

# Exhibit “1”

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

Craig Thomas, *on behalf of himself and all others similarly situated,*

Plaintiff,

v.

Sherwin P. Robin & Associates, P.C.,  
Sherwin P. Robin, Sara G. Robin, and  
Cavalry SPV I, LLC, Cavalry Portfolio  
Services, LLC

Defendants.

CIVIL CASE NO. \_\_\_\_\_

**JURY DEMAND**

**COMPLAINT – CLASS ACTION**

**NATURE OF ACTION**

1. Plaintiff brings this action on behalf of himself and others similarly situated for actual damages, statutory damages, attorneys’ fees and costs pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*
2. Specifically, Defendants have regularly overstated the amount of post-judgment interest owed by consumers in documents Defendants have filed with Courts and sent to consumers and third

parties, and have repeatedly attempted to collect and/or collected post-judgment interest in amounts that exceed what is owed under applicable law.

### **JURISDICTION AND VENUE**

3. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 USC § 1331.
4. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and § 2202.
5. The Court has ancillary jurisdiction to determine any state law claims pursuant to 28 U.S.C. § 1367.
6. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as the acts and transactions that give rise to this action occurred, in substantial part, in this district.
7. Venue is also proper in this district because Defendant conducts business in this district.

### **PARTIES**

#### ***Named Plaintiff***

8. Named Plaintiff Craig Thomas resides in Bibb County, Georgia.
9. Mr. Thomas is a “consumer” as that term is defined at 15 U.S.C. § 1692a(3).

10. Mr. Thomas was the defendant in a consumer collection action commenced by Robin & Associates, P.C. (Robin & Associates) on behalf of Cavalry SPV I, LLC (“Cavalry”) in Bibb County, Georgia, styled *Cavalry SPV I, LLC v. Thomas*, Civil Action No. 15-101938-S (“Bibb County Action”).
11. As discussed below, Robin & Associates, on behalf of Cavalry, subsequently filed an Affidavit For Garnishment in Gwinnett County seeking to enforce Consent Judgment obtained in the Bibb County Action.

***Defendants***

12. Defendant Cavalry is a large nationwide debt collector incorporated in Delaware.
13. Cavalry advertises itself on its website as a “Certified Professional Receivables Company” and “a leader in the acquisition and management of non-performing consumer loan portfolios.”
14. Cavalry is in the business of collecting defaulted consumer debt by use of the mail, telephone, and the courts of Georgia and other means of interstate commerce, and is a debt collector within the meaning of the FDCPA.

15. Defendant Cavalry Portfolio Services, LLC (“CPS”) and Cavalry are, on information and belief affiliated entities under common ownership and control.
16. On information and belief, CPS coordinates and manages collection activities for Cavalry, including coordinating and managing collection activities undertaken by high volume collection law firms.
17. Upon information and belief, CPS coordinates and manages Robin & Associates’ collection efforts on behalf of Cavalry, including those set forth herein.
18. CPS is in the business of collecting defaulted consumer debt by use of the mail, telephone, and the courts of Georgia and other means of interstate commerce, and is a debt collector within the meaning of the FDCPA.
19. Defendant Robin & Associates is a law firm located in Metter, Georgia, which, according to its website, “handles all types of retail and commercial collections.”
20. Robin & Associates is in the business of collecting defaulted consumer debt for others by use of the mail, telephone, and the

courts of Georgia and other means of interstate commerce, and is a debt collector within the meaning of the FDCPA.

21. Defendant Sara G. Robin, an attorney at Robin & Associates, signed her name as an affiant in support of the false statements as to interest owed by Mr. Thomas that were filed in state court in Georgia as alleged herein.

22. Ms. Robin is in the business of collecting defaulted consumer debt for others by use of the mail, telephone, and the courts of Georgia and other means of interstate commerce, and is a debt collector within the meaning of the FDCPA.

23. Defendant Sherwin P. Robin, the named partner at Robin & Associates, was also purported to be an affiant in support of the false representations as to interest that were filed in state court in Georgia as alleged in paragraphs 20 through 25.

24. Mr. Robin is in the business of collecting defaulted consumer debt for others by use of the mail, telephone, and the courts of Georgia and other means of interstate commerce, and is a debt collector within the meaning of the FDCPA.

### **NAMED PLAINTIFF'S EXPERIENCES**

#### ***The Consent Judgment***

25. In connection with an collection action against Plaintiff, on May 18, 2015, Defendants obtained a Consent Judgment for \$771.87 against Mr. Thomas in the Bibb County Action.
26. The Consent Judgment provided that Mr. Thomas was to pay \$70 by May 15, 2015 with regular payments of \$70 thereafter.
27. The Consent Judgment further provides that, in the event of default, “Plaintiff shall be entitled to the full amount of suit (less payments) including future interest.”
28. The Consent Judgment contains a stamp at the end stating “Plus Interest at the Legal Rate of [6.25]% Per Annum.”
29. The number “6.25” was handwritten into the document to fill in a blank left by the Court’s stamp.
30. The Consent Judgment was signed by Judge William M. Shurling, III, Mr. Thomas, and a representative of Robin & Associates.

***The State Court Collection Action***

31. On July 13, 2016, Defendants filed an Affidavit For Continuing Garnishment (“Garnishment Affidavit”) in Gwinnet County seeking to enforce the Consent Judgment obtained in the Bibb County Action.

32. The “Garnishment Affidavit” lists the names of Defendants Sherwin Robin and Sara Robin in the signature block, and is signed with an ink signature by Sara Robin.
33. The Garnishment Affidavit is stamped as having been received by the Clerk on July 13, 2015 at 9:31 am.
34. The Garnishment Affidavit asserted that Mr. Thomas owed \$771.87 in principal, \$10.17 in interest, and \$101.00 in costs, for a total of \$883.04.
35. The Garnishment Affidavit’s calculation of the amount of interested owed is not compliant with the Consent Judgment’s mandate that interest be calculated at 6.25% per annum and therefore falsely represented the character and amount of the debt allegedly owned by Mr. Thomas.
36. There were exactly 60 days from May 15, 2015 – after which date the Consent Judgment provided Mr. Thomas would be in default if he failed to make a \$70 payment – and July 13, 2015, the date the Garnishment Affidavit was filed with the state court.
37. Given the Consent Judgment’s principal amount of \$771.87, interest calculated at a rate of 6.25% per annum over 60 days would



come to \$7.93, more than two dollars less than the \$10.17 claimed in the Garnishment Affidavit.

38. The interest amount stated in the Garnishment Affidavit represents an interest rate of over 8.00%, well above the 6.25% rate explicitly endorsed by the Bibb County Court in the Consent Judgment.
39. On information and belief, Defendants routinely submit affidavits for garnishment and other documents in courts throughout Georgia overstating the amount of interest owed.
40. Upon information and belief, Defendants also regularly seek inflated interest by through letters sent to consumers and third parties (including consumers' employers) that included similarly overstated interest calculations.

### **CLASS ALLEGATIONS**

41. Plaintiff, Mr. Thomas, brings this action on behalf of himself and a class of all other persons similarly situated, pursuant to Fed. R. Civ. P. Rule 23.
42. Plaintiff seeks to represent the following class ("the Class"):
  - (i) Natural persons;

- (ii) who have been defendants in state court consumer collection lawsuits filed in Georgia;
- (iii) in which Robin & Associates was counsel to the state court plaintiff or represented the state court plaintiff in judgment enforcement proceedings and/or in which Calvary was the state court plaintiff or an assignee of state court plaintiff;
- (iv) in which judgment was taken against the state court defendant; and
- (v) in which subsequent to the taking of judgment, Defendants herein sought, collected or attempted to collect post-judgment interest from the state court defendant in an amount above the amount authorized by law as reflected in any writing submitted to a state court and/or sent to the state court defendant or a third party.

43. Excluded from the Class are:

- a. anyone employed by counsel for Plaintiff in this action; and
- b. any Judge to whom this case is assigned, as well as his or her immediate family and staff.

Numerosity:

44. On information and belief, the overstatements of interest owed contained in documents Defendants filed with state courts and sent to class members were the product of a consistently used, and inaccurate, formula for calculating interest that affected hundreds, and possibly thousands, of consumers in the same way.

45. The Class of hundreds, and possibly thousands, of members and is sufficiently numerous that joinder of all members is impractical.

46. Although the exact number of Class members and their addresses are unknown to Plaintiff, they are readily ascertainable from Defendant's records.

Existence And Predominance Of Common Questions:

47. Common questions of law and fact exist as to Plaintiff and all members of the Class and predominate over questions affecting only individual Class members.

48. These common questions include:

- a. whether or not the documents Defendants filed with state courts and sent to class members and/or third parties misrepresented the amount of interest owed by Plaintiff and others similarly situated;
- b. whether Plaintiff and the other Class members are entitled to statutory damages, costs and attorney's fees under the FDCPA.

Typicality:

49. Plaintiff's claims are typical of the claims of the Class because, among other things, Plaintiff is

- a. A natural person;
- b. sued by Calvary and Robins & Associates
- c. in a state court consumer collection action brought within the State of Georgia;
- d. in which judgment was taken; and
- e. in which, subsequent to judgment being taken, a document overstating the amount of interest owed was filed with a court or sent to a class member or third party.

50. Thus, Plaintiff's claim is typical of the claims of the class.

51. Put differently, the claim alleged by Plaintiff is based on the same factual and legal theories and Plaintiff and class members have been subjected the same false and deceptive communications and acts by Defendants.

Adequacy:

52. Plaintiff will fairly and adequately represent the interests of the class members. His interests do not conflict with the interests of the members of the Class he seeks to represent.

53. Plaintiff has retained counsel experienced in prosecuting class actions and in consumer protection matters. There is no reason why this Plaintiff and his counsel will not vigorously pursue this matter.

Superiority:

54. The class action is superior to other available means for the fair and efficient adjudication of the claims at issue herein.

55. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct.

56. Further, it would be virtually impossible for the members of the Class effectively to individually redress the wrongs done to them.

Even if the members of the Class themselves could afford such individual litigation, the court system could not.

57. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case.

58. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

59. In the alternative, the Class may be certified because:

- (a) the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Defendants; and
- (b) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making

appropriate final and injunctive relief with respect to the members of the Class as a whole.

### **COUNT I**

#### *(Violation of the Fair Debt Collection Practices Act)*

60. Plaintiff realleges the allegations stated in paragraphs 25 through 59 of this Complaint.
61. Congress enacted the Fair Debt Collection Practices Act to stop “the use of abusive, deceptive and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a).
62. A debt collector may not “use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e.
63. Such a prohibition includes the false representation of “the character, amount, or legal status of any debt.” 15 U.S.C. § 1692e(2)(A).
64. Such a prohibition also includes the “use of any false representation or deceptive means to collect or attempt to collect any debt.” 15 U.S.C. § 1692e(10).
65. A debt collector may not “use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.

66. Defendants violated § 1692e and § 1692f of the FDCPA by charging, collecting and or seeking to collect interest from Plaintiff and the other class members in excess of the amount of interest that was actually owed.

67. Specifically, and without limitation, the court-filed documents and letters sent to class members and third parties by Defendants:

- a. Falsely represent the character, amount, or legal status of the debt, in violation of § 1692e(2)(A);
- b. take or threaten to take action that cannot legally be taken or that is not intended to be taken (*i.e.* the charging and collection of usurious amounts) in violation of § 1692e(5);
- c. constitute a false and deceptive method of collecting or attempting a debt, in violation of § 1692e(10); and
- d. Constitute an attempt to collect interest not expressly authorized by any agreement between consumers and Defendants, or permitted by law, in violation of § 1692f(1).



68. As a direct and proximate result of the Defendants' violations of the FDCPA, Plaintiff and the class have sustained actual and statutory damages, costs and attorneys' fees.

**PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff and members of the class respectfully request that this Court:

- A. Assume jurisdiction over this action;
- B. Certify this case as a class action under Fed. R. Civ. P. 23, naming Plaintiff as Class Representative, and appointing her attorneys as Class Counsel;
- C. Declare that Defendants have committed the violations of law alleged in this action;
- D. Award Statutory damages pursuant to the FDCPA;
- E. Award Actual damages pursuant to the FDCPA;
- F. Award Plaintiff and other class members pre-judgment and post-judgment interest as allowed by law;
- G. Award Plaintiff and other class members their costs and reasonable attorneys' fees;
- H. Award a reasonable service fee to the named Plaintiff for her efforts on behalf of the class; and

I. Award other and further relief that may be just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury as to all issues so triable.

DATED: July 12, 2016

**LAW OFFICES OF TALLEY GRAY**

/s/ E. Talley Gray

By: E. Talley Gray

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**ATTORNEY FOR PLAINTIFF**

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local R. 7.1(D), this is to certify that the foregoing complies with the font and point setting approved by the Court in LR 5.1(B). The foregoing COMPLAINT – CLASS ACTION was prepared using 14 point Times New Roman Font.

/s/ E. Talley Gray  
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