

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

_____	)	
In Re: TRS Recovery Services, Inc. and	)	
TeleCheck Services, Inc., Fair Debt	)	
Collection Practices Act (FDCPA)	)	Civil Action No. 2:13-MD02426-DBH
Litigation	)	
	)	This document applies only to:
	)	
	)	Melissa Allen v. TRS Recovery
_____	)	Services Inc. and TeleCheck Services, Inc.

**ANSWER TO  
COMPLAINT IN INTERVENTION**

NOW COME Defendants TRS Recovery Services, Inc. and TeleCheck Services, Inc. and respond to Plaintiff's Complaint in Intervention as follows:

**FIRST DEFENSE**

**I. Preliminary Statement**

1. In response to Paragraph 1 of Plaintiff's Complaint, Defendants admit Plaintiff brings this Complaint following the granting of her Motion, but deny she is entitled to any relief she seeks and deny that she is entitled to sue on behalf of any other person.

2. In response to Paragraph 2 of Plaintiff's Complaint, Defendants admit Plaintiff sues under the statutes alleged, but deny she is entitled to any relief thereunder.

3. Defendants deny the allegations contained in Paragraph 3 of Plaintiff's Complaint.

## **II. Jurisdiction and Venue**

4. Defendants admit the allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.

## **III. Parties**

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendants deny that TeleCheck regularly engages in the business of providing debt collection services but otherwise admit the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of Plaintiff's Complaint.

## **IV. Factual Allegations**

10. Defendants deny the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. Defendants admit the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. Defendants admit that checks are scanned and certain data about the check or the check writer is transmitted to TeleCheck by some merchants in some cases. Defendants deny the remaining material allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. Defendants believe that Ms. Allen made out a check to an Origins store and dated that check November 16, 2010 but are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. Defendants believe that Ms. Allen made out a check to an Origins store and dated that check November 16, 2010 but are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. Defendants admit that Origins contracts with TeleCheck for certain services; that, at the merchant's request, TeleCheck did warranty a check tendered by Melissa Allen; and that TRS received a copy of the check that indicated it had been returned unpaid by Plaintiff's bank. Defendants deny the remaining material allegations contained in Paragraph 17 of Plaintiff's Complaint.

18. Defendants admit TeleCheck was notified that Ms. Allen bounced a check at Origins. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining material allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of Plaintiff's Complaint.

20. Defendants admit that TRS Recovery Services, Inc. sent Ms. Allen a “RECR3” letter. Defendants deny the remaining material allegations contained in Paragraph 20 of Plaintiff’s Complaint.

21. In response to Paragraph 21 of Plaintiff’s Complaint, Defendants admit that a true and accurate copy of the RECR3 letter sent to Plaintiff, and attached hereto as Exhibit A, speaks for itself, but deny Paragraph 21 of Plaintiff’s Complaint completely sets forth or accurately summarizes the contents of the RECR3 letter.

22. In response to Paragraph 22 of Plaintiff’s Complaint, Defendants admit that a true and accurate copy of the RECR3 letter sent to Plaintiff, and attached hereto as Exhibit A, speaks for itself, but deny Paragraph 22 of Plaintiff’s Complaint completely sets forth or accurately summarizes the contents of the RECR3 letter.

23. Defendants deny the allegations contained in Paragraph 23 of Plaintiff’s Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of Plaintiff’s Complaint.

25. In response to Paragraph 25 of Plaintiff’s Complaint, Defendants admit that the RECR3 sent to Ms. Allen is a form letter.

26. Defendants deny the allegations contained in Paragraph 26 of Plaintiff’s Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of Plaintiff’s Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of Plaintiff’s Complaint.

29. Defendants admit that TRS acts as a collection agent for TeleCheck and that Defendants act through their employees who typically act within the scope of their employment and under the control of their respective employers in the course of operating Defendants' businesses and otherwise deny the allegations contained in Paragraph 29 of Plaintiff's Complaint.

30. In response to Paragraph 30 of Plaintiff's Complaint, Defendants deny that all acts alleged were performed, but admit that Defendants' employees typically act within the scope of their employment in the course of operating Defendants' business.

31. Defendants admit that TRS acted as a collection agent for TeleCheck and otherwise deny the allegations contained in Paragraph 31 of Plaintiff's Complaint.

#### **V. Class Allegations**

32. In response to Paragraph 32 of Plaintiff's Complaint, Defendants admit Plaintiff is seeking to proceed on behalf of such classes, but deny she is entitled to do so.

33. In response to Paragraph 33 of Plaintiff's Complaint, Defendants state that the first sentence states a conclusion of law as to which no response is required. As to the second sentence of Paragraph 33, Defendants admit that they process at least as many checks and deal with at least as many returned checks as Plaintiffs allege. As to the third sentence of Paragraph 33, Defendants are without knowledge or information sufficient to form a belief as to any estimate Ms. Allen has made about the size of any class, but deny that the putative members of each class alleged in her Complaint number in the thousands.

34. Paragraph 34 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Complaint.

35. Paragraph 35 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiff's Complaint.

36. Paragraph 36 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint.

37. Paragraph 37 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 37 of Plaintiff's Complaint.

38. Paragraph 38 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. Paragraph 39 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 39 of Plaintiff's Complaint.

## **VI. Claims**

### **Count One - FDCPA**

40. Defendants repeat and reassert their answers to Paragraphs 1 through 39 of Plaintiff's Complaint as if set forth in full herein.

41. Defendants admit that TRS is a debt collector within the meaning of the statute and otherwise deny the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43. Paragraph 43 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 43 of Plaintiff's Complaint.

44. Defendants deny the allegations contained in Paragraph 44 of Plaintiff's Complaint.

45. Paragraph 45 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 45 of Plaintiff's Complaint.

**Count Two – Violations of the Maine Fair Debt Collection Practices Act**

46. Defendants repeat and reassert their answers to Paragraphs 1 through 45 of Plaintiff's Complaint as if set forth in full herein.

47. Defendants admit that TRS is a debt collector within the meaning of the statute and otherwise deny the allegations contained in Paragraph 47 of Plaintiff's Complaint.

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of Plaintiff's Complaint.

49. Paragraph 49 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 49 of Plaintiff's Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of Plaintiff's Complaint.

51. Paragraph 51 of Plaintiff's Complaint states a conclusion of law as to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 51 of Plaintiff's Complaint.

**Count Three – Violations of the Maine Unfair Trade Practices Act**

52. Defendants repeat and reassert their answers to Paragraphs 1 through 51 of Plaintiff's Complaint as if set forth in full herein.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of Plaintiff's Complaint.

54. Defendants admit the allegations contained in Paragraph 54 of Plaintiff's Complaint.

55. Defendants admit that Plaintiff is a person and otherwise deny Paragraph 55 of Plaintiff's Complaint and all its subparts.

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

57. Defendants deny the allegations contained in Paragraph 57 of Plaintiff's Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of Plaintiff's Complaint.

**VII. Jury Trial Demand**

59. In response to Paragraph 59 of Plaintiff's Complaint Defendants admit that Plaintiff requests a jury trial, without admitting her right to a trial by jury on any issue.



WHEREFORE Defendants request that class certification be denied, that judgment be entered in favor of Defendants on all claims, and such other and further relief as the Court deems just and appropriate.

**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 31, 2013

/s/ Clifford H. Ruprecht \_\_\_\_\_  
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*Attorneys for Defendants TRS Recovery Services,  
Inc. and TeleCheck Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated below I caused a copy of the foregoing pleading to be filed with the Court's ECF filing system, which will cause an electronic notice to be sent to counsel of record.

DATED: May 31, 2013

/s/ Clifford H. Ruprecht  
Clifford H. Ruprecht  
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*Attorneys for Defendants  
TRS Recovery Services, Inc. and  
TeleCheck Services, Inc.*

# Exhibit A

**RECOVERY SERVICES, INC.**

**RETURNED CHECK FEE DUE**

**Corporate Offices:**  
5251 Westheimer  
Houston, TX 77056  
Telephone:  
713-567-0499

<b>Customer:</b>	Origins At Maine Mall	<b>Date Written</b>	November 16, 2010
<b>Amount:</b>	\$83.48	<b>Check Number</b>	1046
<b>Returned Check Fee:</b>	\$25.00	<b>Returned:</b>	Non-sufficient funds
		<b>Reference #:</b>	40103344000116
<b>Total Amount Due:</b>	\$25.00		

December 05, 2010

**NOTICE OF RE-DEPOSIT**

TeleCheck has purchased the check referenced in this notice, and turned the debt over to its affiliate TRS Recovery Services, Inc., for collection. **As a courtesy to you, we have resubmitted this check to your bank for payment.** If this check is not returned by your bank, we will update your file in approximately fifteen business days from the postmark of this notice.

**Please note:**

**If you have knowledge that this check will not clear your account, then the check amount plus the Returned Check Fee and any applicable state tax is due. If you know the check will clear your account, then only the Returned Check Fee and any applicable state tax is due at this time.**

**RETURNED CHECK FEE DUE**

If this check clears your account, the returned check fee plus any applicable state tax remains due and payable. TRS Recovery Services will create a paper draft and submit it to your bank to resolve this outstanding amount. We appreciate your cooperation in paying this debt as it will help avoid any further collection activity.

**If you would prefer to pay this balance by other means, please contact us at (713) 567-0499.**

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

**See reverse side for important information including the Federal Validation notice, and the enclosed TeleCheck Privacy Statement. RECR3**

**P.O. Box 4857  
Houston, TX 77210-4857**

**Detach and return bottom portion with payment**

P.O. Box 6740  
Aurora, IL 60598-0740  
RETURN SERVICE REQUESTED

**Amount Paid: \$25.00**

401033440001168000083488801000025008

40103344000116-RECR3-December 05, 2010



032284-135

ALLEN MELISSA  
23 OCEAN VIEW RD  
SCARBOROUGH, ME 04074-9241



**TRS Recovery Services, Inc.  
PO BOX 60022  
City of Industry, CA 91716-0022**



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

TRS Recovery Services, Inc. is required under certain state laws to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

**For Maine Residents:** This collection agency's hours of operation are 24 hours a day, 7 days a week.

TELECHECK PRIVACY STATEMENT: Protecting consumer privacy is important to TeleCheck Services, Inc. The following provides you with information about TeleCheck Services, Inc.'s collection and use of nonpublic personal information about consumers.

*TeleCheck Services, Inc. collects nonpublic personal information about you from the following sources:* (1) information we, or our customers, receive from you on applications or other forms; (2) information about your transactions with us, our customers, our affiliates, or others; (3) information we receive from government records; and (4) information we receive from consumer reporting agencies and financial institutions. The types of information we collect include: (1) application information; (2) identification information; (3) transaction information; and (4) consumer reports. Information gathered from these sources may include data about your credit worthiness, credit history, credit standing, credit capacity, credit scores, character, general reputation, personal characteristics, mode of living and transaction history.

*We may disclose the following kinds of nonpublic information about you:* (1) information we receive from you on applications or other forms, such as your name, address, social security number, assets and income; (2) information about your transactions with us, our customers, our affiliates, or others, such as your account balance, payment history, nonpayment history, collection history, parties to these transactions and check, debit, credit and other card usage; and (3) information we receive from a consumer reporting agency, financial institution or others concerning your credit worthiness, credit standing, credit capacity, credit history, and credit scores.

TeleCheck Services, Inc. does not disclose any nonpublic personal information about you or former customers to anyone, except as permitted by law. *TeleCheck may disclose nonpublic personal information about you to the following types of third parties:* (1) financial service providers (such as banks, credit card companies and brokerage houses); (2) non-financial companies, such as retailers, direct marketers, catalogue companies, airlines and government agencies, and (3) credit reporting agencies. Disclosures by TeleCheck of nonpublic personal information are made in connection with transactions initiated by you, as a consumer, in order to authorize, settle, bill, process, clear, transfer, reconcile or collect amounts charged, debited or otherwise paid.

We may disclose the information we collect, as described above, to companies that process transactions for us. We may also disclose nonpublic personal information about you to other nonaffiliated third parties, as permitted by law.

*We restrict access to nonpublic personal information about you to those employees who need to know that information to perform their job duties. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.*

Please send GENERAL CORRESPONDENCE to the following address:

**TRS RECOVERY SERVICES, INC.  
PO BOX 4812  
HOUSTON TX, 77210-4812**