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[Additional Counsel Appear on Signature Page]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WODENA CAVNAR, ROSALINE
TERRILL, LINDA PARKS, and
DAVID SCOTT, on their own behalf
and on the behalf of all others similarly
situated,

Plaintiffs,

v.

BOUNCEBACK, INC., a Missouri
Corporation , STONE FENCE
HOLDINGS, INC., GALE KRIEG, and
DOES 1 through 20,

Defendants.

NO. 2:14-CV-235-RMP

**FIRST AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 **I. INTRODUCTION**

2 1.1 The plaintiffs in this case are four Washington consumers who
3 received a series of letters threatening them with criminal prosecution unless they
4 paid debts arising from unpaid checks for small retail purchases. Each of the
5 letters prominently bore the seal and letterhead of a county prosecutor and
6 contained a “WARNING OF CRIMINAL CHARGES.” Recipients were
7 informed that it was “still possible to avoid a CRIMINAL CONVICTION” if they
8 paid not only the check amount but more than \$180 in fees. Each Plaintiff,
9 believing these letters were really from a prosecutor and that the threats of
10 prosecution were real, made the payments demanded.

11 1.2 What Plaintiffs did not realize was the letters were actually sent by
12 Defendant Bounceback Inc., a for-profit debt collection company based in
13 Missouri. Bounceback’s operations are much like those of any other high-volume
14 debt collector: It solicits its business from large national retailers and other
15 merchants, receives electronic information about unpaid checks directly from
16 those merchants, and sends out standardized collection notices to consumers.

17 1.3 There is one crucial difference, however: Under Bounceback’s so-
18 called “Check Enforcement Program,” county prosecutors rent out the
19 prosecutor’s seal and letterhead to Bounceback in exchange for a cut of the
20 collection fees, thereby cloaking ordinary civil debt collection under a sham

1 “criminal diversion” program. Consumers who receive Bounceback’s letters are
2 led to believe they are from the prosecutor, not from a private collection agency.

3 1.4 Despite Bounceback’s use of the county prosecutor’s name and
4 authority to coerce payments, the prosecutors exercise no meaningful control over
5 Bounceback’s day-to-day collection activities. Bounceback’s threats of criminal
6 prosecution are made without any prosecutor having actually investigated the
7 circumstances to determine whether an unpaid check was written with criminal
8 intent or was simply an innocent mistake. Moreover, when Bounceback sends its
9 collection letters, it cannot know whether a consumer will be prosecuted for
10 failing to pay its step collection fees, as the letters represent.

11 1.5 In any event, there is no basis in Washington law for the assessment
12 of the fees. Both state and federal law, moreover, expressly prohibit a non-lawyer
13 collection company from operating in the name of a law office, even if the lawyer
14 agrees to the use. Bounceback engages in these collection practices in
15 Washington despite the fact that it is neither licensed in this state as a collection
16 agency, nor registered as a corporation to do business, as is required under
17 Washington law. In short, Bounceback’s operations, from top to bottom and in
18 numerous respects, run afoul of both state and federal law.

19 1.6 The American Bar Association issued a formal ethics opinion
20 condemning the practices of companies like Bounceback and concluding that

1 their use of the prosecutor's letterhead on their collection letters constitutes
2 unauthorized practice of law, which is a crime pursuant to RCW 2.48.180. *See*
3 ABA Formal Ethics Opinion 469 (Nov. 12, 2014), attached to this Complaint as
4 Exhibit 1.

5 **II. JURISDICTION**

6 2.1 Plaintiffs bring this action under 15 U.S.C. §1692k(d), which confers
7 jurisdiction over Plaintiffs' claims under the Fair Debt Collection Practices Act
8 (FDCPA). The jurisdiction of this Court also arises under 28 U.S.C. § 1331.
9 Supplemental jurisdiction over the state law claims exists under 28 U.S.C. §
10 1367.

11 2.2 Venue is proper in this district under 28 U.S.C. § 1391(b) because a
12 substantial part of the events giving rise to Plaintiffs' claims occurred in this
13 District and Defendants are subject to personal jurisdiction in this district.

14 **III. PARTIES**

15 **A. Plaintiffs**

16 3.1 Plaintiff Wodena Cavnar is a natural person who wrote one or more
17 checks that were allegedly dishonored upon presentment and that one or more of
18 the Defendants sought to collect.

1 3.2 Plaintiff Rosaline Terrill is a natural person who wrote one or more
2 checks that were allegedly dishonored upon presentment and that one or more of
3 the Defendants sought to collect.

4 3.3 Plaintiff Linda Parks is a natural person who wrote one or more
5 checks that were allegedly dishonored upon presentment and that one or more of
6 the Defendants sought to collect.

7 3.4 Plaintiff David Scott is a natural person who wrote one or more
8 checks that were allegedly dishonored upon presentment and that one or more of
9 the Defendants sought to collect.

10 **B. Defendants**

11 3.5 Defendant Bounceback, Inc. is a Missouri corporation with its
12 principal place of business at 7501 N.W. Tiffany Springs Parkway, Suite 300,
13 Kansas City, Missouri 64153. Bounceback is engaged in the business of
14 collecting dishonored checks. The primary business of Bounceback is the
15 collection of unpaid checks.

16 3.6 Stone Fence Holdings, Inc., (“SFH”), is a Kansas Corporation duly
17 registered as a foreign corporation in Missouri with its principal place of business
18 at 7501 NW Tiffany Springs Parkway, Suite 300, Kansas City, Platte County,
19 Missouri 64153. SFH is a holding company which owns the wholly-owned
20

1 subsidiary of Bounceback, Inc. The primary business of SFH is the operation of
2 Bounceback.

3 3.7 Defendant Gale Krieg (“Krieg”) is an individual residing in Prairie
4 Village, Johnson County, Kansas and at all relevant times was an officer and
5 director of both Bounceback and SFH. Krieg designed, developed, implements
6 and promotes Bounceback’s check collection business.

7 3.8 At all times relevant, Krieg has exercised and continue to exercise
8 ultimate authority to adopt, approve, implement and modify the business practices
9 of Bounceback, Inc. and Stone Fence Holdings. On behalf of Bounceback, Inc.,
10 Krieg personally solicits business, negotiates contracts, oversees daily operations
11 and handles customer relations with both prosecutors and merchants, all for the
12 purpose of facilitating Bounceback, Inc.’s check collection business.

13 3.9 Plaintiffs are ignorant of the true names and capacities, whether
14 individual, corporate, or otherwise, of defendants sued herein as Does One
15 through Twenty. Plaintiffs will seek leave to amend this complaint when the true
16 names and capacities of said defendants are ascertained. Plaintiffs allege on
17 information and belief that each defendant herein is acting in concert with, and as
18 the agent and/or employee of, each other defendant.

19 3.10 Plaintiffs allege on information and belief that the interests of all
20 Defendants have been so unified that their separate personalities no longer exist

1 and that if the acts of the corporate Defendants are treated as those of the
2 corporation alone, an inequitable result will follow.

3 3.11 Each Defendant named in this Complaint uses instrumentalities of
4 interstate commerce and the mails in a business in which the principal purpose is
5 the collection of debts. Each Defendant regularly collects and attempts to collect,
6 directly or indirectly, debts alleged to be due another, and are “debt collectors”
7 within the meaning of 15 U.S.C. § 1692a(6), and are “collection agencies” within
8 the meaning of RCW 19.16.100(4).

9 3.12 Defendants are not employees of the prosecuting attorney’s office of
10 any county or city in Washington.

11 **IV. PLAINTIFFS**

12 **A. Wodena Cavnar**

13 4.1 Wodena Cavnar lives in Moses Lake, Grant County, Washington.
14 She is sixty-six years old and disabled. Because of her disabilities, Ms. Cavnar
15 goes to various doctors appointments at least five times per month and sometimes
16 up to three appointments a week. She lives on a modest fixed income with her
17 son and his fiancé.

18 4.2 In August or September 2013, Ms. Cavnar wrote a personal check in
19 the amount of \$80.43 to her local Safeway store, for household goods. The check
20 was dishonored on presentment.

1 4.3 Once it received the check, Bounceback initiated its collection
2 activities by letter, threatening to criminally prosecute Ms. Cavnar if she did not
3 participate in the Check Enforcement Program. In or about October 2013,
4 Bounceback mailed Ms. Cavnar a letter on the letterhead of the Grant County
5 Prosecuting Attorney. In the letter, Ms. Cavnar was told that to avoid a criminal
6 conviction she must comply with the conditions of the diversion program by
7 paying \$211.43 and completing a “Check Writer’s Financial Training Course.”

8 4.4 At the time, Ms. Cavnar believed that the communications she
9 received were really from the Grant County Prosecuting Attorneys’ Office and
10 that the statements in the communications were true. Based on this belief, Ms.
11 Cavnar paid the Bounceback Check Enforcement Program a total of \$211.43.

12 4.5 Ms. Cavnar was not able to take the “Financial Training” class on
13 the scheduled date due and therefore called to reschedule the class. The
14 Bounceback representative informed her that the company would send her a letter
15 with a rescheduled date for her class. Bounceback’s attempts to contact
16 Ms. Cavnar ended, however, after she paid all the fees it had been demanding.
17 Bounceback did not follow up with Ms. Cavnar to reschedule the “Financial
18 Training” class, for which she was charged \$145.00.

1 **B. Rosaline Terrill**

2 4.6 Rosaline Terrill lives in Kitsap County, Washington. Ms. Terrill is
3 married to William Terrill, who is employed by the federal government as a
4 heating systems technician at Madigan Army Medical Center in Fort Lewis,
5 Washington. Together they have three children, each with special needs. On or
6 about November 29, 2012, Ms. Terrill bought clothes for her children at the local
7 Goodwill, Inc. store, paying for her purchases with a personal check in the
8 amount of \$41.19. The check was dishonored on presentment.

9 4.7 On or about July 19, 2013, Bounceback mailed Ms. Terrill a letter,
10 on the letterhead of the Kitsap County Prosecuting Attorney's office. In the letter
11 Ms. Terrill was told that the Prosecuting Attorney's Office had received a
12 complaint against her for issuing a worthless check, and that to avoid the
13 possibility of criminal prosecution, she had TEN (10) DAYS, from the date of the
14 notice to pay the check amount, bank charges of \$3.75, and the following fees:

15 Program Fees: \$ 40.00

16 Financial Training: \$145.00

17 4.8 In the letter Ms. Terrill was also directed that she should not attempt
18 to pay the merchant directly, and that if she had any questions, to call a toll-free
19 number provided in the letter. A copy of this letter is attached to this Complaint
20 as Exhibit 2.

1 4.9 On or about July 25, 2013, Mr. Terrill mailed a payment of \$84.94 to
2 the “Kitsap County Check Enforcement Program,” consisting of payment of the
3 check amount plus the \$3.75 bank charge and a \$40.00 “penalty” fee. Ms. Terrill
4 included a cover letter stating that she did not wish to participate in the financial
5 training class. That same day Ms. Terrill sent a second letter to the “Kitsap
6 County Check Enforcement Program” stating: “please, no longer call me or send
7 letters to me.”

8 4.10 Bounceback ignored Ms. Terrill’s directive to stop contacting her:
9 Bounceback employees called both her husband and her on their respective cell
10 phones, and Bounceback continued to send collection demands, despite the fact
11 that Ms. Terrill had already paid the check amount, plus \$43.75 in fees. In the
12 letters, Bounceback threatened prosecution and stated that Ms. Terrill’s failure to
13 pay the fees it was demanding could result in a “CRIMINAL RECORD.”

14 4.11 Frightened and upset by Bounceback’s continued threats, on or about
15 August 23, 2013, Ms. Terrill made an additional payment of \$176.00, consisting
16 of a Financial Training Fee of \$145.00, a Payment Plan Charge of \$25.00, and a
17 Convenience Fee of \$6.00. In sum, Ms. Terrill paid \$260.94 for her \$41.19
18 check.

19 4.12 Bounceback’s attempts to contact Ms. Terrill ended after she paid all
20 the fees it had been demanding, although she has never completed the “Financial

1 Training” class, for which she was charged \$145.00, the threats to prosecute her
2 have ended.

3 **C. Linda Parks**

4 4.13 Linda Parks lives by herself in a Senior Living Facility in Sequim,
5 County of Clallam, Washington. She is sixty-five years old and lives on a modest
6 fixed income. On or about February 25, 2013 Ms. Parks wrote a personal check
7 in the amount of \$108.10 to the local Walmart store, for household goods. The
8 check was dishonored on presentment.

9 4.14 Once it received the check, Bounceback initiated its collection
10 activities by letter and phone, threatening to criminally prosecute Ms. Parks if she
11 did not participate in the Check Enforcement Program. On or about August 6
12 2013, Bounceback mailed Ms. Parks a letter on the letterhead of the Clallam
13 County Prosecuting Attorney with the title:

14 **WARNING OF CRIMINAL CHARGES**

15 4.15 In the letter, Ms. Parks was told that to avoid a “**CRIMINAL**
16 **CONVICTION**” she must comply with the conditions of the diversion program
17 by paying a total of \$321.85 and completing a “Check Writer’s Financial Training
18 Course.” A copy of that letter is attached to this Complaint as Exhibit 3.

19 4.16 At the time, Ms. Parks believed the communications she received
20 were really from the Clallam County Prosecuting Attorneys’ Office and that the

1 statements in the communications were true. Based on this belief, in September
2 2013, Ms. Parks permitted Bounceback to debit a total of \$220.46 from her
3 account. After conducting her own research on the internet, Ms. Parks grew
4 suspicious about the legitimacy of the Check Enforcement Program. Ms. Parks
5 contacted her bank and the bank credited her for the payments she had made.

6 4.17 Ms. Parks continued to receive threatening communications from
7 Bounceback. Accordingly, on or about October 26, 2013, Ms. Parks purchased
8 two money orders from Walmart, totaling \$138.10, which she sent to the Check
9 Enforcement Program for payment of any money to which Walmart was lawfully
10 entitled. Ms. Parks alleges, on information and belief, that Bounceback retained
11 all, or a portion of this payment as fees for itself. In making this payment
12 Ms. Parks incurred expenses, including the fees she was charged by Walmart to
13 purchase the money orders, as well as her postage and mailing expenses.

14 **D. David Scott**

15 4.18 David Scott and his wife Thersa Scott reside in Spokane County,
16 Washington. Mr. Scott is a network support engineer. Mrs. Scott is disabled and
17 not currently employed. On or about August 28, 2014, the Scotts purchased pet
18 food for their family dog, cat, and lizard at a PetSmart store in Spokane Valley,
19 Washington. Following the store's procedures, rather than writing a check to pay
20 for their \$105.40 purchase, they gave the cashier a blank check with their

1 checking account information on it, which the cashier scanned and returned.
2 Thersa Scott then signed a computer screen authorizing PetSmart to debit their
3 bank account in the amount of the purchase. The Scotts left the store with their
4 purchase without any indication that there was a problem with their payment.

5 4.19 Complete Payment Recovery Services, Inc. (CPRS) is a debt
6 collector. In November 2014, CPRS left a voice mail message for David Scott.
7 Thersa Scott returned the call on or about November 18, 2014. The CPRS
8 representative told her that the PetSmart check for \$105.40 had not cleared. Mrs.
9 Scott offered to take care of it, but she was told that it was too late, the check had
10 been sent to another company to handle. The CPRS representative gave Mrs.
11 Scott the phone number of that company and suggested that Mrs. Scott call them.

12 4.20 Thersa Scott called the number provided by the CPRS representative
13 on or about November 19, 2014. This was a number for Bounceback. Mrs. Scott
14 spoke with a woman who told Mrs. Scott that they did not yet have any record of
15 this check, but that David Scott had committed a felony and was going to jail if he
16 didn't pay \$275 within the next ten days. Thersa Scott was extremely frightened
17 and upset by this threat.

18 4.21 Upon learning that there was a problem with the payment made to
19 PetSmart, David Scott telephoned Defendants, whom he thought were employees
20 of the Spokane County Prosecuting Attorney's Office. During the course of two

1 phone calls, Mr. Scott explained the facts. He told that he was wrong, and that he
2 had to pay to avoid problems.

3 4.22 David Scott also contacted his financial institution and asked why
4 the electronic check was dishonored. His financial institution advised Mr. Scott
5 that the electronic check was never presented to it for payment.

6 4.23 On or about December 5, 2014, David Scott received a collection
7 letter prepared and mailed by defendants. The letterhead was on the official
8 letterhead of the Spokane Prosecuting Attorney's Office. The letter stated that the
9 Spokane Prosecuting Attorney's Office had received a complaint against him for
10 writing a worthless check, that he could be charged, and that he had an
11 opportunity to avoid prosecution by completing a "Diversion" program. The
12 letter stated further that if he did not pay within ten days, his failure to pay could
13 be used against him in a criminal prosecution. The letter stated that the Check
14 Enforcement Program would cost a total of \$274.15, for the following items:

15	Check Amount:	\$105.40
16	Program Fees:	\$ 40.00
17	Financial Training	\$125.00
17	Bank Charges	\$ 3.75

18 A copy of the letter is attached to this Complaint as Exhibit 4.

19 4.24 David Scott has received numerous telephone calls from Defendants
20 seeking to collect these fees.

1 4.25 On or about December 31, 2014, David Scott received a collection
2 letter prepared and mailed by defendants. That letter stated that he had not
3 responded to the Notice from the Prosecuting Attorney's Office, and in large
4 bold-faced type:

5 **PAY THE TOTAL LISTED BELOW NOW**
6 **TO AVOID THE POSSIBILITY OF CRIMINAL PROSECUTION**

7 The letter states that the payment due is \$274.15. A copy of the letter is attached
8 to this Complaint as Exhibit 5.

9 **V. BOUNCEBACK'S STANDARD OPERATING PROCEDURES**

10 5.1 Unless otherwise specified, "Bounceback" as used herein refers
11 collectively to the activities of Defendants Bounceback, Inc., Stone Fence
12 Holdings, Inc. and Gale Krieg.

13 5.2 During all times relevant herein, Bounceback has collected allegedly
14 unpaid checks, by using "Check Enforcement Programs" which it has operated in
15 more than a dozen Washington counties. Bounceback maintains all physical files,
16 financial records, documentation, reports and computer files regarding this check
17 collection business.

18 5.3 The practices and procedures used by Bounceback are the same or
19 substantially similar for all counties in Washington in which Bounceback
20 operates.

1 5.4 Bounceback’s “Check Enforcement Program” is merely check
2 collection, disguised as law enforcement. What primarily distinguishes the
3 Bounceback business from lawful check collection is its use of official prosecutor
4 letterhead, the use of false prosecution threats to coerce payment, and the
5 imposition of fees far in excess of what may be lawfully charged pursuant to state
6 law.

7 5.5 Typically, a debt collector that is collecting an unpaid check will
8 receive electronic check information from the creditor, enter the check
9 information into its computer system, and then call or send collection letters to
10 the check writer, seeking payment of the check amount, plus any additional
11 charges permitted by law. When a check writer pays the debt collector, the debt
12 collector allocates the money between itself and the creditor, pursuant to the
13 agreement between those parties.

14 5.6 Operationally, Bounceback’s procedures are no different than those
15 of any volume debt collector. It solicits business from major national retailers,
16 like Safeway, and national debt collectors, like Telecheck and Certegy.
17 Following standard procedures, the merchant or debt collector sends electronic
18 check information directly to Bounceback. Bounceback then inputs that
19 information into its computer system, which triggers the mailing of standard form
20 letters on the letterhead of the prosecuting attorney for the county in which the

1 check was written. In the form letters, the check writer is threatened with
2 prosecution, unless he or she pays fees that often total more than \$180 for a
3 purported criminal diversion program. Bounceback sends these letters only to
4 persons who have not been charged with a crime in connection with the check
5 that Bounceback is attempting to collect.

6 5.7 When Bounceback collects money and fees on an unpaid check, it
7 distributes the money as follows: (1) it pays the check amount plus an agreed-
8 upon fee to the merchant or debt collector that referred the check to Bounceback;
9 (2) it pays a small contractual fee to the prosecuting attorney whose name it used
10 in collecting the check; and (3) Bounceback itself then retains the bulk of the fees
11 the check writer paid.

12 5.8 In many cases, Bounceback collects more for its own fees than it
13 collects for the merchant or debt collector that referred the check.

14 5.9 Bounceback enters into contracts with prosecutors purportedly
15 permitting it to operate in the prosecutor's name, and it pays the prosecutor a fee
16 for each successfully collected check. Prior to Bounceback initiating its
17 collection activities, the local prosecutor neither conducts any investigation of a
18 particular check writer, nor makes any individualized determination regarding
19 either probable cause or the likelihood of prosecuting a check writer who does not
20 pay the Bounceback fees and participate in the "Diversion Class."

1 5.10 Bounceback, using the prosecutor's name and authority, also enters
2 into agreements with the merchants that submit checks, purportedly prohibiting
3 the merchant from accepting any payment from the check writer or referring the
4 check to another debt collector while Bounceback is attempting to collect the
5 check.

6 5.11 When Bounceback contacts a check writer, it orders the check writer
7 not to make payment directly to the merchant.

8 5.12 The fees that Bounceback charges have varied, and have increased
9 during the class period. Bounceback's fees now usually include the following:

10 Financial training fee: \$145.00

11 Program fee: \$ 40.00

12 Payment plan fee: \$ 25.00

13 Fee for electronic payments: \$ 6.00

14 5.13 Bounceback's collection letters contain a toll-free number,
15 supposedly to the local prosecuting attorney's office. In reality, the phone
16 number is for Bounceback's office, and is answered by a Bounceback employee.
17 People who call the phone number given on the letter are led to believe they are
18 speaking to the prosecuting attorney's office. Bounceback's employees do not
19 disclose they are employees of a private company and that the company profits
20 directly from the money collected from check writers. People who attempt to

1 explain the check was returned because of a mistake that either they or their bank
2 made, or who otherwise offer to provide evidence negating criminal intent, are
3 told they are nonetheless liable and must pay all the money being demanded to
4 avoid the possibility of prosecution.

5 **VI. FACTS COMMON TO ALL CLASS MEMBERS**

6 6.1 Defendants have generally treated Plaintiffs the same way they treat
7 all check writers from whom they attempt to collect money.

8 6.2 Merchants and debt collectors who refer unpaid checks to
9 Bounceback for collection are seeking to recover money, not to report a crime.
10 Most referrals consist of electronic check data obtained from the face of the check
11 and do not provide Defendants with material information that is not on the face of
12 the check.

13 6.3 Employees at the prosecuting attorney's offices do not determine or
14 supervise Bounceback's day-to-day collection activities or communications with
15 check writers.

16 6.4 The form letters sent to Plaintiffs and Class members contain
17 numerous material misrepresentations and omissions, including, but not limited
18 to, the following:

19 a. The prosecuting attorney operates and controls a Check
20 Enforcement Program.

1 b. The letter was prepared and mailed by the prosecuting
2 attorney, and is official correspondence generated by the prosecuting attorney's
3 office after an attorney in the prosecutor's office reviewed evidence relating to
4 the check writer's alleged criminal conduct.

5 c. Communications to the toll-free phone number and address
6 printed on the letter will be received and considered by the prosecuting attorney.

7 d. The payee of the check has filed a criminal complaint against
8 the check writer alleging a violation of the Washington Criminal Code.

9 e. The check writer must enroll in a criminal diversion program
10 to avoid probable criminal prosecution.

11 f. To avoid probable prosecution, the check writer is obligated to
12 pay the check amount plus fees that typically include a \$6.00 service fee, a \$40.00
13 program fee, and a class fee of \$145.00 for a "Financial Training" class, and must
14 participate in the class.

15 6.5 The true facts are as follows:

16 a. Bounceback is in the business of collecting unpaid checks and
17 fees. The Check Enforcement Program is operated for profit by Bounceback with
18 little or no meaningful supervision by the prosecuting attorney.

19 b. Bounceback, not the prosecuting attorneys' office, prepares
20 and sends the "Check Enforcement Program" form letters.

1 c. The address and phone number on the form letters are contact
2 points for Bounceback, not for the prosecuting attorney. Check Enforcement
3 Program mail that is actually received in the office of a participating Washington
4 prosecuting attorney is forwarded directly to Bounceback, frequently unopened.
5 Bounceback representatives who are contacted by check writers do not disclose
6 that they are employees of a private company and are not employees of the
7 prosecuting attorney.

8 d. Generally, merchants refer checks to Bounceback's Check
9 Enforcement Program simply for collection, not for possible prosecution. Check
10 payees generally do not allege that check writers have violated the Washington
11 Criminal Code, RCW 9A.56.060, and do not file a formal criminal complaint.

12 e. Before Bounceback sends the form collection demands, the
13 prosecuting attorney has not conducted any review of the facts or made an
14 individualized determination that there is probable cause to believe the check
15 writer has violated RCW 9A.56.060.

16 f. The prosecuting attorney rarely reviews the facts concerning a
17 dishonored check handled by Bounceback at any point. In those few instances
18 where the prosecuting attorney conducts a criminal investigation, this does not
19 take place until Bounceback has exhausted its collection efforts.

1 g. The prosecuting attorney rarely, if ever, initiates criminal
2 prosecution where the check writer makes a partial payment, but does not
3 complete Bounceback's Check Enforcement Program requirements.

4 h. The check writer is not lawfully obligated to pay the fees that
5 Bounceback demands.

6 **VII. CLASS ACTION ALLEGATIONS**

7 7.1 This action is brought as a class action, as follows:

8 UMBRELLA CLASS: All persons to whom
9 Bounceback sent a collection demand beginning four
10 years preceding the filing of this Complaint and
11 continuing, in connection with a returned check,
12 purporting to be a letter from a Washington county
13 prosecuting attorney.

14 Sub-Class 1 (FDCPA): All members of the umbrella
15 class to whom Bounceback sent a collection demand
16 seeking to collect a check written for personal, family or
17 household use beginning one year preceding July 18,
18 2014 and continuing through final resolution of this
19 action.

20 Sub-Class 2 (CPA): All members of the umbrella class
to whom Bounceback sent a collection demand seeking
to collect a check beginning four years preceding July
18, 2014 and continuing through final resolution of this
action.

7.2 As set forth below, the proposed Class and Sub-Classes satisfy the
requirements for a class action.

1 7.3 The definitions of the Class and Sub-Classes are clear, and members
2 of the Class and Sub-Classes are easily identifiable on the basis of objective
3 information, as Bounceback maintains information regarding all persons to whom
4 it sends a collection demand in connection with a returned check, including their
5 last known addresses.

6 7.4 Class and Sub-Class members can be identified using information
7 kept by Defendants in the usual course of business and/or in the control of
8 Defendants. Class and Sub-Class members can be notified of the pendency of the
9 class action through direct mailing and emailing to physical addresses and email
10 addresses, using lists maintained in the usual course of business by Defendants,
11 and, if necessary, by publication.

12 7.5 Class and Sub-Class members are so numerous that individual
13 joinder is impracticable. The precise number of Class members is unknown to
14 Plaintiffs, but it is clear that the number greatly exceeds the number for which
15 joinder would be practicable. Indeed, upon information and belief, the Class is
16 believed to contain in excess of 7,000 members and the Sub-Classes each contain
17 more than 500 Sub-Class members.

18 7.6 There are questions of law and fact common to the Class, including,
19 but not limited to, the following:
20

1 a. Whether Bounceback makes demands on all Class and Sub-
2 Class members that are the same or similar to the demands made to Plaintiffs,
3 making the claims of the Plaintiffs typical of the claims of Class and Sub-Class
4 members;

5 b. Whether the collection activities of all Defendants are
6 governed by the FDCPA;

7 c. Whether the collection activities of all Defendants are unfair
8 or deceptive;

9 d. Whether Bounceback fails to provide the validation notice,
10 expressly required by the FDCPA;

11 e. Whether Bounceback fails to provide the debt collection
12 warning expressly required by the FDCPA;

13 f. Whether Bounceback threatens to take any action that cannot
14 legally be taken or that is not intended to be taken;

15 g. Whether Bounceback falsely represents the character, amount,
16 or legal status of the debt;

17 h. Whether Bounceback represents or implies that nonpayment
18 of the debt will result in the arrest or criminal prosecution of the check writer
19 when such action is not intended;

1 i. Whether Defendants collect or attempt to collect fees that are
2 not permitted by law;

3 j. Whether Bounceback uses any business, company, or
4 organization name other than its true name;

5 k. Whether Bounceback was licensed as a collection agency
6 during the class period and was permitted to do business in the State of
7 Washington;

8 l. Whether Bounceback violates RCW 19.16 *et seq.* in collecting
9 checks as described in this Complaint; and

10 m. Whether Defendants are engaged in the unauthorized practice
11 of law in violation of RCW 2.48.180, and, if so, whether this criminal act gives
12 rise to liability under either the FDCPA or the Washington Consumer Protection
13 Act.

14 n. The nature and extent of damages and other remedies to which
15 the conduct of Defendants entitles the Class and the Sub-Classes.

16 7.7 Plaintiffs' claims are typical of the claims of the potential Class and
17 the Sub-Class members, since Plaintiffs and Class members were subject to the
18 same standardized collection conduct. All claims of Plaintiffs and the Class and
19 Sub-Classes are based on the same facts and legal theories.
20

1 7.8 Plaintiffs will fairly and adequately protect the interests of the Class
2 and Sub-Classes. Plaintiffs are familiar with the basic facts underlying the Class
3 and Sub-Class members' claims. Plaintiffs' interests do not conflict with the
4 interests of the other Class and Sub-Class members they seek to represent.
5 Plaintiffs have retained counsel who are competent and experienced in class
6 action litigation and intend to and will prosecute this action vigorously.

7 7.9 Plaintiffs' counsel have successfully prosecuted complex class
8 actions, including consumer protection and FDCPA class actions. Plaintiffs and
9 Plaintiffs' counsel will fairly and adequately protect the interests of the Class and
10 Sub-Class members.

11 7.10 Certification of a Class under Rule 23(b)(2) of the Federal Rules of
12 Civil Procedure is appropriate in that Defendants have acted on grounds generally
13 applicable to the Class thereby making declaratory and injunctive relief
14 appropriate with respect to the Class and Sub-Classes as a whole.

15 7.11 Certification of the class under Rule 23(b)(3) of the Federal Rules of
16 Civil Procedure is also appropriate in that the questions of law and fact common
17 to the members of the Class and Sub-Classes predominate over any questions
18 affecting individual members.

19 7.12 Further, the class action device is superior to other available means
20 for the fair and efficient adjudication of the claims of Plaintiffs and Class and

1 Sub-Class members. The relief sought per individual Class and Sub-Class
2 member is small given the burden and expense of individual prosecution of the
3 potentially expensive litigation necessitated by Defendants' conduct.

4 Furthermore, it would be virtually impossible for Class and Sub-Class members
5 to seek redress on an individual basis. Even if Class and Sub-Class members
6 themselves could afford such individual litigation, the court system could not.

7 7.13 Individual litigation of the legal and factual issues raised by
8 Defendants' conduct would increase delay and expense to all parties and to the
9 court system. The class action device presents far fewer management difficulties
10 and provides the benefits of a single, uniform adjudication, economies of scale,
11 and comprehensive supervision by a single court.

12 7.14 Plaintiffs request certification of the Class and Sub-Classes defined
13 herein pursuant to Rule 23(b)(2), or, in the alternative, a hybrid class combining
14 the elements of Rule 23(b)(3) for monetary damages and Rule 23(b)(2) for
15 declaratory and equitable relief, including injunctive relief and restitution.

16 **VIII. FIRST CLAIM FOR RELIEF**
17 **(Fair Debt Collection Practices Act)**

18 8.1 Plaintiffs reallege and incorporate by reference each and every
19 allegation set forth in the preceding paragraphs.
20

1 8.2 The FDCPA prohibits debt collectors from using false, deceptive or
2 misleading communications to collect a debt, 15 U.S.C. §§ 1692e, 1692e(10), or
3 from using unfair or unconscionable means to collect. 15 U.S.C. §1692f.

4 Defendants' Check Enforcement Program is grounded in deception and
5 unfairness, in violation of these general prohibitions. Additionally, defendants
6 violate specific FDCPA provisions by disguising who they are, how much a
7 check writer owes, and what will happen if a check writer does not pay, as
8 follows:

9 a. **FALSE IDENTITY:** Bounceback's standard practice is to
10 send collection letters on official prosecutor letterhead to convey the false
11 impression that the letters were sent by a law enforcement agency, rather than by
12 Bounceback, in violation of 15 U.S.C. §§ 1692e(9) and (14). Bounceback's
13 standard form letters include the false representation that Bounceback is a law
14 office, i.e., the office of the county prosecuting attorney, in violation of 15 U.S.C.
15 § 1692e(3). Additionally, Defendants violate 15 U.S.C. § 1692d(6) by placing
16 telephone calls to Class and Sub-class members without any meaningful
17 disclosure of their identity.

18 b. **FALSE THREATS:** Bounceback's standard form letters
19 include the false threat that the failure to pay all amounts being demanded will
20 result in the arrest or imprisonment of the check writer, in violation of 15 U.S.C.

1 § 1692e(4) and (5). Defendants have neither the authority, nor the intent to
2 initiate a prosecution, and most check writers from whom Bounceback attempts
3 to collect are never prosecuted, even if the check writer pays less than the full
4 amount demanded.

5 c. **UNLAWFUL FEES:** The fees that Bounceback charges for
6 its Check Enforcement Program, which typically exceed \$180, regardless of the
7 check amount, are not permitted by Washington law. Defendants violate 15
8 U.S.C. §§ 1692e(2)(A) and 169ef(1) by collecting and attempting to collect these
9 fees.

10 d. **MISSING WARNINGS AND DISCLOSURES:** The initial
11 form letter that Bounceback sends to check writers, of which Exhibit 2 is an
12 example, does not contain the validation notice required by 15 U.S.C. § 1692g(a),
13 nor does Bounceback provide the validation notice within five days of the initial
14 communication. None of the collection letters that Bounceback sends contain the
15 debt collection disclosure notice required by 15 U.S.C. § 1692e(11).

16 8.3 As a result of Defendants' violations of the FDCPA, Plaintiffs and
17 the Class have suffered actual damages, including unlawful collection charges
18 and other monetary losses. In addition, Plaintiffs and the Class are entitled to
19 recover statutory damages of up to \$1,000 for each named plaintiff, and such
20 amounts as the court may allow for all other class members not to exceed the

1 lesser of \$500,000 or one percent of the net worth of each debt collector, plus the
2 costs of the action, including reasonable attorneys' fees.

3 WHEREFORE, relief is requested as prayed for below.

4 **IX. SECOND CLAIM FOR RELIEF**

5 **(Per Se Violations of Washington's Consumer Protection Act, RCW 19.86 et**
6 **seq.)**

7 9.1 Plaintiffs reallege and incorporate by reference each and every
8 allegation set forth in the preceding paragraphs.

9 9.2 Defendants have engaged in unfair or deceptive acts or practices by
10 engaging in the following courses of conduct: (i) soliciting claims for collection
11 in Washington while not licensed as a collection agency in Washington; (ii)
12 collecting or attempting to collect debts owed or due or asserted to be owed or
13 due another person while not licensed as a collection agency; (iii) using a
14 fictitious name or any name other than its own which would indicate to the debtor
15 that a third person is collecting or attempting to collect such alleged debts; (iv)
16 making false threats and collecting fees not permitted by law; (vi) collecting
17 substantial compensation and fees from Plaintiffs and other Class members while
18 operating as a collection agency without a license; and (vii) aiding and abetting
19 one another in said unlawful conduct.
20

1 9.3 Defendants' unfair and deceptive acts and practices repeatedly occur
2 in Defendants' trade or business and are capable of deceiving a substantial
3 portion of the public.

4 9.4 Defendants' unfair and deceptive acts and practices affect the public
5 interest.

6 9.5 The Washington Supreme Court has recognized the public policy
7 significance of regulating the debt collection industry and has specifically found
8 that the business of debt collection affects the public interest, and collection
9 agencies are subject to strict regulation to ensure they deal fairly and honestly
10 with alleged debtors.

11 9.6 The Collection Agency Act ("CAA"), chapter RCW 19.16
12 incorporates the CPA, chapter RCW 19.86. RCW 19.86.093 provides that an act
13 or practice is injurious to the public interest when the act "[v]iolates a statute that
14 incorporates [RCW 19.86]." Thus, the Washington public has a strong interest in
15 seeing that the provisions of Washington's CAA are enforced.

16 9.7 The unfair and deceptive acts and practices are and were committed
17 in the general course of Defendants' business in Washington and have already
18 injured many thousands of Washington residents.

1 9.8 Defendants' practices are likely to injure other members of the
2 Washington public, particularly since Defendants continue to operate their Check
3 Enforcement Programs in more than a dozen Washington counties.

4 9.9 As a direct and proximate cause of Defendants' unfair and deceptive
5 acts and practices, Plaintiffs and the Class have been injured and are entitled to
6 recover compensatory damages, including: (1) unlawful fees, costs or other
7 charges collected by Defendants from Class members; (2) fees, costs or other
8 expenses associated with responding to and defending against the collection
9 actions commenced by Defendants; and (3) other compensatory, special and
10 general damages allowed by law. In addition, Plaintiffs and the Class are entitled
11 to recover treble damages, attorneys' fees, and costs pursuant to RCW 19.86.090.

12 WHEREFORE, relief is requested as prayed for below.

13 **X. THIRD CLAIM FOR RELIEF**

14 **(Violations of the Washington Consumer Protection Act, RCW 19.86 et seq.
15 Non-Per Se Unfair and Deceptive Business Practices)**

16 10.1 Plaintiffs reallege and incorporate by reference each and every
17 allegation set forth in the preceding paragraphs.

18 10.2 Defendants are "persons" within the meaning of the Washington
19 Consumer Protection Act ("CPA"), RCW 19.86.010(1), and conduct "trade" and
20 "commerce" within the meaning of the Washington Consumer Protection Act,
RCW 19.86.010(2).

1 10.3 Plaintiffs and other Class members are “persons” within the meaning
2 of the Washington Consumer Protection Act, RCW 19.86.010(1).

3 10.4 Defendants have engaged in unfair and deceptive acts or practices,
4 including but not limited to the following:

5 a. Representing to Plaintiffs and Class members that a merchant
6 has filed a complaint against them alleging a violation of the Washington
7 Criminal Code;

8 b. Representing to Plaintiffs and Class members that the Check
9 Enforcement Program is operated by the prosecuting attorney;

10 c. Masquerading as the prosecuting attorney in communications
11 with check writers;

12 d. Holding itself out as a law office, although not licensed to
13 practice law;

14 e. Representing to Plaintiffs and Class members that they are
15 legally obligated to pay all the charges demanded; and

16 f. Threatening that nonpayment of the debt will result in the
17 arrest or criminal prosecution of Plaintiffs and Class members when such
18 Defendants neither have the ability, nor the intent to initiate prosecution, when
19 making the threat.

1 10.5 Defendants' conduct is unfair and deceptive under RCW 19.86.020.

2 10.6 Defendants' unfair and deceptive acts or practices have repeatedly
3 occurred in trade or business and were and are capable of deceiving a substantial
4 portion of the public. The acts complained of herein are ongoing and/or have a
5 substantial likelihood of being repeated.

6 10.7 Defendants' unfair and deceptive acts and practices affect the public
7 interest. Further, the unfair and deceptive acts and practices were committed in
8 the general course of Defendants' business and have already injured thousands of
9 individuals in Washington.

10 10.8 As a direct and proximate result of Defendants' unfair and deceptive
11 acts or practices, Plaintiffs and Class members have suffered and will suffer
12 injury in fact and lost money.

13 WHEREFORE, relief is requested as prayed for below.

14 **XI. FOURTH CLAIM FOR RELIEF**
15 **(Declaratory and Injunctive Relief)**

16 11.1 Plaintiffs reallege and incorporate by reference each and every
17 allegation set forth in the preceding paragraphs.

18 11.2 An actual controversy has arisen between Plaintiffs and Defendants,
19 concerning Defendants' wrongdoing, which is continuing in nature. Defendants'
20

1 collection activities represent an ongoing threat to Plaintiffs and Class and Sub-
2 class members.

3 11.3 Class and Sub-class members remain generally unaware that
4 Defendants' collection actions, are unlawful.

5 11.4 Defendants, on a continuing basis, are engaged in collection efforts
6 against Class and Sub-class members while not licensed as a collection agency in
7 violation of RCW 19.16.

8 11.5 Defendants, on a continuing basis, are engaged in collection efforts
9 against Class and Sub-class members that violate the FDCPA, including those set
10 forth above.

11 11.6 Plaintiffs and Class and Sub-class members will suffer continuing,
12 immediate and irreparable injury, absent the issuance of injunctive and equitable
13 relief.

14 11.7 Plaintiffs and Class and Sub-class members have no complete,
15 speedy and adequate remedy at law with respect to Defendants' continuing
16 misconduct.

17 11.8 Declaratory, preliminary and final injunctive relief is necessary to
18 prevent further injury to Plaintiffs and Class and Sub-class members.

19 WHEREFORE, relief is requested as prayed for below.
20

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief pursuant to each cause of action set forth in this Complaint as follows, and specifically request the Court to:

A. Certify the proposed plaintiff Classes and Sub-Classes, as set forth in the Complaint;

B. Declare that Defendants are financially responsible for notifying all Class and Sub-class members of its unlawful conduct;

C. Appoint Plaintiffs Cavnar, Terrill, Parks, and Scott as representatives of the Class and Sub-classes;

D. Appoint the undersigned counsel as counsel for the Class and Sub-classes;

E. Declare that Defendants' actions complained of herein violate the Washington Consumer Protection Act, the Washington Collection Agency Act, and the federal Fair Debt Collection Practices Act;

F. Enjoin Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, from engaging in the unlawful and wrongful conduct set forth herein;

G. Award Plaintiffs and the Class and Sub-class compensatory and exemplary damages, including but not limited to: (1) all unlawful fees, costs or

1 other charges collected by Defendants from Class members; (2) other
2 compensatory, statutory, special and general damages allowed by law; (3)
3 maximum treble damages permitted under the Consumer Protection Act; and (4)
4 Maximum actual and statutory damages permitted under the Fair Debt Collection
5 Practices Act, 15 U.S.C. § 1692k;

6 H. Award the Class and Sub-class reasonable attorneys' fees, costs, and
7 litigation expenses as allowed by law;

8 I. Award Plaintiffs and the Class and Sub-class prejudgment and post-
9 judgment interest, as provided by law;

10 J. Permit Plaintiffs leave to amend the Complaint to conform to the
11 evidence presented at trial; and

12 K. Grant such other and further relief as the Court deems necessary,
13 just, and proper.

14 RESPECTFULLY SUBMITTED AND DATED this 29th day of May,
15 2015.

16 TERRELL MARSHALL DAUDT
17 & WILLIE PLLC

18 By: /s/ Beth E. Terrell, WSBA #26759
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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on May 29, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 29th day of May, 2015.

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