

EXHIBIT 1

FILED

04-17-2023
CIRCUIT COURT
DANE COUNTY, WI
2023CV000949
Honorable Susan M.
Crawford
Branch 1

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

KELLY WINK, *individually*
and on behalf of all others similarly situated
435 N COUNTRY LN
FOND DU LAC, WISCONSIN 54935,

Plaintiff,

Case No. _____

Class Code 30301

vs.

THE RECEIVEABLE MANAGEMENT SERVICES LLC
7350 TILGHMAN ST. SUITE 300
ALLENTOWN, PENNSYLVANIA 18106,

Defendant.

SUMMONS

THE STATE OF WISCONSIN, to the said defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The attached Complaint states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the Statutes. Your answer must be sent or delivered to the court, whose address is: Dane County Courthouse, Room 1000, 215 South Madison Street, Madison, WI 53703, and Plaintiffs' Attorney, Francis R. Greene, Thomasson PLLC, whose address is: 3010 South Appleton Road, Menasha, WI 54952. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may be enforced by garnishment or seizure of property.

Date: April 17, 2023

s/Francis R. Greene

Francis R. Greene (WI Bar #1115577)

Of Counsel

THOMASSON PLLC

3010 South Appleton Road

Menasha, Wisconsin 54952

Telephone: (312) 847-6979

Email: Francis@Thomassonpllc.com

Attorney for Plaintiff, Kelly Wink

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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

KELLY WINK, *individually*
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435 NORTH COUNTRY LANE
FOND DU LAC, WISCONSIN 54935,

Plaintiff,

Case No. _____

Class Code 30301

vs.

THE RECEIVABLE MANAGEMENT SERVICES LLC
7350 TILGHMAN STREET SUITE 300
ALLENTOWN, PENNSYLVANIA 18106,

Defendant.

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FAIR DEBT
COLLECTION PRACTICES ACT AND WISCONSIN CONSUMER ACT**

Plaintiff, KELLY WINK ("WINK"), individually and on behalf of all others
similarly situated, brings this action against Defendant, THE RECEIVABLE
MANAGEMENT SERVICES LLC ("RMS"), as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff's lawsuit alleges RMS violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p when collecting a defaulted debt from her.

2. The FDCPA regulates the behavior of "debt collectors" (including collection agencies, collection attorneys, and debt buyers) when attempting to collect consumer debts. When enacting the FDCPA, Congress found "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors" which "contribute to a number of personal bankruptcies, marital instability, loss of jobs,

and invasions of individual privacy.” 15 U.S.C. § 1692(a). The FDCPA was expressly adopted “to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote uniform State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e).

3. When attempting to collect a debt, the FDCPA bars debt collectors from using (a) harassing, oppressive, and abusive conduct; (b) false, deceptive, or misleading means or representations; and (c) unfair or unconscionable means. 15 U.S.C. §§ 1692d, 1692e, and 1692f. Each of those Sections contain a list of specific *per se* violations but are nonexclusive and do not limit each Section’s general application of broad prohibitions.

4. When the collection process starts, the FDCPA requires debt collectors to provide consumers with basic debt information and their verification and dispute rights. 15 U.S.C. § 1692g.

5. The FDCPA is a strict-liability statute and, therefore, “most infractions result in liability” without proof of *scienter* unless the specific infractions include an element of intent or purpose, or the debt collector can affirmatively prove a *bona fide* error under 15 U.S.C. § 1692k(c). *Oliva v. Blatt, Hasenmiller, Leibsker & Moore LLC*, 864 F.3d 492, 502 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 1283 (2018).

6. A debt collector’s conduct violates the FDCPA when viewed from an “unsophisticated debtor” perspective. *Gammon v. GC Servs. Ltd. P’ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). “The unsophisticated consumer is uninformed, naive, and trusting,

but possesses rudimentary knowledge about the financial world, is wise enough to read collection notices with added care, possesses reasonable intelligence, and is capable of making basic logical deductions and inferences.” *Williams v. OSI Educ. Servs., Inc*, 505 F.3d 675, 678 (7th Cir. 2007) (internal editing notations and quotation marks omitted).

7. A single violation is sufficient to establish liability. *Nielsen v. Dickerson*, 307 F.3d 623, 640 (7th Cir. 2002).

8. When a debt collector fails to comply with the FDCPA “with respect to any person,” it “is liable to such person in an amount equal to the sum of” “any actual damage sustained,” “additional” or statutory damages, costs, and reasonable attorneys’ fees. 15 U.S.C. § 1692k(a). Statutory damages are limited: a plaintiff may recover no more than \$1,000, and the class may recover up to \$500,000 or 1% of the debt collector’s net worth, whichever it less. *Id*

9. Plaintiff seeks such relief as allowed under FDCPA including, without limitation, statutory damages and attorney fees and costs.

II. PARTIES

10. Plaintiff is a natural person who, at all times relevant to this lawsuit was a citizen of, and resided in, the City of Fond Du Lac, Fond Du Lac County, Wisconsin.

11. RMS is a for-profit limited liability company formed under Delaware law.

12. RMS maintains its principal business address at 7350 Tilghman Street, Suite 300, Allentown, Pennsylvania 18106.

13. RMS maintains its Registered Agent Office in Wisconsin at C T

Corporation System, 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703.

14. RMS regularly transacts business in Wisconsin by attempting to collect defaulted debts from Wisconsin residents using the U.S. Mail, telephone, and internet.

III. JURISDICTION & VENUE

15. This Court has subject matter jurisdiction pursuant to Wis. Stat. § 801.04(1) and 15 U.S.C. § 1692k(d).

16. This Court has personal jurisdiction over RMS pursuant to Wis. Stat. §801.05(d) because RMS transacts business in Wisconsin.

17. Venue in Dane County is appropriate under Wis. Stat. § 801.50(2)(c) because RMS employs an agent and does substantial business in this county.

IV. FACTS

18. RMS collects, or attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail, telephone, and internet.

19. RMS mailed WINK a letter dated April 16, 2022 (“Letter”).

20. A true copy of the Letter is attached as *Exhibit A*.

21. The Letter alleged WINK incurred and defaulted on a financial obligation (“Debt”).

22. The Debt was incurred, if at all, with Artisan and Truckers Casualty Company for personal, family, or household purposes, namely car insurance.

23. The Letter was the first written communication RMS sent to WINK to collect the Debt.

24. The Letter sought to collect an allegedly overdue insurance premium.

25. The Letter threatened WINK with potential damage to her credit if she did not pay the Debt:

A negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligation.

26. RMS's threat of credit reporting was false.

27. Neither RMS nor the creditor could legally report an overdue insurance premium to the consumer reporting agencies.

28. Overdue insurance premiums cannot be reported to the consumer reporting agencies because they are not extensions of credit.

29. The Letter deceived WINK and deprived her of truthful, non-misleading information in connection with RMS's attempt to collect the Debt.

V. CLASS ALLEGATIONS

30. RMS's Letter is a form letter that was created by merging electronically-stored information specific to the Debt (including but not limited to the addressee's name and address) with predetermined electronically-stored text and any graphics defined by a template, and printing the result. In effect, RMS uses Debt-specific information to populate the blanks in the template to produce its Letter.

31. RMS's conduct is consistent with its policies and practices when

collecting debts from Wisconsin consumers. As such, WINK brings this action individually and on behalf of similarly situated individuals under Wis. Stats. §§ 803.08 and 426.

32. Plaintiff seeks to certify the following defined class (“Class”) and subclass (“Subclass”) under Wis. Stat. §§ 426.110, 803.08(1) and 803.08(2)(c). The Class is defined as:

All natural persons to whom The Receivable Management Services LLC mailed an initial collection letter to a Wisconsin address in the form of *Exhibit A*, between [one year prior to the filing of this complaint] and ending [21 days after the filing of this complaint], and the obligation RMS was seeking to collect was an insurance premium.

The Subclass is defined as:

All persons in the Class from whom RMS was seeking to collect an obligation owed to Artisan and Truckers Casualty Company.

33. Class members’ identities are readily ascertainable from RMS’s business records and the business records of those entities on whose behalf it collects debts.

34. **Class Claims.** The Class Claims are those claims each Class member may have for any violation of the FDCPA arising from RMS’s having sent a written communication in the same form as *Exhibit A*.

35. This action is brought, and is properly maintained, as a class action under Wis. Stat. 803.08 because there is a well-defined community interest in the litigation:

(a) **Numerosity.** The Class includes at least 40 members and, thus, is so

numerous that joinder of all members would be impractical.

- (b) *Common Questions Predominate.* Common questions of law and fact exist as to all Class members which predominate over any issues involving only individual Class members because they concern RMS's standardized conduct regarding all Class members.
- (c) *Typicality.* Plaintiff's claims are typical of Class members because those claims arise from RMS's common course of conduct.
- (d) *Adequacy.* Plaintiff will fairly and adequately protect Class members' interests because her interests are not adverse to them; she is committed to vigorously litigating this action and retained counsel who is experienced in handling consumer lawsuits, complex legal issues, and class actions.

36. Certification of a class under Wis. Stat. 803.08 is appropriate in that the questions of law and fact common to Class members predominate over any questions affecting individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

37. Based on discovery and further investigation (including, but not limited to, RMS's disclosure of class size and net worth), Plaintiff may seek certification:

- (a) only as to particular issues as allowed under Wis. Stat. 803.08(6); (b) using modified definitions of the Class, Subclass, or Class Claims; and (c) a different Class Period.

VI. FIRST CAUSE OF ACTION:
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

38. The prior factual allegations are realleged and incorporated by reference.
39. RMS is a “debt collector” as defined by 15 U.S.C. § 1692a(6).
40. The Debt is a “debt” as defined by 15 U.S.C. §1692a(5).
41. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).
42. *Exhibit A* is a “communication” as defined by 15 U.S.C. § 1692a(2).
43. RMS’s use and mailing of *Exhibit A* to collect the Debt violated the

FDCPA in one or more following ways:

- (a) Using a false, deceptive, or misleading representation or means in connection with the collection of any debt in violation of 15 U.S.C. § 1692e;
- (b) Falsely representing the character, amount, or legal status of any debt in violation of 15 U.S.C. § 1692e(2)(A);
- (c) Threatening to take any action that cannot legally be taken or that is not intended to be taken in violation of 15 U.S.C. § 1692e(5);
- (d) Communicating or threatening to communicate to any person credit information which is know or which should be known to be false in violation of 15 U.S.C. § 1692e(8);
- (e) Using any false representation or deceptive means to collect or attempt to collect any debt in violation of 15 U.S.C. § 1692e(10);

- (f) Using unfair or unconscionable means to collect or attempt to collect any debt in violation of 15 U.S.C. § 1692f.

VII. PRAYER FOR RELIEF

44. WHEREFORE, Plaintiff demands judgment against RMS as follows:

- (a) Certifying this action as a class action under Wis. Stat. 803.08 including, but not limited to, defining the Class and Subclass and the Class and Subclass claims, issues, or defenses, and appointing the undersigned counsel as class counsel;
- (b) Awarding Plaintiff and the Class statutory damages under 15 U.S.C. § 1692k(a)(2)(B);
- (c) In the Court's discretion, compensating Plaintiff for her services on behalf of the Class;
- (d) Awarding attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(3);
- (e) Awarding, to the extent the recovery of attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(3) causes a negative tax consequence to Plaintiff and/or the Class, a sum sufficient to ameliorate such consequences; and
- (f) Ordering such other and further relief as may be just and proper.

VIII. JURY DEMAND

45. Trial by jury is demanded on all issues so triable.

Respectfully submitted,

s/Francis R. Greene

Date: April 17, 2023

Francis R. Greene (WI Bar #1115577)

Of Counsel

THOMASSON PLLC

3010 South Appleton Road

Menasha, Wisconsin 54952

Telephone: (312) 847-6979

Email: Francis@Thomassonpllc.com

Attorney for Plaintiff, Kelly Wink

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Exhibit A

RMS
P.O. Box 19646
Minneapolis, MN 55419
(877) 575-8182 from 8:00AM ET - 8:00PM ET, Monday thru Friday
and 9:30AM - 6:00PM ET, Saturday
www.rmscustomersupport.com
Fond Du Lac, WI 54935-9728

Reference No: 520008937110

The Receivable Management Services LLC is a debt collector. We are trying to collect a debt that you owe to Artisan and Truckers Casualty Co. We will use any information you give us to help collect the debt.

Our information shows:

You had a Artisan And Truckers Casualty Co account with account number [REDACTED]	
As of March 15, 2022, you owed:	\$335.44
Between March 15, 2022 and today:	
You were charged this amount in interest: +	\$0.00
You were charged this amount in fees: +	\$0.00
You paid or were credited this amount toward the debt: -	\$0.00
Total amount of the debt now:	\$335.44

How can you dispute the debt?

- **Call or write to us by May 31, 2022, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by May 31, 2022, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.** You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.rmscustomersupport.com/dispute-request.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by May 31, 2022, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.rmscustomersupport.com/dispute-request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- **Contact us about your payment options.**

← **Notice: See reverse side for important information.**

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RETURN MAIL ONLY
P.O. Box 1954
Southgate, MI 48195-0954



Kelly Wink
[REDACTED]
Fond Du Lac, WI 54935-9728

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.
- I enclosed this amount: \$

Make your check payable to *The Receivable Management Services LLC*. Include the reference number 520008937110.

A negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligation. We will not submit a negative credit report until after 45 days have passed from the date of this letter and will not submit such a report if we receive notice that you dispute the obligation.

This collection agency is licensed by the Division of Banking in the Wisconsin Department of Financial Institutions, www.wdfi.org.

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Mail this form to:
RMS
P.O. Box 19646
Minneapolis, MN 55419