

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

LEE DEFALICO, Individually and on Behalf of All Others Similarly Situated,)	Case No.: 17-cv-1303
)	
)	CLASS ACTION COMPLAINT
Plaintiff,)	
)	
vs.)	
)	Jury Trial Demanded
EVERGREEN PROFESSIONAL RECOVERIES,)	
INC. and GUARDIAN CREDIT UNION,)	
)	
Defendants.)	

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, Ch. 421-427, Wis. Stats.

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 Defendants directed their collection efforts into the District.

PARTIES

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

4. 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, namely purchases of home goods.

5. Plaintiff is also a “customer” as defined in the Wisconsin Consumer Act, Wis. Stat. § 421.301(17), in that the alleged debt arose from consumer credit transactions.

6. Defendant Evergreen Professional Recoveries, Inc. (“Evergreen”) is a corporation with its principal place of business located at 12100 NE 195th Street #125, Bothell, WA 98011.

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

8. Evergreen is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes. Evergreen is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

9. Guardian Credit Union (“Guardian”) is a credit union with its primary place of business at 11220 W. Oklahoma Ave., West Allis, WI 53227.

10. Guardian issues loans to consumers to finance vehicle purchases and other consumer credit transactions. <https://www.guardiancu.org/personal/auto-loans>.

11. On its face, Wis. Stat. § 427.103(3) applies both to creditors collecting on their own behalf and to creditors who hire other debt collectors to collect on the creditor’s behalf.

12. 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).

13. 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.”

14. 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).

15. The Wisconsin Department of Financial Institutions, which has been tasked with administering the Wisconsin Consumer Act since it was passed in 1971, *see* Wis. Stat. §§ 421.301(2) and 426.103, interprets Wis. Stat. § 427.103(2) to mean that:

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. . . . Compliance with Wisconsin law does not ensure compliance with the federal law and vice versa.

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

16. Guardian is a “debt collector” under Wisconsin law, in that it collects consumer debts owed to itself, both directly and indirectly through collection agencies.

17. Guardian uses third party debt collection agencies, including Evergreen, to collect consumer debts. Guardian, directly or indirectly, is a debt collector under this arrangement. Wis. Stat. § 427.103(3).

18. A company meeting the definition of a “debt collector” (here, Guardian) is vicariously liable for the actions of a second company collecting debts on its behalf. *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.

**THE FAIR DEBT COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET SEQ.**

19. The FDCPA states that its purpose, in part, is “to eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e). It is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt. *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997); *Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982); *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir. 1992). The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§ 1692d, 1692e, 1692f and 1692g.

20. The Seventh Circuit has held that whether a debt collector’s conduct violates the FDCPA should be judged from the standpoint of an “unsophisticated consumer.” *Avila v. Rubin*, 84 F.3d 222, 227 (7th Cir. 1996); *Gammon v. GC Services, LP*, 27 F.3d 1254, 1257 (7th Cir. 1994). The standard is an objective one—whether the plaintiffs or any class members were misled is not an element of a cause of action. *Bartlett v. Heibl*, 128 F.3d 497, 499 (7th Cir. 1997). “The question is not whether these plaintiffs were deceived or misled, but rather whether an unsophisticated consumer would have been misled.” *Beattie v. D.M. Collections Inc.*, 754 F. Supp. 383, 392 (D. Del. 1991).

21. Because it is part of the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 *et seq.*, the FDCPA should be liberally construed in favor of the consumer to effectuate its purposes. *Cirkot v. Diversified Fin. Services, Inc.*, 839 F. Supp. 941, 944 (D. Conn. 1993).

The [Consumer Credit Protection] Act is remedial in nature, designed to remedy what Congressional hearings revealed to be unscrupulous and predatory creditor practices throughout the nation. Since the statute is remedial in nature, its terms must be construed in liberal fashion if the underlying Congressional purpose is to be effectuated.

N.C. Freed Co. v. Board of Governors, 473 F.2d 1210, 1214 (2d Cir. 1973).

22. Statutory damages are recoverable for violations, whether or not the consumer proves actual damages. *Baker*, 677 F.2d at 780-1; *Woolfolk v. Van Ru Credit Corp.*, 783 F. Supp. 724, 727 and n. 3 (D. Conn. 1990); *Riveria v. MAB Collections, Inc.*, 682 F. Supp. 174, 177 (W.D.N.Y. 1988); *Kuhn v. Account Control Tech.*, 865 F. Supp. 1443, 1450 (D. Nev. 1994); *In re Scrimpsheer*, 17 B.R. 999, 1016-7 (Bankr. N.D.N.Y. 1982); *In re Littles*, 90 B.R. 669, 680 (Bankr. E.D. Pa. 1988), *aff'd as modified sub nom. Crossley v. Lieberman*, 90 B.R. 682 (E.D. Pa. 1988), *aff'd*, 868 F.2d 566 (3d Cir. 1989).

23. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *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).

24. 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”).

25. The FDCPA prohibits debt collectors from contacting third parties and disclosing the existence of a debt. 15 U.S.C. § 1692c(b) states:

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

26. 15 U.S.C. § 1692b allows a debt collector to communicate with third parties for the purpose of determining the consumer’s location or employment. However, the debt collector must “not state that such consumer owes any debt.” 15 U.S.C. § 1692b(2).

27. The FDCPA prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e.

28. 15 U.S.C. § 1692e(2)(a) specifically prohibits: “The false representation of — the character, amount, or legal status of any debt.”

29. 15 U.S.C. § 1692e(5) specifically prohibits: “The threat to take any action that cannot legally be taken or that is not intended to be taken.”

30. 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.”

31. 15 U.S.C. § 1692f generally prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

32. 15 U.S.C. § 1692f(1) specifically prohibits the “collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

33. 15 U.S.C. § 1692g(a) states:

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

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

**THE WISCONSIN CONSUMER ACT,
CH. 421-427 WIS. STATS.**

34. 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).

35. 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).

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

37. "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.

38. 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.

39. 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).

40. 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).

41. 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. Nuvel 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.*

42. Wis. Stat. § 427.104(1)(j) states that a debt collector may not: “Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist.”

43. Wis. Stat. § 427.104(1)(L) states that a debt collector may not: “Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt.”

FACTS

44. Sometime prior to January 1, 2016, Plaintiff entered into a consumer credit transaction with Guardian to finance the purchase of a vehicle ("Plaintiff's Auto Loan").

45. Plaintiff's Auto Loan was made to purchase a 2005 Pontiac Grand Prix (the "Pontiac") that was to be used for personal, family, or household purposes. Plaintiff did not purchase the vehicle to resell it or for any other business purpose.

46. On or about March 4, 2016, Plaintiff and Guardian executed an agreement to refinance Plaintiff's Auto Loan.

47. On or about March 31, 2016, Guardian mailed an account statement to Plaintiff regarding his alleged Guardian Credit Union account, showing the present status of Plaintiff's Auto Loan. A copy of the letter is attached to this complaint as Exhibit A.

48. Upon information and belief, Exhibit A is a form account statement, generated by computer, and with the information specific to Plaintiff and Plaintiff's Auto Loan inserted by computer.

49. Exhibit A states:

Loan: 1		2005 PONTIAC GRAND PRIX-V6				
Trans.	Post	Transaction Description	Amount	Principal	Fin. Chg.	Balance
		Balance Forward				6,283.62
Jan 27		Payments (Late Fee 9.69)	-200.61	-56.64	134.28	6,226.98
		ONLINE ACH				
Feb 23		Payments (Late Fee 9.69)	-193.88	-109.34	74.85	6,117.64
		MBR ONLINE CC PYMT				
Mar 04		Payments	-6,144.88	-6,117.64	27.24	0.00
		Acct [REDACTED] 263 Ln 0002 Disbursal				
Mar 04		Loan Closed				
			Additional Account Information			
			Joint Owner(s) ADAM A ALLEN			
			Original Balance			
			7,000.00			
			Annual Percentage Rate			
			16.250%			
			Daily Periodic Rate			
			.044520%			

50. Exhibit A also states the following:

Loan: 1 - continued		2005 PONTIAC GRAND PRIX-V6				
Trans.	Post	Transaction Description	Amount	Principal	Fin. Chg.	Balance
Jan 07		Ending balance subject to interest rate				-200.61
		3 Payment(s) =	6,539.37			
			Totals This Period			
			Total Interest Charged for This Period			
			236.37			
			Total Fees Charged for This Period			
			19.38			
			Totals Year to Date			
			Total Principal Paid in 2016			
			6,283.62			
			Total Interest Charged in 2016			
			236.37			
			Total Fees Charged in 2016			
			19.38			
			Total Late Charges Paid in 2016			
			19.38			
			2015 Information			
			Total Principal Paid in 2015			
			716.38			
			Total Interest Charged in 2015			
			694.62			
			Total Fees Charged in 2015			
			0.00			

Loan: 2		2005 PONTIAC GRAND PRIX-V6				
Trans.	Post	Transaction Description	Amount	Principal	Fin. Chg.	Balance
		Balance Forward				0.00
Mar 04		New Loan	6,234.93	6,234.93		6,234.93
Mar 31		Loan Advance ST-LIFE/DIS/II	16.65	16.65		6,251.58
Mar 31		Ending balance subject to interest rate				6,251.58
			Payment Information			
			Next Payment			
			195.27			
			Due Date			
			04/18/16			
			2 Advance(s) =			
			6,251.58			
			Totals This Period			
			Total Interest Charged for This Period			
			0.00			
			Total Fees Charged for This Period			
			16.65			
			Totals Year to Date			
			Total Principal Paid in 2016			
			0.00			
			Total Interest Charged in 2016			
			0.00			
			Total Fees Charged in 2016			
			16.65			
			Interest Paid			
			236.37			

51. As of March 31, 2016, the balance of Plaintiff's Auto Loan was \$6,251.58.

52. Sometime between March 31, 2016 and September 30, 2016, Plaintiff defaulted on the scheduled payments under Plaintiff's Auto Loan.

53. Sometime after Plaintiff's Auto Loan was in default, Guardian repossessed the Pontiac.

54. On or about October 3, 2016, Guardian mailed Plaintiff a debt collection letter and Statement of Repossession and Sale of Collateral stating that, on or about September 30, 2016, Guardian sold the Pontiac at a "WISCONSIN STATE AUTO AUCTION." A copy of the debt collection letter and attached Statement of Repossession and Sale of Collateral is attached to this complaint as Exhibit B.

55. Upon information and belief, Exhibit B is a form debt collection letter and Statement of Repossession and Sale of Collateral, generated by computer, and with information specific to Plaintiff, Plaintiff's Auto Loan, and the Pontiac entered by computer.

56. Exhibit B states the following:

As a result of your default, the vehicle referenced above was recovered and sold. A Statement of Repossession and Sale of Collateral is also attached.

After the proceeds of the funds were applied to the loan, there remains a deficiency balance due.

Total Due	\$	7,396.40
Selling Price	\$	700.00
Deficiency Balance	\$	6,696.40

57. Exhibit B also states the following:

Principal Amount owed as of Sale Date: \$ 6,389.16

ADD:	Late charges owed at sale	\$	19.52
	Interest Owed at sale	\$	527.72
	Court/legal Costs	\$	0.00
	Repossession Fee	\$	150.00
	Storage Fee	\$	25.00
	Selling Fee	\$	125.00
	Transportation Fee	\$	60.00
	Repo Title	\$	100.00
	Gas/Oil/Battery	\$	0.00
	Postage	\$	0.00
	Keys	\$	0.00
	Total	\$	7,396.40

LESS: Selling Price \$ 700.00

Total Deficiency Balance Due \$ 6,696.40

58. Exhibit B states that the Pontiac was sold for \$700 and that, because of the balance of Plaintiff's Auto Loan and the costs of resale, Plaintiff still owed Guardian a balance of \$6,696.40.

59. On or about April 19, 2017, Evergreen mailed a debt collection letter to Plaintiff regarding an alleged debt Plaintiff owed to "GUARDIAN CREDIT UNION." A copy of this letter is attached to this complaint as Exhibit C.

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

61. Exhibit C was the first written communication that Evergreen sent to Plaintiff regarding Plaintiff's "GUARDIAN CREDIT UNION" account.

62. Upon information and belief, the alleged debt Evergreen was attempting to collect with Exhibit C arose from the alleged deficiency balance remaining after Guardian resold the Pontiac and is the same alleged debt stated in Exhibit B.

63. Exhibit C states:

EVERGREEN PROFESSIONAL RECOVERIES

12100 NE 195th Street, #125 * Bothell, WA 98011
800-241-1305

Re: GUARDIAN CREDIT UNION
Account #: ■■■4974
Balance Due: \$6389.16

Pay your bill online: www.everprof.com

PRINCIPAL:	\$ 6389.16

TOTAL:	\$ 6389.16

64. Exhibit C states that Plaintiff's balance, as of April 19, 2017, is \$6,389.16.

65. Exhibits B and C together are false, misleading and confusing to the unsophisticated consumer.

66. Exhibit B tells Plaintiff that he owes Guardian \$6,696.40, but Exhibit C, sent several months later, tells Plaintiff that he owes \$6,389.16.

67. Upon information and belief, during the intervening time between October 3, 2016 and April 19, 2017, the balance of Plaintiff's alleged debt allegedly owed to Guardian would have increased as a result of interest, late fees, or other charges.

68. Upon information and belief, even if Plaintiff's alleged debt allegedly owed to Guardian was not subject to interest, late fees, or other charges, the balance of the debt certainly would not have decreased on its own.

69. Plaintiff did not make a payment to, or procure any additional loans from Guardian that could account for the discrepancy.

70. Plaintiff was confused by the different amounts listed on Exhibits B and C, and had no idea why the balance had apparently decreased or whether the letter sent by Evergreen was legitimate.

71. The unsophisticated consumer would be confused by the different balances on Exhibits B and C, and about whether one or neither of the stated balances is correct.

72. Plaintiff was confused by Exhibits B and C.

73. Plaintiff had to spend time and money investigating Exhibits B and C and the consequences of any potential responses to Exhibits B and C.

74. Plaintiff had to take time to obtain and meet with counsel, including travel to counsel's office by car and its related expenses (including but not limited to the cost of gasoline and mileage), to advise Plaintiff on the consequences of Exhibits B and C.

75. Moreover, upon information and belief, Guardian did not sell the Pontiac in a commercially reasonable manner.

76. Whether collateral that has been repossessed has been sold in a commercially reasonable manner requires a detailed factual inquiry into the method, manner, time, place, purchaser, and other terms, including whether the seller disclaimed or modified warranties. All aspects of the resale must be commercially reasonable. Wis. Stat. § 409.610; *see Vic Hansen & Sons, Inc. v. Crowley*, 203 N.W.2d 728 (Wis. 1973); *Appleton State Bank v. Van Dyke Ford, Inc.*, 279 N.W.2d 443 (1979).

77. According to Exhibit A, Plaintiff paid a total of \$716.38 in principal in 2015, leaving a total of \$6,283.62 in principal on Plaintiff's Auto Loan. Upon information and belief, Plaintiff purchased the Pontiac for a total of \$7,000 in 2015.

78. According to Exhibit B, the Pontiac was resold about a year later for \$700, which, upon information and belief, was roughly 10% of the purchase price to Plaintiff.

79. Per a Kelley Blue Book search performed 9/25/2017, approximately one year after the Pontiac was resold, the private party value of a 2005 Pontiac Grand Prix with 140,000

miles and in good condition was \$2,786. <https://www.kbb.com/pontiac/grand-prix/2005/sedan-4d/?vehicleid=1476&intent=trade-in-sell&mileage=140000&pricetype=private-party&options=6488725|true&condition=good>.

80. Upon information and belief, the terms under which Guardian resold the Pontiac were not commercially reasonable.

COUNT I -- FDCPA

81. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

82. Count I is brought against Defendant Evergreen.

83. Even though Plaintiff did not make any payments or procure any additional loans to refinance the alleged debt allegedly owed to Guardian, the balance stated in Guardian's debt collection letter and Statement of Repossession and Sale of Collateral (Exhibit B) was higher than the balance on Evergreen's debt collection letter (Exhibit C), sent several months later.

84. In Exhibit C, Evergreen attempted to collect an incorrect amount from Plaintiff.

85. Alternatively, regardless of whether the balance stated on Exhibit C is wrong, Evergreen's attempt to collect an amount different from the amount on Exhibit B is confusing to the unsophisticated consumer.

86. Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(5), and 1692e(10).

COUNT II -- FDCPA

87. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

88. Count II is brought against Defendant Evergreen.

89. Evergreen failed to state the "amount of the debt" in a non-confusing manner.

90. The unsophisticated consumer would not understand why the balance stated on Exhibit C would be lower than the balance stated on Exhibit B.

91. Defendant violated 15 U.S.C. §§ 1692f, 1692f(1) and 1692g(a).

COUNT III -- WCA

92. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

93. Count III is brought against both Defendants.

94. Even though Plaintiff did not make any payments or procure any additional loans to refinance the alleged debt allegedly owed to Guardian, the balance stated in Guardian's debt collection letter and Statement of Repossession and Sale of Collateral (Exhibit B) was higher than the balance on Evergreen's debt collection letter (Exhibit C), sent several months later.

95. Regardless of whether the balance stated on Exhibits B or C are wrong, Guardian's engagement with Evergreen to attempt to collect an amount different from the amount on Exhibit B is confusing to the unsophisticated consumer.

96. Guardian violated Wis. Stat. §§ 427.104(1)(j) and 427.104(1)(L).

COUNT IV -- WCA

97. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

98. Count IV is brought against Guardian.

99. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral as long as every aspect of the disposition of collateral, including the method, manner, time, place, and other terms is commercially reasonable. Wis. Stat. § 409.610(2); *Baird Credit Corp. v. Seher*, 2003 U.S. Dist. LEXIS 4921 (N.D. Ill. March 28, 2003)

(under Wisconsin law, "whether BCC exercised its discretion within the standards prescribed in the UCC under the circumstances in this case is a factual issue that cannot be resolved in a motion to dismiss.").

100. Unless every aspect of disposition is commercially reasonable, the secured party is not entitled to a deficiency judgment in the case of default under a consumer transaction. Wis. Stat. § 425.209; *see Shoeder's Auto Center, Inc. v. Teschner*, 479 N.W.2d 203, 204 (Wis. App. 1991) ("it is the merchant's duty to prove as part of its prima facie case that it disposed of the goods in a commercially reasonable manner before it is entitled to recover a deficiency judgment.").

101. Guardian's resale of the Pontiac was not commercially reasonable.

102. Guardian violated Wis. Stat. §§ 409.610 and 425.209.

CLASS ALLEGATIONS

103. Plaintiff brings this action on behalf of a Class, consisting of (a) all natural persons in the State of Wisconsin (b) who were sent collection letters in the form of Exhibits B and C to the complaint in this action, (c) which listed different balances on the same account, (d) seeking to collect an alleged debt, (e) incurred for personal, family or household purposes, (f) between September 26, 2016 and September 26, 2017, inclusive, (g) that was not returned by the postal service.

104. The Class is so numerous that joinder is impracticable. Upon information and belief, there are more than 50 members of the Class.

105. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibits B and C violate the FDCPA and WCA.

106. Plaintiff's claims are typical of the claims of the Class members. All are based on the same factual and legal theories.

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

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

JURY DEMAND

109. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendant for:

- (a) actual damages;
- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and
- (d) such other or further relief as the Court deems proper.

Dated: September 26, 2017

ADEMI & O'REILLY, LLP

By: s/ John D. Blythin
Shpetim Ademi (SBN 1026973)
John D. Blythin (SBN 1046105)
Mark A. Eldridge (SBN 1089944)
3620 East Layton Avenue
Cudahy, WI 53110
(414) 482-8000
(414) 482-8001 (fax)
sademi@ademilaw.com
jblythin@ademilaw.com
meldridge@ademilaw.com

EXHIBIT A



4501 W. Greenfield Avenue
West Milwaukee, WI 53214-9820
(414) 546-7450 • (800) 556-5154
guardiancu.org

Account Statement

88 22617 1 AV 0.391 0.749 MC 397

LEE DEFALICO
9730 W BELOIT RD APT 1
MILWAUKEE, WI 53227-4249

397s

GUARDIAN CREDIT UNION

Member No.: XXXXXXXX263
Statement Period: 01/01/16 to 03/31/16
Page No.: 1 of 2

ACCOUNT SUMMARY

Type	Total Balance
Savings Accounts	5.00
Checking Accounts	0.00
Certificate Accounts	0.00
Club Accounts	0.00
Loan Accounts	6,251.58

Account: 1

REGULAR SAVINGS

Trans.	Post	Transaction Description	Credit	Debit	Balance
Jan 01		Balance Forward			5.00
Mar 31		Ending Balance			5.00

Additional Account Information

Dividends Paid Year to Date 0.00

Loan: 1

2005 PONTIAC GRAND PRIX-V6

Trans.	Post	Transaction Description	Amount	Principal	Fin. Chg.	Balance
		Balance Forward				6,283.62
Jan 27		Payments (Late Fee 9.69) ONLINE ACH	-200.61	-56.64	134.28	6,226.98
Feb 23		Payments (Late Fee 9.69) MBR ONLINE CC PYMT	-193.88	-109.34	74.85	6,117.64
Mar 04		Payments Acct [REDACTED] 263 Ln 0002 Disbursal	-6,144.88	-6,117.64	27.24	0.00

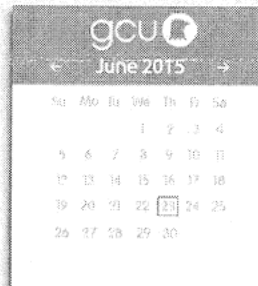
Loan Closed

Additional Account Information

Joint Owner(s) ADAM A ALLEN
Original Balance 7,000.00
Annual Percentage Rate 16.250%
Daily Periodic Rate .044520%

Mark your calendars!

Guardian Credit Union's
Annual Member Meeting is
June 23rd, 2016!



Call us to reserve your spot
414.546.7450

guardiancu.org



SAVE YOURSELF \$150

ON AVERAGE PER YEAR

Case 2:17-cv-01303-PP Filed 09/26/17 Page 2 of 5 Document 1-1



ROUND-UP REWARDS

guardiancu.org

SHARE DRAFT RECONCILIATION

DRAFTS OUTSTANDING – NOT CHARGED TO ACCOUNT				MONTH _____ 20____
DRAFT NUMBER	AMOUNT	DRAFT NUMBER	AMOUNT	
				ENDING BALANCE SHOWN ON THIS STATEMENT \$ _____
				DEPOSITS NOT CREDITED IN THIS STATEMENT (IF ANY) + \$ _____
				ADD + \$ _____
				+ \$ _____
				+ \$ _____
				+ \$ _____
				+ \$ _____
				SUB-TOTAL \$ _____
				DRAFTS OUTSTANDING SUBTRACT – \$ _____
				BALANCE \$ _____
				NOTE: DIVIDENDS, IF ANY, THAT APPEAR AS A DEPOSIT ON THIS STATEMENT MUST ALSO BE ENTERED IN YOUR SHARE DRAFT REGISTER AS A DEPOSIT, IN ORDER TO BALANCE.
				THIS FORM IS PROVIDED TO HELP YOU BALANCE YOUR SHARE DRAFT STATEMENT.
TOTAL			\$ _____	

TAX AND GENERAL INFORMATION. RETAIN THIS STATEMENT FOR YOUR RECORDS.

Important information: This statement of account contains income tax reporting data, year to date interest and / or dividend. The dividend amount will be reported to federal and state governments per requirements. Retain your statement of account for purposes of income tax reporting.

The amount of dividends received as shown on this statement is reportable as "Interest Earned" on your Income Tax Return.

SHARES ARE NOT TRANSFERABLE EXCEPT AS AUTHORIZED BY THE CREDIT UNION.

The "**Finance Charge**" is inclusive of all costs for the credit including what previously was termed "interest". It is computed at the time a payment is received by multiplying the loan balance by the number of days it has been outstanding by the periodic rate as shown on the face of the statement.

Loan Balance does not include "**Finance Charge**". "**Finance Charge**" due is computed by multiplying the loan balance by the periodic rate per day as shown on the statement and then multiplying the result by the number of days from the last loan transaction to the current date.

YOUR BILLING RIGHTS. KEEP THIS NOTICE FOR FUTURE USE.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR STATEMENT.

If you think your statement is wrong, or if you need more information about a transaction on your statement, write us (on a separate sheet) at the address shown on your statement as soon as possible. We must hear from you no later than 60 days after we sent you the first statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

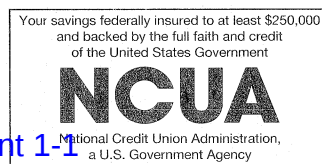
You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your statement that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

Write us at the address shown on the front of this statement or call us at the telephone number shown as soon as you can if you think your statement or receipt is wrong, or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- (1.) Tell us your name and account number.
- (2.) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
- (3.) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than ten (10) business days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.





4501 W. Greenfield Avenue
West Milwaukee, WI 53214-9820
(414) 546-7450 • (800) 556-5154
guardiancu.org

Account Statement

GUARDIAN CREDIT UNION

Member No.: XXXXXXXX263
Statement Period: 01/01/16 to 03/31/16
Page No.: 2 of 2

397m

LEE DEFALICO
9730 W BELOIT RD APT 1
MILWAUKEE, WI 53227-4249



22617 / 2-2

Loan: 1 - continued 2005 PONTIAC GRAND PRIX-V6

Trans.	Post	Transaction Description	Amount	Principal	Fin. Chg.	Balance
Jan 07		Ending balance subject to interest rate				-200.61
		3 Payment(s) =	6,539.37			
		Totals This Period				
		Total Interest Charged for This Period	236.37			
		Total Fees Charged for This Period	19.38			
		Totals Year to Date				
		Total Principal Paid in 2016	6,283.62			
		Total Interest Charged in 2016	236.37			
		Total Fees Charged in 2016	19.38			
		Total Late Charges Paid in 2016	19.38			
		2015 Information				
		Total Principal Paid in 2015	716.38			
		Total Interest Charged in 2015	694.62			
		Total Fees Charged in 2015	0.00			

Loan: 2 2005 PONTIAC GRAND PRIX-V6

Trans.	Post	Transaction Description	Amount	Principal	Fin. Chg.	Balance
		Balance Forward				0.00
Mar 04		New Loan	6,234.93	6,234.93		6,234.93
Mar 31		Loan Advance ST-LIFE/DIS/IIU	16.65	16.65		6,251.58
Mar 31		Ending balance subject to interest rate				6,251.58
		Payment Information				
		Next Payment	195.27			
		Due Date	04/18/16			
		2 Advance(s) =	6,251.58			
		Totals This Period				
		Total Interest Charged for This Period	0.00			
		Total Fees Charged for This Period	16.65			
		Totals Year to Date				
		Total Principal Paid in 2016	0.00			
		Total Interest Charged in 2016	0.00			
		Total Fees Charged in 2016	16.65			
		Interest Paid	236.37			



4501 W. Greenfield Avenue
West Milwaukee, WI 53214-9820
(414) 546-7450 • (800) 556-5154
guardiancu.org

Account Statement

Exhibit B



October 3, 2016

LEE DEFALICO
9730 W BELOIT RD #1
MILWAUKEE WI 53227

Account: *****63 - 0002
Original Contract Date: 03/04/2016
Description of Vehicle: 2005 PONTIAC Grand Prix-V6
VIN: 2G2WR524951227037

Dear LEE DEFALICO,

As a result of your default, the vehicle referenced above was recovered and sold. A Statement of Repossession and Sale of Collateral is also attached.

After the proceeds of the funds were applied to the loan, there remains a deficiency balance due.

Total Due	\$	7,396.40
Selling Price	\$	700.00
Deficiency Balance	\$	6,696.40

Please contact Guardian Credit Union Collections Department at 414-546-7450 x 2483 to make arrangements to pay the deficiency balance or discuss the possibility of paying the balance off in a lumps sum settlement payment.

Your deficiency balance may also be sold to a third party collection agency in which you are able to make arrangements with them in order to pay off your debt.

If you have filed bankruptcy, this explanation is not an attempt to collect a deficiency, but is only for your information. You are not liable personally for payment of a deficiency. However, we may enforce our lien against any property that you gave as collateral for that debt. If you have any questions regarding this letter, call us at 414-546-7450 x2483 or write us at the address above.

Sincerely,

ALBERT MONTANEZ

This is an attempt to collect a debt. Any information obtained will be used for that purpose.



Statement of Repossession and Sale of Collateral

Date: October 3, 2016

Member Name: LEE DEFALICO

Member Number: *****63 - 0002

Vehicle Description: 2005 PONTIAC Grand Prix-V6
VIN: 2G2WR524951227037

Date of Sale: 09/30/2016
Location of Sale: WISCONSIN STATE AUTO AUCTION

Principal Amount owed as of Sale Date: \$ 6,389.16

ADD: Late charges owed at sale	\$	19.52
Interest Owed at sale	\$	527.72
Court/legal Costs	\$	0.00
Repossession Fee	\$	150.00
Storage Fee	\$	25.00
Selling Fee	\$	125.00
Transportation Fee	\$	60.00
Repo Title	\$	100.00
Gas/Oil/Battery	\$	0.00
Postage	\$	0.00
Keys	\$	0.00
Total	\$	7,396.40

LESS: Selling Price \$ 700.00

Total Deficiency Balance Due \$ 6,696.40

Surplus to Savings Account \$ 0.00

Exhibit C

PO BOX 666
BOTHELL WA 98041

EVERGREEN PROFESSIONAL RECOVERIES

12100 NE 195th Street, #125 * Bothell, WA 98011
800-241-1305

April 19, 2017

Re: GUARDIAN CREDIT UNION
Account #: [REDACTED] 4974
Balance Due: \$6389.16

RETURN SERVICE REQUESTED

Pay your bill online: www.everprof.com



LEE DEFALICO
6915 S TIMBER RIDGE LN
APT 3101
OAK CREEK WI 53154-1359



PRINCIPAL: \$ 6389.16

TOTAL: \$ 6389.16

Notice

This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose.

YOU ARE HEREBY NOTIFIED: The creditor identified above has engaged our services to collect the above account.

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

Creditor: GUARDIAN CREDIT UNION

Ref # 139263.2

EVERGREEN PROFESSIONAL RECOVERIES 12100 NE 195th Street, #125 * Bothell, WA 98011 800-241-1305

PLEASE DETACH HERE AND RETURN WITH YOUR PAYMENT IN THE ENVELOPE PROVIDED

RE: GUARDIAN CREDIT UNION
ACCT #: [REDACTED] 4974
BALANCE DUE: \$6389.16

PAY THIS AMOUNT: \$6389.16

If paying by Credit Card, please complete this section			
<input type="checkbox"/> VISA	CARD NUMBER	AMOUNT	CVV# (3 or 4 Digit code on Back of Card)
<input type="checkbox"/> M/C	SIGNATURE	EXP DATE	
CARDHOLDER NAME (Please Print)		<input type="checkbox"/> Check here if Cardholder address is the same. If not, provide Cardholder address on back of statement.	

Pay your bill online: www.everprof.com

LEE DEFALICO
6915 S TIMBER RIDGE LN
APT 3101
OAK CREEK WI 53154-1359

EVERGREEN PROFESSIONAL RECOVERIES

P.O. BOX 666
BOTHELL WA 98041-0666



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Place an X in the appropriate Box:

☐ Green Bay Division☒ Milwaukee Division**I. (a) PLAINTIFFS**

Lee Defalico

(b) County of Residence of First Listed Plaintiff Milwaukee

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Ademi & O'Reilly, LLP, 3620 E. Layton Ave., Cudahy, WI 53110
(414) 482-8000-Telephone (414) 482-8001-Facsimile**DEFENDANTS**

Evergreen Professional Recoveries, Inc., et al.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 et seq

Brief description of cause:

Violation of Fair Debt Collection Practices Act and Wisconsin Consumer Act, Wis. Stat. 421-427

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 26, 2017

s/ John D. Blythin

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING JEP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the
Eastern District of Wisconsin

LEE DEFALICO

Plaintiff(s)

v.

EVERGREEN PROFESSIONAL RECOVERIES, INC.
and GUARDIAN CREDIT UNION

Defendant(s)

Civil Action No. 17-cv-1303

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* EVERGREEN PROFESSIONAL RECOVERIES, INC.
c/o CORPORATION SERVICE COMPANY
8040 EXCELSIOR DRIVE, SUITE 400
MADISON, WI 53717

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

John D. Blythin
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, WI 53110

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 17-cv-1303

PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))***This summons and the attached complaint for *(name of individual and title, if any)*:_____ were received by me on *(date)* _____.☐ I personally served the summons and the attached complaint on the individual at *(place)*:_____ on *(date)* _____; or☐ I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or☐ I served the summons and the attached complaint on *(name of individual)* _____who is designated by law to accept service of process on behalf of *(name of organization)* __________ on *(date)* _____; or☐ I returned the summons unexecuted because _____; or☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

*Server's signature*_____
*Printed name and title*_____
Server's address

Additional information regarding attempted service, etc.:

Print

Save As...

Case 1:17-cv-01303-25 Filed 09/26/17 Page 2 of 2 Document 1-1

Reset

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

LEE DEFALICO

Plaintiff(s)

v.

EVERGREEN PROFESSIONAL RECOVERIES, INC.
and GUARDIAN CREDIT UNION

Defendant(s)

Civil Action No. 17-cv-1303

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* GUARDIAN CREDIT UNION
11220 W. Oklahoma Ave.
West Allis, WI 53227

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

John D. Blythin
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, WI 53110

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on *(date)* _____, and mailed a copy to the individual's last known address; or☐ I served the summons and the attached complaint on *(name of individual)* _____who is designated by law to accept service of process on behalf of *(name of organization)* __________ on *(date)* _____; or☐ I returned the summons unexecuted because _____; or☐ Other *(specify)*: _____

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I declare under penalty of perjury that this information is true.

Date: _____

*Server's signature*_____
*Printed name and title*_____
Server's address

Additional information regarding attempted service, etc.:

Print

Save As...

Case 1:17-cv-01303-25 Filed 09/26/17 Page 2 of 2 Document 1-2

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Evergreen Professional Recoveries, Guardian Credit Union Facing FDCPA Lawsuit](#)
