STATE OF MICHIGAN

IN THE 63rd CIVIL DISTRICT COURT

UHG I, LLC,

Plaintiff/Counter-Defendant

Case N.
HON.

-vs-

DEFENDANT ANSWER AND AFFIRMATIVE DEFENSES

Defendant/Counter-Plaintiff.

RICHARD E. STUECKROTH (P85814)
DOBBERSTEIN LAW FIRM
Attorney for Plaintiff
225 S. Executive Dr.
Brookfield WI 53005
(262) 641-3715

LAW OFFICES OF BRIAN P PARKER PC
BRIAN P. PARKER (P48617)
Attorney for Defendant
4301 Orchard Lake Road, #180-208
West Bloomfield MI 48323
(248) 342-9583
brianparker@collectionstopper.com

PRELIMINARY STATEMENT AS TO NO STATED CLAIM

In violation of the Fair Debt Collection Practices Act ("FDCPA") and Regulation of Michigan Collection Practices Act ("RMCPA), Plaintiff UHG I, LLC ("UHG") is suing s. D with no agreement between UHG and Defendant. Defendant does not owe Plaintiff as the chain of title in this lawsuit lacks any evidentiary proof of the SPECIFIC DEBT of Defendant being assigned under Michigan law and the ***Brownbark, Bassett and Riley*** cases below and part of Michigan Assignment law at **Exhibit 2 and to be in the Counter Claim**.

The debt is located in a secured trust or Asset Backed Security (ABS) and was securitized by the originator, WebBank. The Lawsuit Pleadings at Paragraph #3 state:

3. Defendant requested an extension of credit from Upgrade ("Original Creditor") through WebBank, a licensed Credit Services Organization on an installment loan ("Account Agreement"), specifically account number ending in 5864, and by use of the Account, Defendant became bound by the terms in the Loan & Security Agreement, copies of which are attached hereto as Exhibit 1. Account Agreement was opened on 09/27/2018.

Yet, the paperwork attached to the lawsuit states the Original Creditor is the Lender, WebBank:

Lender:

WebBank
215 South State Street, Suite 1000
Salt Lake City, UT 84111

and Upgrade is just a marketplace platform to request a loan from WebBank:

This Borrower Agreement ("Agreement") is entered into between you ("you") and WebBank, a Utah-chartered FDIC-insured industrial bank ("WebBank," "we,.. or "us"). Upgrade, Inc. ("upgrade") operates a national online consumer loan marketplace platform, located at www.upgrade.com ("Site"), through which you may request and apply for unsecured consumer installment loans from WebBank. **See Complaint Exhibit 1Purported to be the Note**.

The Loan Document contradicts the pleadings of the lawsuit.

6. **Loan Servicing.** You acknowledge that all loans obtained through the Upgrade platform will be serviced by Upgrade. You also agree that Upgrade may delegate the servicing of your loan to a third party in its sole discretion without prior consent or notice.

By the Plaintiff's own Pleadings and contradictory paperwork, it has no standing in the lawsuit or interest in the debt.

Further, WebBank sold this debt to a trust long before UHG and there is no assignment or proof it is out of the ABS. **See Attached Exhibit 1 showing a typical financial report of WebBank and its securitized assets**.

The Bill of Sale at Plaintiff's Complaint **Exhibit 2**, shows no assignment of Defendant's debt to WebBank or even Upgrade from the trust or even those entities assigning any debt to UHG. The Chain of Title leading up to UHG is a mess and broken with no signatures not matching up with any ownership of the debt by UHG. **See Exhibit 2 with Weltman Weinberg's explanation on Michigan Assignment Case law**.

Further, **The Dobberstein law firm violated 15 USC 1692b(c) in providing the**

information to a third party. The law firm and UHG exposed the fact it was collecting a debt from Ms. Biggs the fact that Defendant was being pursued by a debt collector as in the complaint it states on every page, "***This is a communication from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose***":

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

15 USC 1692e (11) mandates that the "mini-Miranda" UHG has placed on every page of the lawsuit announcing they are debt collectors should not be in the pleadings:

15 USC 1692e states that,

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:

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, ***except that this paragraph shall not apply to a formal pleading made in connection with a legal action.***

Given the horrible mess of the Chain of title in the complaint and the false claims of ownership in Plaintiff's Complaint at Paragraph 3, Plaintiff has no standing to sue Ms. Biggs and is not a Real Party in Interest. **See Exhibit 1-2 and the Pleadings of the Complaint.**

This case should be dismissed. Thank you.

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

WHEREFORE, [redacted] reinafter referred to as individually, "Defendant"), by and through his attorneys, The Law Offices of Brian P. Parker, P.C., Answers Plaintiff UHG I, LLCs ("UHG")'s Complaint against Defendant as follows:

1. Defendant Denies this allegation because Ms. Biggs does not know who UHG is as Plaintiff has provided no proof UHG owns the debt. **Please see Exhibit 1-2.**

2. Admit but deny as to owing the debt to UHG. **Please see Exhibit 1-2**.

3. Denied as to this Plaintiff as Defendant does not owe the debt to UHG I, LLC thus voiding this lawsuit in this venue and jurisdiction. **Please see Exhibit 1**. See Also Plaintiff's Pleadings at **Exhibit 1** showing WebBank is the original creditor and not Upgrade.

4. Denied as there is no proof of this as it relates to the ownership of the debt by Plaintiff. **Please see Exhibit 1-2**. See Also Plaintiff's **Exhibit 1** showing WebBank is the original creditor and not in the Chain of Title at Plaintiff's Exhibit 2.

5. Denied as there is no evidence UHG I, LLC is in the title history of Plaintiff's complaint especially considering the absolute mess of a chain of title with no proof of debt assignment and further, Plaintiff has failed to provide any true or coherent ownership or assignment proof of the debt or debt amount under ***Midland Funding v Michael Bassett***, Michigan Court of Appeals, No. 338404, April 24, 2018 and ***Brownbark II, LP v. Bay Area Floorcovering & Design Inc. et al***, Michigan Court of Appeals Case No. 296660, May 31, 2011, ***Weston v Dowty,*** 163 Mich App 238,242; 414 NW2d 165 (1987), and ***Unifund CCR Partners v. Nishawn Riley***, Michigan Court of Appeals Case No. 287599, February 18, 2010. **Please see Exhibit 1 and the exhibits of lack of "ownership" proof attached to the lawsuit**. **See also Exhibit 2 with Weltman Weinberg's explanation on Michigan Assignment Case law**.

6. Denied as UHG I, LLC is not in the title history of Plaintiff's complaint especially considering the absolute mess of a chain of title with no proof of debt assignment. **See Complaint and Exhibit 1 and Exhibit 2 with Weltman Weinberg's explanation on Michigan Assignment Case law**.

7. Denied under *Bassett and Brownbark and Riley* as Defendant has no agreement with Plaintiff, no payment plans with Plaintiff, and no proof of ownership of the debt or right to

the debt amount by Plaintiff. **Please see Exhibit 1 and the exhibits of "ownership" proof attached to the lawsuit**. Further, there is no evidence that Upgrade Inc. is the original creditor as Plaintiff states at Pleading #3.

8. Denied as this allegation relates to the Plaintiff and it lacks proof of ownership of the debt. **Please see Exhibit 1 and the exhibits of "ownership" proof attached to the lawsuit and no assignments as to Exhibit 2.**

9. Denied as this relates to Plaintiff and there is no contract between the parties that can be breached, and no contract attached to the complaint that Defendant signed or any account stated proof granting Plaintiff the right to sue in this case. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing inconsistent or false chain of title at Exhibit 2.**

10. Denied as there is no contract between the parties that can be breached, and no signed contract attached to the complaint and no account stated proof granting Plaintiff any rights in this case. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing no coherent or true chain of title at Exhibit 2.**

11. Denied as there is no signed contract or specific assignment of the debt attached to the complaint granting Plaintiff any rights in this case, so Plaintiff has failed to legitimize or prove why they believe it is entitled to own this debt or sue Defendant. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing no coherent or true chain of title at Exhibit 2.**

12. Denied as to this Plaintiff as there is no contract between the parties that can be breached, and no signed contract attached to the complaint and no account stated proof granting Plaintiff any rights in this case or proof of any debt amount to seek. **See Exhibit 1**.

13. Denied as to this Plaintiff as there is no contract between the parties that can be breached, no payments made to UHG, and no assignments of the contract attached to the

complaint and no account stated proof granting Plaintiff any rights in this case. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing not coherent or true chain of title.**

14. Denied as to this Plaintiff as there is no contract between the parties that can be breached, no payments made to UHG, and no signed Assignment under Michigan law attached to the complaint and no account stated proof granting Plaintiff any rights in this case. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing not coherent or true chain of title and Exhibit 2.**

15. Denied under *Bassett and Brownbark and Riley* as Defendant has no agreement with Plaintiff, no payment plans with Plaintiff, and no proof of ownership of the debt or right to the debt amount by Plaintiff. **Please see Exhibit 1 and the exhibits of "ownership" proof attached to the lawsuit and Exhibit 2**.

16. Denied under *Bassett and Brownbark and Riley* as Defendant has no agreement with Plaintiff, no payment plans with Plaintiff, and no proof of ownership of the debt or right to the debt amount by Plaintiff. **Please see Exhibit 1 and the exhibits of "ownership" proof attached to the lawsuit and the debt is not assigned under Exhibit 2**.

17. Denied under *Bassett and Brownbark and Riley* as Defendant has no agreement with Plaintiff, no payment plans with Plaintiff, and no proof of ownership of the debt or right to sue on the debt amount by Plaintiff. **Please see Exhibit 1 and the exhibits of "ownership" proof attached to the lawsuit and Assignment law under Exhibit 2**.

WHEREFORE, Defendant seeks a No Cause against Plaintiff and statutory and actual damages against Plaintiff under the FDCPA and RCPA including attorney fees and other relief this Court deems just and equitable. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing not coherent or true chain of title.**

AFFIRMATIVE DEFENSES

Defendant pleads the following affirmative defenses:

1. Plaintiff fails to state a claim upon which relief can be granted against this Defendant.
2. There is no Mutual Assent to the Contract Terms and the Original Contract Terms are not attached to the lawsuit.
3. The Chain of Title in this case is broken and missing many assignments and further, the Plaintiff has no proof it owns the debt in this case. ***Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing not coherent or true chain of title and Exhibit 2.***
4. There is no agreement between Plaintiff and Defendant and therefore, no Breach of Contract or Account Stated Claim.
5. Plaintiff lacks standing to sue because it does not own the alleged debt and is not a Real Party in Interest with a false title history and no proof of ownership of the debt alleged.
5. Plaintiff lacks capacity to sue as it has no authority to sue upon the debt.
6. Plaintiff is suing Defendant in violation of the FDCPA/RCPA based upon false allegations and misrepresentations in suing upon a debt it has no right to sue upon as the lawsuit at Paragraph #3 as it falsely claims Upgrade Inc. is the "original creditor" or "lender":

> Lender:
>
> WebBank
> 215 South State Street, Suite 1000
> Salt Lake City, UT 84111

6. **Loan Servicing.** You acknowledge that all loans obtained through the Upgrade platform will be serviced by Upgrade. You also agree that Upgrade may delegate the servicing of your loan to a third party in its sole discretion without prior consent or notice.

At Complaint **Exhibit 1** of Plaintiff's complaint, the loan states it is from the ***Original Creditor***, WebBank, not Upgrade. See:

This Borrower Agreement ("Agreement") is entered into between you ("you") and WebBank, a Utah-chartered FDIC-insured industrial bank ("WebBank," "we," or "us"). Upgrade, Inc. ("Upgrade") operates a national online consumer loan marketplace platform, located at www.upgrade.com ("Site"), through which you may request and apply for unsecured consumer installment loans from WebBank. If you request a loan that is approved by us, then your loan will be governed by the terms of the Loan Agreement and Promissory Note, attached herein as Exhibit A. We reserve the right to revise the Loan Agreement and Promissory Note from time to time. The version in effect at the time of your loan request will govern the terms of your loan with us.

Borrower Name and Address: _____

1. PROMISE TO PAY. The parties (each, a "Party" and collectively, "Parties") to this Loan Agreement and Promissory Note ("Note") are the Borrower designated above ("Borrower," "you," or "your") and WebBank. For value received, you promise to pay to the order of WebBank or any subsequent holder ("we," "us," or "Lender") of this Note, the principal loan amount of $_____, together with interest, fees and charges as set forth below. You promise that you will use the Loan Amount for the purpose you indicated on the loan application to us (the "Application") and not for any post-secondary student loan, to buy or sell securities, or for illegal purposes.

2. INTEREST AND PAYMENTS.

7. Plaintiff's suit is barred by the statute of frauds.
8. Plaintiff is barred by the Fair Debt Collection Practices Act ("FDCPA") from collecting late fees, attorney fees, costs, interest, and other amounts.
9. Plaintiffs' proofs are inadmissible and are hearsay under MRE 911/112.
10. Plaintiff does not possess the required assignment signed by the Original Creditor or previous debt owners with an account number and name specific to this Defendant and Defendant debt.
11. Plaintiff lacks proof of a chain of title and proof of assignment of the SPECIFIC debt.
12. Another Entity or Creditor owns the rights to the debt.
13. Plaintiff does not possess the required assignment signed by the Original Creditor that is Notarized and with an account number and name specific to this Defendant and Defendant debt.
14. Plaintiff 15 USC 1692*e (11)* by exposing the fact that the Defendant is being pursued by a debt collector to a third party *PRIOR TO THE LAWSUIT BEING SERVED by stating in the lawsuit,* "***This is a communication from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose***":

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

15. Defendant Disputes he owes the debt to Plaintiff as it has no standing and there is no proof of ownership of the debt or how much is owed to Plaintiff.
16. The debt was securitized by the original creditor or Originator of the debt-and there is no assignment back to the original creditor, see **Exhibit 1**.
17. The case should be in UTAH according to the Contract from Plaintiff.

16. Choice of Law: This Agreement shall be governed by federal law and, to the extent not preempted by federal law, the laws of the State of Utah without regard to any conflict of laws provision.

18. Defendant reserves the right to Amend these Affirmative Defenses through discovery. **Please see Exhibit 1 and Plaintiff's Complaint Exhibits showing not coherent or true chain of title and Exhibit 2.**

WEREFORE, Defendant seeks a No Cause against Plaintiff and statutory and actual damages against Plaintiff under the FDCPA and RCPA including attorney fees and other relief this Court deems just and equitable.

THE LAW OFFICES OF BRIAN PARKER PC

Dated: May 18, 2023

Brian P. Parker (P48617)
Attorney for Defendant
4301 Orchard Lake Road, #180-208
West Bloomfield, MI 48323

EXHIBIT #1

AFFIDAVIT C_ _____

STATE OF MICHIGAN)

COUNTY OF KENT) *

Pursuant to 28 U.S.C § 1746, _____ ng duly sworn and upon oath verifies, certifies, and declares as follows:

1. UHG I, LLC and their law firm Dobberstein Law has filed a lawsuit in the 63rd District Court against me titled *UI. _ _* " 23
2. I have looked over the lawsuit paperwork and I see no evidence that UHG I, LLC obtained my specific debt from anyone or that I owe the amount to UHG that they claim I do.
3. The Exhibits connected to the lawsuit contain many title changes of different entities with no chain of title showing ownership of the debt by UHG and no assignment.
4. UHG and Dobberstein placed the words,

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

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

right into the Summons and Lawsuit for everyone to see that I am being pursued for a debt by a debt collector. I did not give the Plaintiff UHG permission to do this and the lawsuit is now a debt collection communication.

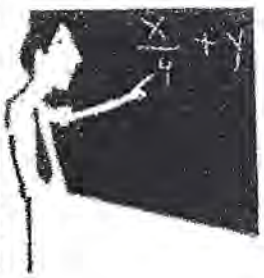
5. I have not received a validation letter or verification rights from UHG beyond five days from the date I was served with the lawsuit.
6. I dispute I owe this debt or debt amount to UHG as stated in the complaint.
7. I have not received or viewed any assignment or proof UHG has a right to sue me for this debt.
8. Indeed, the Bill of Sale and Assignment that are attached to the lawsuit are both lacking in information and also directly contradict the lawsuit pleadings as to who the original creditor is and who the servicer is.
9. There is specifically no assignment of any debt to UHG.
10. The contract terms and conditions attached to the lawsuit say this case must be based upon UTAH law:

16. Choice of Law. This Agreement shall be governed by federal law and, to the extent not preempted by federal law, the laws of the State of Utah without regard to any conflict of laws provision.

11. Further, I believe that the debt itself was placed into a securitized trust (Asset Backed Security or ABS) and there is no assignment back from the trust or ABS to the originator or lender for them to sell the debt. See the attached paperwork from WebBank's own financial reports.
12. This is an Account Stated lawsuit that I have not paid anything to UHG on or come to any agreement to pay UHG or Dobberstein.
13. This lawsuit is causing me emotional and financial distress on something there is no proof I owe to UHG or Dobberstein and further, the Plaintiff has alerted the public that debt collectors are pursuing me and collecting a debt without my permission and has not sent me my mandatory debt collection rights of verification and validation under federal law.

DATED: 5-17-23

BACK TO BASICS



What Is Securitization?

Andreas Jobst

THE SUBPRIME mortgage crisis that began in 2007 has given the decades-old concept of securitization a bad name. Securitization is the process in which certain types of assets are pooled so that they can be repackaged into interest-bearing securities. The interest and principal payments from the assets are passed through to the purchasers of the securities.

Securitization got its start in the 1970s, when home mortgages were pooled by U.S. government-backed agencies. Starting in the 1980s, other income-producing assets began to be securitized, and in recent years the market has grown dramatically. In some markets, such as those for securities backed by risky subprime mortgages in the United States, the unexpected deterioration in the quality of some of the underlying assets undermined investor confidence. Both the scale and persistence of the attendant credit crisis seem to suggest that securitization—together with poor credit origination, inadequate valuation methods, and insufficient regulatory oversight—could severely hurt financial stability.

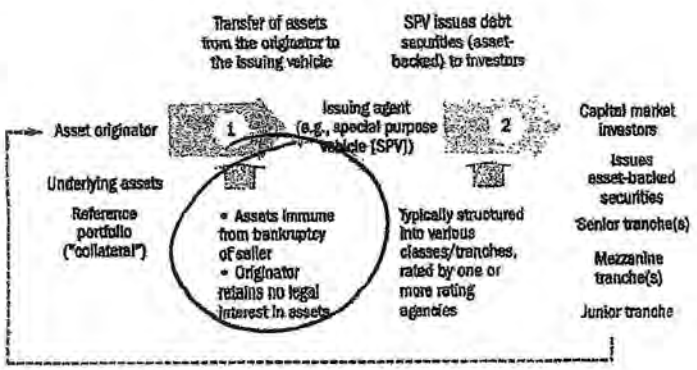
Increasing numbers of financial institutions employ securitization to transfer the credit risk of the assets they originate from their balance sheets to those of other financial institutions, such as banks, insurance companies, and hedge funds. They do it for a variety reasons. It is often cheaper to raise money through securitization, and securitized assets were then less costly for banks to hold because financial regulators had different standards for them than for the assets that underpinned them. In principle, this "originate and distribute" approach brought broad economic benefits too—spreading out credit exposures, thereby diffusing risk concentrations and reducing systemic vulnerabilities.

Until the subprime crisis unfolded, the impact of securitization appeared largely to be positive and benign. But securitization also has been indicted by some for compromising the incentives for originators to ensure minimum standards of prudent lending, risk management, and investment, at a time when low returns on conventional debt products, default rates below the historical experience, and the wide availability of hedging tools were encouraging investors to take more risk to achieve a higher yield. Many of the loans were not kept on the balance sheets of those who securitized them, perhaps encouraging originators to cut back on screening and monitoring borrowers, resulting possibly in a systematic deterioration of lending and collateral standards.

The securitization process

In its most basic form, the process involves two steps (see chart). In step one, a company with loans or other income-producing assets—the originator—identifies the assets it wants to remove from its balance sheet and pools them into what is called the reference portfolio. It then sells this asset pool to an issuer, such as a special purpose vehicle (SPV)—an entity set up, usually by a financial institution, specifically to purchase the assets and realize their off-balance-sheet treatment for legal and accounting purposes. In step two, the issuer finances the acquisition of the pooled assets by issuing tradable, interest-bearing securities that are sold to capital market investors. The investors receive fixed or floating rate payments from a trustee account funded by the cash flows generated by the reference portfolio. In most cases, the originator services the loans in the portfolio, collects payments from the original borrowers, and passes them on—less a servicing fee—directly to the SPV or the trustee. In essence,

How securitization works



securitization represents an alternative and diversified source of finance based on the transfer of credit risk (and possibly also interest rate and currency risk) from issuers to investors.

In a more recent refinement, the reference portfolio is divided into several slices, called tranches, each of which has a different level of risk associated with it and is sold separately. Both investment return (principal and interest repayment) and losses are allocated among the various tranches according to their seniority. The least risky tranche, for example, has first call on the income generated by the underlying assets, while the riskiest has last claim on that income. The conventional securitization structure assumes a three-tier security design—junior, mezzanine, and senior tranches. This structure concentrates expected portfolio losses in the junior, or first loss position, which is usually the smallest of the tranches but the one that bears most of the credit exposure and receives the highest return. There is little expectation of portfolio losses in senior tranches, which, because investors often finance their purchase by borrowing, are very sensitive to changes in underlying asset quality. It was this sensitivity that was the initial source of the problems in the subprime mortgage market last year. When repayment issues surfaced in the riskiest tranches, lack of confidence spread to holders of more senior tranches—causing panic among investors and a flight into safer assets, resulting in a fire sale of securitized debt.

Securitization was initially used to finance simple, self-liquidating assets such as mortgages. But any type of asset with a stable cash flow can in principle be structured into a reference portfolio that supports securitized debt. Securities can be backed not only by mortgages but by corporate and sovereign loans, consumer credit, project finance, lease/trade receivables, and individualized lending agreements. The generic name for such instruments is asset-backed securities (ABS), although securitization transactions backed by mortgage loans (residential or commercial) are called mortgage-backed securities. A variant is the collateralized debt obligation, which uses the same structuring technology as an ABS but includes a wider and more diverse range of assets.

The allure of securitizing

Securitization started as a way for financial institutions and corporations to find new sources of funding—either by moving assets off their balance sheets or by borrowing against them to refinance their origination at a fair market rate. It reduced their borrowing costs and, in the case of banks, lowered regulatory minimum capital requirements.

For example, suppose a leasing company needed to raise cash. Under standard procedures, the company would take out a loan or sell bonds. Its ability to do so, and the cost, would depend on its overall financial health and credit rating. If it could find buyers, it could sell some of the leases directly, effectively converting a future income stream to cash. The problem is that there is virtually no secondary market for individual leases. But by pooling those leases, the company can raise cash by selling the package to an issuer, which in turn converts the pool of leases into a tradable security.

Moreover, the assets are detached from the originator's balance sheet (and its credit rating), allowing issuers to raise funds to finance the purchase of assets more cheaply than would be possible on the strength of the originator's balance sheet alone. For instance, a company with an overall "B" rating with "AAA"-rated assets on its books might be able to raise funds at an "AAA" rather than "B" rating by securitizing those assets. Unlike conventional debt, securitization does not inflate a company's liabilities. Instead it produces funds for future investment without balance sheet growth.

Investors benefit from more than just a greater range of investible assets made available through securitization. The flexibility of securitization transactions also helps issuers tailor the risk-return properties of tranches to the risk tolerance of investors. For instance, pension funds and other collective investment schemes require a diverse range of highly rated long-term fixed-income investments beyond what the public debt issuance by governments can provide. If securitized debt is traded, investors can quickly adjust their individual exposure to credit-sensitive assets in response to changes in personal risk sensitivity, market sentiment, and consumption preferences at low transaction cost.

Sometimes the originators do not sell the securities outright to the issuer (called "true sale securitization") but instead sell only the credit risk associated with the assets without the transfer of legal title ("synthetic securitization"). Synthetic securitization helps issuers exploit price differences between the acquired (and often illiquid) assets and the price investors are willing to pay for them (if diversified in a greater pool of assets).

Growth of securitization

The landscape of securitization has changed dramatically in the last decade. No longer is it wed to traditional assets with specific terms such as mortgages, bank loans, or consumer loans (called self-liquidating assets). Improved modeling and risk quantification as well as greater data availability have encouraged issuers to consider a wider variety of asset types, including home equity loans, lease receivables, and small business loans, to name a few. Although most issuance is concentrated in mature markets, securitization has also registered significant growth in emerging markets, where large and highly rated corporate entities and banks have used securitization to turn future cash flow from hard-currency export receivables or remittances into current cash.

In the future, securitized products are likely to become simpler. After years of posting virtually no capital reserves against highly rated securitized debt, issuers will soon be faced with regulatory changes that will require higher capital charges and more comprehensive valuation. Reviving securitization transactions and restoring investor confidence might also require issuers to retain interest in the performance of securitized assets at each level of seniority, not just the junior tranche. ■

Andreas Jobst is an Economist in the IMF's Monetary and Capital Markets Department.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For The Fiscal Year Ended December 31, 2015

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-35493

STEEL PARTNERS HOLDINGS L.P.

(Exact name of registrant as specified in its charter)

Delaware	**13-3727655**
(State of Incorporation)	(I.R.S. Employer Identification No.)
590 Madison Avenue, 32nd Floor	
New York, New York	**10022**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (212) 520-2300

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common units, $0 par	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

Common Units, no par value

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☑

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to

Energy Segment

Steel Excel is a Delaware corporation formerly known as ADPT Corporation (NASDAQ:SXCL). Three of our representatives serve on Steel Excel's six-member board of directors, one of whom serves as Chairman and another of whom serves as the Chief Executive Officer. Our representatives also serve as Chief Financial Officer and General Counsel. Through its wholly-owned subsidiary Steel Energy Ltd. ("Steel Energy"), Steel Excel's Energy business provides drilling and production services to the oil and gas industry. Through its wholly-owned subsidiary Steel Sports Inc., Steel Excel's Sports business is a social impact organization that strives to provide a first-class youth sports experience emphasizing positive experiences and instilling the core values of discipline, teamwork, safety, respect, and integrity. Steel Excel also makes significant non-controlling investments in entities in industries related to its existing businesses as well as entities in other unrelated industries, and continues to identify business acquisition opportunities in all these areas. As of December 31, 2015, Steel Excel had 763 employees, of which 658 were full-time employees and 105 were part-time employees. All of Steel Excel's employees are located in the United States. Steel Excel also hires additional full-time and part-time employees during peak seasonal periods. None of Steel Excel's employees are covered by collective bargaining agreements. Steel Excel considers its employee relations to be satisfactory.

Steel Excel's energy services are affected by seasonal factors, such as inclement weather, fewer daylight hours, and holidays during the winter months. Heavy snow, ice, wind, or rain can make it difficult to operate and to move equipment between work sites, which can reduce its ability to provide services and generate revenues. These seasonal factors affect Steel Excel's competitors as well.

Steel Excel relies primarily on its local operations to sell and market its services. Because they have conducted business together over several years, the members of its local operations have established strong working relationships with certain of their clients. These strong client relationships provide a better understanding of region-specific issues and enable Steel Excel to better address customer needs. In 2015, Steel Excel had two customers, that made up 28% or more of its net revenues, and its top 15 customers made up 76%, 81% and 81% of its net revenues for the years ended December 31, 2015, 2014 and 2013, respectively.

Steel Excel also has equity method investments in Aviat (NASDAQ:AVNW), a global provider of microwave networking solutions, API Tech (NASDAQ:ATNY), a designer and manufacturer of high performance systems, subsystems, modules, and components and iGo, a mobile device accessories provider company.

Financial Services Segment

The Financial Services segment activity during 2015 primarily consists of our subsidiary WFHC, which conducted its financial operations during 2015 through its wholly owned subsidiary WebBank. WebBank is a Utah chartered industrial bank subject to comprehensive regulation, examination, and supervision of the Federal Deposit Insurance Corporation ("FDIC") and the State of Utah Department of Financial Institutions ("UDFI"). WebBank is not considered a "bank" for Bank Holding Company Act purposes and, as such, SPLP is not regulated as a bank holding company. WebBank's deposits are insured by the FDIC. As of December 31, 2015, WebBank had 58 employees.

WebBank engages in a full range of banking activities including originating loans, issuing credit cards, and taking deposits that are federally insured. WebBank originates and funds consumer and small business loans through lending programs with unaffiliated companies that market and service the programs ("Marketing Partners"), where the Marketing Partners subsequently purchase the loans (or interests in the loans) that are originated by WebBank. WebBank also has private-label financing programs that are branded for a specific retailer, manufacturer, dealer channel, or proprietary network and bank card programs. WebBank also participates in syndicated commercial and industrial as well as asset based credit facilities and asset based securitizations through relationships with other financial institutions.

WebBank's interest income is primarily derived from interest and origination fees earned on loans and investments. WebBank's non-interest income is primarily derived from fee income on contractual lending arrangements, premiums on the sale of loans, and loan servicing fees. For the years ended December 31, 2015, 2014 and 2013, the two highest grossing contractual lending programs accounted for 46%, 35% and 46%, respectively, of WebBank's total revenue.

Gross profit in 2014, increased by $24,393, or 68.1%, as compared to 2013, and as a percentage of revenue declined slightly to 28.7% from 29.9%. Gross profit from Steel Excel's energy businesses increased by $21,100, and as a percentage of revenue declined slightly to 26.5% in 2014 from 27.0% in 2013. The gross profit increase was as a result of $22,400 in gross profit from the acquisition of the assets of Black Hawk Inc., which was acquired in December 2013, partially offset by a decrease in gross profit of $1,200 in Steel Excel's other energy operations. Gross profit from Steel Excel's sports businesses in

the 2014 period increased by $3,400 primarily as a result of $2,700 in gross profit from UK Elite and an increase in gross profit of $600 from baseball operations.

SG&A expenses in 2014 increased by $15,207, as compared to 2013. SG&A expenses in Steel Excel's energy businesses increased by $3,100 as a result of $3,000 of costs incurred at Black Hawk Inc. in the 2014 period, whose assets were acquired in December 2013. SG&A expenses in Steel Excel's sports businesses increased by $3,800 primarily as a result of costs incurred at UK Elite, including costs associated with operating the businesses acquired in the current period. Other SG&A expenses increased by $6,100 primarily as a result of increased costs incurred for services provided by affiliates of Steel Excel and an increase in stock-based compensation expense in 2014.

A goodwill impairment charge of $41,450 was recorded in the fourth quarter of 2014 as a result of the adverse effects the decline in energy prices had on the oil services industry and the projected future results of operations of the Energy segment.

Interest expense of $3,177 in 2014 increased by $1,452, as compared to 2013, primarily as a result of the borrowings under Steel Excel's Amended Credit Agreement being outstanding for the full year in 2014.

Other income, net of $7,016 in 2014 primarily represented investment income of $6,600 and realized gains on the sale of marketable securities of $3,800, partially offset by a loss of $1,800 recognized on financial instrument obligations, a loss of $600 recognized upon initially accounting for an investment under the equity method of accounting at fair value, and a foreign exchange loss of $1,100.

Financial Services Segment

The Financial Services segment, for financial reporting purposes, consists of our consolidated subsidiary WFHC, which conducted its financial operations in 2015 through its wholly owned subsidiary, WebBank, and WF Asset Corp. WebBank originates and funds consumer and small business loans through lending programs with Marketing Partners, where the Marketing Partners provide marketing and servicing for the loans and subsequently purchases the loans (or interests in the loans) that are originated by WebBank. WebBank also has private-label financing programs that are branded for a specific retailer, manufacturer, dealer channel, or proprietary network and bank card programs. WebBank also participates in syndicated commercial and industrial, as well as asset based credit facilities and asset based securitizations through relationships with other financial institutions. WF Asset Corp. owns a portfolio of investments. WebBank's deposits are insured by the FDIC up to the current limits, and the bank is examined and regulated by the FDIC and the UDFI. The following presents a summary of the Financial Services segment operating results as reported in our consolidated financial statements:

	Year Ended December 31,		
	2015	2014	2013
Revenue:			
Interest income (including fees)	$ 60,468	$ 24,640	$ 18,898
Non-interest income	8,962	12,007	9,287
	69,430	36,647	28,185
Costs and expenses:			
Selling, general and administrative expenses	21,716	11,808	9,933
Interest expense	1,450	638	496
Recovery of loan losses	(50)	(50)	(80)
Asset impairment charge	—	—	168
	23,116	12,396	10,517

(3) Represents total expected required minimum pension plan contributions to the WHX Pension Plan, the JPS Pension Plan and the API Plan for 2016, 2017, 2018, 2019, 2020 and for the five years thereafter. Actual future pension costs and required funding obligations will be affected by changes in the factors and assumptions described elsewhere in this Annual Report on Form 10-K, as well as other changes such as any plan termination or other acceleration events.

Environmental Liabilities

Certain of BNS' and HNH's facilities are environmentally impaired. BNS and HNH have estimated their liability to remediate these sites to be $3,922 and $3,822, respectively, at December 31, 2015. For further discussion regarding these commitments, among others, see Note 21, "Commitments and Contingencies," to the SPLP consolidated financial statements found elsewhere in this Form 10-K.

Deposits

Deposits at WebBank at December 31, 2015, and 2014 were as follows:

	2015	2014
Current	$ 155,112	$ 87,804
Long-term	97,060	77,056
Total	$ 252,172	$ 164,860

The increase in deposits at December 31, 2015 compared with 2014 is due to WebBank's asset growth. The average original maturity for time deposits at December 31, 2015 was 29 months compared with 30 months at December 31, 2014.

The following table details the maturity of time deposits as of December 31, 2015:

	Maturity				
	< 3 Months	3 to 6 Months	6 to 12 Months	> 12 Months	Total
	(Dollars in Thousands)				
Certificate of Deposits less than $100	$ 9,999	$ 10,538	$ 24,772	$ 97,060	$ 142,369
Certificate of Deposits of $100 or more	4,128	9,723	12,531	—	26,382
Total Certificates of Deposits	$ 14,127	$ 20,261	$ 37,303	$ 97,060	$ 168,751

Off-Balance Sheet Risk

It is not the Company's usual business practice to enter into off-balance sheet arrangements such as guarantees on loans and financial commitments, indemnification arrangements, and retained interests in assets transferred to an unconsolidated entity for securitization purposes. Certain customers and suppliers of HNH's Joining Materials business choose to do business on a "pool" basis. Such customers or suppliers furnish precious metal to subsidiaries of H&H for return in fabricated form or for purchase from or return to the supplier. When the customer's precious metal is returned in fabricated form, the customer is charged a fabrication charge. The value of pooled precious metal is not included in HNH's balance sheet. As of December 31, 2015, customer metal in H&H's custody consisted of 160,363 ounces of silver, 535 ounces of gold, and 1,391 ounces of palladium. The market value per ounce of silver, gold and palladium as of December 31, 2015 was $13.86, $1,062.25, and $547.00, respectively.

SPLP uses the same credit policy in making commitments and conditional obligations as it does for on-balance sheet instruments.

WebBank is a party to financial instruments with off-balance sheet risk. In the normal course of business, these financial instruments include commitments to extend credit in the form of loans as part of WebBank's lending arrangements. Those

segment also includes the operations of WFH LLC's (formerly known as CoSine) API subsidiary beginning in the second quarter of 2015. API, is a manufacturer and distributor of foils, films and laminates used to enhance the visual appeal of products and packaging.

Energy

Steel Excel's Energy business provides drilling and production services to the oil and gas industry. Through its wholly owned subsidiary Steel Sports Inc., Steel Excel's sports business is a social impact organization that strives to provide a first-class youth sports experience emphasizing positive experiences and instilling the core values of discipline, teamwork, safety, respect, and integrity. Steel Excel also continues to identify other new business acquisition opportunities. The operations of Steel Sports are not considered material and are included in the Energy segment.

Financial Services

The Financial Services segment activity during 2015 primarily consists of our subsidiary WFHC, which conducted its financial operations during 2015 through its wholly owned subsidiary WebBank. WebBank originates and funds consumer and small business loans through lending programs with unaffiliated companies that market and service the programs ("Marketing Partners"), where the Marketing Partners subsequently purchase the loans (or interests in the loans) that are originated by WebBank. WebBank also has private-label financing programs that are branded for a specific retailer, manufacturer, dealer channel, or proprietary network and bank card programs. WebBank also participates in syndicated commercial and industrial as well as asset based credit facilities and asset based securitizations through relationships with other financial institutions. Interest income is primarily derived from interest and origination fees earned on loans and investments. Non-interest income is primarily derived from fee income on contractual lending arrangements, premiums on the sale of loans, and loan servicing fees. WebBank's deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") up to the current limits, and the bank is examined and regulated by the FDIC and the State of Utah Department of Financial Institutions ("UDFI").

STATE OF MICHIGAN

IN THE 63RD DISTRICT COURT FOR THE COUNTY OF KENT

UHG I LLC ,	Case No.:
Plaintiff,	HON.
v	**COMPLAINT FOR MONEY OWED UNDER AN ACCOUNT STATED, BREACH OF CONTRACT OR ALTERNATIVELY FOR UNJUST ENRICHMENT**
I	
Defendant.	

Richard E. Stueckroth (P85814)
Dobberstein Law Firm, PLLC
Attorney for Plaintiff
225 S Executive Dr
Brookfield, WI 53005
(262) 641-3715

DLF42761

Pursuant to MCR 2.113(C)(2)(a), there is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

NOW COMES Plaintiff, UHG I LLC ("Plaintiff"), by and through its attorney, Richard E. Stueckroth of Dobberstein Law Firm, PLLC, and for its complaint against Defendant states as follows:

COUNT I
ACCOUNT STATED

1. Plaintiff, UHG I LLC , is a corporation with its primary offices located at 6400 Sheridan Drive, Suite 138, Williamsville NY 14221. UHG I LLC does not do business, nor does it have any employees or offices in the State of Michigan and is not required to obtain a certificate of authority from the State of Michigan.

2. Defendant [illegible]fendant"), is an individual last known to reside at 11443 BOULDER DR E APT 110 LOWELL MI 49331, located in KENT County.

3. Defendant requested an extension of credit from Upgrade ("Original Creditor") through WebBank, a licensed Credit Services Organization on an installment loan ("Account

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

Agreement"), specifically account number ending in 5864, and by use of the Account, Defendant became bound by the terms in the Loan & Security Agreement, copies of which are attached hereto as **Exhibit 1.** Account Agreement was opened on 09/27/2018.

4. Upgrade assigned all its rights in and to UHG I LLC on 11/21/2019 as evidenced by the Bill of Sale attached hereto as **Exhibit 2.**

5. The principal balance purchased by Plaintiff was $2,430.17.

6. Plaintiff remains the holder and owner of the Account Agreement and is the successor in interest to the terms and conditions relating thereto.

7. Defendant breached the Account Agreement by failing to make monthly payments as they became due.

8. By reason of Defendant's failure and refusal to pay the balance in accordance with the terms of the account agreement, Plaintiff has suffered damages in the amount of $2,430.17. Plaintiff requests this court to enter judgment in this amount plus costs, attorney fees, and post-judgment contractual interest thereon capped at the rate of 13.00% annually calculated from the date of the filing of the complaint pursuant to MCL 600.6013(7).

COUNT II
(BREACH OF CONTRACT)

9. Plaintiff repeats and incorporates the preceding paragraphs of this complaint as though fully stated herein.

10. Defendant breached the Account Agreement between the parties by failing to make payments as required by the Account Agreement and has suffered damages as a result.

11. Plaintiff has made demand upon Defendant for payment of the amount due and owing, but Defendant has refused to pay the amount due.

12. As a direct and proximate result of Defendant's breach of the Account Agreement

Plaintiff has incurred damages in the amount of $2,430.17. Plaintiff requests this court to enter judgment in this amount plus costs, attorney fees, and post-judgment contractual interest thereon capped at the rate of 13.00% annually calculated from the date of the filing of the complaint pursuant to MCL 600.6013(7).

COUNT III – ALTERNATIVE
(UNJUST ENRICHMENT)

13. Plaintiff repeats and incorporates the preceding paragraphs of this complaint as though fully stated herein.

14. Plaintiff brings Count III in the alternative to Counts I and II of this complaint.

15. Defendant accepted and/or received a monetary benefit of $2,430.17.

16. Defendant accepted and/or received the benefits of a credit account issued.

17. It would be inequitable for this Court to allow Defendant to retain the benefits of the funds or to be unjustly enriched at the expense of Plaintiff or allow Defendant to retain the value of the funds at issue without repaying Plaintiff the value of the same.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of $2,430.17, together with court costs, attorney's fees and post-judgment contractual interest thereon capped at the rate of 13.00% annually calculated from the date of the filing of the complaint pursuant to MCL 600.6013(7).

Dobberstein Law Firm, PLLC

Dated: 3/23/2023

By: _____

Richard E. Stueckroth (P85814)
Attorney for Plaintiff
225 S Executive Dr Suite 201
Brookfield, WI 53005
(262) 641-3715
info@dlflaw.com

Truth in Lending Disclosure Statement

Lender:
WebBank
215 South State Street, Suite 1000
Salt Lake City, UT 84111

Borrower:
[redacted]
IONIA, Michigan 48846

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
35.89%	$2,367.55	$3,661.30	$6,028.85

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
35	$167.47	Monthly, Beginning on 10/27/2018 and due on the same day of each following month. If your due date is on the 29th, 30th or 31st and the current month is shorter, your payment will be due on the last day of the month.
One Final Payment	$167.40	09/27/2021

Late Charge If payment is not received in full within 15 calendar days of the payment due date, you may pay a late charge of $10. This charge is assessed only once per late payment.

Prepayment If you pay off your loan early, you will not have to pay a penalty and you may be entitled to a refund of a portion of your finance charge.

Security None. This loan is unsecured.

Additional Information See your contract terms for any additional information about nonpayment, default, and repayment in full before the scheduled due date.

Itemization of the Amount Financed

Principal Amount of Loan $3,895.00

Loan Origination Fee/Prepaid Finance Charge (Paid to Lender) $233.70

Amount Financed (Amount Provided to You) $3,661.30

Borrower Agreement

Last Revised: October 30, 2017

This Borrower Agreement ("Agreement") is entered into between you ("you") and WebBank, a Utah-chartered FDIC-insured industrial bank ("WebBank," "we," or "us"). Upgrade, Inc. ("Upgrade") operates a national online consumer loan marketplace platform, located at www.upgrade.com ("Site"), through which you may request and apply for unsecured consumer installment loans from WebBank. If you request a loan that is approved by us, then your loan will be governed by the terms of the Loan Agreement and Promissory Note, attached herein as Exhibit A. We reserve the right to revise the Loan Agreement and Promissory Note from time to time. The version in effect at the time of your loan request will govern the terms of your loan with us.

1. **Use of the Site/Loan Applications.** Under this Agreement, you may request unsecured consumer installment loans originated by WebBank through the Site. By entering into this Agreement, you agree to comply with Upgrade's Terms of Use and all other rules or procedures set forth and described on the Site. By submitting a loan request or application, you agree to receive loan proceeds in the amount requested and you agree to repay timely all installments required under your Loan Agreement and Promissory Note , subject to any right to cancel you may have as described below. You understand that each loan request or application is subject to WebBank's current loan underwriting criteria, which may change from time to time. If you have been approved for and/or received a new consumer loan from any lender within sixty (60) days of submitting an application through the Site, you may be ineligible for a loan through the Site at the time of application submission. You may subsequently submit a new application through the Site once you become eligible. You agree that all disputes between you and WebBank, Upgrade, or any subsequent holder of your Note will be resolved through binding arbitration as described in Section 8 below, subject to your right to opt-out. You agree not to request a loan or use any loan proceeds to pay post-secondary education expenses, to buy or sell securities, or for any illegal purpose.

2. **Loan Terms.** If your loan is approved and funded, your loan will have a principal loan amount, fees, and interest as described on your federal Truth in Lending Act disclosure ("Truth in Lending Disclosure") and in your Loan Agreement and Promissory Note. You understand that we will provide you with an initial loan disclosure at the time of application that contains estimates based on the terms of your loan request, and that those initial estimates are subject to change prior to issuance of your loan. At the time of loan issuance, you will be provided with a final Truth in Lending Disclosure and Loan Agreement and Promissory Note, which will be deposited into your personal Upgrade account and may be accessed through your Upgrade online dashboard. All loans obtained through the Site will be funded by the standard Automated Clearing House method ("ACH"), and loan proceeds may take up to four (4) business days to post to your bank account. If your loan is subject to an origination fee, the fee will be deducted from your loan proceeds at the time of origination. Origination fee amounts of 5% or less of the total loan amount will not be refunded in any instance. The amount of any origination fee that exceeds 5% of the total loan amount is applied on a pro-rata basis over the term of the loan, and any unapplied portion of the amount of the origination fee that exceeds 5% of the total loan amount will be refunded to you in the event that you pay your loan in full prior to its maturity date. Origination fees are included in the total loan amount, which accrues interest over the life of the loan.

3. **Authorization to Obtain Your Credit Report.** By entering into this Agreement and requesting a loan, you authorize Upgrade and WebBank, and their agents, servicers, and assigns to obtain your credit report from one or more consumer reporting agencies, such as TransUnion, Experian, or Equifax. You acknowledge that WebBank and Upgrade may use the credit report for any purpose permitted by law, including: (i) to authenticate your identity; (ii) to make credit decisions; (iii) to determine your current debt-to-income ratio; and (iv) to obtain your credit score. By proceeding with your loan application, you authorize us to contact third-parties to verify the information in your credit report without further notice to you.

4. **Limited Power of Attorney.** You hereby grant to Upgrade a limited power of attorney and appoint Upgrade and its designees as your true and lawful Attorney-in-Fact and agent, with full power of delegation, substitution, and re-substitution, for you and in your name, place, and stead, in any and all capacities, to complete and execute the Loan Agreement and Promissory Note in the form attached herein as Exhibit A, but which incorporates the final accepted terms as indicated on the final Truth in Lending Disclosure deposited into your Upgrade account prior to loan funding. You further authorize Upgrade to perform each and every act necessary to be done in connection with executing your Loan Agreement and Promissory Note as you might or could do in person, and to approve, execute, and deliver the provisions of any instruments, documents, agreements, powers, releases, and certificates related to the Loan Agreement and Promissory Note and perform each and every action required, including but not limited to any legal or beneficial assignment of the Loan Agreement and Promissory Note. This Power of Attorney is limited to the purpose described above and will expire automatically upon the termination of this Agreement. You may revoke this Power of Attorney by emailing support@upgrade.com or calling 1(855) 997-3100 and closing your Upgrade account. However, if your loan request or application has been approved, you must revoke this Power of Attorney prior to the loan proceeds being transferred to your bank account. Once the Loan Agreement and Promissory Note is signed by Upgrade as your Attorney-in-Fact on your behalf, it is deemed executed and is thereafter your binding obligation. If you chose to revoke this Power of Attorney prior to execution of a Loan Agreement and Promissory Note, we will be unable to proceed with your loan request or application and your request or application will be considered withdrawn.

5. **Military Lending Act.** Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependents may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: the costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fees charged (other than certain participation fees for a credit card account). Your payment obligation is shown on the Truth in Lending Disclosure. Please call 1(855) 511-7676 toll free to have this disclosure provided to you orally. If you are a member of the Armed Forces or a dependent, certain terms of this Agreement prohibited under the Military Lending Act including the Arbitration Agreement contained in Section 8 of this Agreement, will not apply to you.

6. **Loan Servicing.** You acknowledge that all loans obtained through the Upgrade platform will be serviced by Upgrade. You also agree that Upgrade may delegate the servicing of your loan to a third party in its sole discretion without prior consent or notice.

7. **TCPA Consent.** By providing us with your mobile telephone number, you expressly consent to be contacted by us, our agents, representatives, affiliates, or anyone calling on our behalf for any and all purposes arising out of your relationship with us, your use of Upgrade's website and services, or any agreement you have entered into with Upgrade or us. You agree we may contact you in any way including SMS text messages, calls using prerecorded messages or artificial voice, and calls and messages delivered using an automated telephone dialing system or an automated texting system. You understand that automated messages may be played when the telephone is answered, whether by you or someone else. You also agree that representatives may leave you messages on your answering machine, voice mail, or via text if you don't answer. Standard calling and text messaging rates will apply, based on your cellular telephone carrier and service plan.

   During Upgrade's online application process, you may be asked to provide your prior express written consent to receive prerecorded calls and texts to your mobile device for marketing purposes. We will not use autodialed or prerecorded calls or texts to contact you for marketing purposes unless you provide us with that prior express written consent.

   You understand that you do not have to consent to receive any autodialed or prerecorded calls or texts to your mobile phone number in order to use or enjoy our services and products. If you have already provided your consent, you may withdraw your consent to receive autodialed or prerecorded calls or texts to your mobile phone number by contacting Upgrade by email at support@upgrade.com or by calling Upgrade customer support at 1-(855) 997-3100.

8. **Arbitration.**

   PLEASE READ THE FOLLOWING ARBITRATION AGREEMENT CAREFULLY. UNLESS YOU REJECT THIS PROVISION AS PROVIDED BELOW, BECAUSE YOU AND WE HAVE AGREED TO ARBITRATE ALL DISPUTES, NEITHER OF US WILL HAVE THE RIGHT TO LITIGATE THAT DISPUTE IN COURT, OR TO HAVE A JURY TRIAL ON THAT DISPUTE, OR ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE RULES OF THE ARBITRATOR, OR TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE ACTION.

   Rejection of This Arbitration Agreement. You may opt out of this Arbitration Agreement (as defined below) for all purposes by sending an arbitration opt out notice to WebBank, c/o Upgrade, Inc., 275 Battery Street, 23rd Floor, San Francisco, CA 94111, Attention: Legal Department, which is received at the specified address within 30 days of the date of your electronic acceptance of the terms of this Note.

   Arbitration Agreement. You agree that any dispute between you and WebBank or Upgrade (a "Dispute") shall be resolved exclusively by arbitration. A Dispute is any unresolved disagreement between us that arises out of or relates in any way to this Agreement, the loan or the relationship between you and us (including Upgrade and any assignee or holder of the loan). A Dispute also includes any disagreement about whether this arbitration agreement ("Arbitration Agreement") is enforceable or valid, the meaning of this Arbitration Agreement, and whether a disagreement is a "dispute" subject to binding arbitration as provided for in this Arbitration Agreement. However, in the event of a default, nothing in this Arbitration Agreement shall preclude us from exercising the lawful remedies of a creditor under applicable law, including, but not limited to set off. The scope of this Arbitration Agreement shall be given the broadest possible interpretation that is enforceable.

EXHIBIT #2

WELTMAN, WEINBERG & REIS Co., LPA

Consumer Collections

A Single Solution for All Your Consumer Collection Matters

Michigan Courts Increase Requirements of Proof of Assignment in Debt Buyer Cases

August 02, 2011 | Jeffrey K. Bearss, Esq.

On May 31, 2011 the Michigan Court of Appeals released a decision that will have immediate impact upon our clients, particularly our debt buyer clients. The case describes the level of proof needed to prove the assignment in debt buyer cases. The case is **Brownbark II LP v. Bay Area Floorcovering & Design Inc. et al**, Michigan Court of Appeals Case No. 296660, Decided May 31, 2011. Plaintiff debt buyer appealed the trial court's denial of judgment. The trial court determined that the debt buyer failed to establish both the existence of a valid assignment of the defaulted loan at issue and its damages with reasonable certainty. The Court of Appeals concluded that the evidence presented at trial was insufficient to establish a valid assignment of the defaulted loan, and affirmed the dismissal of the case.

This action centers around a small business loan obtained by defendant Bay Area Floorcovering & Design from a bank. In December 2007, plaintiff Brown Bark II, L.C. purchased a block of loans from the bank, including the loan at issue here.

Plaintiff commenced suit, alleging that it was entitled to recover the money owed on the loan as the assignee of the loan. To prove its assignee status, plaintiff relied on a half-page document, an allonge, which was a general assignment of a block of loans, without any specific reference to any specific account number or specific sum owed. Nor was it signed or notarized.

The Court of Appeals stated that Michigan's statute of frauds still requires that an assignment of debt be in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise.[1]

The Michigan Court of Appeals also stated that while the allonge was presented as evidence at trial, it was not attached to the note; nor did plaintiff introduce the agreement referenced in the allonge as evidence, citing privilege as its reason for failing to do so. Because the trial court did not have an opportunity to review the referenced agreement, and consequently could not determine what limitations might exist, the trial court could not conclude that the half-page general assignment constituted documentation of the bank's intent to transfer all of its rights related to the specific defaulted loan without any power of revocation. In addition, plaintiff's representative conceded that the person who purportedly signed the allonge on behalf of the bank was actually an employee of the debt buyer's affiliate. The appellate court held that the Plaintiff presented no evidence, either of an actual signed power of attorney or testimony by a representative of the bank, to support the assertion that plaintiff's representative had been authorized to act as an attorney-in-fact on the bank's behalf. In light of the foregoing facts, the Court of Appeals affirmed the dismissal of the case due to failure to prove the existence of a valid assignment at the trial.

For our debt buyer clients, there is now an increased level of proof of the assignment. The general contract, or batch assignment agreement, is no longer sufficient. A specific assignment, or affidavit supporting a specific assignment, should be supplied that refers to the specific account number. It should also be signed and notarized by the original creditor.

[1]MCL 566.132(f).

Firm News

- Weltman, Weinberg & Reis Co., LPA Shareholder Keri P. Ebeck Receives American Legal & Financial Network's "JPEG: Picture the Future" Award
- Weltman, Weinberg & Reis Co., LPA Welcomes Attorney Kevin J. Cummings
- Weltman, Weinberg & Reis Co., LPA Shareholder Keri P. Ebeck Elected Secretary of the Allegheny County Bar Association's Bankruptcy and Commercial Law Section
- Weltman, Weinberg & Reis Co., LPA Attorney Christopher B. Best Elected to Board of Directors for the Michigan Creditors Bar Association
- Weltman, Weinberg & Reis Co., LPA Attorney Benjamin N. Hoen Admitted to the State Bar of Michigan

WELTMAN, WEINBERG & REIS Co., LPA

Jeffrey K. Bearss

- At a Glance
- Credentials
- Affiliations

- Publications & Presentations

Jeffrey K. Bearss practices in Consumer Collections, assisting the Credit Union and Subrogation Practice Groups. He is based in the firm's Detroit, Michigan office. Mr. Bearss earned his J.D. from the University of Detroit Mercy School of Law, and a B.A. in political science from Michigan State University. He is licensed in Michigan and the U.S. District Court for the Eastern District of Michigan, the Sixth Circuit Court of Appeals, and the U.S. Supreme Court. He is a member of the State Bar of Michigan and the Knights of Columbus.

Practice Areas:

Consumer Collections
- Credit Union Group
- Subrogation Group

Bar Admissions:

Michigan (1988)
Sixth Circuit Court of Appeals (1989)
U.S. District Court for the Eastern District of Michigan (1989)
U.S. Supreme Court (1992)

Education:

J.D., University of Detroit Mercy School of Law (1988)
B.A., Political Science, Michigan State University (1985)

Professional Affiliations:

State Bar of Michigan

Community Involvement:

Knights of Columbus: Member

Alerts:

July 07, 2014
Beware of Hidden Fees in Health Insurance Contracts

February 24, 2015
A Checklist to Increase Recoveries in Insurance Subrogation Cases in Michigan

December 20, 2012
Arbitration Clauses in Nursing Home Contracts: Are They Hurting More Than Helping?

Insights:

November 2, 2015
What Constitutes Actual or Constructive Knowledge of a Defective Pole?

December 16, 2013

New Michigan Utility Shut Off Statutes: What You Need to Know

May 27, 2013
Statute of Limitations in Utility Collection Cases: Protecting Receivables

Jeffrey K. Bearss

Attorney
Detroit
Phone: 248.786.3134
Fax: 248.786.3197
Email: jbearss@weltman.com

- Download Profile
- Print Profile
- Send to a Colleague
- Download vCard

© Copyright 2018 Weltman, Weinberg & Reis Co., LPA | Site Map | RSS | Privacy | Disclaimer
Hosted on the FirmWise Platform