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Name & Address here

Alleged Defendant & Cross-Complainant

SUPERIOR COURT OF

ASSET ACCEPTANCE, LLC;

Plaintiff & Cross-Defendant

vs.

Alleged Defendant & Cross-Complainant

Case No:

Honorable

**CROSS-COMPLAINT FOR DAMAGES,
INJUNCTIVE & DELARATORY
RELIEF AND AN ACCOUNTING FOR
VIOLATIONS OF THE FAIR DEBT
COLLECTION PRACTICES ACT
(FDCPA)**

COMPLAINT FILED:
CROSS-COMPLAINT FILED:
TRIAL DATE: None Set

Cross-Complainant hereby Cross-Complains to Plaintiff/Cross-Defendant

ASSET ACCEPTANCE, LLC, and hereby alleges as follows:

GENERAL ALLEGATIONS

COMMON CAUSES TO ALL CAUSES OF ACTION

1. DEBTOR NAME HERE was at all times an individual who maintains a principle place of residence within the County and Judicial District of this Court.

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2. Cross-Defendant ASSET ACCEPTANCE is at all times stated herein, was a limited liability company, organized under the laws of the State of Delaware and qualified to do business in NAME OF STATE HERE.

3. Cross-Complainant is a consumer within the meaning of the Consumer Legal Remedies Act.

4. Cross-Complainant is informed and believes and therefore alleges that Cross-Defendant ASSET ACCEPTANCE, LLC regularly uses the United States mail in the regular collection of debts owed to another and attempts to collect debts and is a debt collector as defined by the Federal Debt Collection Practices (FDCPA).

JURISDICTION

Venue for the within action is properly within the jurisdiction of this Court upon the ground, *inter alia*, that one or more of the Defendants resided within this Judicial District of the County of NAME OF COUNTY AND STATE HERE.

FACTS

5. Cross-complainant seeks damages for cross-defendants unlawful practices and for an accounting to resolve the rights and responsibilities under the facts as stated in the cross-defendant’s Complaint for damages under complaint number .

6. Cross-Complainant is informed and believes and therefore alleges that:

A. Plaintiff/Cross Defendant does not have a contract with Alleged Defendant/Cross-Complainant.

B. That collection of any alleged debt after having been written off or charged off would be a case of unjust enrichment, and/or fraud on the consumer and/or fraud on the court.

C. That the alleged credit card issued to Alleged Defendant/Cross Complainant remains the

1 property of the original card issuer.

2 D. that ANY/ALL documents filed by ASSET ACCEPTANCE, LLC on the records in this instant
3 case and authenticated by ANNA K. MERRILL SBN 236358 FULTON, FRIEDMAN &
4 GULLACE, LLP attorneys for ASSET ACCEPTANCE, LLC are inadmissible, that these records
5 cannot pass the *hearsay* exception test, therefore, are not business records.

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7 E. That ASSET ACCEPTANCE, LLC is not the real party in interest in this proceeding and has no
8 remaining equity in the original Application or Agreement due to insurance settlements or
9 charge-offs.

10 F. That it is the practice of ORIGINAL CREDITOR to charge-off and sell evidence of
11 indebtedness (after collecting insurance), thus the worthless commercial paper illustrating the
12 duty between the assignor and assignee becomes legally uncollectible.

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14 G. That Plaintiff/Cross-Defendant arbitrarily selected alleged defendant/Cross-Complainant to
15 be responsible for this alleged debt despite not having a legal right to do so.

16 H. That Plaintiff has violated Defendants Fair Debt Credit Protection Act (FDCPA) rights with
17 respect to this alleged debt.

18 I. That ORIGINAL CREDITOR NAME HERE does not have a contract with Alleged
19 Defendant/Cross-Complainant.

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21 7. That Alleged Defendant/Cross-Complainant has always objected to any amount due and is
22 unaware of any demands that the alleged debt was to be paid in full. That Alleged
23 Defendant/Cross-Complainant specifically denies the **unverified Breach of Contract, and**
24 **Common Count claims**, and alleged Defendant/Cross-Complainant denies that the amount
25 claimed by Asset Acceptance, LLC is fixed and agreed to by Alleged Defendant/Cross-
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Complainant, and demands strict proof and an accounting.

8. The Cross-Complainant is informed and believes and therefore alleges that the purported contract or agreement falls within a class of contracts or agreements required to be in writing. The purported contract or agreement alleged in the complaint was not in writing and signed by alleged defendant/cross-complainant or by some other person authorized by alleged defendant and who was to answer for the debt, default, or miscarriage of another person.

9. The Cross-Complainant is informed and believes and therefore alleges that there is no evidence that this purported assignment was bona fide. There is no evidence of valuable consideration and no evidence that the purported assignor is even aware of this action or has conveyed all rights and control to Asset Acceptance, LLC.

10. That the first time NAME OF DEBTOR HERE ever heard of these false claims by plaintiff/cross-defendant Asset Acceptance, LLC was when he was served with the above described complaint.

11. That on alleged defendant/cross-complainant sent by first class US Mail a Debt Validation letter to both ASSET ACCEPTANCE, LLC located 28405 VAN DYKE AVE. WARREN, MICHIGAN 48093 and ASSET ACCEPTANCE, LLC.'s Attorney ANNA K. MERRILL SBN 236358 FULTON, FRIEDMAN & GULLACE, LLP located at 2151 SALVIO STREET, SUITE W CONCORD, CA 94520. (Attached hereto and made a part hereof as Exhibit A the Debt Validation letter)

12. To the best of Cross-Complainant's knowledge and belief, Defendant has used the mails of the United States to attempt to collect from an alleged debt purportedly previously owed to an "original creditor," other than Asset Acceptance, LLC, which has purportedly

1 been “charged off.”

2 13. Asset Acceptance, LLC has violated the Fair Debt Collection Practices Act, 15 U.S.C.
3 §1692e, because it made and/or employed false, deceptive and misleading representations
4 and/or means in connection with the instant cause of action. Said false, deceptive and
5 misleading representations were and have been made and are being made to and
6 others as more specifically set out hereafter. Some or all of said false, deceptive and
7 misleading representations were knowingly and intentionally made by Asset Acceptance,
8 LLC.
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10 14. Asset Acceptance, LLC has violated the Fair Debt Collection Practices Act, 15 U.S.C.
11 §1692d because it has engaged in conduct the natural consequence of which is to harass,
12 oppress, or abuse the in connection with the instant Complaint, and as a result of
13 the filing of said Complaint, and in other actions as more specifically set out hereafter. Asset
14 Acceptance, LLC knowingly and intentionally engaged in harassing, oppressive, and/or
15 abusive conduct toward the . Asset Acceptance, LLC knew or should have known
16 that the natural consequences of said conduct would be to harass, oppress, or abuse the
17 .
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20 15. Asset Acceptance, LLC has represented to that it has the legal right to collect the
21 sums sought in the amount of \$ and \$ in court costs. Asset Acceptance, LLC does
22 not in fact have the legal right to collect the sums claimed from , or any other amount,
23 and knew or should have known same when it filed the instant lawsuit against .
24

25 16. Upon information and belief, Asset Acceptance, LLC does not have the legal right to collect
26 this sum because no sum is owed by to Asset Acceptance, LLC, and/or any party
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1 under whom Asset Acceptance, LLC is claiming to hold an assignment, and further, no valid
2 assignment to Asset Acceptance, LLC exists. Although Asset Acceptance, LLC's Complaint
3 does not expressly allege same, on knowledge and belief, believes Asset Acceptance,
4 LLC is claiming to hold the alleged debt sued on by assignment from another entity. By
5 falsely representing that there exists a proper and legally valid assignment between Asset
6 Acceptance, LLC and the original creditor of the account, if Asset Acceptance, LLC is so
7 representing, and that Asset Acceptance, LLC has a right of recovery against thereon,
8 and by filing a lawsuit against allegedly thereon, Asset Acceptance, LLC has
9 violated the FDCPA, and is liable to for statutory and actual damages thereon,
10 attorneys' fees, and costs. Said violations include, but are not limited to violations of 15
11 U.S.C. §1692e, et seq. and 15 U.S.C. §1692d, et seq.
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14 17. Asset Acceptance, LLC has made knowing and intentional misrepresentations or misleading
15 and/or false representations as to the legal status, character, and/or amount of the debt in
16 violation of 15 U.S.C. §1692e(2), and in violation of U.S.C.15 §1692e(10).
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18 18. To the best of 's knowledge and belief, at the time of filing the instant lawsuit,
19 Asset Acceptance, LLC does not have in its possession, and is unable to acquire or produce,
20 the entire "Purchase Agreement" (or other similar name) pursuant to which it claims to have
21 purchased the said purported "account" of on which it is suing herein. Asset
22 Acceptance, LLC will only produce, and will only be able to produce, a "Bill of Sale," "Bill
23 of Sale and Assignment," or other document having a similar name, which will make no
24 specific reference to or any "account" allegedly owed by , and will
25 on its face be an incomplete document, explicitly and specifically making reference to
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another “master agreement”, consisting of the above “Purchase Agreement” or other document having a similar name, to which the said “Bill of Sale” is made subject to, and the terms of which control and govern the said “Bill of Sale.” The production of an authenticated “master agreement” or “Purchase Agreement” as described above is necessary, inter alia, for Asset Acceptance, LLC to be able to make out a case against herein. At the time of filing the instant lawsuit, Asset Acceptance, LLC is aware, or should be aware, of the above. Thus, for this reason also, Asset Acceptance, LLC has knowingly and intentionally filed the instant lawsuit under circumstances in which it knows or should have known that it would be unable to make out any claim against herein. The above constitute violations by Asset Acceptance, LLC of 15 U.S.C. §1692d, 15 U.S.C. §1692e, and 15 U.S.C.15 §1692f.

19. By filing suit, Asset Acceptance, LLC made the false, knowing, and intentional representation to and all other persons having or acquiring knowledge of the claims of Asset Acceptance, LLC against , and said suit, including credit reporting bureaus, and persons or entities might seek to obtain credit from, present or future potential employers of , and other persons and entities that it has the legal right to pursue this account in this Court. By filing the said action with this Court, Asset Acceptance, LLC has made false, knowing and intentionally deceptive and/or misleading representations to the general public, creditors of , persons or entities might seek to obtain credit from, present or future potential employers of , and others with respect to said account, all of which constitute violations of the Fair Debt Collections Practices Act and the Fair Business Practices Act.

20. Some or all of Defendant’s Counterclaim is based on the following facts:

1 (a) The alleged “debt” or “account” on which Asset Acceptance, LLC is basing its claim of
2 right to sue _____ was acquired by Asset Acceptance, LLC, or some predecessor party, at
3 auction, or by some other method of acquisition, from a bank or other financial institution, in
4 blocks of said “accounts” as large as 5,000, 10,000, 15,000, 20,000, and/or 25,000 or more in
5 a single transaction.

6 (b) In said auction, Asset Acceptance, LLC, or some predecessor party, bid on the block of
7 “accounts” in which the “account” allegedly owed by _____ was included, or acquired
8 said account along with a large quantity of other accounts by some other means.

9 (c) At the said auction, or by some other method of acquisition, when either Asset
10 Acceptance, LLC or some predecessor party acquired the block or group of “accounts”
11 which included the “account” allegedly owed by _____, no actual hard copies, or indeed
12 any records in any form whatsoever of any of the following were acquired, or transferred
13 from the bank or other financial institution to Asset Acceptance, LLC or the predecessor
14 party with respect to the following:

15 (1) any credit card or other agreement, or contract with respect to the specific alleged
16 “account” of _____’s individually;

17 (2) monthly statements of account, records of charges, payments, interest, fees, or similar
18 records or documents necessary to verify and prove that the said “account” is in fact owed by
19 Defendant, and;

20 (3) the correct total amount actually owed, if any, by _____; and

21 (4) any accounting or financial records, including the above records, necessary to prove the
22 breakdown of the purported “total” amount alleged to be owed, with respect to its
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1 components, such as principal, interest, late fees, over limit fees, etc.

2 21. Some or all of Defendant's counterclaim is further based on the following facts:

3 (a) At the said auction, or by some other method of acquisition, the information transferred
4 between buyers and sellers of accounts (purportedly including the instant account allegedly
5 owed by Defendant and sued on herein) consisted solely of a "line entry" in digital or
6 electronic format containing, at most, only a name, address, social security number, account
7 number, telephone number, and a "total" dollar amount, without breakdown, and possibly
8 some other very minimal information such as the alleged "charge-off" date.

9 (b) Said "total" dollar amount was not broken down into principal, interest, fees, late charges,
10 or in any other manner. To the best of Defendant's knowledge and belief this was the method
11 by which the data regarding Defendant's alleged debt was transferred from a third party to
12 Asset Acceptance, LLC or some predecessor party to Asset Acceptance, LLC.

13 (c) At the time of filing the instant lawsuit, Asset Acceptance, LLC does not have in its
14 possession records or documents sufficient to prove the necessary elements of its purported
15 claim against Defendant, and will not acquire said records or documents, if ever, until after
16 the filing and service of Defendant's instant Answer and Counterclaim. At the time of filing
17 the instant lawsuit Asset Acceptance, LLC was aware or should be aware that it did not have
18 in its possession records or documents sufficient to prove the necessary elements of its
19 purported claim against Defendant, and further that it will not be able to acquire same.

20 (d) Further, Asset Acceptance, LLC has made no effort to verify or substantiate either:

21 (1) the documentation necessary to prove that Defendant in fact currently owes a debt of
22 some amount which it is supposedly acquiring; and
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(2) the correct amount (if any) which it is claimed is owed by Defendant.

(e) After acquiring the block of accounts, either Asset Acceptance, LLC or some predecessor party processed the block of accounts through a computer software algorithm “scrubbing” program, designed to select specific “accounts” to file suit on, or otherwise attempt to collect.

(f) Said scrubbing program was optimized to rank said accounts according to two primary criteria, in the following order of importance:

(1) Those “account debtors” LEAST LIKELY to obtain legal representation to defend a lawsuit, or otherwise resist collection efforts, without reference to the validity or accuracy of said debt. As example, said software programs normally rank individuals of the female gender; persons believed to have low income levels; and/or lower than normal education levels as being less likely to obtain legal representation or otherwise resist collection,

(2) Those “account debtors” from whom collection might be more easily made, i.e., having employment from which wages could be garnisheed, or those having bank accounts, or owning vehicles or other property which could be seized, without reference to the validity or accuracy of said debt.

(g) The above described computer software “scrubbing program” contains no software criteria, software routines, or subprograms to determine the validity of said “debt”, and no software criteria, software routines, or subprograms to determine the accuracy or validity of the amounts claimed to be owed.

(h) Said software program and “scrubbing” procedure was used to determine which account debtors would be sued.

22. The Cross-Complainant is informed and believes and therefore alleges that the false claims

1 of debt owed as indicated in the Plaintiff Asset Acceptance, LLC's complaint and their
2 failure to demand said sums or to validate said debt prior to initiating their lawsuit places the
3 Plaintiff/Cross-Defendant in violation of the following:

4 **FIRST CAUSE OF ACTION**
5 **ACCOUNTING**

- 6 1. Cross-Defendant repeat and reallege and incorporate by reference the allegations of
7 paragraph 1-22.
- 8 2. ASSET ACCEPTANCE LLC has purportedly held themselves out to be Cross-complainant's
9 assigned creditor. As a result of this purported relationship with Cross-complainant, said
10 Cross-Defendant has a duty to Cross-Complainant to properly account for monies owed or
11 payments made by Cross-Complainant.
- 12 3. The amount of money paid or claimed still owed to Cross-Defendant is unknown to Cross-
13 complainant and cannot be determined without an accounting.
- 14 4. ASSET ACCEPTANCE LLC. should be ordered to provide written accounting of all sums
15 allegedly due under the terms of the alleged original written contract (if any), an explanation
16 of each amount due, and an accounting of all sums allegedly paid from ASSET
17 ACCEPTANCE LLC. To NAME OF ORIGINAL CREDITOR HERE for the alleged
18 assignment of the alleged debt.

19 **SECOND CAUSE OF ACTION**

20 **FEDERAL FAIR DEBT COLLECTION PRACTICES ACT (FDCPA), 15USC 1692**

- 21 5. Cross-Defendant repeat and reallege and incorporate by reference the allegations of
22 paragraph 1-26.

- 1 6. Cross-Defendant conduct was negligent or willful or both, rendering it liable for attempting
2 to collect fees, interest, and expenses from Cross-Complainant that are not authorized by any
3 agreement or permitted by law, in violation of 1692 f (1).
- 4 7. Cross-Defendant conduct was negligent or willful or both, rendering it liable for failing to
5 cease collection of an alleged debt, and not providing proper verification of the debt to the
6 Cross-Complainant prior to initiating a lawsuit, in violation of 1692 g (b).
- 7 8. As a result of the foregoing violations, Cross-Defendant is liable for actual damages,
8 including general damages and special damages in an amount to be proven at trial, but not
9 less than \$2,000 per cross-complainant, pursuant to 15 USC 1692(k) a 1.
- 10 9. As a result of the foregoing violations, Cross-Defendant is liable for actual damages,
11 including general damages and special damages in an amount to be proven at trial, but not
12 less than \$1,000 per cross-complainant, pursuant to 15 USC 1692(k) a 2 a.
- 13 10. As a result of the foregoing violations, Cross-Defendant is liable for costs and reasonable
14 attorney's fees pursuant to 15 USC 1692(k) a 3.
- 15 11. As a result of the foregoing violations, Cross-Defendant should be enjoined from employing
16 any of the unlawful conduct, methods, acts, or practices under the FDCPA alleged herein or
17 proven at trial.
- 18 12. An actual controversy has arisen and now exists between cross-complainant and cross-
19 defendant concerning their respective rights and duties under the FDCPA. A judicial
20 declaration pursuant to Code of Civ. Procedure 1060 that cross-defendants actions violated
21 the FDCPA is necessary so that all parties may ascertain their rights and duties under the law.
- 22 13. Based on the allegations above and further set forth herein, Asset Acceptance, LLC has
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1 violated 15 U.S.C. §1692d by engaging in conduct the natural consequence of which is to
2 harass, oppress, or abuse Defendant by, without limitation; Continuing to pursue collection
3 of disputed and unverified debt; and filing suit on an invalid debt, forcing Defendant to
4 defend against an invalid action, and further, and in addition thereto, knew or should have
5 known that it has engaged in such conduct, and the said consequences thereof.
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7 14. Upon information and belief, Asset Acceptance, LLC has communicated credit information
8 to persons, including but not limited to credit reporting bureaus or agencies, with respect to
9 Defendant, which it knew or should have known to be false – including without limitation
10 allegations that Defendant owed the purported debt which is the subject of this action, and/or
11 that Defendant owes said debt to Asset Acceptance, LLC and/or that Asset Acceptance, LLC
12 is the original creditor of said alleged debt.
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14 15. Upon information and belief, Asset Acceptance, LLC has, in violation of 15 U.S.C.
15 §1692e(8) failed to communicate to Defendant, other persons and entities, including credit
16 bureaus, and persons yet to be determined, that Defendant disputes the alleged debt.
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18 16. By falsely representing that Asset Acceptance, LLC is either an assignee of an original
19 creditor, and/or that said assignment constitutes a proper, competent, or valid assignment
20 between Asset Acceptance, LLC and the original creditor of any alleged debt by any alleged
21 original creditor to Asset Acceptance, LLC, and/or that Asset Acceptance, LLC is the
22 original creditor, Asset Acceptance, LLC has made material, false and misleading
23 representations, and has further communicated to Defendant and other persons credit
24 information which is known or which should be known to be false, including the above, the
25 failure to communicate that a disputed debt is disputed, the “re-aging” of said debt, the false
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1 and misleading representation and impression that Asset Acceptance, LLC is the original
2 creditor of said debt, and other material false and misleading representations, and has
3 violated 15 U.S.C. §1692e, 15 U.S.C. §1692e(8), §1692e(2)(A), § 1692e(5), § 1692e(10) and
4 § 1692f. Asset Acceptance, LLC either knew or should have known all of the above.

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6 17. By reporting the account sued on to credit bureaus with misleading information regarding the
7 nature and/or status of said alleged debt with respect to such matters as the identity of the
8 original creditor, the relevant dates and ages of said alleged debt, and other matters which
9 Asset Acceptance, LLC knew or should have known would mislead, Asset Acceptance, LLC
10 has violated 15 U.S.C. §1692e(2)(A), 1692e(8), 1692e(10) and 1692k(a)(3).

11
12 18. The Fair Debt Collection Practices Act, §1692k, provides for actual damages, statutory
13 damages up to one-thousand dollars (\$1,000.00) per violation, costs of the action, and
14 reasonable attorneys' fees. Defendant has suffered actual damages as the proximate and
15 actual cause and result of the violations of the FDCPA by Asset Acceptance, LLC to be
16 determined at trial. Asset Acceptance, LLC is liable to Defendant for statutory damages as
17 prescribed by § 1692k(a)(2)(A), actual damages pursuant to § 1692k(a)(1) in an amount to be
18 determined at time of trial, and reasonable attorneys' fees and costs pursuant to §
19 1692k(a)(3).

20
21 19. Cross-Complainant in Counterclaim hereby prays for actual damages under the Fair Debt
22 Collection Practices Act, and for statutory damages as set forth above for each and every
23 violation of the Fair Debt Collection Practices Act proven at the trial of this case, and
24 reasonable attorneys' fees and costs thereunder.

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26 WHEREFORE, cross-complainant prays for judgment against cross-defendant as follows:
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1. That Plaintiff/Cross-Defendant takes nothing by way of their complaint;
2. That Cross-Complainant recover costs, and reasonable attorney fees, if incurred;
3. That Plaintiff/Cross-Defendant be required to specifically prove all allegations in this action;
4. That Plaintiff/Cross-Defendant be required to produce an Accounting of all sums due under the alleged breach of contract and account stated claims; and an accounting of all consideration allegedly paid from ASSET ACCEPTANCE LLC. to ORIGINAL CREDITOR NAME HERE.
5. For general damages and special damages in an amount to be proven at trial, but not less than \$2,000 per cross-complainant, pursuant to 15 USC 1692(k) a 1.
6. For actual damages, including general damages and special damages in an amount to be proven at trial, but not less than \$1,000 per cross-complainant, pursuant to 15 USC 1692(k) a 2 a.
7. For costs and reasonable attorney's fees pursuant to 15 USC 1692(k) a 3.
8. For a judicial declaration pursuant to Code of Civ. Procedure 1060 that cross-defendants actions violated the FDCPA
9. And for such other and further relief as the Court may deem just, equitable and proper.

Dated:

Alleged Defendant/Cross-Complainant

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PROOF OF SERVICE BY MAIL

I, the undersigned, hereby declare: I am over the age of 18 and not a party to the within action; my mailing address is:

On _____, I served the foregoing document described as: **FDCPA CROSS-COMPLAINT FROM Alleged Defendant(s) to Complaint With Debt Validation Letter**

on interested parties in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

1. ASSET ACCEPTANCE, LLC located 28405 VAN DYKE AVE. WARREN, MICHIGAN 48093 and
2. ASSET ACCEPTANCE, LLC.'s Attorney ANNA K. MERRILL SBN 236358 FULTON, FRIEDMAN & GULLACE,LLP. located at 2151 SALVIO STREET, SUITE W CONCORD, CA 94520.

VIA:

MAIL I am "readily familiar" with the practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at place of business, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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EXHIBIT A