UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anthony Kassube, Plaintiff, v. Recovery Management Solutions LLC, Defendant.	Case No.: 0:24-cv-00052 **COMPLAINT** **JURY TRIAL DEMANDED**

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*., 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 consistent State action to protect consumers against debt collection abuses.

2. This action arises out of violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*., by Defendant and its collection agents in their illegal efforts to collect a consumer debt from Plaintiff.

JURISDICTION

3. Jurisdiction of this Court arises under U.S.C. § 1692k(d), and 28 U.S.C. § 1367 for pendent state law claims.

4. Venue is proper because the acts and transactions occurred here, Plaintiff resides in Minnesota, and Defendant transacts business here.

5. Defendant RMS and its collection employees have transacted business within the State of Minnesota by attempting to collect a debt from Plaintiff via the telephone, the mails, and/or through the use of email while Plaintiff was located within and permanently residing within the State of Minnesota.

6. Defendant RMS has transacted business within the State of Minnesota by operating a collection agency, making collection calls into Minnesota, and directing debt collection activities to Minnesota.

PARTIES

7. Plaintiff Anthony Kassube (hereinafter "Plaintiff") is a natural person who resides in the City of Woodbury, County of Washington, State of Minnesota, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3) or a person affected by a violation of that law.

8. Plaintiff has suffered an injury in fact that is fairly traceable to Defendant's collective conduct and that is likely to be redressed by a favorable decision in this matter.

9. Defendant Recovery Management Solutions LLC (hereinafter "Defendant RMS") is foreign New York corporation and a Minnesota-licensed collection agency operating from a principal office address of 485 Cayuga Rd #402 Cheektowaga, NY

14225, and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

10. Defendant RMS's registered agent of process in Minnesota is InCorp Services, Inc. at an address of 11575 E. Laketowne Drive Albertville, MN 55301.

11. Defendant RMS uses interstate commerce and the mails in a business the principal purpose of which is the collection of debts.

12. Defendant RMS regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

13. Defendant RMS and its employees and agents directly and indirectly participated in the unlawful efforts to collect an alleged debt from Plaintiff, as further described in this complaint.

FACTUAL ALLEGATIONS

14. Within one year immediately preceding the filing of this complaint, Defendant RMS attempted to collect from Plaintiff a financial obligation that was primarily for personal, family or household purposes, and is therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5), by attempting to collect this debt from Plaintiff in the State of Minnesota.

15. Sometime on or before December 2022, Plaintiff incurred an alleged debt to personal loan in Minnesota ("debt") which was approximately $5,000 and used for Plaintiff personal, family, and/or household purposes.

16. Plaintiff disputes this alleged debt, the final bill on this account, and any remaining balance, and is represented by the undersigned counsel both with respect to this debt and to the claims made herein.

17. Sometime thereafter, the debt was consigned, placed or otherwise transferred to Defendant RMS for collection from Plaintiff.

Defendants' Illegal Collection Calls

18. In and around the period between September 15, 2023, and October 16, 2023, Defendant's debt collectors left a series of at least (14) collection communications on various voicemail systems for Plaintiff, his spouse, his brother, and his father-in-law which were designed to embarrass, harass and humiliate Plaintiff into paying this alleged debt.

19. Each of these collection communications from Defendant and its employees were "communications" in an effort to collect a debt as that term is defined by 15 U.S.C. §1692e(2).

20. None of the collection communications identified Defendant or its employees as debt collectors as required by the FDCPA. 15 U.S.C. § 1692e(11).

21. Some of these collection communications contained phrases such as a request for Plaintiff's "attention and cooperation" in the matter which are impermissible collection communications under the FDCPA and Reg. F, 12 CFR § 1006.2(j).

22. At other times during these communications, Defendant's collectors stated "Given the nature of this matter and for your privacy, I cannot share details on your

voicemail" or words to that effect, which are impermissible collection communications under the FDCPA and Reg. F, 12 CFR § 1006.2(j).

23. Some of these collection communications were left on the voicemail system of Plaintiff's adult brother, Tom Kassube, who lives in Savage, Minnesota and with whom Plaintiff has not lived in more than 30 years, does not owe this debt, and with whom Plaintiff does not share private financial information.

24. The collection communications left with on Plaintiff's brother's voicemail system stated in pertinent part, "I'm now handling one of your personal business matters."

25. Some of these collection communication messages were also left on the voicemail system of Plaintiff's father-in-law, Mr. Scott Bergmann, who lives in River Falls, Wisconsin and with whom Plaintiff has not lived in more than 18 years; does not owe this debt; and, with whom Plaintiff does not share private financial information.

26. The collection communications left with on Plaintiff's father-in-law's voicemail system stated in pertinent part, "Given the nature of this matter and for your privacy, I cannot share details on your voicemail. I'm requesting your attention and cooperation in this matter."

27. The obvious import of these collection communications was to communicate to third parties that Plaintiff owed money on a debt.

28. By referring to the collection communications as related to the "nature of this matter and for your privacy" and requesting Plaintiff's "cooperation in the matter" in voicemails left with unrelated third-parties, Defendant was in effect using illegal collection dog whistles to suggest that Plaintiff owed money to Defendant.

29. These collection communications left as voicemails with Plaintiff's family members have been extremely embarrassing and humiliating to Plaintiff who has considered filing bankruptcy in order to stop the harassment by Defendant.

30. Each of these (14) collection communications from Defendant to Plaintiff and his family members were impermissible collection communications under the FDCPA and Reg. F, because they exceeded the information permitted within a limited content message, were intentionally left with third parties, and they failed to contain the notices that the Defendant is required to give when communicating in an effort to collect a debt. 12 CFR § 1006.2(j); 15 U.S.C. § 1692e(11).

31. Moreover, Defendant never provided Plaintiff with the notices required under the FDCPA and in violation of 15 U.S.C. § 1692g.

32. This collection communication described above violated the FDCPA because Defendant's collectors engaged in harassing, oppressive, and abusive tactics to pressure Plaintiff into paying a debt.

33. These collection communications and conduct from Defendant's collection employees toward Plaintiff represent numerous and multiple violations of the FDCPA, including but not limited to 15 U.S.C. §§ 1692d, 1692d(3), 1692d(5), 1692e, 1692e(2), 1692e(5), 1692e(7), 1692e(10), 1692e(11), 1692f, 1692f(1), and the FDCPA's enabling regulation, Reg. F, amongst others, as well as violations of Minnesota law.

34. In addition, Defendant failed to provide Plaintiff with the notices required under the FDCPA, specifically 15 U.S.C. § 1692g, and therefore these collectors' demands

for payment before Plaintiff had an opportunity to be apprised of and dispute this debt violated the FDCPA.

Plaintiff has Suffered Concrete Harm

35. The above-described collection conduct by Defendant RMS and its collection employees in their efforts to collect this alleged debt from Plaintiff were oppressive, deceptive, misleading, unfair, and illegal communications in an attempt to collect this alleged debt, all done in violation of numerous and multiple provisions of the FDCPA.

36. These collection actions taken by Defendant RMS, and the collection employees employed by it, were made in violation of multiple provisions of the FDCPA, including but not limited to all of the provisions of those laws cited herein.

37. These violations by Defendant RMS were knowing, willful, negligent and/or intentional, and it did not maintain procedures reasonably adapted to avoid any such violations.

38. Defendant RMS's collection efforts with respect to this alleged debt from Plaintiff caused Plaintiff to suffer concrete and particularized harm because the FDCPA provides Plaintiff with the legally protected right to be treated fairly and truthfully with respect to any action for the collection of any consumer debt.

39. Defendant RMS's deceptive, misleading and unfair representations with respect to its collection effort were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendant RMS's collection efforts

because Plaintiff could not adequately respond to the Defendant RMS's demand for payment of this debt and they invaded Plaintiff's peace and right to privacy in his financial affairs.

40. A violation of Reg. F with respect to a consumer is an unfair consumer debt collection practice and a violation of the FDCPA.

Respondeat Superior Liability

41. The acts and omissions herein of the individuals employed to collect debts by Defendant RMS, and the other debt collectors employed as agents of Defendant RMS who communicated with Plaintiff as further described herein, were committed within the time and space limits of their agency relationship with their principal, Defendant RMS.

42. The acts and omissions by these individuals and these other debt collectors were incidental to, or of the same general nature as, the responsibilities these agents were authorized to perform by Defendant RMS in collecting consumer debts.

43. By committing these acts and omissions against Plaintiff, these individuals and these other debt collectors were motivated to benefit their principal, Defendant RMS.

44. Defendant RMS is therefore liable to Plaintiff through the Doctrine of Respondeat Superior for the intentional and negligent acts, errors, and omissions done in violation of state and federal law by its collection employees, including but not limited to violations of the state and federal law in its attempts to collect this debt from Plaintiff.

TRIAL BY JURY

45. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues so triable.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 *et seq.*

46. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

47. The foregoing acts and omissions of Defendant RMS and the others and their agents constitute numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 *et seq.*, with respect to Plaintiff.

48. As a result of each Defendant violations of the FDCPA, Plaintiff is entitled to actual damages and statutory damages in an amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3), from Defendant RMS herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant as follows:

- for an award actual damages and statutory damages of $1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against Defendant RMS and for Plaintiff;

- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against Defendant RMS and for Plaintiff;
- for all other recoveries and fees otherwise permitted by these claims and by law;
- for attorney's fees and costs of suit as provided by state and federal law;
- for both pre- and post-judgment interest at the maximum allowable rate on any amounts awarded;
- and for such other and further relief as may be just and proper.

Respectfully submitted,

Dated: January 5, 2024

THE BARRY LAW OFFICE, LTD

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VERIFICATION OF COMPLAINT AND CERTIFICATION

The undersigned verifies, certifies, and declares as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information, best recollection and belief formed after reasonable inquiry.
3. I believe that this Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each exhibit I have provided to my attorneys that has been attached to this Complaint, if any, is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorney where appropriate, I have not altered, changed, modified, or fabricated any attached exhibits, except that some of those exhibits may contain some of my own handwritten notations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Date 05/01/2024 Signature Tony Kassube (Jan 5, 2024 15:25 CST)

Printed Name Tony Kassube

NOTICE TO PRESERVE ALL DOCUMENTS, RECORDINGS, AND TANGIBLE THINGS, AND ALL ELECTRONICALLY STORED INFORMATION ("Notice")

To the Defendant(s) Above:

As you know, this law firm has been retained to represent the Plaintiff in the above captioned matter ("Lawsuit"). As used in this notice, the terms "you" and "your" refer to the Defendant(s) above-named and their predecessors, successors, parents, subsidiaries, divisions and affiliates and its respective officers, directors, agents, attorneys, accounts, employees, partners, contractors and other persons occupying similar positions or performing any functions on behalf of Defendant.

My client respectfully demands that you preserve all recordings, documents, tangible things and electronically stored information that are in anyway relevant to the Lawsuit. A civil suit has been commenced against you by my client in the District Court herein, related to the matters described herein.

You have a legal duty to preserve evidence in this matter. This duty to preserve evidence exists not only after the formal commencement of litigation, but whenever a party knows or should know that litigation is reasonably foreseeable. The Minnesota Supreme Court has specifically addressed this issue:

> We have said that the spoliation of evidence is the "failure to preserve property for another's use as evidence in pending or future litigation." *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.,* 456 N.W.2d 434, 436 (Minn.1990) (quoting *County of Solano v. Delancy,* 264 Cal.Rptr. 721, 724 n. 4 (Cal.Ct.App.1989)). Further, we have recognized that, regardless of whether a party acted in good or bad faith, "the affirmative destruction of evidence has not been condoned." *Patton,* 538 N.W.2d at 119. The duty to preserve evidence[2] exists not only after the formal commencement of litigation, but whenever a party knows or should know that litigation is reasonably foreseeable. *See id.* at 118–19. Breach of the duty to preserve evidence once such a duty arises may be sanctioned, under a court's inherent authority, as spoliation. *See id.* at 118. Here, we specifically reaffirm our rule that custodial parties have a duty to preserve relevant evidence for use in litigation. *Id.* at 116. We also reaffirm our previously stated rule that, even when a breach of the duty to preserve evidence is not done in bad faith, the district court must attempt to remedy any prejudice that occurs as a result of the destruction of the evidence. *Id.*

Miller v. Lankow, 801 N.W.2d 120, 127–28 (Minn. 2011)

Once a duty to preserve evidence has arisen, the breach of that duty may subject a party to sanctions under a court's inherent authority as spoliation. "Courts have long afforded redress for the destruction of evidence * * *." Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc., 456 N.W.2d 434, 436 (Minn.1990).

Much of the information that is subject to disclosure or responsive to discovery in this case may be stored on your current and former computer systems and other media and devices, including personal digital assistants, voice messaging systems, online repositories, telephone recording systems, hard drives and cell phones. The term Electronically Stored Information (hereinafter "ESI") should be afforded the broadest possible meaning and includes (by way of example and not as an exclusive list) potentially relevant information electronically, digitally, magnetically, optically or otherwise stored as:

- Audio and/or video records of any telephone calls and conversations made related to the events described in the Lawsuit
- digital communications (for example email, voicemail, imaging, scanning, and/or instant messaging);
- email service stores and server information (for example SQL Server, Oracle, Dropbox, Box, lotus, domino.nsf, Microsoft exchange.edb, Google Corporate Gmail, etc.);
- word processing documents (for example Microsoft Word or WordPerfect files and all drafts thereof);
- spreadsheets and tables;
- accounting application data;
- imaging and facsimile files;
- recordings of any conversations with my client;
- phone records of any calls to my client;
- databases (for example Access, Oracle, SQL Server data);
- Contact and relationship data management (for example Outlook, Ask or Interaction);
- Calendar and diary application data;
- online access data (for example temporary internet files, history files and cookies);
- presentations (for example PowerPoint and Corel presentations);
- network access and server activity logs relating to information exchanged between you and third parties, and by you with third parties;
- project management application data;
- backup and archival files;
- letters, documents, or correspondence of whatever kind related to existing loss prevention policies, and changes, updates, alterations made to loss prevention policies for the past three (3) years

My client hereby demands that you preserve both accessible and inaccessible ESI. This demand is reasonable and necessary. Pursuant to the Rules of Civil Procedure, in the event of an eventual civil suit you must identify all sources of ESI you decline to produce and demonstrate why such sources are not reasonably accessible. For good cause shown in that event, the Court may order production of ESI even if it is not reasonably accessible. Accordingly, you must preserve ESI that you deem inaccessible so as not to preempt the Court's authority.

Preservation requires your immediate intervention. You must act immediately to preserve potentially relevant ESI, including, without limitation, information and the earlier of a created or last modified date for ESI concerning any activity, updates, changes, alterations, or modifications to the information maintained by you related to the events described in the above-referenced lawsuit, through the date of this demand. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must immediately intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents or running any application may irretrievably alter the evidence contained therein and constitute spoliation of evidence.

You are also directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things, and to act diligently and in good faith to secure and audit compliance with that litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and devices, which, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations that could result in spoliation include:

- purging the contents of email repositories by age, capacity or any other criteria
- using data or media wiping, disposal, erasure of encryption utilities or devices
- overriding erasing, destroying or discarding backup media
- reassigning, re-imaging or deposing of systems, servers, devices or media
- running antivirus or other programs affecting wholesale metadata alteration
- releasing or purging online storage repositories
- using metadata stripper utilities
- disabling server, packet or local instant messaging login
- executing drive or file defragmentation or compression programs
- shredding or other destruction of documents, routine or otherwise

You should anticipate that your officers, employees, or others may seek to hide, destroy or alter ESI. This is not a concern that is unique to you or your organization.

Rather it is simply conduct that occurs with such regularity that any custodian of ESI and their counsel must anticipate and guard against its occurrence. You are directed to preserve complete backup tape sets (including differentials and incrementals) containing recordings, emails and ESI for any person involved in the activity, updates, changes, alterations, or modifications to the information maintained by you related to the events described in the above-referenced lawsuit, through the date of this demand, whether inside or outside of your organization and control. You should also take affirmative steps to prevent anyone with access to your data, systems or archives from seeking to modify destroy or hide ESI.

As an appropriate and cost-effective means of preservation, you should remove from service and securely sequester the systems, media and devices housing potentially relevant ESI. In the event that you deem it impractical to sequester those systems, we believe that the breadth of preservation required, coupled with the modest number of systems implicated, dictates that forensically sound imaging of the systems identified above is expedient and cost effective. As we anticipate the need for forensic examination of one or more of the systems and the presence of relevant evidence in forensically accessible areas of the drives, we demand that you employ forensically sound ESI preservation methods. Failure to use such methods imposes a significant threat of spoliation and data loss. Be advised that a conventional copy, backup or ghosting of a hard drive does not produce a forensically sound image because it only captures active, unlocked data files and fails to preserve forensically significant data.

You should anticipate that certain ESI, including but not limited to recordings, spreadsheets and databases will be sought in the forms or form in which it was ordinarily maintained, that is in native form. Accordingly, you should preserve ESI in such native forms and should not employ methods to preserve ESI that remove or degrade the ability to search ESI by electronic means or that make it difficult or burdensome to use that information.

You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files. As hard copies do not preserve electronic search ability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both the forms.

We desire to work with you to agree upon an acceptable protocol for forensically sound preservation and can supply a suitable protocol if you will furnish an inventory and description of the systems and media to be preserved. Alternatively, if you

promptly disclose the preservation protocol you intend to employ, perhaps we can now identify any points of disagreement and resolve them.

A successful and compliant ESI preservation effort requires expertise. If you do not currently have such expertise, we urge you to engage the services of an expert in electronic evidence and computer forensics. Perhaps our respective experts can work cooperatively to secure a balance between evidence preservation and burden that is fair to both sides and acceptable to the Court. I am available to discuss reasonable preservation steps; however, you should not defer preservation steps pending such discussions if ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay of production of evidence to which we are entitled, that failure would constitute spoliation of evidence.

Please confirm in writing no later than five (5) business days from the date of this Notice, that you have taken the steps outlined in this Notice to preserve ESI and tangible documents potentially relevant to this pending action. If you have not undertaken the steps outlined above, or have taken other actions, please describe what you have done to preserve potentially relevant evidence.

If you retain legal counsel with respect to these matters, please direct this Notice to their immediate attention. Thank you for your anticipated cooperation in this vital matter.