**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF WISCONSIN**
**MILWAUKEE DIVISION**

| | |
|---|---|
| AARON ASSELIN and TROY NORTON, Individually and on Behalf of All Others Similarly Situated,<br><br>Plaintiffs,<br>v.<br><br>DOBBERSTEIN LAW FIRM, LLC, BCG EQUITIES, LLC, and GUARDIAN CREDIT UNION,<br><br>Defendants. | Case No.: 19-cv-9<br><br>**CLASS ACTION COMPLAINT**<br><br>**Jury Trial Demanded** |

## INTRODUCTION

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. (the "FDCPA") and the Wisconsin Consumer Act, Chs. 421-427, Wis. Stats. (the "WCA").

## JURISDICTION AND VENUE

2. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331, 1337, and 1367. Venue in this District is proper in that Defendant directed its collection efforts into the District.

## PARTIES

3. Plaintiff Aaron Asselin is an individual who resides in the Eastern District of Wisconsin (Milwaukee County).

4. Plaintiff Troy Norton is an individual who resides in the Eastern District of Wisconsin (Milwaukee County).

5. Each Plaintiff is a "consumer" as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that Defendant sought to collect from Plaintiff debts allegedly incurred for personal, family, or household purposes.

6. Each Plaintiff is also a "customer" as defined in the WCA, Wis. Stat. § 421.301(17), in that the alleged debt allegedly arose from a consumer transaction that included agreements to defer payment.

7. Defendant Dobberstein Law Firm, LLC ("Dobberstein") is a Wisconsin law firm with its principal offices located at 225 South Executive Drive, Suite 201, Brookfield, WI 53005.

8. Dobberstein is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

9. Dobberstein is engaged in the business of collecting debts owed to others and incurred for personal, family, or household purposes.

10. Dobberstein is a debt collector as defined in 15 U.S.C. § 1692a.

11. Wis. Stat. § 427.103(3) defines debt collector as: "any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme, intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms." (emphasis added).

12. Wis. Stat § 427.103(2) states: "Debt collection" means *any action*, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant by a customer."

13. Dobberstein is a debt collector as defined in Wis. Stat. § 427.103(3).

14. Defendant BCG Equities, LLC ("BCG") is a domestic limited liability company with its principal office located at 225 South Executive Drive, Suite 201, Brookfield, WI 53005, which is the same address of the principal office of Dobberstein.

15. BCG is engaged in the business of collecting debts, in that it purchases and receives assignment of consumer debts that are in default at the time BCG acquires them.

16. BCG uses third-party debt collectors, including Dobberstein, to collect consumer debts originally owed to others and currently held by BCG. BCG, directly or indirectly, is a debt collector under this arrangement. 15 U.S.C. § 1692a(6).

17. The FDCPA defines a "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."

18. The FDCPA defines a "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, *or* who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6) (emphasis added); *see, e.g., Tepper v. Amos Fin., LLC,* 898 F.3d 364, 371 (3d Cir. 2018) ("In sum, Amos may be one tough gazookus when it attempts to collect the defaulted debts it has purchased, but when its conduct crosses the lines prescribed by the FDCPA, it opens itself up to the Act's penalties."); *Kurtzman v. Nationstar Mortg. LLC*, No. 16 17236, 2017 U.S. App. LEXIS 19750, at *6-7 (11th Cir. Oct. 10, 2017); *Skinner v. LVNV Funding LLC*, 2018 U.S. Dist. LEXIS 2812, at *7-8 (N.D. Ill. Jan 8, 2018); *Mitchell v. LVNV Funding LLC*, 2017 U.S. Dist. LEXIS 206440, at *7-12 (N.D. Ind. Dec. 15, 2017); *Torres v. LVNV Funding LLC*. 2018 U.S. Dist. LEXIS 49885, at *13-15 (N.D. Ill Mar.

27, 2018); *Hordgev. First Nat'l Collection Bureau, Inc.*, 2018 U.S. Dist. LEXIS 132435, at *12-13 (S.D. Tex. Aug. 7, 2018); *Meola v. Asset Recovery Solutions*, 2018 U.S. Dist. LEXIS 139101, at *13-18 (E.D.N.Y. Aug. 15, 2018).

19. Upon information and belief, the primary purpose of BCG's business, and BCG's principal purpose, is the collection of consumer debts.

20. Debt purchasers, including BCG, are also debt collectors as a matter of Wisconsin law. On its face, Wis. Stat. § 427.103(3) applies to creditors collecting on their own behalf.

21. Wis. Stat. § 427.103(3) defines debt collector:

> Any person engaging, *directly or indirectly*, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme, intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms.

(emphasis added).

22. At a minimum, debt buyers like BCG engage in debt collection indirectly through their servicing agents, like Dobberstein. *See, e.g., Mitchell v. LVNV Funding, LLC*, 2017 U.S. Dist. LEXIS 206440 *16 ("'[t]here is no business purpose in purchasing charged off debts if the ultimate goal is not to collect them,' and that '[d]ebt buyers don't buy debts to use them as wallpaper, but to turn them into money'" (citing Pl.'s Reply Br.)).

23. BCG is a "merchant" as defined in the WCA, as it has, or claims to have, taken assignment of Plaintiff's former consumer credit card account, originally owed to Guardian. Wis. Stat. § 421.301(25) ("The term [merchant] includes but is not limited to a seller, lessor, manufacturer, creditor, arranger of credit and any assignee of or successor to such person.").

24. The WCA's debt collection chapter applies to all persons collecting, either directly or indirectly, consumer debts, including merchants collecting debts owed to themselves.

25. The Western District of Wisconsin has noted: "Unlike the FDCPA, the Wisconsin Consumer Act does not provide exceptions to its general definition of a debt collector." *Hartman v. Meridian Fin. Servs.*, 191 F. Supp. 2d 1031, 1048 (W.D. Wis. 2002).

26. The Wisconsin Department of Financial Institutions ("DFI") has likewise observed that merchants and creditors are "Debt Collectors" under the WCA:

> Anyone attempting to collect a debt arising from a consumer credit transaction in Wisconsin, whether a merchant doing its own debt collecting or a third-party debt collector, must follow Wisconsin's debt collection law, Ch. 427, Wis. Stats. This is an important point because many merchants collecting debt owed directly to them mistakenly believe that they are exempt from Wisconsin's debt collection law because they are not included within the definition of "debt collector" under the federal Fair Debt Collection Practices Act.

https://www.wdfi.org/wca/business_guidance/creditors/debt_collection/.

27. In addition to mail and telephone communications, BCG also regularly uses Wisconsin courts in its debt collection activities. A general search on Wisconsin Circuit Court Access ("CCAP") for "BCG Equities" returns at least 1,408 actions filed. Upon information and belief, all or almost all of these cases are collection actions against Wisconsin consumers.

28. BCG is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

29. A company meeting the definition of a "debt collector" (here, BCG) is vicariously liable for the actions of a second company collecting debts on its behalf (here, Dobberstein). *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 325-26 (7th Cir. 2016) (assignees who are "debt collectors" are responsible for the actions of those collecting on their behalf); *citing Pollice*, 225 F.3d at 404-05.

30. Defendant Guardian Credit Union ("Guardian") is a credit union organized under the laws of the United States of America. Defendant Guardian is headquartered at 11220 W. Oklahoma Ave., Milwaukee, WI 53227.

31. With respect to Plaintiff and the class, Guardian is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts.

32. Guardian is in the business of collecting debts owed to itself or its predecessors in interest, incurred for personal, family, or household purposes.

33. Guardian is a debt collector as defined in Wis. Stat. § 427.103(3).

## FACTS

### *Facts Related to Plaintiff Asselin*

34. On January 5, 2017, Guardian filed a small claims action in Milwaukee County Court, Case No. 2017SC000400 (the "Small Claims Action") seeking a judgment against Plaintiff Asselin in the amount of $5,213.33, exclusive of costs and fees. A copy of the complaint filed in the Small Claims Action is attached to this complaint as Exhibit A.

35. Upon information and belief, the alleged debt at issue in the Small Claims Action was incurred as the result of a personal loan, which was used exclusively for personal, family, or household purposes.

36. On January 24, 2017, Plaintiff Asselin and his wife, Jennifer Asselin, filed for protection under Chapter 7 of the U.S. Bankruptcy Code. 11 U.S.C. 701, *et seq*. A copy of Plaintiff's Petition under file with the Bankruptcy Court of the Eastern District of Wisconsin is attached to this complaint as Exhibit B.

37. Guardian is among the creditors listed in Schedule F of Plaintiff Asselin's Petition, Exhibit B. The Petition values the claim at $5,224.00.

38. Upon information and belief, Guardian received notice of Plaintiff Asselin's bankruptcy from the United States Bankruptcy Court for the Eastern District of Wisconsin. The address listed for Guardian on Schedule F of Plaintiff's Petition, Exhibit B, is the address listed under the signature line of the operative complaint in the Small Claims Action filed by Maya Kamath, Guardian's in-house attorney, and the docket for Plaintiff's bankruptcy case does not include any entry indicating any failure to deliver notice at such address.

39. Nevertheless, Guardian and Attorney Kamath failed to dismiss the Small Claims Action which was currently pending against Plaintiff Asselin in Milwaukee County Court, and Guardian proceeded to be granted default judgment against Plaintiff in the amount of $5,511.33 on February 2, 2017. *See* Wisconsin Circuit Court Access ("CCAP") (https://wcca.wicourts.gov/caseDetail.html?caseNo=2017SC000400&countyNo=40&index=0) (last visited November 28, 2018).

40. By continuing to pursue a default judgment against Plaintiff Asselin after he had filed for bankruptcy, Guardian violated the automatic stay imposed under the bankruptcy code and thus sought to collect a debt to which it was no longer legally entitled. *See* 11 U.S.C. § 306 (providing that the filing of a petition under bankruptcy code operates as a stay the commencement or continuation … of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title).

41. On May 8, 2017, Plaintiff's debts were discharged pursuant an order of the U.S. Bankruptcy Court for the Eastern District of Wisconsin. A copy of the order is attached to this complaint as Exhibit C.

42. Upon information and belief, sometime between February 2, 2017 and October 11, 2018, Guardian transferred the default judgment that it illegally attained against Plaintiff Asselin in the Small Claims Action to BCG.

43. On or about January 26, 2018, Dobberstein mailed a debt collection letter to Plaintiff regarding the same alleged judgment debt, with a "Current Creditor" listed as "Bcg Equities, Llc" and an "Original Creditor" listed as "Guardian Credit Unio." [*sic*] A copy of this letter is attached to this complaint as Exhibit D.

44. Upon information and belief, Exhibit D is a form letter, generated by computer, and with the information specific to Plaintiff Asselin inserted by computer.

45. Upon information and belief, Exhibit D is a form debt collection letter used by Dobberstein to attempt to collect alleged debts.

46. Upon information and belief, Exhibit D is the first written communication Dobberstein mailed to Plaintiff Asselin regarding the alleged debt referenced in Exhibit D.

47. Exhibit D contains the statutory validation notice that the FDCPA, 15 U.S.C. § 1692g, requires the debt collector mail the alleged debtor along with, or within five days of, the initial communication:

> Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from current creditor.

48. Exhibit D also includes the following representation:

Current Creditor: Bcg Equities, Llc
Original Creditor: Guardian Credit Unio

| LAST ACTIVITY | ACCOUNT NUMBER | BALANCE |
|---|---|---|
| 02/02/2017 | [redacted]5958 | $5952.78 |

49. Exhibit D thus represents that Plaintiff owed BCG a "BALANCE" of $5,952.78.

50. By demanding payment for a debt that was discharged pursuant to an order of the United States Bankruptcy Court, Exhibit D demands payment for an amount that BCG and Dobberstein had no legal right to claim.

51. Furthermore, Exhibit D demands payment of an alleged debt with a "BALANCE" of $5,952.78, an amount which is significantly greater than the $5,511.33 originally awarded to Guardian pursuant to the default judgment it was granted against Plaintiff Asselin.

52. Upon information and belief the difference between the amount demanded by Exhibit D and the amount of the original judgment is the result of post-judgment interest, which Dobberstein and/or BCG were assessing at a rate of approximately 5.0% annually.

53. Exhibit D, however, fails to state that the debt is accruing interest.

54. On the face of Exhibit D, the unsophisticated consumer would be unable to tell that interest on the debt was accruing.

55. When the amount of the debt varies day to day, the debt collector should avoid confusion by including explanatory language in the letter. *See Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 876 (7th Cir. 2000) ("As of the date of this letter, you owe $ [the exact amount due]. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-800-[phone number]."); *see also Chuway v. Nat'l Action Fin. Servs.*, 362 F.3d 944, 949 (7th Cir. 2004); *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 565-66 (7th Cir. 2004).

56. No such explanatory language was used in Exhibit D.

57. In *Chuway v. Nat'l Action Fin. Servs., Inc.*, 362 F.3d 944, 949 (7th Cir. 2004), the Seventh Circuit made clear that the debt collector must use the safe harbor language in *Miller* or equivalent language, in cases where the debt collector is attempting to collect the listed balance plus the interest running on it or other charges. *See also Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72 (2d Cir. 2016) (a collection notice violated 15 U.S.C. § 1692e by stating the "current balance" without providing notice that the amount is increasing due to accruing interest or other charges.); *Boucher v. Fin. Sys. of Green Bay*, No. 17-2308, 2018 U.S. App. LEXIS 1094 **12-14 (7th Cir. Jan. 17, 2018) (*Miller*, including its "accuracy requirement," applies to claims brought under 15 U.S.C. § 1692e).

58. A court in this district recently held in a virtually identical scenario that when a debt collector is, in fact, collecting interest, the collector must use the *Miller* safe harbor or equivalent language, or risk misleading and confusing the unsophisticated consumer. *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 210895 at *17-20 (E.D. Wis. Dec. 22, 2017) ("State Collection's letter undeniably does not contain any form of Miller's safe harbor language. Because State Collection's letter failed to inform the Spuhlers that interest was running on the amount owed, I find there is a triable issue of fact as to whether the collection letter is confusing or unclear on its face."); *see also Synder v. Gordon*, 2012 U.S. Dist. LEXIS 120659, at *8-9 (W.D. Wash. Aug. 24, 2012); *Michaelek v. ARS Nat'l Sys., Inc.*, 2011 U.S. Dist. LEXIS 142976, at *4 (M.D. Penn. Dec. 13, 2011); *Dragon v. I.C. Sys.*, 483 F. Supp. 2d 198, 202-03 (D. Conn. 2007); *Lukawski v. Client Servs., Inc.*, 2013 U.S. Dist. LEXIS 124075, at *10-14 (M.D. Penn. Aug. 29, 2013).

59. Dobberstein's failure to include explanatory safe harbor language in Exhibit D is material because the unsophisticated consumer may pay the amount listed on Exhibit D, but the payment would not actually resolve the debt. The unsophisticated consumer would have no way of knowing if the debt was resolved because Exhibit D does not explain that the debt Dobberstein is collecting is subject to the accrual of interest.

60. Dobberstein's failure to include explanatory safe harbor language in Exhibit C is also material because whether the account is bearing interest would undoubtedly be a factor in the unsophisticated consumer's prioritization of the debt. *See Martin v. Trott Law, P.C.*, 265 F. Supp. 3d 731, 748 (E.D. Mich. July 12, 2017) ("An inherent danger posed by harassing or deceptive collection practices is that consumers will be pressed into making uninformed decisions about debt prioritization, which affects their daily lives.") (quoting *Gillie v. Law Office of Eric A. Jones, LLC*, 785 F.3d 1091, 1097 (6th Cir. 2015), *rev'd on other grounds*, *Sheriff v. Gillie*, 136 S. Ct. 1594 (2016)); *Lox v. CDA, Ltd.*, 689 F.3d 818, 827 (7th Cir. 2012) ("Whether or not this fact would have led Lox to alter his course of action, it would have undoubtedly been a factor in his decision-making process[.]"). The consumer may prioritize debts that are accruing interest over debts that are not.

61. Further, even assuming the creditor previously disclosed that the account would bear interest, the unsophisticated consumer is not expected to reference the creditor's documents to ameliorate any potential confusion. *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 566 (7th Cir. 2004) ("an unsophisticated consumer may have lost the bill and forgotten the amount of the debt completely"); *Lukawski*, 2013 U.S. Dist. LEXIS 124075, at *10, 11 (rejecting an argument that interest had been disclosed in a letter sent six weeks prior to the offending communication) ("the letter in question is deceptive in spite of the prior letter with the interest disclosure. . . .

These arguments, requesting that the letters be read together to place notice on Michalek of increasing balances, were made and rejected by the Court.") (citing *Michalek*, 2011 U.S. Dist. LEXIS 142976, at *18-19).

62. Plaintiff Asselin was misled and confused by Exhibit D.

63. The unsophisticated consumer would be misled and confused by Exhibit D.

64. Plaintiff Asselin had to spend time and money to investigate Exhibit D and the possible consequences of responding to Exhibit D.

***Facts Related to Plaintiff Norton***

65. On or about January 19, 2018, Dobberstein mailed a debt collection letter to Plaintiff Norton regarding an alleged debt owed to "MARINER FINANCE, LLC-GREENDA" [*sic*]. A copy of this letter is attached to this complaint as Exhibit E.

66. Upon information and belief, the alleged debt referenced in Exhibit E was incurred as the result of a personal loan from Mariner Finance, LLC ("Mariner") used to finance the purchase of an automobile which was used for personal, family, and household purposes.

67. Upon information and belief, Exhibit E is a form letter, generated by computer, and with the information specific to Plaintiff Norton inserted by computer.

68. Upon information and belief, Exhibit E is a form debt collection letter used by Dobberstein to attempt to collect alleged debts.

69. Upon information and belief, Exhibit E is the first written communication Dobberstein mailed to Plaintiff Norton regarding the alleged debt referenced in Exhibit E.

70. Exhibit E contains the statutory validation notice that the FDCPA, 15 U.S.C. § 1692g, requires the debt collector mail the alleged debtor along with, or within five days of, the initial communication:

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from current creditor.

71. Exhibit E also includes the following representation:

| Last Activity | Account Number | Creditor | Balance |
|---|---|---|---|
| 09/30/2017 | [redacted]4538 | MARINER FINANCE, LLC-GREENDA | $27991.71 |
| | | TOTAL DUE: | $27991.71 |

72. Exhibit E thus represents that Plaintiff Norton owed Mariner a "Balance" of $27,991.71.

73. Additionally, Exhibit E lists a "Last Activity Date" of September 30, 2017.

74. In the context of consumer financing, the phrase "Last Activity Date" generally denotes the most recent payment made on an account. *See, e.g.*, *Slick v. Portfolio Recovery Associates., LLC*, 111 F. Supp. 3d 900, 903. (N.D. Ill June 30, 2015); *Moya v. Hocking*, 10 F. Supp. 2d 847, 850 (E.D. Mich. 1998).

75. The unsophisticated consumer would interpret the phrase "Last Activity Date" to reference the most recent payment made on an account.

76. Plaintiff Norton, however, did not make any payments pursuant to his alleged debt to Mariner or any other entity on or around September 30, 2017. Upon information and belief, the "Last Activity Date" listed by Exhibit E references a date associated with an alleged defaulted installment payment.

77. Indeed, on or around November 24, 2018, Mariner sent to Plaintiff a Notice of Right to Cure Default which listed September 30, 2017 as the date of a "Late Payment" contributing to

the total amount of the loan which was in default at the time the letter was sent. A copy of such notice is attached to the complaint as Exhibit F.

78. Exhibit E thus includes false, deceptive, and misleading representations regarding the date of the last payment Plaintiff made pursuant to his alleged debt owed to Mariner.

79. A false, deceptive, and misleading representation regarding the date of last payment is a material misrepresentation because it would impact the apparent legitimacy of the entity attempting to collect a consumer's alleged debt.

80. Moreover, a false, deceptive, and misleading representation regarding the date of last payment is a material misrepresentation because, under Wisconsin law, a payment restarts the statute of limitations. *Liberty Credit Servs. v. Quinn*, 276 Wis. 2d 826, 688 N.W.2d 768 (Ct. App. 2004) ("A partial payment on the contractual obligation made before the statute of limitations has run tolls the statute and sets it running from the date of payment.").

81. A misrepresentation that a payment has been made misleads the consumer about the amount of time the debt remains valid and potentially, that the debt is valid when it is not. Under Wisconsin law, the expiration of the statute of limitations extinguishes the debt. Wis. Stat. § 893.05 ("**Relation of statute of limitations to right and remedy.** When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.").

82. Plaintiff Norton was misled and confused by Exhibit E.

83. The unsophisticated consumer would be misled and confused by Exhibit E.

84. Plaintiff Norton had to spend time and money to investigate Exhibit E and the possible consequences of responding to Exhibit E.

***The FDCPA***

85. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *Derosia v. Credit Corp. Solutions*, 2018 U.S. Dist. LEXIS 50016, *12, 2018 WL 1513043 (E.D. Wis. March 27, 2018); *Pogorzelski v. Patenaude & Felix APC*, No. 16-C-1330, 2017 U.S. Dist. LEXIS 89678 *9 (E.D. Wis. June 12, 2017) ("A plaintiff who receives misinformation from a debt collector has suffered the type of injury the FDCPA was intended to protect against."); *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 177631 (E.D. Wis. Oct. 26, 2017) ("As in Pogorzelski, the Spuhlers' allegations that the debt collection letters sent by State Collection contained false representations of the character, amount, or legal status of a debt in violation of their rights under the FDCPA sufficiently pleads a concrete injury-in-fact for purposes of standing."); *Lorang v. Ditech Fin. LLC*, 2017 U.S. Dist. LEXIS 169286, at *6 (W.D. Wis. Oct. 13, 2017) ("the weight of authority in this circuit is that a misrepresentation about a debt is a sufficient injury for standing because a primary purpose of the FDCPA is to protect consumers from receiving false and misleading information."); *Qualls v. T-H Prof'l & Med. Collections, Ltd.*, 2017 U.S. Dist. LEXIS 113037, at *8 (C.D. Ill. July 20, 2017) ("Courts in this Circuit, both before and after *Spokeo*, have rejected similar challenges to standing in FDCPA cases.") (citing "*Hayes v. Convergent Healthcare Recoveries, Inc.*, 2016 U.S. Dist. LEXIS 139743 (C.D. Ill. 2016)); *Long v. Fenton & McGarvey Law Firm P.S.C.*, 223 F. Supp. 3d 773, 777 (S.D. Ind. Dec. 9, 2016) ("While courts have found that violations of other statutes . . . do not create concrete injuries in fact, violations of the FDCPA are distinguishable from these other statutes and have been repeatedly found to establish concrete injuries."); *Bock v. Pressler & Pressler, LLP*, No. 11-7593, 2017 U.S. Dist. LEXIS 81058 *21 (D.N.J. May 25, 2017) ("through [s]ection 1692e of the FDCPA, Congress

established 'an enforceable right to truthful information concerning' debt collection practices, a decision that 'was undoubtedly influenced by congressional awareness that the intentional provision of misinformation' related to such practices, 'contribute[s] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy,"); *Quinn v. Specialized Loan Servicing, LLC*, No. 16 C 2021, 2016 U.S. Dist. LEXIS 107299 *8-13 (N.D. Ill. Aug. 11, 2016) (rejecting challenge to Plaintiff's standing based upon alleged FDCPA statutory violation); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 U.S. Dist. LEXIS 89258 *9-10 (N.D. Ill. July 11, 2016) ("When a federal statute is violated, and especially when Congress has created a cause of action for its violation, by definition Congress has created a legally protected interest that it deems important enough for a lawsuit."); *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 U.S. App. LEXIS 12414 *7-11 (11th Cir. July 6, 2016) (same); *see also Mogg v. Jacobs*, No. 15-CV-1142-JPG-DGW, 2016 U.S. Dist. LEXIS 33229, 2016 WL 1029396, at *5 (S.D. Ill. Mar. 15, 2016) ("Congress does have the power to enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute," (quoting *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 623 (7th Cir. 2014)). For this reason, and to encourage consumers to bring FDCPA actions, Congress authorized an award of statutory damages for violations. 15 U.S.C. § 1692k(a).

86. Moreover, Congress has explicitly described the FDCPA as regulating "abusive practices" in debt collection. 15 U.S.C. §§ 1692(a) – 1692(e). Any person who receives a debt collection letter containing a violation of the FDCPA is a victim of abusive practices. *See* 15 U.S.C. §§ 1692(e) ("It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure 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").

87. 15 U.S.C. § 1692e generally prohibits "any false, deceptive, or misleading representation or means in connection with the collection of any debt."

88. 15 U.S.C. § 1692e(2)(a) specifically prohibits "The false representation of— the character, amount, or legal status of any debt.

89. 15 U.S.C. § 1692e(10) specifically prohibits the "use of any false representation or deceptive means to collect or attempt to collect any debt."

90. 15 U.S.C. § 1692f generally prohibits "unfair or unconscionable means to collect or attempt to collect any debt."

91. 15 U.S.C. § 1692g states, in part:

> a) **Notice of debt; contents**
> Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—
>
> (1) the amount of the debt;

92. The Seventh Circuit has held that initial collection letters must clearly state the amount of the debt. *Miller*, 214 F.3d at 876; *Chuway*, 362 F.3d at 949.

93. Failure to disclose that the account was accruing interest is ambiguous as to the amount and character of the debt. *See Spuhler*, 2017 U.S. Dist. LEXIS 210895, at *19-20 (triable issue of fact as to whether the collection letter is misleading under 15 U.S.C. §§ 1692e and 1692f).

94. Because there is a triable issue as to whether failure to disclose that the account was accruing interest is misleading as to the amount of the debt, it is necessarily confusing and ambiguous, and therefore violates 15 U.S.C. § 1692g(a)(1) as a matter of law. *See Pantoja v.*

*Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 687 (7th Cir. 2017) ("When assessing whether a dunning letter violates the FDCPA, whether an unsophisticated consumer would find certain debt-collection language misleading is often a question of fact. . . . Where the FDCPA requires clarity, however, ambiguity itself can prove a violation.").

***The WCA***

95. The Wisconsin Consumer Act ("WCA") was enacted to protect consumers against unfair, deceptive, and unconscionable business practices and to encourage development of fair and economically sound practices in consumer transactions. Wis. Stat. § 421.102(2).

96. The Wisconsin Supreme Court has favorably cited authority finding that the WCA "goes further to protect consumer interests than any other such legislation in the country," and is "probably the most sweeping consumer credit legislation yet enacted in any state." *Kett* v. *Community Credit Plan, Inc.,* 228 Wis. 2d 1, 18 n.15, 596 N.W.2d 786 (1999) (citations omitted).

97. To further these goals, the Act's protections must be "liberally construed and applied." Wis. Stat. § 421.102(1); *see also* § 425.301.

98. "The basic purpose of the remedies set forth in Chapter 425, Stats., is to induce compliance with the WCA and thereby promote its underlying objectives." *First Wisconsin Nat'l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983). Thus, private actions under the WCA are designed to both benefit consumers whose rights have been violated and also competitors of the violators, whose competitive advantage should not be diminished because of their compliance with the law.

99. To carry out this intent, the WCA provides Wisconsin consumers with an array of protections and legal remedies. The Act contains significant and sweeping restrictions on the activities of those attempting to collect debts. *See* Wis. Stats. § 427.104.

100. The Act limits the amounts and types of additional fees that may be charged to consumers in conjunction with transactions. Wis. Stats. § 422.202(1). The Act also provides injured consumers with causes of action for class-wide statutory and actual damages and injunctive remedies against defendants on behalf of all customers who suffer similar injuries. *See* Wis. Stats. §§ 426.110(1); § 426.110(4)(e). Finally, "a customer may not waive or agree to forego rights or benefits under [the Act]." Wis. Stat. § 421.106(1).

101. Consumers' WCA claims under Wis. Stat. § 427.104(1) are analyzed using the same methods as claims under the FDCPA. Indeed, the WCA itself requires that the court analyze the WCA "in accordance with the policies underlying a federal consumer credit protection act," including the FDCPA. Wis. Stat. § 421.102(1).

102. Further, the Wisconsin Supreme Court has held that WCA claims relating to debt collection are to be analyzed under the "unsophisticated consumer" standard. *Brunton v. Nuvell Credit Corp.*, 785 N.W.2d 302, 314-15. In *Brunton*, the Wisconsin Supreme Court explicitly adopted and followed the "unsophisticated consumer" standard, citing and discussing *Gammon v. GC Servs. Ltd. P'ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). *Id.*

103. Wis. Stat. § 427.104(1)(g) states that a debt collector may not: "Communicate with the customer or a person related to the customer with such frequency of at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the customer."

104. Wis. Stat. § 427.104(1)(h) states that a debt collector may not: "Engage in other conduct . . . in such a manner as can reasonably be expected to threaten or harass the customer."

105. The Wisconsin Department of Financial Institutions, which is tasked with regulating licensed collection agencies, has found that "conduct which violates the Federal Fair

Debt Collection Practices Act" can reasonably be expected to threaten or harass the customer. *See* Wis. Admin. Code DFI-Bkg 74.16(9) ("Oppressive and deceptive practices prohibited.").

**COUNT I – FDCPA**

106. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

107. Count I is brought on behalf of Plaintiff Asselin and against Defendants Dobberstein and BCG.

108. By demanding payment on a debt which had been discharged in bankruptcy, Exhibit D includes representations which are false, deceptive, and misleading as to the character and legal status of such debt.

109. By demanding payment on a debt which had been discharged in bankruptcy, Exhibit D seeks to collect amounts not permitted by law.

110. Defendants thereby violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(10), 1692f, and 1692f(1).

**COUNT II - WCA**

111. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

112. Count II is brought on behalf of Plaintiff Asselin and against Defendants Dobberstein and BCG.

113. By demanding payment on a debt which had been discharged in bankruptcy, Exhibit D claims a right with knowledge or reason to know such a right did not exists.

114. By demanding payment on a debt which had been discharged in bankruptcy, Exhibit D can be reasonably expected to threaten or harass a customer.

115. Defendants thereby violated Wis. Stat. §§ 427.104(g), 427.104(h), and 427.104(g).

**COUNT III - WCA**

116. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

117. Count III is brought on behalf of Plaintiff Asselin and against Defendant Guardian.

118. By pursuing a default judgment against Plaintiff Asselin after Plaintiff had filed for bankruptcy and subsequently selling such judgment, Guardian claimed a right with knowledge or reason to know such a right did not exist.

119. By pursuing a default judgment against Plaintiff Asselin after Plaintiff had filed for bankruptcy and subsequently selling such judgment, Guardian engaged in conduct that could reasonably expected to threaten or harass a customer.

120. Defendants thereby violated Wis. Stat. §§ 427.104(h) and 427.104(g).

**COUNT IV - FDCPA**

121. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

122. Count IV is brought on behalf of Plaintiff Asselin and against Defendants Dobberstein and BCG.

123. By failing to disclose that the amount of Plaintiff Asselin's alleged debt was subject to the accrual of interest, Exhibit D fails to clearly disclose the amount of the debt and is false, deceptive, and misleading as to the amount, character, and legal status of such debt.

124. Defendant thereby violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(10), 1692f, and 1692g(a)(1).

## COUNT V – FDCPA

125. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

126. Count V is brought on behalf of Plaintiff Norton and against Defendant Dobberstein.

127. By listing the date of a defaulted installment payment under "LAST ACTIVITY," Exhibit E is false, deceptive, and misleading as to the date of the most recent payment tendered on Plaintiff's alleged debt.

128. Defendant thereby violated 15 U.S.C. §§ 1692e, 1692e(2)(a), and 1692e(10).

## CLASS ALLEGATIONS

129. Plaintiffs bring this action on behalf of two classes.

130. Class I consists of: (a) all natural persons in the State of Wisconsin, (b) who were sent a collection letter in the form of Exhibit D to the complaint in this action, (c) between January 2, 2018 and January 2, 2019, inclusive, (d) seeking to collect a debt, and/or judgment obtained pursuant to a debt, which was incurred for personal, family, or household purposes, and (e) attempting to collect a debt that was included in a bankruptcy petition or which had been discharged in bankruptcy, (f) and was not returned by the postal service. Plaintiff Asselin is the proposed class representative for Class I.

131. Class II consists of: (a) all natural persons in the State of Wisconsin, (b) who were sent a collection letter by Defendant in the form of Exhibit E to the complaint in this action, (c) seeking to collect an alleged debt which was incurred for personal, family, or household purposes, (d) which was included in a pending bankruptcy or discharged pursuant to bankruptcy, (e) in which the letter in the form of Exhibit C was mailed between January 2, 2018 and January 2, 2019,

inclusive, (f) and was not returned by the postal service. Plaintiff Norton is the proposed class representative for Class II.

132. Each class is so numerous that joinder is impracticable. On information and belief, there are more than 50 members of each class.

133. There are questions of law and fact common to the members of each class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibits D & E violate the FDCPA and WCA.

134. Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal theories.

135. Plaintiffs will fairly and adequately represent the interests of the class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

136. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

## JURY DEMAND

137. Plaintiffs hereby demand a trial by jury.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment in favor of Plaintiffs and the Class and against Defendants for:

(a) actual damages;

(b) statutory damages;

(c) injunctive relief;

(d) attorneys' fees, litigation expenses and costs of suit; and

(e) such other or further relief as the Court deems proper.

Dated: January 2, 2019

**ADEMI & O'REILLY, LLP**

By: /s/ John D. Blythin

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