

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEAN LAROCQUE, by and through her
Appointed Power of Attorney, DEIDRE
SPANG, on behalf of herself and all others
Similarly situated

Plaintiff,

v.

TRS RECOVERY SERVICES, INC.,
And
TELECHECK SERVICES, INC.

Defendants.

CIVIL ACTION

Docket No: 2:11-cv-00091-DBH

ANSWER OF DEFENDANTS
TRS RECOVERY SERVICES, INC. AND TELECHECK SERVICES, INC.

NOW COME the Defendants, TRS Recovery Services, Inc. (“TRS”) and TeleCheck Services, Inc. (“TeleCheck”) (collectively “Defendants”) by and through their undersigned counsel and in answer to Plaintiff’s Complaint state as follows:

FIRST DEFENSE

1. Defendants admit Plaintiff purports to sue under the statutes enumerated and purports to bring this action as a class action but deny she is entitled to relief under those statutes or to proceed by way of a class action and otherwise deny the allegations of Paragraph 1 of Plaintiff’s Complaint.

2. Defendants admit the allegations of Paragraph 2 of Plaintiff’s Complaint.

3. Defendants admit the allegations of Paragraph 3 of Plaintiff’s Complaint.

4. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 4 of Plaintiff's Complaint and therefore deny the same.

5. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 5 of Plaintiff's Complaint and therefore deny the same.

6. Defendants deny the allegations of Paragraph 6 of Plaintiff's Complaint. TRS's principal place of business is 5251 Westheimer, Suite 201, Houston, Texas 77056; TRS does regularly attempt to collect debts owed to its affiliate, TeleCheck.

7. Defendants deny the allegations of Paragraph 7 of Plaintiff's Complaint. TeleCheck's principal place of business is 5251 Westheimer, Suite 201, Houston, Texas 77056, and TeleCheck is not regularly engaged in the business of collecting debts.

8. Defendants deny the allegations of Paragraph 8 of Plaintiff's Complaint.

9. Defendants admit that TeleCheck is a specialty consumer reporting agency under FCRA by virtue of some of its business activities.

10. Defendants admit that TRS works to collect debts owed to TeleCheck, that TeleCheck cooperates with TRS in those efforts, and that some communications with consumers will bear both companies' logos, but otherwise deny the allegations of Paragraph 10 of Plaintiff's Complaint.

11. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 11 of Plaintiff's Complaint and therefore deny the same.

12. Defendants admit Plaintiff wrote check 289 dated March 2, 2010 to Rite-Aid, drawn on her York County Federal Credit Union account, but are without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations set forth in Paragraph 12 of Plaintiff's Complaint and therefore deny the same.

13. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations set forth in Paragraph 13 of Plaintiff's Complaint and therefore deny the same.

14. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations set forth in Paragraph 14 of Plaintiff's Complaint and therefore deny the same.

15. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 15 of Plaintiff's Complaint, and therefore deny the same.

16. Defendants admit the allegations of Paragraph 16 of Plaintiff's Complaint.

17. Defendants admit the routing information and account number were transmitted to TeleCheck from the point of sale for purposes of analysis for check acceptance and processing and otherwise deny the allegations of Paragraph 17 of Plaintiff's Complaint.

18. Defendants deny the allegations of Paragraph 18 of Plaintiff's Complaint.

19. Defendants admit that Exhibit A to Plaintiff's Complaint is a correct copy of the letter dated March 15, 2010 from TRS to Plaintiff, but deny that TeleCheck sent the letter. Defendants deny that Paragraph 19 of Plaintiff's Complaint completely sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

20. Defendants admit that Defendants did not communicate with Plaintiff prior to March 15, 2010 regarding check 289 but otherwise deny the allegations of Paragraph 20 of Plaintiff's Complaint.

21. Defendants admit that Exhibit A to Plaintiff's Complaint is a correct copy of the letter dated March 15, 2010 from TRS to Plaintiff. Defendants deny that Paragraph 21 of Plaintiff's Complaint completely sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

22. Defendants admit that Exhibit A to Plaintiff's Complaint is a correct copy of the letter dated March 15, 2010 from TRS to Plaintiff. Defendants deny that Paragraph 22 of Plaintiff's Complaint completely sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

23. Defendants admit that Exhibit A to Plaintiff's Complaint is a correct copy of the letter dated March 15, 2010 from TRS to Plaintiff. Defendants deny that Paragraph 23 of Plaintiff's Complaint completely sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

24. Defendants deny the allegations of Paragraph 24 of Plaintiff's Complaint.

25. Defendants admit that Exhibit A to Plaintiff's Complaint is a correct copy of the letter dated March 15, 2010 from TRS to Plaintiff. Defendants deny that Paragraph 25 of Plaintiff's Complaint completely sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents. Defendants deny any implication that the letter bears a return address from TeleCheck.

26. Defendants admit that Exhibit A to Plaintiff's Complaint is a correct copy of the letter dated March 15, 2010 from TRS to Plaintiff. Defendants deny that Paragraph 26 of

Plaintiff's Complaint completely sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

Defendants deny any implication the March 15, 2010 letter was sent "from TeleCheck" and admit only that TRS included the terms of TeleCheck's privacy notice in TRS's March 15, 2010 letter.

27. Defendants deny the allegations of Paragraph 27 of Plaintiff's Complaint.

28. Defendants admit TRS sends thousands of letters to consumers but otherwise deny the allegations of Paragraph 28 of Plaintiff's Complaint.

29. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 29 of Plaintiff's Complaint, and therefore deny the same.

30. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 30 of Plaintiff's Complaint, and therefore deny the same.

31. Defendants deny the allegations of Paragraph 31 of Plaintiff's Complaint.

32. Defendants deny the allegations of Paragraph 32 of Plaintiff's Complaint.

33. Defendants admit TRS works to collect funds owed to TeleCheck by consumers who make checks that the drawee bank returns unpaid claiming non-sufficient funds and otherwise deny the allegations of Paragraph 33 of Plaintiff's Complaint.

34. Defendants deny the allegations of Paragraph 34 of Plaintiff's Complaint.

35. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations set forth in Paragraph 35 of Plaintiff's Complaint and therefore deny the same.

36. Defendants admit that TeleCheck received a letter dated March 20, 2010 that purports to be signed by Plaintiff, not Mrs. Spang, and deny that the allegations of Paragraph 36 of Plaintiff's Complaint completely or accurately set forth or describe the letter's contents. The March 20, 2010 letter speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

37. Defendants admit that TeleCheck sent Plaintiff a letter dated March 24, 2010, partially attached as Exhibit B to Plaintiff's Complaint, explaining that Plaintiff's check 289 had been returned marked as unpaid due to insufficient funds, which is true, and attaching a true and correct check image stamped "Not Sufficient Funds," and otherwise deny the allegations of Paragraph 37 of Plaintiff's Complaint.

38. Defendants admit Exhibit B to Plaintiff's Complaint is a portion of TeleCheck's correspondence dated March 24, 2010 to Plaintiff but deny it is complete or accurate and otherwise deny the allegations of Paragraph 38 of Plaintiff's Complaint.

39. Defendants deny the allegations of Paragraph 39 of Plaintiff's Complaint.

40. Defendants deny the allegations of Paragraph 40 of Plaintiff's Complaint.

41. Defendants admit Exhibit B to Plaintiff's Complaint is a portion of TeleCheck's correspondence dated March 24, 2010 to Plaintiff but deny it is complete or accurate and otherwise deny the allegations of Paragraph 41 of Plaintiff's Complaint; that correspondence speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

42. Defendants admit Exhibit B to Plaintiff's Complaint is a portion of TeleCheck's correspondence dated March 24, 2010 to Plaintiff but deny it is complete or accurate and otherwise deny the allegations of Paragraph 42 of Plaintiff's Complaint; that correspondence

speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

43. Defendants admit Exhibit B to Plaintiff's Complaint is a portion of TeleCheck's correspondence dated March 24, 2010 to Plaintiff but deny it is complete or accurate and otherwise deny the allegations of Paragraph 43 of Plaintiff's Complaint; that correspondence speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

44. Defendants admit that neither of them has purported to collect money due from Plaintiff to her bank and otherwise are without knowledge or information regarding the truth of the allegations set forth in Paragraph 44 of Plaintiff's Complaint and therefore deny the same. Further responding, Defendants state that they were furnished an image of check 289 bearing a stamp that indicated it had been returned unpaid due to insufficient funds.

45. On information and belief, Defendants deny the allegations of Paragraph 45 of Plaintiff's Complaint.

46. Defendants deny the allegations of Paragraph 46 of Plaintiff's Complaint.

47. Defendants admit that TRS called Plaintiff on March 24, 2010 but deny the remaining allegations of the first sentence of Paragraph 47 of Plaintiff's Complaint. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations of the second sentence of Paragraph 47 of Plaintiff's Complaint and therefore deny the same.

48. Defendants admit that TRS received a letter dated March 25, 2010, purportedly signed by Plaintiff. Defendants deny Paragraph 48 of Plaintiff's Complaint completely or accurately describes such correspondence and otherwise deny the allegations of Paragraph 48 of

Plaintiff's Complaint. The correspondence in question should be referred to in its entirety for a complete and accurate description of its contents. Defendants further state that Paragraph 48 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

49. Defendants admit TRS received on March 29, 2010 a letter bearing a date of March 25, 2010 and purporting to be signed by Plaintiff but to the extent the term "this letter" in Paragraph 49 of Plaintiff's Complaint is meant to incorporate the allegations of Paragraph 48 of Plaintiff's Complaint, Defendants otherwise incorporate their answer to Paragraph 48 in this Paragraph of their Answer. Defendants deny any implication the letter was sent to TeleCheck.

50. Defendants admit that Exhibit C to Plaintiff's Complaint is a correct copy of the letter dated March 26, 2010 from TRS to Plaintiff. Defendants deny that Paragraph 50 of Plaintiff's Complaint completely or accurately sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents. Defendants deny the remaining allegations of Paragraph 50 of Plaintiff's Complaint.

51. Defendants admit that Exhibit C to Plaintiff's Complaint is a correct copy of the letter dated March 26, 2010 from TRS to Plaintiff, but deny that TeleCheck also was an author of the letter. Defendants deny that Paragraph 51 of Plaintiff's Complaint completely or accurately sets forth the contents of that letter, which speaks for itself and should be referred to in its entirety for a complete and accurate description of its contents.

52. Defendants deny the allegations of Paragraph 52 of Plaintiff's Complaint.

53. Defendants admit that TeleCheck made no further contact with Plaintiff, and otherwise deny the allegations of Paragraph 53 of Plaintiff's Complaint.

54. Defendants admit they did not provide a written answer to Exhibit C to Plaintiff's Complaint after it was received on March 29, 2010 and otherwise deny the allegations of Paragraph 54 of Plaintiff's Complaint.

55. Defendants deny the allegations of Paragraph 55 of Plaintiff's Complaint.

56. Defendants deny the allegations of Paragraph 56 of Plaintiff's Complaint.

57. Paragraph 57 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

58. Paragraph 58 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

59. Paragraph 59 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

60. Paragraph 60 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

61. Defendants admit that Plaintiff purports to bring this action individually and as a class action, as alleged but deny that Plaintiff is entitled to do so. Defendants further deny that the putative classes described in Paragraph 61 of Plaintiff's Complaint may be certified.

62. Defendants deny the allegations of Paragraph 62 of Plaintiff's Complaint.

63. Defendants deny the allegations of Paragraph 63 of Plaintiff's Complaint.

64. Defendants deny the allegations of Paragraph 64 of Plaintiff's Complaint.

65. Defendants deny the allegations of Paragraph 65 of Plaintiff's Complaint.

66. Defendants deny the allegations of Paragraph 66 of Plaintiff's Complaint.

67. Defendants deny the allegations of Paragraph 67 of Plaintiff's Complaint.

68. Defendants deny the allegations of Paragraph 68 of Plaintiff's Complaint.

69. Defendants incorporate Paragraphs 1-68 of this Answer as though the same were set forth at length herein.

70. Paragraph 70 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

71. Defendants admit the allegations of Paragraph 71 of Plaintiff's Complaint.

72. Defendants deny the allegations of Paragraph 72 of Plaintiff's Complaint.

73. Defendants deny the allegations of Paragraph 73 of Plaintiff's Complaint.

74. Defendants deny the allegations of Paragraph 74 of Plaintiff's Complaint.

75. Defendants incorporate Paragraphs 1-74 of this Answer as though the same were set forth at length herein.

76. Paragraph 76 of Plaintiff's Complaint sets forth conclusions of law to which no response is required; to the extent a response is required, those conclusions are denied.

77. Defendants admit the allegations of Paragraph 77 of Plaintiff's Complaint.

78. Defendants deny the allegations of Paragraph 78 of Plaintiff's Complaint.

79. Defendants deny the allegations of Paragraph 79 of Plaintiff's Complaint.

80. Defendants deny the allegations of Paragraph 80 of Plaintiff's Complaint.

81. Defendants deny the allegations of Paragraph 81 of Plaintiff's Complaint.

82. Defendants incorporate Paragraphs 1-81 of this Answer as though the same were set forth at length herein.

83. Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations of Paragraph 83 of Plaintiff's Complaint and therefore deny the same.

84. Defendants admit the allegations of Paragraph 84 of Plaintiff's Complaint.

85. Defendants admit the allegations of paragraph 85 of Plaintiff's Complaint.

86. Defendants deny the allegations of Paragraph 86 of Plaintiff's Complaint.

87. Defendants deny the allegations of Paragraph 87 of Plaintiff's Complaint.

88. Defendants deny the allegations of Paragraph 88 of Plaintiff's Complaint.

89. Defendants deny the allegations of Paragraph 89 of Plaintiff's Complaint.

90. Defendants incorporate Paragraphs 1-89 of this Answer as though the same were set forth at length herein.

91. Defendants admit that each is a "person" within the meaning of 15 U.S.C. § 1681a(b) and that TeleCheck is a specialty consumer reporting agency by virtue of some of its business activities but otherwise deny the allegations of Paragraph 91 of Plaintiff's Complaint. [

92. Defendants admit the allegations set forth in paragraph 92 of Plaintiff's Complaint.

93. Defendants deny the allegations of Paragraph 93 of Plaintiff's Complaint.

94. Defendants deny the allegations of Paragraph 94 of Plaintiff's Complaint.

95. Defendants admit Plaintiff demands trial by jury solely on issues so triable and deny Plaintiff is entitled to trial by jury on any issues not so triable.

SECOND DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state a claim on which relief can be granted.

THIRD DEFENSE

Plaintiff's claims are barred in whole or in part because they arise from a bona fide error that was unintentional and occurred notwithstanding maintenance of procedures reasonably adapted to avoid such error.

FOURTH DEFENSE

Plaintiff's claims and the claims of some of the putative class members under FDCPA are barred under 15 U.S.C. § 1692o and the exemption granted at 60 Fed. Reg. 66,792 (Dec. 27, 1995).

FIFTH DEFENSE

Plaintiff's claims and the claims of some or all of the putative class members are barred in whole or in part by waiver.

SIXTH DEFENSE

Plaintiff's claims and the claims of some or all of the putative class members are barred in whole or in part by estoppel.

SEVENTH DEFENSE

Plaintiff's claims and the claims of some or all of the putative class members are barred in whole or in part by assumption of the risk.

EIGHTH DEFENSE

Plaintiff's claims and the claims of some or all of the putative class members are barred in whole or in part by payment.

NINTH DEFENSE

Plaintiff's claims and the claims of some or all of the putative class members are barred in whole or in part by failure to mitigate damages.

TENTH DEFENSE

Plaintiff's claims and the claims of some or all of the putative class members are barred in whole or in part by license.

ELEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part because they arise out of the errors or misconduct of persons not subject to Defendants' control.

TWELFTH DEFENSE

Plaintiff's claims are barred in whole or in part for lack of actual damages.

THIRTEENTH DEFENSE

Plaintiff's damages and any damages for a putative class are limited by statute.

FOURTEENTH DEFENSE

Plaintiff's claim is barred for failure to join all necessary parties.

FIFTEENTH DEFENSE

The proposed classes include persons who have suffered no injury and therefore are overly broad.

SIXTEENTH DEFENSE

Membership in the proposed classes as currently defined or as may later be defined is not ascertainable.

SEVENTEENTH DEFENSE

The putative classes alleged in the Complaint do not satisfy the requirements for class certification set forth in Fed. R. Civ. P. 23 and therefore may not be certified..

EIGHTEENTH DEFENSE

The claims of the Plaintiff and of some or all of the putative class members are barred, in whole or in part, by the statute of limitations.

NINETEENTH DEFENSE

The claims of the Plaintiff and of some or all of the putative class members are barred, in whole or in part, by the doctrine of laches.

TWENTIETH DEFENSE

Plaintiff's claims are barred in whole or in part by setoff.

TWENTY-FIRST DEFENSE

The proposed classes include persons who lack standing and whose claims are therefore barred.

TWENTY-SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, because Defendants and/or their assignors have complied with all relevant laws and regulations including, without limitation, the Electronic Funds Transfer Act, 15 U.S.C. § 1693 et seq., and Regulation E, 12 C.F.R. § 201 et seq.

TWENTY-THIRD DEFENSE

Maintenance of this action as a class action would violate Defendants' rights to due process.

TWENTY-FOURTH DEFENSE

Maintenance of this action as a class action would violate the Rules Enabling Act, 28 U.S.C. § 2072(b).

Dated: May 2, 2011

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UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2011, I electronically filed the Answer of Defendants TRS Recovery Services, Inc. and TeleCheck Services, Inc. with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to registered users.

Dated: May 2, 2011

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