

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ARCHIE J. SHOEMAKER,  
on behalf of himself and others similarly situated,

Case No. 19-cv-316

Plaintiffs,  
vs.

BASS & MOGLOWSKY, S.C.,

Defendant.

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**DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT**

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Defendant, by its attorneys, von Briesen & Roper, s.c., answers the complaint as follows:

1. Answering paragraph 1, admits generally the truth of the allegations contained therein.
2. Answering paragraph 2, admits that the statutory enactments referred to therein were enacted and that the quoted language is contained within the cited provisions, but alleges that the truth scope and intent of the statutes in question is set forth in the entirety of the enactment and, to the extent that the allegations of that paragraph vary from, contradict or inconsistent with the language contained therein in any respect or to any degree whatsoever, denies, to that extent and to that extent only, each and every such allegation.
3. Answering paragraph 3, admits that the quoted language was contained in a brief filed by Consumer Financial Protection Bureau but denies any other implication or allegation contained therein.
4. Answering paragraph 4, admits that validation notices are required under certain circumstances, but denies the truth of the remaining allegations contained therein.

5. Answering paragraph 5, admits generally the truth of the allegations contained therein.

6. Answering paragraphs 6 and 7, denies the truth of the allegations contained therein.

7. Answering paragraph 8, denies upon information and belief the truth of the allegations contained therein.

8. Answering paragraph 9, admits that Congress amended the FDCPA in 2006, but denies the truth of the remaining allegations contained therein.

9. Answering paragraph 10, denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies all such allegations.

10. Answering paragraphs 11, 12 and 13, denies the truth of the allegations contained therein.

11. Answering paragraph 14, denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies all such allegations.

12. Answering paragraph 15, admits that the Seventh Circuit wrote the words contained therein in the *Thomas* decision, but denies upon information and belief the truth of the remaining allegations contained therein.

13. Answering paragraph 16, denies the truth of the allegations contained therein.

14. Answering paragraph 17, denies that any violations occurred; further answering said paragraph, denies any knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and therefore denies all such allegations.

15. Answering paragraphs 18, 19, 20 and 21, admits on information and belief the truth of the allegations contained therein.

16. Answering paragraph 22, admits the truth of the allegations contained therein.

17. Answering paragraph 23, denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies all such allegations.

18. Answering paragraphs 24 and 25, admits the truth of the allegations contained therein.

19. Answering paragraph 26, admits that at certain times the quoted language was contained on defendant's website, but denies that at any time material hereto the quoted language fairly or accurately described defendant's practice.

20. Answering paragraphs 27, 28, 29 and 30, denies the truth of the allegations contained therein.

21. Answering paragraph 31, admits the truth of the allegations contained therein, but denies that the term "collection complaint" is an accurate or proper description of the complaint in question and affirmatively alleges that no collection was sought in the mortgage foreclosure complaint.

22. Answering paragraphs 32 and 33, admits generally the truth of the allegations contained therein.

23. Answering paragraph 34, admits that the statements contained therein were contained in the FDCPA Disclosure.

24. Answering paragraph 35, denies the truth of the allegations contained therein.

25. Answering paragraphs 36, 37, 38, 39, 40, 41, 42, 43 and 44, denies on information and belief the truth of the allegations contained therein.

26. Answering paragraph 45, realleges and incorporates herein by reference as if fully set forth the admissions, denials and allegations contained within the preceding paragraphs of this answer.

27. Answering paragraphs 46 and 47, admits the truth of the allegations contained therein.

28. Answering paragraphs 48, 49, 50, and 51, admits that the quoted language was contained in the FDCPA Disclosure, but alleges that the affect, scope, intent and meaning of the disclosure is that specifically set forth in the Disclosure in its entirety and affirmatively alleges that, if the quoted language mischaracterizes or misstates in any respect the full intent, meaning and affect the disclosure in any respect or to any degree whatsoever, denies, to that extent and to that extent only, each and every such allegation.

29. Answering paragraph 52, admits that plaintiff had 20 days to respond to the complaint without risking a default judgment; further answering said paragraph, denies the truth of the remaining allegations contained therein.

30. Answering paragraph 53, denies the truth of the allegations contained therein.

31. Answering paragraph 54, admits that the Summons provided the information contained therein in responding to the Complaint and that the FDCPA Disclosure provided other information; further answering said paragraph, to the extent that that paragraph contains any further allegation, denies on information and belief the truth of the allegations contained therein.

32. Answering paragraph 55, denies the truth of the allegations contained therein.

33. Answering paragraph 56, denies on information and belief the truth of the allegations contained therein.

34. Answering paragraph 57, admits that the quoted words were contained in the Disclosure; further answering said paragraph, denies the truth of the remaining allegations contained therein.

35. Answering paragraphs 58 and 59, denies the truth of the allegations contained therein.

36. Answering paragraph 60, denies on information and belief the truth of the allegations contained therein.

37. Answering paragraphs 61, 62, 63 and 64, denies the truth of the allegations contained therein.

38. Answering paragraph 65, realleges and incorporates herein by reference as if fully set forth the admissions, denials and allegations contained within the preceding paragraphs of this answer.

39. Answering paragraph 66, admits that the quoted language is found within the cited statute.

40. Answering paragraphs 67, 68, 69, 70 and 71, denies the truth of the allegations contained therein.

#### **AFFIRMATIVE DEFENSES**

Now comes this answering defendant, and as and for its first affirmative defense, alleges that some or all of the plaintiffs may have failed to mitigate any damages allegedly caused by the events referred to in the complaint.

As and for a further affirmative defense, alleges that any conduct allegedly violating the statutes referred to therein and any allegedly violations of any law or statute were not intentional and, to the extent that they may have occurred, such violations resulted from a bona fide error notwithstanding the maintenance by defendant and his then current employees of procedures reasonably adapted to avoid any such error.

As and for a further affirmative defense, alleges upon information and belief that some or all of the debts or some or all of the purported class plaintiffs referred to in the complaint were not incurred for personal, household or family purposes and therefore not within the scope of the statutes on which plaintiffs' claims are based.

As and for a further affirmative defense, alleges that if a technical violation of any statute occurred, plaintiffs' statutory damages are limited.

As and for a further affirmative defense, alleges that, at all times material hereto, defendant acted in good faith.

As and for a further affirmative defense, alleges that some or all of the claims asserted in the complaint may be subject to litigation privilege and/or litigation immunities.

WHEREFORE, this answering defendant demands judgment dismissing the complaint against it on its merits, together with its costs and disbursements herein.

TRIAL BY A JURY OF TWELVE OF ALL ISSUES PROBABLY TRIABLE BY A JURY IS HEREBY DEMANDED.

Dated at Milwaukee, Wisconsin this 17<sup>th</sup> day of May, 2019.

von Briesen & Roper, s.c.  
Attorneys for Defendant

By: s/Terry E. Johnson  
Terry E. Johnson  
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