

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

JON BRAUN, Individually and on Behalf of All Others Similarly Situated,)	Case No.: 16-cv-1634
	}	
Plaintiff,	}	CLASS ACTION COMPLAINT
	}	
v.	}	
	}	Jury Trial Demanded
FMS, INC.	}	
	}	
Defendant.	}	

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”).

JURISDICTION AND VENUE

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

PARTIES

3. Plaintiff Jon Braun 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 him a debt allegedly incurred for personal, family or household purposes, namely an alleged credit card debt.

5. Defendant FMS, Inc. (“FMS”) is an Oklahoma corporation with its principal place of business located at 4915 South Union Avenue Tulsa, OK 74107.

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

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

8. FMS is a debt collector as defined in 15 U.S.C. § 1692a.

FACTS

9. On or around April 18, 2016, FMS mailed a debt collection letter to Plaintiff regarding an alleged debt, listing the “original creditor” as “Capital One, N.A.,” the “current creditor” as “Capital One, N.A.” (“Capital One”) and the “creditor” as “Kohl’s Dept Stores, Inc.” (“Kohl’s”). A copy of this letter is attached to this complaint as Exhibit A.

10. Upon information and belief, the alleged debt identified in Exhibit A was an alleged credit card used only for personal, family or household purposes.

11. The alleged credit card debt account number identified in Exhibit A ended in the following digits: 3893.

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

13. Exhibit A states:

We have been authorized by KOHL'S DEPARTMENT STORES INC. to offer you a 50% settlement to pay your outstanding balance, as shown. We can offer payment arrangements on this settlement offer to assist you in clearing this account in six(6) monthly installments.

14. Exhibit A also states:

Your payment should be made payable to KOHL'S DEPARTMENT STORES INC. and mailed to the address on the tear-off portion of this letter.

15. On or around May 25, 2016, FMS mailed a second debt collection letter regarding the same alleged debt, an alleged credit card debt with an account number ending in 3893. A copy of this letter is attached to the complaint as Exhibit B.

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

17. Exhibit B also lists the original creditor as “Capital One N.A.,” the creditor as “Kohl's Dept Stores Inc” and the current creditor as “Capital One N.A.”

18. Exhibit B states:

We have been authorized by KOHL'S DEPARTMENT STORES INC. to offer you a 50% settlement to pay your outstanding balance, as shown. We can offer payment arrangements on this settlement offer to assist you in clearing this account in six(6) monthly installments.

19. Exhibits A and B make it unclear who the current creditor really is.

20. Exhibit B also states:

Your payment should be made payable to KOHL'S DEPARTMENT STORES INC. and mailed to the address on the tear-off portion of this letter.

21. Both Exhibit A and Exhibit B are confusing to the unsophisticated consumer.

22. Both Exhibit A and Exhibit B identify two different entities as the “creditor” and “current creditor.” The unsophisticated consumer interprets those two terms as the same – the entity to whom the consumer currently owes money.

23. The letters also state that the “current creditor” is “Capital One, N.A.,” but direct that payments to be made to “Kohl's Department Stores Inc.,” who is identified as “creditor.”

24. Both Exhibit A and Exhibit B also state that FMS has been authorized by “Kohl's Department Stores Inc.” to offer a settlement of the debt.

25. Kohl's and Capital One are two distinct business entities. Capital One is one of the largest consumer credit card issuers in the United States. See <https://www.capitalone.com/>; Kohl's is a "department store" retailer. <http://www.kohls.com/>.

26. The unsophisticated consumer would have no idea whether Kohl's Department Stores Inc. or Capital One, N.A. currently owned the debt or who to contact with questions.

27. The unsophisticated consumer would have no idea whether Kohl's actually has the authority to settle the account balance for less than the amount owed if Capital One is the creditor.

28. FMS's misrepresentation is a material false, misleading or confusing statement.

29. Misrepresentation of the creditor's identity is a misrepresentation of the character and legal status of the debt.

30. Even a more sophisticated consumer (or his attorney), who might understand that debts can be transferred, bought and sold, would not be able to determine who actually holds the debt from reading Exhibit A and Exhibit B.

31. Plaintiff was confused by Exhibits A-B.

32. The unsophisticated consumer would be confused by Exhibits A-B.

33. Plaintiff had to spend time and money investigating Exhibits A-B.

34. Plaintiff had to take time to obtain and meet with counsel, including traveling 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 A-B.

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

36. 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”).

37. 15 U.S.C. § 1692e generally prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

38. 15 U.S.C. § 1692e(2)(a) specifically prohibits the “false representation of the character, amount, or legal status” of an alleged debt.

39. 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.”

40. FMS violated 15 U.S.C. §§ 1692e, 1692e(2)(a) and 1692e(10).

COUNT I – FDCPA

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

42. Exhibits A and B identify the “Current Creditor” as “Capital One, N.A.”

43. Exhibits A and B identify the “Creditor” as “Kohl's Department Stores, Inc.”

44. Exhibits A and B also state that FMS is authorized by Kohl’s Department Stores Inc. with respect to the debt listed in Exhibit A and Exhibit B to make a settlement offer and that payments should be made to “Kohl's Department Stores Inc.”

45. Exhibit A and Exhibit B do not disclose the actual identity of the creditor to the consumer in a manner that is not confusing.

46. The language in FMS’s letters is false, misleading and confusing to the unsophisticated consumer, in that the letter fails to state the name of the creditor in a clear, non-confusing manner.

47. Defendant’s misstatement of the name of the creditor is a false representation or deceptive means to collect or attempt to collect any debt.

48. Defendant’s misstatement of the name of the creditor is a false and misleading statement of the character and legal status of the alleged debt.

49. The Defendant has therefore violated 15 U.S.C. §§ 1692e, 1692e(2)(a), and 1692e(10).

CLASS ALLEGATIONS

50. Plaintiff brings this action on behalf of a Class, consisting of (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter in the form represented by Exhibit A or Exhibit B to the complaint, (c) seeking to collect a debt for personal, family or household purposes, (d) on or after December 9, 2015, up to and including December 9, 2016, (e) that was not returned by the postal service.

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

52. There are questions of law and fact common to the members of the classes, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether the Defendant complied with 15 U.S.C. §§ 1692e, 1692e(2)(a), and 1692e(10).

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

54. 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.

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

JURY DEMAND

56. 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: December 9, 2016

ADEMI & O'REILLY, LLP

By: s/ John D. Blythin
Shpetim Ademi (SBN 1026973)
John D. Blythin (SBN 1046105)
Mark A. Eldridge (SBN 1089944)
Denise L. Morris (SBN 1097911)
3620 East Layton Avenue
Cudahy, WI 53110
(414) 482-8000
(414) 482-8001 (fax)
sademi@ademilaw.com
jblythin@ademilaw.com
meldridge@ademilaw.com
dmorris@ademilaw.com

EXHIBIT A

PO BOX 707600
TULSA, OK 74170-7600

IF PAYING BY VISA OR MASTERCARD FILL OUT BELOW

CHECK CARD USING FOR PAYMENT

VISA MasterCard

CARD NUMBER	AMOUNT
CARD HOLDER NAME	EXP. DATE
SIGNATURE	CURRENT BALANCE \$288.29

April 18, 2016

JON J BRAUN
9621 S BURRELL ST
OAK CREEK, WI 53154-5174

FMS INC.
PO BOX 707600
TULSA, OK 74170-7600

8893 - 5050 - 266

*** Detach Upper Portion And Return With Payment ***



PO BOX 707600
TULSA, OK 74170-7600
Toll Free: 866-323-8205

Office Hours:
Mon - Thurs 8:00AM to 9:00PM CST
Friday 8:00AM to 5:00PM CST
Saturday 9:00AM to 1:00PM CST

Street Address: FMS INC. • 4915 South Union Avenue • Tulsa • Oklahoma • 74107

50% SETTLEMENT OFFER

April 18, 2016

Dear Jon J Braun,

This is to inform you that the creditor, as listed, has placed your account with this agency with the full intention of settling this debt.

We have been authorized by KOHL'S DEPARTMENT STORES INC. to offer you a 50% settlement to pay your outstanding balance, as shown. We can offer payment arrangements on this settlement offer to assist you in clearing this account in six(6) monthly installments.

Take advantage of this offer by contacting us at 866-323-8205 to make arrangements to settle your account.

* Any returned payment will be represented electronically.

Your payment should be made payable to KOHL'S DEPARTMENT STORES INC. and mailed to the address on the tear-off portion of this letter.

We also accept payment by MoneyGram, Visa, and Mastercard. Call us at 866-323-8205 for information on these easy methods of payment.

IMPORTANT NOTIFICATION PER FEDERAL LAW
THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

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

Account Summary

Creditor
KOHL'S DEPARTMENT STORES INC.
Customer No
xxxxxxxx5352
Original Creditor
CAPITAL ONE N.A.
Current Creditor
CAPITAL ONE N.A.
Account Of
JON J BRAUN
Account No
8893
Total Balance Due:
\$288.29
Settlement Amount
\$144.15

Benefits of Paying

- Take up to 6 months to settle your obligation.
- Settle your past-due obligation at a discounted rate.
- Satisfaction that your obligation is resolved.
- Collection efforts cease.

CALL US AT 866-323-8205





Exhibit B

PO BOX 707600
TULSA, OK 74170-7600


15

IF PAYING BY VISA OR MASTERCARD FILL OUT BELOW
CHECK CARD USING FOR PAYMENT

 <input type="checkbox"/>	 <input type="checkbox"/>
CARD NUMBER	AMOUNT
CARD HOLDER NAME	EXP. DATE
SIGNATURE	CURRENT BALANCE \$288.29



May 25, 2016


JON J BRAUN
3734A S 14th St
Milwaukee, WI 53221-1644


FMS INC.
PO BOX 707600
TULSA, OK 74170-7600

893 - 5050 - 266

*** Detach Upper Portion And Return With Payment ***



PO BOX 707600
TULSA, OK 74170-7600
Toll Free: 866-323-8205

Office Hours:
Mon - Thurs 8:00AM to 9:00PM CST
Friday 8:00AM to 5:00PM CST
Saturday 9:00AM to 1:00PM CST

Street Address: FMS INC. • 4915 South Union Avenue • Tulsa • Oklahoma • 74107

50% SETTLEMENT OFFER

May 25, 2016

Dear Jon J Braun,

This is to inform you that the creditor, as listed, has placed your account with this agency for collection efforts.

We have been authorized by KOHL'S DEPARTMENT STORES INC. to offer you a 50% settlement to pay your outstanding balance, as shown. We can offer payment arrangements on this settlement offer to assist you in clearing this account in six(6) monthly installments.

Take advantage of this offer by contacting us at 866-323-8205 to make arrangements to settle your account.

* Any returned payment will be represented electronically.

Your payment should be made payable to KOHL'S DEPARTMENT STORES INC. and mailed to the address on the tear-off portion of this letter.

We also accept payment by MoneyGram, Visa, and Mastercard. Call us at 866-323-8205 for information on these easy methods of payment.

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Account Summary	
Creditor	KOHL'S DEPARTMENT STORES INC.
Customer No	xxxxxxxx5352
Original Creditor	CAPITAL ONE N.A.
Current Creditor	CAPITAL ONE N.A.
Account Of	JON J BRAUN
Account No	893
Total Balance Due:	\$288.29
Settlement Amount	\$144.15



266
FMS_Tulsa.wfd
649236 • 00004858

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
JON BRAUN

DEFENDANTS
FMS, INC.

(b) County of Residence of First Listed Plaintiff Milwaukee
(EXCEPT IN U.S. PLAINTIFF CASES)

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.

(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

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	<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"/> 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"/> 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"/> 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	<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"/> 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"/> 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"/> 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	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 & Disclosure Act	<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	<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"/> 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	<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	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<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"/> 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"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
		PRISONER PETITIONS		
		<input type="checkbox"/> 510 Motions to Vacate Sentence		
		Habeas Corpus:		
		<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 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

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

December 9, 2016 s/ John D. Blythin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IEP _____ 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

JON BRAUN

Plaintiff

v.

FMS, INC.

Defendant

)
)
)
)
)
)
)

Civil Action No. 16-cv-

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) FMS, 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 received 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 plaintiff's attorney, whose name and address are:

John D. Blythin
ADEMI & O'REILLY, LLP
3620 E. LAYTON AVE.
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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 16-cv-

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons 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 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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FMS, Inc. Hit with FDCPA Class Action](#)
