

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TRAVIS HOWARD and VANESSA	:	
HOWARD, individually and on behalf of	:	
all others similarly situated,	:	
	:	
Plaintiffs,	:	CASE NO. 3:19-cv-00093-KRG
	:	
v.	:	
	:	
LVNV FUNDING, LLC, and	:	
RESURGENT CAPITAL SERVICES, LP,	:	
	:	
Defendants.	:	

**DEFENDANT RESURGENT CAPITAL SERVICES, LP’S ANSWER WITH  
AFFIRMATIVE DEFENSES TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

Defendant Resurgent Capital Services, LP (“RCS”) respectfully answers Plaintiffs’ First Amended Complaint as follows:

**NATURE OF THE ACTION**

1. Admitted in part, denied in part. RCS admits this action seeks damages, attorneys’ fees, and costs for alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* RCS denies violating the FDCPA and denies Plaintiffs’ entitlement to damages, attorneys’ fees or costs.

**JURISDICTION AND VENUE**

- 2. RCS denies the allegations Paragraph 2 of Plaintiffs’ First Amended Complaint.
- 3. RCS denies the allegations Paragraph 3 of Plaintiffs’ First Amended Complaint.
- 4. RCS denies the allegations Paragraph 4 of Plaintiffs’ First Amended Complaint.

**PARTIES**

- 5. Admitted upon information and belief.

6. Admitted in part, denied in part. RCS admits it is a business entity with its place of business in Greenville, South Carolina. RCS denies the remaining allegations in Paragraph 6 of Plaintiff's First Amended Complaint.

7. RCS denies the allegations Paragraph 7 of Plaintiffs' First Amended Complaint.

8. After reasonable investigation, RCS lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 8 of Plaintiffs' First Amended Complaint, and as such they are denied.

9. RCS denies the allegations Paragraph 9 of Plaintiffs' First Amended Complaint.

10. Admitted in part, denied in part. RCS admits that at times it uses the telephone, mail and the internet. After reasonable investigation, RCS lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 10 of Plaintiffs' First Amended Complaint, and as such they are denied.

### **FACTUAL ALLEGATIONS**

11. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit A. RCS denies all remaining allegations in Paragraph 11 of Plaintiffs' First Amended Complaint.

12. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit A. RCS denies all remaining allegations in Paragraph 12 of Plaintiffs' First Amended Complaint.

13. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 13 of Plaintiffs' First Amended Complaint.

14. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 14 of Plaintiffs' First Amended Complaint.

15. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 15 of Plaintiffs' First Amended Complaint.

16. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 16 of Plaintiffs' First Amended Complaint.

17. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 17 of Plaintiffs' First Amended Complaint.

18. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 18 of Plaintiffs' First Amended Complaint.

19. Denied. After reasonable investigation, RCS lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 19 of Plaintiffs' First Amended Complaint, and as such they are denied.

20. Admitted in part, denied in part. RCS admits only the accuracy of any properly quoted language from Exhibit B. RCS denies all remaining allegations in Paragraph 20 of Plaintiffs' First Amended Complaint.

21. RCS denies the allegations in Paragraph 21 of Plaintiffs' First Amended Complaint.

22. LVNV denies the allegations in Paragraph 22 of Plaintiffs' First Amended Complaint.

23. RCS denies the allegations in Paragraph 23 of Plaintiffs' First Amended Complaint.

24. RCS denies the allegations in Paragraph 24 of Plaintiffs' First Amended Complaint.

25. RCS denies the allegations in Paragraph 25 of Plaintiffs' First Amended Complaint.

26. RCS denies the allegations in Paragraph 26 of Plaintiffs' First Amended Complaint.

27. RCS denies the allegations in Paragraph 27 of Plaintiffs' First Amended Complaint.

28. RCS denies the allegations in Paragraph 28 of Plaintiffs' First Amended Complaint.

29. RCS denies the allegations in Paragraph 29 of Plaintiffs' First Amended Complaint.

30. RCS denies the allegations in Paragraph 30 of Plaintiffs' First Amended Complaint.

31. RCS denies the allegations in Paragraph 31 of Plaintiffs' First Amended Complaint.

32. RCS denies the allegations in Paragraph 32 of Plaintiffs' First Amended Complaint.

33. RCS denies the allegations in Paragraph 33 of Plaintiffs' First Amended Complaint.

34. RCS denies the allegations in Paragraph 34 of Plaintiffs' First Amended Complaint.

35. RCS denies the allegations in Paragraph 35 of Plaintiffs' First Amended Complaint.

### **CLASS ALLEGATIONS**

36. Admitted in part, denied in part. RCS admits Plaintiffs bring this action individually and on behalf of all others similarly situated. RCS denies liability to Plaintiffs and their putative class, and deny class treatment is appropriate.

37. Admitted in part, denied in part. RCS admits Plaintiffs seek to certify the class defined in Paragraph 37 of their First Amended Complaint. RCS denies liability to Plaintiffs and their putative class, and deny class treatment is appropriate.

38. RCS denies the allegations in Paragraph 38 of Plaintiffs' First Amended Complaint.

39. RCS denies the allegations in Paragraph 39 of Plaintiffs' First Amended Complaint.
40. RCS denies the allegations in Paragraph 40 of Plaintiffs' First Amended Complaint.
41. RCS denies the allegations in Paragraph 41 of Plaintiffs' First Amended Complaint.
42. RCS denies the allegations in Paragraph 42 of Plaintiffs' First Amended Complaint.
43. RCS denies the allegations in Paragraph 43 of Plaintiffs' First Amended Complaint.
44. RCS denies the allegations in Paragraph 44 of Plaintiffs' First Amended Complaint.

**COUNT I**  
**Violation of the Fair Debt Collection Practices Act**  
**15 U.S.C. §§ 1692, *et seq.***

45. RCS incorporates paragraphs 1 through 44 of this Answer as though more fully set forth here.

46. Admitted in part, denied in part. RCS admits Plaintiffs bring this claim individually and on behalf of a putative class. RCS denies liability to Plaintiffs and their putative class, and deny class treatment is appropriate.

47. Admitted in part, denied in part. RCS admits that at times it is a "debt collector" under the FDCPA. After reasonable investigation, RCS lacks sufficient knowledge and information to form a belief as to whether it is a "debt collector" in this case. RCS denies LVNV is a debt collector. After reasonable investigation, RCS lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 47 of Plaintiffs' First Amended Complaint, and as such they are denied.

48. RCS denies the allegations in Paragraph 48 of Plaintiffs' First Amended Complaint.

49. Admitted in part, denied in part. RCS admits Plaintiffs seek statutory damages, attorneys' fees and costs. RCS denies violating the FDCPA and denies Plaintiffs' entitlement to damages, fees and costs.

WHEREFORE, Defendant Resurgent Capital Services, LP respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff; dismiss Plaintiff's First Amended Complaint with prejudice; and further award all such other relief as is just and appropriate.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The putative class, as defined, frustrates the purpose and intent of 15 U.S.C. § 1692k(a)(2)(B) which anticipates an absolute cap on statutory damages for any failure to comply with the provisions of the FDCPA.

**SECOND AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiffs have contractually agreed to the resolution of the disputes that are the subject of this lawsuit through mandatory individual arbitration. Accordingly, this action should be stayed and the disputes that are the subject of this lawsuit should be ordered to be resolved through mandatory individual arbitration. Arbitration is hereby demanded.

**THIRD AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiffs contractually agreed to waive their participation in any class action, whether as class member or class representative, for issues arising from or in any way related to the account at issue in this case. As such, Plaintiffs' class claims should be dismissed.

**FOURTH AFFIRMATIVE DEFENSE**

Upon information and belief, members meeting Plaintiffs' putative class definition have contractually agreed to waive their participation in any class action, whether as class member or

class representative, for issues arising from or in any way related to the account at issue in this case. As such, Plaintiffs' class claims should be dismissed.

**FIFTH AFFIRMATIVE DEFENSE**

RCS affirmatively asserts the defense of preemption.

**SIXTH AFFIRMATIVE DEFENSE**

RCS affirmatively asserts the defense of *res judicata*, collateral estoppel and/or claim preclusion.

WHEREFORE, Defendant Resurgent Capital Services, LP respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff; dismiss Plaintiff's First Amended Complaint with prejudice; and further award all such other relief as is just and appropriate.

Respectfully submitted,

**MESSER STRICKLER, LTD.**

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*Counsel for Defendants*

Dated: September 21, 2021

**CERTIFICATE OF SERVICE**

I certify that on September 21, 2021, a true copy of the foregoing document was served on all counsel of record by CM/ECF.

**MESSER STRICKLER, LTD.**

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*Counsel for Defendants*

Dated: September 21, 2021