

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN CONSUMER CREDIT COUNSELING, INC.)	
)	
Plaintiff,)	Civil Action No. 16-12170
)	
v.)	
)	
AMERICAN CONSUMER CREDIT, LLC.)	
)	
Defendant.)	

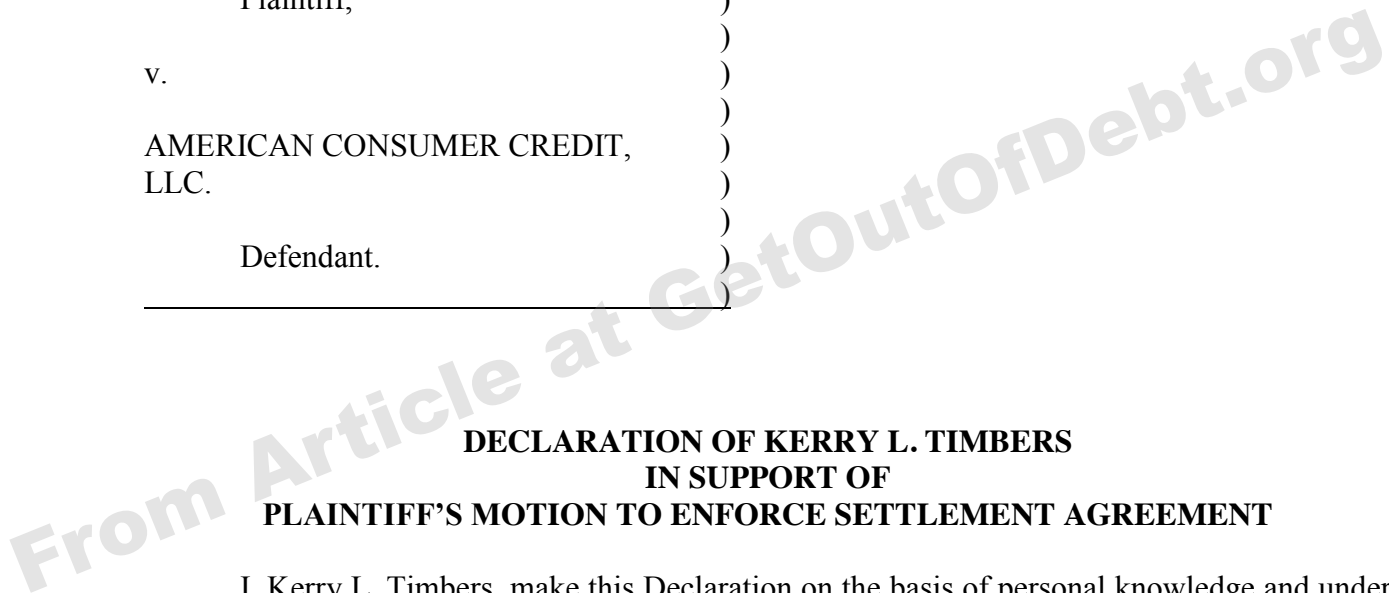
**DECLARATION OF KERRY L. TIMBERS
IN SUPPORT OF
PLAINTIFF’S MOTION TO ENFORCE SETTLEMENT AGREEMENT**

I, Kerry L. Timbers, make this Declaration on the basis of personal knowledge and under penalty of perjury.

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts and in this Court and a partner at the law firm of Sunstein Kann Murphy & Timbers LLC. I am one of the counsel of record for Plaintiff American Consumer Credit Counseling, Inc. (“ACCC”).

2. This case was scheduled for mediation before Magistrate Judge Boal on June 9, 2017. On June 7, 2017, I received a voice mail and email from Zack Kleinsasser, counsel for Defendant American Consumer Credit, LLC (“ACC Florida”) informing me that his client had agreed to change its name and accordingly the mediation scheduled for June 9 was unnecessary.

Attached hereto as Exhibit A is a true and correct copy of that email.



3. On June 8, 2017, I returned Mr. Kleinsasser's phone call and he informed me that to settle the case ACC Florida agreed to change its name to Timeshare Advocates and stop using AMERICAN CONSUMER CREDIT and ACC within six months. Attached hereto as Exhibit B is a true and correct copy of the email chain acknowledging Mr. Kleinsasser and I discussed settlement on the morning of June 8, 2017.

4. On June 8, 2017, after a brief consultation with my client, I accepted the terms of ACC Florida's settlement proposal via telephone, and further agreed that mediation was no longer necessary.

5. At 11:36 am on June 8, 2017, Mr. Kleinsasser wrote an email to Magistrate Judge Boal's clerk, Steve York, informing him that the case had been settled and requesting to cancel the mediation scheduled for June 9. Attached hereto as Exhibit C is a true and correct copy of that communication.

6. A joint motion was also filed requesting that the mediation be canceled. The motion states that the case has been settled and was executed by myself and Mr. Kleinsasser. Attached hereto as Exhibit D is a true and correct copy of the email from SKMT sending Mr. Kleinsasser the draft motion for review and the as filed motion.

7. On June 9, 2017 SKMT sent Mr. Kleinsasser a draft settlement agreement. Attached hereto as Exhibit E is a true and correct copy of the email attaching the draft and the draft agreement.

8. On June 13, 2017, Mr. Kleinsasser notified me via email that ACC Florida was meeting the next day to discuss the draft agreement. Attached hereto as Exhibit F is a true and correct copy of that email.

9. On June 19, 2017, Mr. Kleinsasser sent me the changes that ACC Florida proposed to the draft agreement. Attached hereto as Exhibit G is a true and correct copy of the email attaching ACC Florida's edits, and a copy of the draft agreement reflecting the changes sought.

10. I placed a phone call to Mr. Kleinsasser to discuss the changes and left him a voicemail on June 20, 2017. Attached hereto as Exhibit H is a true and correct copy of an email from Mr. Kleinsasser acknowledging receipt of my voicemail.

11. On June 21, 2017, I spoke with Mr. Kleinsasser on the phone regarding ACC Florida's proposed edits and agreed to all of the changes requested by ACC Florida and suggested four small non-substantive clarifications. Attached hereto as Exhibit I is a true and correct copy of an email sent by me to Mr. Kleinsasser after our phone call, attaching the draft agreement with changes accepted and a copy of the draft agreement.

12. On June 22, 2017, Mr. Kleinsasser sent me an email stating that it was unlikely that his client would sign the agreement that day but he was "pushing" it to sign. Attached hereto as Exhibit J is a true and correct copy of that email.

13. On June 28, 2017 and June 29, 2017 an associate at SKMT called Mr. Kleinsasser and left two voicemails requesting a status update on whether the agreement was signed yet. On June 30, 2017 the same associate sent Mr. Kleinsasser an email following up on his prior voicemails. Attached hereto as Exhibit K is a true and correct copy of that email.

14. Mr. Kleinsasser responded by voicemail and informed SKMT that it was his understanding that the changes were acceptable and that he was just waiting for an executed copy from ACC Florida, but reiterated that he could not confirm with certainty. Attached hereto

as Exhibit L-1 is a true and correct copy of the email chain discussing Mr. Kleinsasser's voice mail.

15. Between June 30, 2017 and July 16, 2017 I made calls to Mr. Kleinsasser on July 6, July 7, and July 11, regarding the status of the executed agreement but was never given a reason why the signed agreement was not forthcoming or told that Defendant did not intend to sign.

16. On July 16, 2017, I received an email from Mr. Kleinsasser stating that ACC Florida had decided to change its name to ACC Timeshare Advocates. The next day I called Mr. Kleinsasser and left him a voicemail regarding Defendant's abrupt reversal on the agreement. Attached hereto as Exhibit L-2 is a true and correct copy of Mr. Kleinsasser's email.

17. On July 19, 2017, I received an email from ACCC's CEO Steve Trumble attaching an audio recording of a call that ACCC received to its customer service line that contained a threatening message directed towards him. I informed Mr. Kleinsasser of the call and had the recording forwarded to him. I also told Mr. Kleinsasser that Plaintiff would likely be move to enforce the agreement.

18. On July 25, 2017, having not heard from Defendant since I forward Mr. Kleinsasser the Micallef recording I called Mr. Kleinsasser and left a voicemail. Later that afternoon I spoke with Mr. Kleinsasser on the phone and confirmed I would be filing a motion to enforce the settlement agreement.

19. On July 26, 2017, I received an email and voicemail from Mr. Kleinsasser asking that I get in touch with him. Attached hereto as Exhibit M is a true and correct copy of the email sent by Mr. Kleinsasser.

20. When I returned Mr. Kleinsasser's call he presented me with another new settlement proposal. Defendant would agree to change its name to Timeshare Advocates (the originally agreed to new name) but would not honor the other key terms of the parties' settlement agreement. Defendant wanted a one year run out period and to maintain a permanent website for its timeshare services at its current domain. Attached hereto as Exhibit N is a true and correct copy of the email sent by Mr. Kleinsasser containing the new proposal.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 28, 2017

/s/ Kerry L Timbers
Kerry L. Timbers

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on July 28, 2017 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule 5.2(b).

/s/ Kerry L. Timbers
Kerry L. Timbers