. The Plaintiff is a "consumer" and "debtor" as defined by 559.55(2)
22. Vericrest is a "Debt Collector" as defined by 559.55(6) or in the alternative is an "Out-of-state debt collector" as defined by 559.55(8)
23. John Doe Loan Owner Inc is a creditor within the meaning of 559.55(3)
24. By letters dated December 28, 2010, Plaintiff's undersigned counsel put Vericrest on notice that Plaintiff was represented by counsel with respect to the mortgage on his primary residence.
25. Florida Statute 559.72 sets forth in pertinent part:
Prohibited Practices:
--In collecting consumer debts, no person shall:
 - (5) Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false;
 - (14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts;
 - (18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within a reasonable period of time to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication;
26. Upon information and belief Vericrest became the new servicer of the first mortgage on Plaintiff's home after the loan was sold by CitiMortgage to John Doe Loan Owner. Prior to selling the subject loan CitiMortgage commenced a foreclosure action against which is being defended by his undersigned counsel.

27. On January 31, 2011, Vericrest made direct written communication with Plaintiff by sending a letter to his home address as Exhibit 2 to the Complaint.
28. The above-referenced letter stated on its face "This communication is from a debt collector attempting to collect a debt.."
29. Vericrest made phone calls to the Plaintiff 's home phone on February 8, 2011 at 4:05 p.m. and to Plaintiff's cell phone on February 8, 2011 at 6:00 p.m. in violation of 559.72(14).
30. Vericrest also violated the FCCPA, because it or its agent(s) made direct telephonic/written communication with Plaintiff after Citimortgage was on notice that Plaintiff had retained counsel.
31. The subject debt was discharged by the Plaintiff in a chapter 7 bankruptcy. As such Vericrest's attempts to collect the debt violate FCCPA,. FDCPA, and the bankruptcy discharge order.
32. Pursuant to 559.77 Plaintiff is entitled to his actual damages, together with statutory damages of up to \$1,000.00 for the violation.

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.

COUNT III – VIOLATION OF TILA

Plaintiff reallages Paragraphs One to Seven above.

33. The Qualified Written Request sent on December 28, 2010 requested that Vericrest disclose the identity of the current owner of the note and mortgage.
34. Vericrest is obligated disclose the identity of the owner of the note and mortgage under the amendments to the Truth In Lending Act.
35. John Doe Loan Owner Inc., is required to disclose its identity under TILA.
36. Vericrest is the agent of John Doe Loan Owner Inc.

37. 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.
38. Vericrest failed or refused to disclose the owner of the note.
39. John Doe Loan Owner Inc. failed or refused to disclose its identity.
40. Plaintiff is entitled to damages from Vericrest for its violations of TILA
41. Plaintiff is entitled to damages from John Doe Loan Owner Inc. for its violations of TILA.

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

RICHARD SHUSTER, ESQUIRE
Fla. Bar No.: 045713
540 North Harbor City Blvd
Melbourne, Florida 32935
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Fax Number: 321-259-3255
Attorney for Defendants

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

December 28, 2010

VIA MAIL & FAX (405) 553-4705
Vericrest Financial, Inc.
P. O. Box 24610
Oklahoma City, OK

Re: CITIMORTGAGE, INC. v. J
Case No.: 05-2008-CA-0725
CitiMortgage Loan No.: 07715099
Homeowner: J
Original Lender: First NLC Financial Services, LLC d/b/a The Lending
Center
Alleged Current Holder: Unknown
Property Address: [redacted] Melbourne, FL 329[redacted]

To Whom It May Concern:

Please be advised that our law firm represents J [redacted] regarding your attempts to collect a debt allegedly owed to the above-referenced lender. As you may know, the prior loan servicer, Citimortgage, Inc., which alleged to be the owner and holder of the note, has already filed suit against our client, and this law firm is defending the subject lawsuit.

Pursuant to the Fair Debt Collection Practices Act and on behalf of our client, we hereby dispute the validity of the debt and demand validation and verification of same.

Please also let this letter serve as a qualified written request pursuant to RESPA and recent amendments to TILA. Our client obtained a mortgage from First NLC Financial Services, LLC d/b/a The Lending Center, Inc. on September 25, 2006, and he does not understand what, if any, ownership interest Vericrest Financial, Inc. has in the subject Note and Mortgage. Our client believes that his payments have not been properly credited toward the balance due, that Citimortgage overcharged for servicing expenses and that the interest charged exceeds rate contracted for in the Mortgage

As such please furnish our office with the following:

- (1) The identity of the current owner of the Note and Mortgage.

Exhibit 1

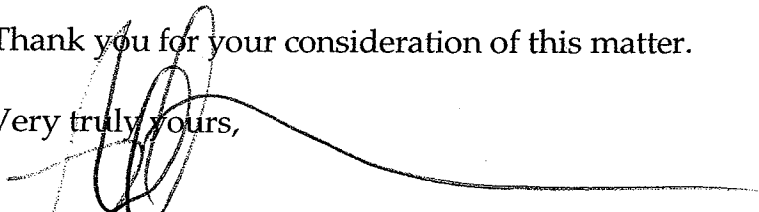
- (1) The identity of all prior owners of the Note and Mortgage.
- (2) The date the current owner of the Note and Mortgage acquired the Note and Mortgage.
- (3) If the Note and Mortgage is owned by a trust please identify both the trustee of the subject trust and the trust itself.
- (4) Identify the current and all past servicers of the Mortgage.
- (5) Provide a complete payment history.
- (6) Provide documentation of when the current owner of the Note acquired the Note, the entity from which the Note was acquired, and the amount of consideration paid for the loan.
- (7) Specify the interest rate utilized for each installment due under the Mortgage.
- (8) Please state whether our client was evaluated for loan modification under HAMP.
- (9) Please provide copies of any HAMP application received and all correspondence and log notes concerning the application for HAMP.
- (10) Please identify the interest rate used for determining the amount of any HAMP trial payment.
- (11) If our client was placed in a Trial HAMP state the reason why the trial HAMP was not made permanent.
- (12) If the trial HAMP was not made permanent based on "missing documentation" please identify what documents were missing and state the date the servicer notified the borrower and specifically advised what additional documents were needed.
- (13) Please advise whether CitiMortgage disclosed to Vericrest that Joseph Giuliani included the subject debt in a Chapter 7 bankruptcy and obtained a discharge of the debt.

All future contact relative to this debt must take place solely through this office. Please cease and desist all communications with our clients.

For your reference, please also find enclosed written authorization to disclose the requested information.

Thank you for your consideration of this matter.

Very truly yours,


Richard Shuster, Esq.
RS/ch
Enclosure

AUTHORIZATION AND RELEASE

_____,
_____, do hereby
authorize **Richard Shuster, Esquire and Shuster & Saben, LLC**,
to contact and negotiate and with any company, bank or mortgage
lender on my behalf in reference to my real property located at:

Citi Account
LOAN # 07715099

Borrower SSN: _____

Borrower SSN: _____

This Authorization and Release shall confirm that I have hired Richard Shuster, Esq. as my attorney. I authorize and request any and all information concerning any mortgage or other debt on the above-mentioned property to be released to Richard Shuster. I also authorize Richard Shuster to request and receive a Qualified Written Request pursuant to RESPA.

This authorization and release shall be effective immediately as of this 27 day of December, 2010.

Jc
Homeowner


Signature



VERICREST[™]
FINANCIAL

RETURN TO SERVICE ONLY
Please do not send mail to this address
Vericrest Financial, Inc.
P.O. Box 619063
Dallas, TX 75261-9063
www.vericrestfinancial.com
800-401-6587

January 31, 2011

Jd

MELBOURNE FL 329

Re: Loan No. 98008672
Property address MELBOURNE FL 329

Dear Borrower

As we previously informed you, the servicing of your mortgage loan was transferred to Vericrest Financial, Inc. ("Vericrest"). Our goal is to provide you with the utmost in customer service. As your new servicer, we are required to tell you that, as of the date of this letter, you owe a total of \$296916.65, which consists of unpaid principal, interest and if applicable, negative escrow and servicing fees and costs. The creditor to whom you owe this debt is Vericrest Financial, Inc.

The following is the amount of your past due balance, if any, and your current payment:

Past due balance (due immediately).....	\$53835.46
Current payment (pay by 08/01/2008 to avoid late charges).....	\$1643.33

Interest, late charges, and other charges may vary from day to day. Therefore, the past due balance on the day you make the payment may be greater. If you pay the past due amount shown above, an adjustment may be necessary after we receive your payment.

We are not requesting that you pay the entire loan balance. However, if you wish to pay off the entire amount of the loan, please contact us for a payoff statement because that balance may also be greater because of interest, late charges, and other charges. A charge for the statement may apply as permitted by state law.

You have (30) days after you receive this letter to dispute the validity of the debt or any part of it. If you do not dispute it within that period, we will assume that it is valid. If you notify us that you dispute the debt we will, as required by the law, obtain and mail to you proof of the debt. If, within the same period, you request in writing the name and address of your original creditor, we will furnish you with that information.

The communication is from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

Exhibit 2