

**IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI  
ASSOCIATE DIVISION**

UHG I LLC,	)	
	)	Case No. 22AE-AC01070
Plaintiff/Counterclaim Defendant,	)	
	)	<b>JURY TRIAL DEMANDED</b>
<i>v.</i>	)	
	)	
THOMAS MCDONOUGH,	)	
	)	
Defendant/Counterclaim Plaintiff.	)	

**DEFENDANT/COUNTERCLAIM PLAINTIFF’S ANSWER,  
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

COMES NOW Defendant/Counterclaim Plaintiff, Thomas McDonough (“McDonough”), by and through his undersigned counsel of record, and, in his Answer to Plaintiff/Counterclaim Defendant UHG I LLC’s (“UHG”) Petition, admits, denies, and avers as follows:

1. McDonough denies each and every allegation contained in UHG’s Petition, except that McDonough admits that he is a resident of Platte County.

**AFFIRMATIVE DEFENSES**

COMES NOW Defendant/Counterclaim Plaintiff McDonough and, for his Affirmative Defenses, states to this honorable Court as follows:

2. UHG is not the real party in interest.

3. UHG does not have standing to bring this lawsuit.

4. UHG’s claim is barred by the Statute of Frauds as it has not alleged any agreement in writing that would obligate McDonough to UHG in any way, and the

nature of UHG's claim is one in which a written contract would be necessary to be enforceable in Missouri.

5. UHG's claim against McDonough is unenforceable, as there is no privity of contract between McDonough and UHG.

6. McDonough pleads the affirmative defenses of laches, collateral estoppel, and satisfaction and accord and that, if any "agreement" were entered into, it is void as a contract of adhesion and did not comprise a meeting of minds so as to be against the public policy of Missouri and its courts.

7. UHG's exhibits fail pursuant to the best evidence rule because they're being offered as proof of the operative, material terms of a substantive writing—the alleged contract—which terms haven't been independently proven.

8. McDonough further states that UHG's Petition should be dismissed for failure to name all necessary parties, including the actual and original creditor as to the alleged debt.

9. Pursuant to 15 U.S.C. § 1640(e), McDonough isn't barred from asserting a violation of that subchapter "in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment . . .". McDonough reserves that defense here to the extent that any TILA disclosures asserted by UHG may be materially incorrect on their face.

10. McDonough asserts the right to assert additional affirmative defenses as they become known during the pendency of this case, up to and including trial.

11. WHEREFORE, Defendant/Counterclaim Plaintiff McDonough, having set forth his Affirmative Defenses, prays that the Court enter judgment in his favor and against UHG; order this alleged debt to be removed from the trade lines of all credit-reporting businesses; provide for payment of reasonable attorneys' fees and costs incurred herein; and for such other and further relief as the Court may deem just and proper under these circumstances.

### **COUNTERCLAIMS**

COMES NOW, Defendant/Counterclaim Plaintiff McDonough, by and through his undersigned counsel and, for his Counterclaims, states and avers to the Court as follows:

#### **FACTS COMMON TO ALL COUNTS**

12. McDonough incorporates by reference all facts and allegations outlined in his Affirmative Defenses as though fully set forth herein.

13. McDonough doesn't owe the debt for which UHG has sued him.

14. McDonough is an architect, with credit scores well into the 800s, who hasn't taken out an "emergency" payday-type loan, such as the 249%-APR one from CashNetUSA ("CashNet") attributed to him by UHG. As of July 6, 2022, McDonough's Capital One CreditWise credit report stated, "100% of payments made on time."

15. UHG defames, repeatedly, McDonough in the public record by claiming he owes a debt he doesn't owe and, similarly, defaulted on an account.

16. UHG's filing of suits against Missouri consumers, such as McDonough, who simply didn't take out a loan from CashNet is a pattern and practice.

17. Generally, UHG is a predatory debt mill whose primary business consists of purchasing large pools of charged-off consumer debt for, at most, pennies on the dollar.

18. Endemic to UHG's business is the accordant purchase of "data files" – bits and pieces of consumer information and related alleged debts – that are, broadly, legally insufficient to support claims against alleged debtors.

19. Nonetheless, UHG files such claims *en masse* in Associate division dockets, where it profits by obtaining default judgments against individuals without adequate legal representation.

20. UHG's action against McDonough fails as a matter of law, for multiple reasons.

21. One need look only at UHG's Petition to see that it's for "on Note" and see that no contract at all has been entered into the record to realize that the claim is fatally deficient.

22. A breach-of-contract/note action cannot be sustained in Missouri without substantial evidence of the actual contract. As stated, UHG's exhibits likewise fail pursuant to the best evidence rule.

23. The Petition baldly avers to a "Contract." However, UHG not only fails to include that purported agreement but also declines to even attest to basic, essential information, such as when the "Contract" was formed or its principal amount.

24. The "evidence" supporting UHG's suit against McDonough consists of a generic, wildly inadequate affidavit by Kaelyn Kowalik, Account Administrator (the

“Affidavit”) and a series of heavily redacted loan-pool-sale documents that, as evidence against individual consumers, are meaningless as they contain no unique identifying information as to particular loans.

25. The Affidavit is not only legally insufficient but also ethically problematic.

26. More specifically, Ms. Kowalik swears that “the Defendant defaulted in his/her payments to the Original Creditor.”

27. Ms. Kowalik can’t have such knowledge as McDonough didn’t take out the alleged debt, let alone default on a payment.

28. Similarly, Ms. Kowalik doesn’t state *when* such default occurred, *when* the account was charged off, or *when* the “final” statement was issued. Even by the low standards of such generic debt-collection declarations, the Affidavit is threadbare and dubious.

29. Ms. Kowalik doesn’t provide a foundation by which she would have personal knowledge of McDonough’s alleged default *to CashNet*.

30. Ms. Kowalik doesn’t bother to attest to the principal, interest, and fee amounts constituting the alleged balance of \$3,090.

31. The Affidavit swears, “The Exhibits attached to the Complaint and this Affidavit [are true and accurate copies], which [were] kept in the ordinary course of business and reflect[] Defendant’s obligation to pay the Account.”

32. Again, McDonough has, and had, no obligation to pay the debt alleged.

33. The Affidavit doesn’t state what the exhibits are “true and accurate” copies *of*—e.g., as described below, the apparent billing statement—the only exhibit ostensibly

involving McDonough (i.e., including his name and address, comprising a document that could have conceivably been sent to McDonough) – attached to the Petition is chaotic and meaningless.

34. More specifically, the billing statement is untethered relative to any alleged contract; doesn't purport to be "final"; doesn't entail anything remotely close to a complete payment, default, principal, interest, or fees history; is completely unevicenced as to whether it was allegedly sent to or received by McDonough; is devoid of TILA terms; and is quite possibly a post-hoc printout, as opposed to a statement allegedly sent to a debtor.

35. The Affidavit avers that, "All credits and payments have been properly applied, Defendant is not entitled to any additional credits or offsets on the account of any kind, and the balance as set forth herein is currently due and owing."

36. Given that the entire premise of UHG's lawsuit is faulty, Ms. Kowalik's averment here is necessarily incorrect. Beyond that glaring fact, however, Ms. Kowalik provides no basis as to how she would know anything at all as to the accuracy of the debt's accounting.

37. Rather, UHG's process here is to, pursuant to forward-flow agreements with a predatory lender (CashNet), indiscriminately purchase large pools of bad paper and then sue consumers for alleged debts, seeking default judgments. Nowhere in this process is there room for a UHG functionary in Buffalo to review the accounting/payment history, even at a high level, of tens or hundreds of thousands of

alleged CashNet accounts from across the country so as to aver to their accuracy in any meaningful manner.

38. Similarly, Ms. Kowalik doesn't purport to have personal knowledge of the "records" themselves, but rather she attests that the records "are kept in the ordinary course of a regularly conducted business activity and are made either by a person having personal knowledge of the information contained therein or based on information conveyed by a person having personal knowledge of the information contained therein."

39. Putting aside the boilerplate legalese and insufficiency of hearsay in establishing "business records," it's not at all evident, given the "records" *actually* attached, how Ms. Kowalik might know *who* maintained the *CashNet*-branded billing statement, *how* they did so, and *how* Ms. Kowalik knows that *they* have "personal knowledge" of such. CashNet isn't a party to this lawsuit and provides no affidavit of its own; the same is true of any third-party vendor that CashNet may have retained to manage billing.

40. The Affidavit also cites to an account number ending in "2796" while the attached billing statement notes an account number ending in "6296," such that the Affidavit's definition of "Account" is facially incorrect.

41. Further, the financial terms of the debt attributed to McDonough are nebulous.

42. Per the billing-statement exhibit, dated August 8, 2019, McDonough's "credit limit" was \$2,000; "available credit" was \$200; "account balance" was \$3,090;

“previous balance” was \$2,986.50; “fees” were \$15; and “interest” was \$88.50, on a 14-day billing cycle.

43. Lower in that same statement, the “balance subject to interest,” denoted “all advances,” was \$890.75.

44. Thus, despite allegedly being nearly \$1,000 over the “credit limit,” McDonough had \$200 upon which to draw. And, despite a balance approaching \$3,000, the 249% APR was applied only to the seemingly random balance of \$890.75.

45. Taken on its face, then, this billing statement—evidence of nothing whatsoever—suggests cash advances of \$890.75 and the remaining balance of \$2,199.25 derived from interest and fees.

46. Because UHG’s evidence in this regard is so deficient, including lacking a contract, one is left guessing as to how this alleged debt of \$3,090 was actually arrived at over time.

47. Given the August 8, 2019, statement date, and the “year-to-date [220 days] total interest” amount of \$1,215 (approximately \$5.52 in interest per day), one arrives at an average daily balance of around \$809, which is roughly commensurate with the \$890.75 in “all advances.” The best guess, then, is that *someone*—if anyone at all—received around \$800 in cash from CashNet sometime in early 2018 and became overwhelmed by the loan’s 249% APR, defaulting at whatever point in time.

48. There is, again, no evidence that the apparent billing statement, with the logo “CashNetUSA UPSWING,” was ever sent to, or received by, anyone at all, let alone McDonough.



49. Likewise, the billing statement is unusual, with underscores separating the words and numbers in McDonough's address, such that it appears to be a mere printout from *whatever* source, as opposed to a statement that was allegedly sent to McDonough.

50. Indeed, UHG doesn't explain or contextualize this exhibit. If the billing statement is intended to constitute the "demand" for payment, Petition at ¶ 8, it is wholly insufficient as evidence in that regard.

51. Relatedly, the billing statement doesn't appear to state the type of credit product—cash advance, online loan, installment loan, line of credit, or fast cash—under which the alleged debt originated. Such information is essential as to, amongst other considerations, reviewing financial calculations, TILA disclosures, and general legality of the underlying credit product.

52. UHG also avers, "All monthly balances owed on the Contract, if not already past due, have been accelerated." Again, the billing statement fails to account for what, if anything, may have been "accelerated."

53. Per the "Wiring Instructions for Seller," with a closing date of April 30, 2020, the "Buyer" — UHG — was to pay the "Total Purchase Price . . . no later than June 29, 2020." There is thus no evidence that UHG actually purchased the pool of accounts alleged.

54. Even further, the "EXHIBIT A TO CASHNET ADDENDUM" refers to an itemized list of accounts in "Exhibit '1'" even though no such exhibit is attached.

55. UHG's proffered chain-of-custody evidence is also deficient. The Petition and Affidavit aver that "CashNetUSA" was the "original creditor" as to the alleged debt but the (aggregated/non-particularized and heavily redacted) bill of sale refers to "CNU

Holdings, LLC, on its own behalf and its capacity as an authorized agent for each of the CashNet Affiliates” as the “Seller.” While “CashNetUSA” *may* be a “CashNet Affiliate,” and CNU Holdings, LLC, *may* be an “authorized agent” for “CashNetUSA,” these points are completely unevicenced such that the chain-of-custody for the alleged debt across entities is facially incomplete.

56. Beyond simply having sued McDonough baselessly, owing to whatever particular aspects of gross negligence on its part, UHG has failed to evidence its claim against McDonough in ways that are common to the class McDonough seeks to represent.

57. Per Casenet, UHG has filed—in 2022 alone—approximately 2,400 debt-collection lawsuits against Missouri consumers. That number was approximately 1,100 in 2021.

58. These cases have typically been filed by attorney Anthony F. Porto.

59. These cases are largely for breach of contract/note, though some are for account stated.

60. These cases are consistently supported by affidavits from Ms. Kowalik, which affidavits often suffer from the same fundamental deficiencies detailed above.

61. These cases consistently pertain to alleged debts originally owed to CashNet.

62. These cases, beyond failing to evidence a contract/note, often include little beyond the heavily redacted, account-pool-sale documents described above.

63. As but a tiny sampling of breach-of-contract actions recently filed by UHG against Missouri consumers, which suits are devoid of any contract in the record, there

are UHG v. *Grayson* (Case No. 2216-CV11466)(Jackson Cty.); *Borisen* (Case No. 2216-CV11485)(Jackson Cty.); *Montgomery* (Case No. 22AE-AC00907)(Platte Cty.); *Elbataineh* (Case No. 22AE-AC00870)(Platte Cty.); *Valent* (Case No. 22CA-AC00741)(Cass Cty.); *Shanks* (Case No. 22BA-CV01778)(Boone Cty.); and *Gill* (Case No. 22JO-AC00169)(Johnson Cty.).

**COUNT ONE:**  
**DEFAMATION**  
*Against UHG*

64. McDonough incorporates by reference all foregoing facts and allegations as if fully set forth herein.

65. As stated, UHG averred in the public record that McDonough owed, and owes, a debt that isn't his. Likewise, UHG attested in the public record that McDonough defaulted on an account that he didn't hold in the first place.

66. These statements were not only false but also derogatory.

67. UHG has published these derogatory, untrue statements in the public record.

68. UHG knew, or should have known, that these derogatory statements were false. Again, it not only claimed an incorrect debt against McDonough but also filed suit without evidence legally required to sustain such a claim.

69. UHG's false statements against McDonough damaged his reputation.

70. WHEREFORE, Defendant/Counterclaim Plaintiff McDonough prays, per his Count One against UHG, that the Court enter judgment in his favor for his actual damages, pre and post-judgment interest at the greatest rate allowed by statute, costs,

and for other and further relief as the Court may deem just and proper under the circumstances.

### CLASS-ACTION ALLEGATIONS

71. McDonough brings the following class-action counterclaims on behalf of himself and all other persons similarly situated, pursuant to Missouri Rule of Civil Procedure 52.08.

72. McDonough proposes to represent all persons who meet the following class definition (the “Class”):

*All persons who were sued in Missouri by UHG I LLC for breach of contract, where the alleged debts were allegedly originated by CashNet USA, the filing of which suits occurred from one year prior to the filing of these Counterclaims through the date this Class is certified, inclusively.*

73. McDonough reserves the right to amend the foregoing class definition or to define further subclasses before the Court determines whether class certification is appropriate.

74. McDonough proposes that the following be excluded from any class: (1) any judge(s) to whom this case is assigned and their staff; (2) UHG, including any parent, sister, and/or subsidiary entities; (3) any current employees of UHG and any of UHG’s officers and directors; (4) counsel of record; and (5) any person who has previously settled these claims against UHG.

75. **Numerosity.** Although McDonough doesn’t know the precise number of putative Class members, a review of the Missouri Casenet dockets reveals that UHG, as stated, has filed approximately 2,400 debt-collection cases in Missouri during 2022 alone and that a substantial number of these derive from debts allegedly originated by

CashNet. The number of Class members is thus likely in the thousands. As such, members of the Class are too numerous to practically join in an individual action. Members may be notified of the pendency of this action via appropriate means.

76. **Commonality.** This case presents material questions of law and fact common to the proposed Class. Such questions include, but are not limited to:

- i. Whether UHG has evidenced its breach-of-contract actions against the members with a legally sufficient contract;
- ii. Whether UHG has violated the FDCPA in its actions against the members by filing breach-of-contract actions against them despite entering no alleged contract at all into the record;
- iii. Whether UHG has violated the FDCPA by submitting misleading affidavits into the record;
- iv. Whether UHG has violated the FDCPA in its actions against the members by failing to evidence the amounts it claimed are due;
- v. Whether UHG has violated the FDCPA in its actions against the members by failing to evidence, via chain of custody, that it had standing to bring those actions;
- vi. Whether UHG has violated the FDCPA in its actions against the members by failing to evidence, via assignment of particularized loan number, that it had standing to bring those actions;
- vii. Whether UHG has violated the FDCPA in its actions against the members by engaging in conduct whose natural consequence was to harass, oppress, and/or abuse; and
- viii. Whether UHG was negligent in its lawsuits against the members.

77. **Typicality.** McDonough's counterclaims are typical of those of the Class in that his claims, as described, derive from the fact of having been sued by UHG over a debt allegedly originated by CashNet, which action by UHG was predicated on false, deceptive, misleading, legally insufficient, and/or negligent representations by UHG.

78. **Adequacy.** McDonough is and will be an adequate representative of the Class in that he can, and will, act to protect and advance the interests of the Class. McDonough does not currently know of any conflicts of interest with regard to the

proposed Class. Further, McDonough has retained class counsel experienced in litigating matters such as this, who have and will continue to vigorously prosecute these claims.

79. **Predominance.** The questions of law or fact common to the Class members predominate over any questions affecting only individual members. UHG's course of conduct will be discovered without any need for participation by individual members of the Class.

80. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. This action presents simple, objective facts for a class action so as to afford each member a fair and efficient method for prosecuting their claims. Likewise, UHG will be afforded a fair and efficient method for defending itself against these claims. Upon information and belief, no overlapping classes have been filed against UHG in Missouri.

81. **Individual Control.** The interests of individual members are best served by certifying this case as a class action. Proposed members' individual actual damages may be relatively small. By contrast, the undersigned counsel believe they will be compelled to invest tens, if not hundreds, of thousands of dollars in time and expenses in prosecuting this matter so as to best litigate (and win) these claims. If counsel only represented McDonough, they would still be compelled to spend substantially the same time and costs as if it were a class action – i.e., there are desirable economies of scale here. In the absence of a class action, many members would, in reasonable probability, be unable to prosecute their claims.

**COUNT TWO:**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT,**  
**15 U.S.C. § 1692 et seq.**  
*Against UHG*

82. McDonough incorporates by reference all foregoing facts and allegations as if fully set forth herein.

83. McDonough brings this Count Two on behalf of the Class.

84. McDonough, at all relevant times, was a “consumer” pursuant to the Fair Debt Collection Practices Act (“FDCPA”). *See* 15 U.S.C. § 1692a(3).

85. UHG, at all pertinent times, was a “debt collector” pursuant to the FDCPA. *See* 15 U.S.C. § 1692a(6); *see also* *Ruth v. Triumph P’ships*, 577 F.3d 790, 796-97 (7th Cir. 2009).

86. UHG, at all pertinent times, used an instrumentality, or instrumentalities, of interstate commerce and/or the mails in a business whose principal purpose was the collection of debts.

87. At all pertinent times, the subject of UHG’s instant lawsuit against McDonough concerned an alleged consumer debt, which, as alleged, was not a debt originally owed to UHG. Petition at ¶ 3.

88. UHG brought this lawsuit after purportedly purchasing an assignment of the aforementioned, alleged “Contract.” Petition at ¶ 3.

89. As described, despite its sole cause of action against McDonough being “Petition on Note” (i.e., breach of contract), UHG didn’t enter an alleged contract into the record.

90. As described, despite alleging a “Contract” purporting to bind McDonough

to the alleged debt, UHG didn't enter an alleged contract into the record.

91. As described, despite alleging a "Contract," UHG's suit against McDonough completely neglected to mention *when* this supposed contract was formed and *when* the underlying account was charged off.

92. On its face, then, UHG's lawsuit was both legally insufficient and harassing.

93. As described, UHG also used a number of false, misleading, and/or deceptive statements or means in filing its suit against McDonough, including but not limited to statements in the Affidavit.

94. As described, despite submitting bills of sale to the record as supposed evidence of an assignment of McDonough's alleged loan to UHG, those bills of sale are heavily redacted and devoid of individual loan numbers such that they're evidence of nothing at all as to McDonough and the alleged debt's chain of custody.

95. UHG has brought this suit hoping to take advantage of McDonough by forcing him to "admit" through court procedure that he owes a debt to UHG. Given the brazen inadequacy and illusory nature of the documents entered by UHG into the docket in this matter, its collection attempt is also harassing, oppressing, and/or abusive, in violation of 15 U.S.C. § 1692d.

96. Generally, UHG's business model entails the generation of a massive amount of litigation against thousands of consumers allegedly identified by "data files" purchased by UHG; this litigation seeks to obtain rapid default judgments and/or "admitted" judgments through discovery or other tactics deployed against unrepresented individuals.



97. The proceeds from such rapid, predatory judgments against unrepresented persons more than make up for UHG's losses in having to abandon attempts to collect against those persons represented by competent counsel, whereby such counsel is able to identify the myriad deficiencies in UHG's pleadings.

98. In effecting such a business model, UHG consistently neglects to obtain – if any is available at all – documentation sufficient to legally evidence its lawsuits against consumers.

99. A single action on the part of a debt collector can violate multiple sections of the FDCPA.

100. The FDCPA, 15 U.S.C. § 1692e, provides that 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: (2) The false representation of – (A) the character, amount or legal status of any debt.”

101. The same statutory section also proscribes, “(9) The use or distribution of any written communication which . . . creates a false impression as to its source, authorization, or approval.”

102. The same statutory section also proscribes, “(10) The use of any false representation or deceptive means to collect or attempt to collect any debt . . . .”

103. UHG, in its action against McDonough, violated all of these provisions, in multiple ways.

104. The FDCPA, 15 U.S.C. § 1692f(1), also provides that “a debt collector may

not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) The collection of any amount (including any interest, fee, charge or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

105. UHG has violated the FDCPA in ways including, but not limited to, the following:

A. Using a false, deceptive, and/or misleading representation and/or means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e, by:

- i. Filing a contract action against a consumer with no evidence of a contract;
- ii. Claiming that McDonough owes it \$3,090 despite no evidence of a contract between it and McDonough;
- iii. Claiming that McDonough owed CashNet \$3,090 despite no evidence of a contract between it and McDonough;
- iv. Claiming that McDonough owes it \$3,090 despite an (almost entirely) incomplete account history;
- v. Claiming that McDonough owes it \$3,090 despite no evidence of when the alleged debt was charged off;
- vi. Claiming that McDonough defaulted on a CashNet account;
- vii. Submitting an affidavit that was misleading and/or false, in material ways, to the record;
- viii. Failing to evidence the alleged debt’s chain of custody relative to the alleged original creditor (“CashNetUSA”) and CNU Online Holdings, LLC; and
- ix. Failing to evidence the alleged debt’s assignment to UHG given that no individual account numbers were included in the bills of sale.

B. Using unfair or unconscionable means to collect or attempt to collect any debt, in violation of 15 U.S.C. § 1692f, by:

- i. Filing a contract action against a consumer with no evidence of a contract;
- ii. Claiming that McDonough owes it \$3,090 despite no evidence of a

- contract between it and McDonough;
- iii. Claiming that McDonough owed CashNet \$3,090 despite no evidence of a contract between it and McDonough;
- iv. Claiming that McDonough owes it \$3,090 despite an (almost entirely) incomplete account history;
- v. Claiming that McDonough owes it \$3,090 despite no evidence of when the alleged debt was charged off;
- vi. Claiming that McDonough defaulted on a CashNet account;
- vii. Submitting an affidavit that was misleading and/or false, in material ways, to the record;
- viii. Failing to evidence the alleged debt's chain of custody relative to the alleged original creditor ("CashNetUSA") and CNU Online Holdings, LLC; and
- ix. Failing to evidence the alleged debt's assignment to UHG given that no individual account numbers were included in the bills of sale.

106. UHG's lawsuit, as presented by UHG and for the reasons described herein, also constitutes conduct whose natural consequence is to harass, oppress, and/or abuse McDonough, in violation of 15 U.S.C. § 1692d.

107. As stated, UHG's conduct in this regard is part of a pattern and practice.

108. As a result of the aforementioned conduct, McDonough has suffered damages, including the need to retain counsel, wasted time, defamation, and distress.

109. McDonough and the Class are entitled to actual damages, statutory damages, and attorneys' fees pursuant to 15 U.S.C. § 1692k(a).

110. McDonough also seeks, on behalf of the Class, to have default judgments entered against members and in favor of UHG set aside.

111. WHEREFORE, Defendant/Counterclaim Plaintiff McDonough prays, per his Count Two against UHG, that the Court enter judgment in his favor, and the favor of the Class, and against UHG for actual damages, statutory damages, attorneys' fees, pre- and post-judgment interest at the greatest rate permitted by law, the setting aside of

default judgments, and any other relief the Court may deem just and proper under the circumstances.

**COUNT THREE:**  
**NEGLIGENCE/GROSS NEGLIGENCE**  
*Against UHG*

112. McDonough incorporates by reference all foregoing facts and allegations as if fully set forth herein.

113. McDonough brings this Count Three on behalf of the Class.

114. As a debt collector, UHG owed McDonough and the Class members a duty of reasonable care pursuant to the FDCPA. More specifically, McDonough and the members, as alleged debtors and “consumers,” belong to the class of persons the FDCPA seeks to protect.

115. Further, UHG is a professional debt collector that, as stated, files numerous lawsuits against ordinary people attempting to collect alleged debts. As such, UHG has superior knowledge and/or skill relative to McDonough and the members as to reasonable practices, rights, and remedies vis-à-vis debt collection, including debt-collection lawsuits. UHG’s status as a professional debt collector, including its superior knowledge and skill relative to laypeople in that regard, also meant that it owed McDonough and the members a duty of reasonable care in attempting to collect alleged debts.

116. UHG breached its duty of reasonable care to McDonough by filing a lawsuit against him that was, relative to basic evidentiary standards, completely deficient.

117. In filing its “Petition on Note” claim against McDonough, UHG expressly

and implicitly stated that such a document afforded it the right to collect on the alleged debt, which it clearly did not.

118. In this way, and others, as described herein, UHG breached its duty of reasonable care to McDonough, as an FDCPA-covered “consumer,” by attempting to collect an alleged debt via unreasonable, unlawful means.

119. Likewise, as a professional debt collector, UHG breached its duty of reasonable care to McDonough by failing to exercise the degree of care, skill, and proficiency commonly exercised by such professionals.

120. UHG has done as much—and collected default judgments despite a disturbing lack of evidence—repeatedly in Missouri.

121. UHG’s breach of its duty of reasonable care to McDonough caused, both directly and proximately, his injury. McDonough, had to retain legal counsel to defend herself against and suffered wasted time and distress because of a lawsuit whose deficient evidentiary basis should be evident to a professional debt collector. Such injury was also entirely foreseeable.

122. WHEREFORE, Defendant/Counterclaim Plaintiff McDonough prays, per his Count Three against UHG, that the Court enter judgment in his favor, and the favor of the Class, for his actual damages, pre and post-judgment interest at the greatest rate allowed by statute, costs, and for other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

/s/ Andrew Taylor

Bryce B. Bell MO#66841

Mark W. Schmitz MO#69329

Andrew Taylor MO#72157

Jenilee V. Zentrich MO#72781

**BELL LAW, LLC**

2600 Grand Blvd., Ste. 580

Kansas City, Missouri 64108

Telephone: 816-886-8206

Facsimile: 816-817-8500

Bryce@BellLawKC.com

MS@BellLawKC.com

AT@BellLawKC.com

JZ@BellLawKC.com

*Attorney for Defendant/Counterclaim Plaintiff Tom McDonough and the Class*