

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

DAVID W. VENESS and JULIE K. VENESS,
on behalf of themselves and others similarly situated,

Plaintiffs,

Case No.: 17-cv-338

HEYWOOD, CARI, & ANDERSON, S.C.

Class Action Complaint

Defendant,

Jury Trial Demanded

NATURE OF THE ACTION

1. This is a class action under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*

2. Congress enacted the FDCPA in 1977 to “eliminate abusive debt collection practices by debt collectors,” 15 U.S.C. § 1692(e), and in response to “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,” which Congress found to have contributed “to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692(a).

3. As the Consumer Financial Protection Bureau (“CFPB”)—the federal agency tasked with enforcing the FDCPA—recently explained, “[h]armful debt collection practices remain a significant concern today. The CFPB receives more consumer complaints about debt collection practices than about any other issue.”¹

4. To combat this serious problem in the debt collection industry, the FDCPA requires debt collectors to send consumers “validation notices” containing certain information about their

¹ See Brief for the CFPB as Amicus Curiae, Dkt. No. 14, p. 10, *Hernandez v. Williams, Zinman, & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014).

alleged debts and consumers' rights. 15 U.S.C. § 1692g(a). A debt collector must send this notice “[w]ithin five days after the *initial communication* with a consumer in connection with the collection of any debt,” unless the required information was “contained in the initial communication or the consumer has paid the debt.” *Id.*, § 1692g(a) (emphasis added).

5. As noted by the CFPB and the Federal Trade Commission, “this validation requirement was a ‘significant feature’ of the law that aimed to ‘eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid,’” *see Hernandez*, No. 14-15672, at 5 (quoting S. Rep. No. 95-382, at 4 (1977)), and to guarantee that consumers would receive adequate notice of their legal rights. *See* S. Rep. No. 382, 95th Cong., 1st Sess. 4, 8, *reprinted in* 1977 U.S. Code Cong. & Admin. News 1695, 1699, 1702.

6. This case arises out of the antiquated practice of serving a validation notice on a consumer who is a defendant in a state court debt collection lawsuit at the same time the debt collector serves the summons and complaint on the consumer.

7. This practice appears to have originated out of a previous lack of clarity as to whether a state court complaint to collect a consumer debt was an “initial communication” under the FDCPA. *Compare, e.g., Vega v. McKay*, 351 F.3d 1334, 1337 (11th Cir. 2003) (holding that a summons and complaint do not constitute “initial communications” triggering the debt validation notice requirements of § 1692g), *with Thomas v. Law Firm of Simpson & Cybak*, 392 F.3d 914, 920 (7th Cir. 2004) (finding that a summons and complaint served in a state court action constitute an “initial communication” under the FDCPA), *superseded by statute as stated in Beler v. Blatt, Hasenmiller, Leibsker & Moore, LLC*, 480 F.3d 470, 472 (7th Cir. 2007).²

² Internal citations and quotations are omitted, and emphasis is added, unless otherwise noted.

8. But in 2006, the FDCPA was amended to clearly articulate that “[a] communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).” 15 U.S.C. § 1692g(d); *see also Beler*, 480 F.3d at 473 (“A recent amendment nullified the holding of *Thomas*: legal pleadings no longer need be preceded or accompanied by verification notices. Pub. L. 109-351, 120 Stat. 2006 (Oct. 13, 2006), adding 15 U.S.C. § 1692g(d)”).

9. Nonetheless, over 10 years later, some debt collectors continue to attach validation notices to summonses and complaints they file and serve on consumers. This unnecessary practice creates numerous risks and confusion for the consumers who are the targets of the debt collection activity.

10. For instance, because a state-court complaint is not an initial communication, service of a complaint triggers neither a debt collector’s obligations under 15 U.S.C. § 1692g, nor a consumer’s concomitant rights under that provision of the FDCPA. Thus, by serving a validation notice with a summons and complaint, the debt collector misleads the consumer into believing the consumer has certain rights under the law that the consumer does not have.

11. Moreover, the timing requirements for responding to a complaint in many state courts are often shorter in duration than the timing requirements for disputing a debt under 15 U.S.C. § 1692g. As a result, serving a validation notice with a summons and complaint in such jurisdictions is likely to confuse the consumer as to when and how the consumer needs to respond to the complaint, and in a worst-case scenario, can result in the consumer missing the deadline to respond to the complaint. *See Thomas*, 392 F.3d at 919 (“Sending the notice along with the pleadings, or shortly thereafter, might also confuse the debtor. A debtor must comply with deadlines imposed by court rules and judges, even if that debtor has requested verification of the

debt. While the § 1692g notice indicates that the debtor has 30 days to dispute his debt, in federal court a defendant must answer a complaint within 20 days of its filing. Failing to timely file an answer could result in a default judgment. Thus, the validation notice could potentially give a debtor the false impression that it has 30 days before it is required to take any action in the lawsuit.”).

12. Upon information and belief, Heywood, Cari & Anderson, S.C. (“Defendant”) routinely serves validation notices on consumers in conjunction with the service of summonses and complaints to collect consumer debt, in violation of the FDCPA.

13. As a result of these violations, David W. Veness and Julie K. Veness (“Plaintiffs”) bring this case as a class action seeking damages for themselves and others similarly situated.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.

15. Venue is proper before this Court under 28 U.S.C. § 1391(b)(2), where the events giving rise to Plaintiffs’ action occurred in this this District, and where Defendant transacts business, and has its principal offices, in this District.

PARTIES

16. Plaintiffs are natural persons who reside in Sawyer County, Wisconsin.

17. As such, Plaintiffs are each a “consumer” as defined 15 U.S.C. § 1692a(3).

18. Plaintiffs are obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, a creditor other than Defendant.

19. Plaintiffs’ obligation, or alleged obligation, owed or due, or asserted to be owed or due, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—

namely, promissory notes in favor of the Unites States acting through Rural Housing Service, Successor in Interest to Farmers Home Administration (the “RHS”) (the “Debt”).

20. Defendant is a law firm based in Hudson, Wisconsin.

21. Defendant is an entity that at all relevant times was engaged, by use of the mails telephone, and/or credit reporting, in the business of attempting to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).

22. Upon information and belief, at the time Defendant was hired to collect the alleged Debt from Plaintiffs, the Debt was in default, or Defendant treated the Debt as if it was in default from the time that Defendant acquired it for collection.

23. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or to regularly collect or attempt to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

24. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

25. On March 14, 2017, Defendant served Plaintiffs with a summons and mortgage foreclosure complaint (the “Collection Complaint”). A true and correct copy of the Collection Complaint, filed in Wisconsin state court, is attached as Exhibit A.³

26. The summons advised Plaintiffs, in pertinent part,

Within 20 days of receiving this Summons (45 days for the State of Wisconsin and 60 days for United States), you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the requirements of the Statutes. The Answer must be sent or delivered to the Clerk of the Court whose address is Courthouse, 10610 Main street, Suite 74, Hayward, WI 54843, and to Samuel R. Cari, Plaintiff’s attorney, whose address is Heywood, Cari & Anderson, S.C., 816 Dominion Drive, Suite 100, P.O. Box 125, Hudson, Wisconsin 54016. You may have an attorney help or represent you.

³ Plaintiffs have not included the exhibits to the foreclosure complaint, which are irrelevant to the instant suit.

If you do not provide a proper Answer within 20 days (if State agencies involved: (45 days for State of Wisconsin and 60 days for United States), the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be correct in the Complaint.

See Ex. A.

27. Attached to the Collection Complaint was a document titled "Notice Required by the Fair Debt Collection Practices Act (The Act), 15 U.S.C. Section 192 as Amended." A true and correct copy of the "FDCPA Notice" is attached as Exhibit B.

28. The FDCPA Notice provided:

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT (THE ACT),
15 U.S.C. SECTION 1692 AS AMENDED**

1. Heywood, Cari & Anderson, S.C. is the creditor's law firm and is attempting to collect a debt for the creditor. Any information the debtor provides to Heywood, Cari & Anderson, S.C. will be used for that purpose
2. The amount of the debt is stated in Paragraph 16 of the Complaint attached hereto.
3. The Plaintiff, as named in the attached Summons and Complaint, is the creditor to whom the debt is owed.
4. The debt described in the Complaint attached hereto and evidenced by the copy of the mortgage note attached hereto will be assumed to be valid by Heywood, Cari & Anderson, S.C., unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
5. If the debtor notifies Heywood, Cari & Anderson, S.C. in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, Heywood, Cari & Anderson, S.C. will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by Heywood, Cari & Anderson, S.C.
6. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to Heywood, Cari & Anderson, S.C. within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by Heywood, Cari & Anderson, S.C.
7. Written request should be addressed to Heywood, Cari & Anderson, S.C., 816 Dominion Drive, Suite 100, P.O. Box 125, Hudson, Wisconsin 54016.

29. Upon information and belief, Defendant, as a matter of pattern and practice, includes the FDCPA Notice as an attachment to all debt collection complaints that it serves on Wisconsin consumers.

CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action as a class action under Federal Rules of Civil Procedure 23(a) and (b) on behalf of themselves and a class of similarly situated individuals as defined below:

All persons in the state of Wisconsin to whom, within one year before the date of this complaint, Heywood, Cari & Anderson, S.C. sent a “Notice Required by the Fair Debt Collection Practices Act (The Act), 15 U.S.C. Section 192 as Amended” as part of a lawsuit it filed against such person in connection with the collection of a consumer debt.

Excluded from the class is Defendant, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had a controlling interest.

31. Upon information and belief, the proposed class is so numerous that joinder of all members is impracticable. The exact number of members of the class is unknown to Plaintiffs at this time and can only be determined through appropriate discovery. The proposed class is ascertainable in that is defined by reference to objective criteria. In addition, upon information and belief, the names and addresses of all members of the class can be identified in business records maintained by Defendant and in public records.

32. Plaintiffs’ claims are typical of the claims of the members of the class because Plaintiffs and all class members’ claims originate from the same conduct, practice and procedure on the part of Defendant, and Plaintiffs have suffered the same injuries as each member of the class. Like all members of the proposed class, Defendant sent Plaintiffs a “Notice Required by the

Fair Debt Collection Practices Act (The Act), 15 U.S.C. Section 192 as Amended” as part of a lawsuit filed by it against Plaintiffs in connection with the collection of a consumer debt.

33. Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel experienced and competent in class action litigation.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is likely impracticable. Furthermore, as the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation may make it impracticable for the members of the class to individually redress the wrongs done to them. There will be little difficulty in the management of this action as a class action.

35. Issues of law and fact common to the members of the class predominate over any questions that may affect only individual members, in that Defendant has acted on grounds generally applicable to the class. Among the issues of law and fact common to the class are:

- a. Defendant’s violations of the FDCPA;
- b. Whether including a validation notice when serving a complaint and summons on a consumer constitutes a false, deceptive or misleading practice;
- c. Whether Defendant is a “debt collector” as defined by the FDCPA;
- d. the availability of declaratory relief;
- e. the availability of statutory penalties; and
- f. the availability of attorneys’ fees and costs.

36. Absent a class action, Defendant’s violations of the law will be allowed to proceed without a full, fair, judicially supervised remedy.

COUNT I: VIOLATION OF THE FDCPA, 15 U.S.C. § 1692e(10)

37. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-36.

38. The FDCPA at 15 U.S.C. § 1692e(10) provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

39. Defendant served the FDCPA Notice on Plaintiffs at the same time it served the Collection Complaint.

40. The FDCPA Notice advised Plaintiffs that “[t]he debt described in the Complaint attached hereto and evidenced by the copy of the mortgage note attached hereto will be assumed to be valid by Heywood, Cari & Anderson, S.C., unless the debtor, within thirty (30) days after receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.” *See Ex. B.*

41. The FDCPA Notice further advised Plaintiffs that “[i]f the debtor notifies Heywood, Cari & Anderson, S.C. in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, Heywood, Cari & Anderson, S.C. will obtain verification of the debt and a copy of the verification will be mailed to the debtor by Heywood, Cari & Anderson, S.C.” *Id.*

42. The FDCPA Notice concluded by advising Plaintiffs that any “[w]ritten request should be addressed to Heywood, Cari & Anderson, S.C., 816 Dominion Drive, Suite 100, P.O. Box 125, Hudson, Wisconsin 54016.” *Id.*

43. These representations are false and misleading because they provide a misleading impression of the process for responding to a lawsuit under Wisconsin law. Specifically, Plaintiffs only had 20 days—not 30—to respond to the complaint without risking default judgment.

44. Moreover, the summons advised Plaintiffs to prepare a “written answer” to both the state court and to Defendant, but the FDCPA Notice only directed Plaintiffs to send their “written request” to Defendant. *See* Ex. A; Ex. B.

45. As a result, and given the conflict between the time period in the summons (20 days) and the time period in the FDCPA Notice (30 days), the least sophisticated consumer would be confused as to when and how she would need to respond to the Collection Complaint.

46. Upon being served with the Collection Complaint, Plaintiffs were, in fact, confused about when and how they needed to respond to the Collection Complaint.

47. Finally, Defendant’s representations were false and misleading because they purported to provide Plaintiffs with rights under the law that Plaintiffs did not have, and could not enforce.

48. For instance, as the Collection Complaint was not an “initial communication” within the meaning of the FDCPA, Plaintiffs neither had the legal right to dispute the debt within 30 days after the Collection Complaint was served on them, nor would Defendant be legally obligated to obtain verification of the Debt and provide a copy of such verification to Plaintiffs had Plaintiffs disputed the debt in writing within the 30-day period. Nonetheless, Defendant falsely advised Plaintiffs that they had these exact rights pursuant to the FDCPA.

49. As a result of the foregoing, Defendant violated 15 U.S.C. § 1692e(10).

50. The harm suffered by Plaintiffs is particularized in that the illegal debt collection conduct was targeted at them personally and regarded their personal alleged debt. Likewise,

Defendant's actions created a concrete harm in that they constituted a debt collection practice that Congress prohibited because such practice is likely to mislead consumers, causing them to misunderstand their rights. And here, upon receiving the Collection Complaint and FDCPA Notice, Plaintiffs were confused as to what their rights were and when and how to respond to the Collection Complaint.

COUNT II: VIOLATION OF THE FDCPA, 15 U.S.C. § 1692g(a)(3)

51. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-36.

52. The FDCPA at 15 U.S.C. § 1692g(a)(3) provides:

(a) 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 –

(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;

53. To the extent that Defendant contends that the FDCPA Notice should be construed as Defendant's initial communication with Plaintiffs in connection with collection of the Debt, the FDCPA Notice did not contain the proper disclosures required by 15 U.S.C. § 1692g(a)(3), and Defendant did not provide such disclosures within five days thereafter.

54. Specifically, the FDCPA Notice violated 15 U.S.C. § 1692g(a)(3) because it required disputes to be in writing when there is no requirement under 15 U.S.C. § 1692g(a)(3) that disputes be made in writing. *See, e.g., Campbell v. Hall*, 624 F. Supp. 2d 991, 995, 1000 (N.D. Ind. 2009) (“This Court agrees with the reasoning of the Ninth Circuit in *Camacho* and the weight

of the authority from district courts which have held that § 1692g(a)(3) of the FDCPA should be interpreted to allow consumers to dispute the validity of their debt in ways other than writing.”).

55. As a result, Defendant violated 15 U.S.C. § 1692g(a)(3).

56. The harm suffered by Plaintiffs is particularized in that the illegal debt collection conduct was targeted at them personally and regarded their personal alleged debt. Likewise, Defendant’s actions created a concrete harm in that they constituted a debt collection practice that Congress prohibited because such practice is likely to mislead consumers, causing them to misunderstand their rights and to not vindicate the protections afforded them by federal law. And here, upon receiving the Collection Complaint and FDCPA Notice, Plaintiffs were confused as to what their rights were.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a. Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- b. Adjudging and declaring that Defendant violated 15 U.S.C. § 1692e(10) or, alternatively, 15 U.S.C. § 1692g(a)(3);
- c. Awarding Plaintiffs and members of the class statutory damages pursuant to 15 U.S.C. § 1692k;
- d. Enjoining Defendant from future violations of 15 U.S.C. § 1692e(10) and 15 U.S.C. § 1692g(a)(3) with respect to Plaintiffs and the class;
- e. Awarding Plaintiffs and members of the class their reasonable costs and attorneys’ fees incurred in this action, including expert fees, pursuant to 15 U.S.C. § 1692k and Rule 23 of the Federal Rules of Civil Procedure;

f. Awarding Plaintiffs and the members of the class any pre-judgment and post-judgment interest as may be allowed under the law; and

g. Awarding other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: May 5, 2017

Respectfully submitted,

/s/ Matthew C. Lein

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Counsel for Plaintiffs and the proposed class

USA acting through Rural Housing Service vs. David W. Veness et al

Electronic Filing Notice

Case No. 2017CV000041
Class Code: Foreclosure of Mortgage

FILED
03-10-2017
Clerk of Circuit Court
Sawyer County, Wis.
2017CV000041

JULIE K. VENESS
10313W BLOMBERG ROAD
EXELAND WI 54835

Case number 2017CV000041 was electronically filed with/converted by the Sawyer County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 37ab83

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 715-634-4887 .

BY THE COURT:

Electronically signed by Sarah R Jungbluth
Clerk of Circuit Court

03-10-2017
Date

Date 3/14/17
Time 4:05pm
Clair Handberg
Private Process Service

FILED
03-10-2017
Clerk of Circuit Court
Sawyer County, Wis.

STATE OF WISCONSIN

CIRCUIT COURT

SAWYER COUNTY 00041

United States of America acting through
Rural Housing Service (RHS), Successor in Interest
to Farmers Home Administration (FmHA)
5417 Clem's Way, Stevens Point, WI 54482,
Plaintiff,

SUMMONS

Case No. _____
Classification: 30404

vs.

David W. Veness
10313W Blomberg Road
Exeland, WI 54835,

Julie K. Veness
10313W Blomberg Road
Exeland, WI 54835,

Sawyer County
c/o Sawyer County Clerk
10610 Main Street, Suite 10
Hayward, WI 54843,

Community Bank of Northern Wisconsin
810 Miner Avenue West
Ladysmith, WI 54848,

St. Joseph's Hospital of Marshfield, Inc..
611 St. Joseph Avenue
Marshfield, WI 54449,

Marshfield Clinic, Inc.
c/o Jerard J. Jensen, Registered Agent
1000 North Oak Avenue
Marshfield, WI 54449,

Defendants.

THE STATE OF WISCONSIN

To each person named above as Defendant:

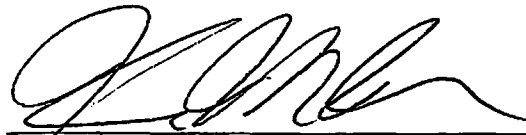
You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons (45 days for State of Wisconsin and 60 days for United States), you must respond with a written answer, as that term is used in Chapter 802 of the

Wisconsin Statutes, to the requirements of the Statutes. The Answer must be sent or delivered to the Clerk of Court whose address is Courthouse, 10610 Main Street, Suite 74, Hayward, WI 54843, and to Samuel R. Cari, Plaintiff's attorney, whose address is Heywood, Cari & Anderson, S.C., 816 Dominion Drive, Suite 100, P.O. Box 125, Hudson, Wisconsin 54016. You may have an attorney help or represent you.

If you do not provide a proper Answer within 20 days (if State agencies involved: (45 days for State of Wisconsin and 60 days for United States), the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by a garnishment or seizure of property.

Dated this 9th day of March, 2017.



Kevin M. Urbik (WI Bar #1081430)
on behalf of Samuel R. Cari (WI Bar #1016909)
Attorneys for Plaintiff
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Hudson, WI 54016
Tel: (715) 386-5551

FILED
03-10-2017
Clerk of Circuit Court
Sawyer County, Wis.
2017CV000041

STATE OF WISCONSIN CIRCUIT COURT

United States of America acting through
Rural Housing Service (RHS), Successor in Interest
to Farmers Home Administration (FmHA)
5417 Clem's Way, Stevens Point, WI 54482,
Plaintiff,

COMPLAINT

Case No. _____
Classification: 30404

v.

David W. Veness
10313W Blomberg Road
Exeland, WI 54835,

Julie K. Veness
10313W Blomberg Road
Exeland, WI 54835,

Sawyer County
c/o Sawyer County Clerk
10610 Main Street, Suite 10
Hayward, WI 54843,

.Community Bank of Northern Wisconsin
810 Miner Avenue West
Ladysmith, WI 54848,

St. Joseph's Hospital of Marshfield, Inc.
611 St. Joseph Avenue
Marshfield, WI 54449,

Marshfield Clinic, Inc.
c/o Jerard J. Jensen, Registered Agent
1000 North Oak Avenue
Marshfield, WI 54449,

Defendants.

NOW COMES the above Plaintiff, by its attorneys, HEYWOOD, CARI & ANDERSON, S.C. by Samuel R. Cari as and for a Complaint in the above-entitled matter alleges as follows:

1. That the Plaintiff is a sovereign entity and the body politic acting through Rural Housing Service (RHS), Successor in Interest to the Farmers Home Administration, with its office at 5417 Clem's Way, Stevens Point, WI 54482.

2. That the Defendants, David W. Veness and Julie K. Veness, hereinafter referred to as the "Mortgagor Defendants" are adult residents of Sawyer County, residing at 10313W Blomberg Road, Exeland, WI 54835.

3. That Defendant, Sawyer County, maintains an office at 10610 Main Street, Suite 10, Hayward, Wisconsin 54843.

4. That Defendant, Community Bank of Northern Wisconsin, maintains an office at 810 Miner Avenue West, Ladysmith, WI 54848.

5. That Defendant, St. Joseph's Hospital of Marshfield, Inc., maintains an office at 611 St. Joseph Avenue, Marshfield, WI 54449.

6. That Defendant, Marshfield Clinic, Inc., maintains an office at 1000 North Oak Avenue, Marshfield, WI 54449.

7. That on or about April 20, 1989, Mortgagor Defendants, for value received, executed a Promissory Note to the Plaintiff in the principal sum of \$38,300.00, plus interest at the rate of 9.5% per annum payable in monthly installments of \$318.00 on the 20th day of each month commencing May 20, 1989 and continuing until April 20, 2022, whereby the entire indebtedness would be due and payable, a copy of which is attached hereto as Exhibit "A".

8. That on or about August 25, 1994, Mortgagor Defendants, for value received, executed a Promissory Note to the Plaintiff in the principal sum of \$21,440.00, plus interest at the rate of 7.50% per annum payable in monthly installments of \$147.00 on the 25th day of each month commencing September 25, 1994 and continuing until August 25, 2027, whereby the entire indebtedness would be due and payable, a copy of which is attached hereto as Exhibit "B".

9. That in order to secure payment of said indebtedness of Promissory Note attached hereto as Exhibit "A", Mortgagor Defendants, duly made, executed, acknowledged and delivered to the Plaintiff a real estate Mortgage dated April 20, 1989 whereby they mortgaged, granted, bargained, sold and conveyed to said Plaintiff, lands and premises hereinafter described lying and being in the County of Sawyer, in the State of Wisconsin, and known and designated in said mortgage as:

The North 330 feet of the East 330 feet of the Northeast Quarter of the Northwest Quarter (NE ¼ NW ¼), Section Twenty-three (23), Township Thirty-seven (37) North, Range Seven (7) West, Town of Weirgor, Sawyer County, Wisconsin.

10. That a true and correct copy of said Mortgage is attached hereto, marked Exhibit "C" and made a part of this Complaint as though duly set forth at length herein.

11. That said Mortgage was duly acknowledged so as to entitle the same to be recorded and the same was duly recorded in the Office of the Register of Deeds for Sawyer County, Wisconsin on April 20, 1989, in Volume 432 of Records, Pages 328-331, as Document No. 213397.

12. That in order to secure payment of said indebtedness of Promissory Note attached hereto as Exhibit "B", Mortgagor Defendants, duly made, executed, acknowledged and delivered to the Plaintiff a real estate Mortgage dated August 25, 1994 whereby they mortgaged, granted, bargained, sold and conveyed to said Plaintiff, lands and premises hereinafter described lying and being in the County of Sawyer, in the State of Wisconsin as described above. A true and correct copy of said Mortgage is attached hereto, marked Exhibit "D" and made a part of this Complaint as though duly set forth at length herein. Said Mortgage was duly acknowledged so as to entitle the same to be recorded and the same was duly recorded in the Office of the Register of Deeds for Sawyer County, Wisconsin on September 26, 1994, in Volume 540 of Records, Pages 402-405, as Document No. 244291.

13. That on April 20, 1989 and August 25, 1994, the Mortgagor Defendants further executed a Subsidy Repayment Agreement attached hereto as Exhibit "E", and that on or about June 13, 1996, the Mortgagor Defendants executed an Interest Credit Agreement attached hereto as Exhibit "F".

14. The Mortgagor Defendants have failed to comply with the terms and conditions of the aforesaid Note and Mortgage by failing and neglecting to pay the monthly installments since January 19, 2015.

15. That by reasons of the aforesaid default on the part of the Mortgagor Defendants, the Plaintiff heretofore and before the commencement of this action exercised its option as provided in the Note and Mortgage to declare the whole of the principal and interest thereon due and payable forthwith; that the Plaintiff mailed a notice to the Mortgagor Defendants, addressed to their residence addresses, certified mail and return receipt requested, specifying the Mortgagor Defendants' breach and notifying the Mortgagor Defendants of the acceleration of said indebtedness. A copy of said notice is attached hereto as Exhibit "G".

16. That there is now justly due and owing to Plaintiff upon said Note and Mortgage the following sum:

Principal (Loan #1654645)	\$34,478.38
Interest	\$7,529.03
Total Subsidy	\$33,941.68
Late Charges	\$75.85
Fees currently assessed	<u>\$4,535.38</u>
Total	\$80,560.32
Principal (Loan #1654658)	\$18,154.86
Interest	\$3,129.75
Late Charges	<u>\$41.20</u>
Total	\$21,325.81

17. That no proceedings have been had at law or otherwise for the recovery of the sum secured by said mortgage note and mortgage.

18. That Defendant, Sawyer County, may also claim some interest in or lien upon the premises by virtue of a second Mortgage signed by Mortgagor Defendants on August 5, 2002. The original principal sum of this second Mortgage was \$6,055.00. The Mortgage was recorded on August 23, 2002, in Volume 813 of Records on Pages 502-503, as Document No. 302706.

19. That Defendant, Community Bank of Northern Wisconsin, may also claim some interest in or lien upon the premises by virtue of a third Mortgage signed by Mortgagor Defendants on April 13, 2009. The original principal sum of this second Mortgage was \$35,000.00. The Mortgage was recorded on April 20, 2009, as Document No. 359700.

20. That Defendant, St. Joseph's Hospital of Marshfield, Inc., may claim some interest or lien upon the premises by virtue of a Judgment entered against David W. Veness and Julie K. Veness, in the amount of \$10,235.13 dated August 16, 2010, as Case No. 10 CV 141.

21. That Defendant, Marshfield Clinic, Inc., may claim some interest or lien upon the premises by virtue of a Judgment entered against David W. Veness and Julie K. Veness, in the amount of \$624.21 dated December 12, 2007, as Case No. 07 SC 417.

22. That the Plaintiff herein expressly alleges that said mortgaged property covers real estate of twenty acres or less and is an owner-occupied single family residence property, and pursuant to §846.10 Wis. Stats., Plaintiff is therefore entitled to proceed to Sheriff's Sale upon the expiration of twelve (12) months from the date of entry of Judgment and to give notice of such sale as provided by law within such twelve-month period.

23. That the interest, claim or lien of any of the Defendants named in this Complaint are subsequent, subordinate and junior to the lien and claim of Plaintiff's mortgage in this case.

WHEREFORE, Plaintiff demands judgment of foreclosure and sale of said mortgaged premises as provided by law; that the amounts due the Plaintiff for principal, interest, late charges, any advances for taxes, insurance premiums, costs, disbursements and attorney's fees be adjudged and determined; that the Defendants, and each of them and all persons claiming under them, may be barred and foreclosed of all right, claim, lien and equity of redemption in or to said premises, except the right to redeem the same before the sale, as provided by law; that the said premises, or such part thereof as may be sufficient to pay the amounts due upon said Note and Mortgage to the Plaintiff, be adjudged to be sold, unless redeemed within the time and in the manner as provided by law; with interest, to the time of such payment, together with the costs and disbursements of this action, and reasonable attorney's fees and such additional amounts as Plaintiff may advance for the payment of taxes and insurance upon said premises with interest on the same as allowed by law, from the date of judgment, and out of the proceeds of such sale so far as to the monies arising out of the sale and proceeds applicable thereto will pay the same; that the Defendants, and each of them, be enjoined from committing any waste upon said premises or doing any other act that may impair the value of the same between the date of said judgment and the date the sale of said premises is confirmed by this Court; and that in the event that there is a sale of said premises, as aforesaid, the Defendants, and all persons claiming under them, be barred and foreclosed of all right, title and equity of redemption in or to the premises so sold; and for such other and further Order, judgment or relief as provided by law in such cases and as may be just and equitable.

Dated this 9th day of March, 2017.



Kevin M. Urbik (WI Bar #1081430)
on behalf of Samuel R. Cari (WI Bar #1016909)
Attorneys for Plaintiff
Heywood, Cari & Anderson, S.C.
816 Dominion Dr., Suite 100, P.O. Box 125
Hudson, WI 54016
Tel: (715) 386-5551

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT (THE ACT),
15 U.S.C. SECTION 1692 AS AMENDED**

1. Heywood, Cari & Anderson, S.C. is the creditor's law firm and is attempting to collect a debt for the creditor. Any information the debtor provides to Heywood, Cari & Anderson, S.C. will be used for that purpose
2. The amount of the debt is stated in Paragraph 16 of the Complaint attached hereto.
3. The Plaintiff, as named in the attached Summons and Complaint, is the creditor to whom the debt is owed.
4. The debt described in the Complaint attached hereto and evidenced by the copy of the mortgage note attached hereto will be assumed to be valid by Heywood, Cari & Anderson, S.C., unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
5. If the debtor notifies Heywood, Cari & Anderson, S.C. in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, Heywood, Cari & Anderson, S.C. will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by Heywood, Cari & Anderson, S.C.
6. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a written request to Heywood, Cari & Anderson, S.C. within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by Heywood, Cari & Anderson, S.C.
7. Written request should be addressed to Heywood, Cari & Anderson, S.C., 816 Dominion Drive, Suite 100, P.O. Box 125, Hudson, Wisconsin 54016.

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 NEXT PAGE OF THIS FORM.)

(a) PLAINTIFFS
David W. Veness and Julie K. Veness, on behalf of themselves and others similarly situated,
(b) County of Residence of First Listed Plaintiff Sawyer
(c) Attorneys (Firm Name, Address and Telephone Number)
James L. Davidson, Greenwald Davidson Raddil PLLC, 5550 Glades Road, Suite 500, Boca Raton, FL 33431; (561) 826-5477

DEFENDANTS
Heywood, Carr & Anderson, S.C.
County of Residence of First Listed Defendant St. Croix
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each column contains a list of legal categories with checkboxes.

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 - Transfer
8 Multidistrict Litigation - Direct File

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
Brief description of cause:
Violations of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 05/05/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ James L. Davidson

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP 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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 actual dollar amount 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.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin



David W. Veness and Julie K. Veness, on behalf of themselves and others similarly situated,

Plaintiff(s)

v.

Heywood, Cari & Anderson, S.C.

Defendant(s)

Civil Action No. 17-cv-338

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Heywood, Cari & Anderson, S.C. c/o its registered agent Samuel R. Cari 816 Domino Dr., Suite 100 Hudson, WI 54016

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: James L. Davidson Greenwald Davidson Radbil PLLC 5550 Glades Road, Suite 500 Boca Raton, FL 33431

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. 17-cv-338

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: [Lawsuit: Heywood, Cari, & Anderson Misinforms Consumers of their Rights](#)
