

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 14-CV-1066

CONTONIUS GILL and RAYMOND )  
BELL, on behalf of themselves and a )  
class of similarly situated persons, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
WESTERN UNION BUSINESS )  
SOLUTIONS (USA), LLC , )  
 )  
Defendant. )  
\_\_\_\_\_ )

**NOTICE OF REMOVAL BY**  
**DEFENDANT WESTERN UNION**  
**BUSINESS SOLUTIONS (USA), LLC**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA:

Defendant Western Union Business Solutions (USA), LLC (“Western Union”), by and through counsel, hereby files this Notice of Removal to the United States District Court for the Middle District of North Carolina under Federal Rule of Civil Procedure 81(c) and pursuant to 28 U.S.C. §§ 1441 and 1446, on the ground that this Court has jurisdiction over the action pursuant to 28 U.S.C. § 1332. In support thereof, Defendant states the following:

## INTRODUCTION

1. On November 13, 2014, Plaintiffs filed a putative class-action complaint in the General Court of Justice, Superior Court Division, Cabarrus County captioned, *Contonius Gill and Raymond Bell, et. al. v. Western Union Business Solutions (USA), LLC*, Cabarrus County, North Carolina, Civil Action No. 14-CV-003334.

2. A Summons was issued to the Defendant on November 13, 2014. Plaintiffs sent a copy of the complaint and summons to CT Corporation System in Raleigh via certified mail. CT Corporation received the summons and complaint on or about November 20, 2014. (Ex. 1.)

3. Defendant timely filed this Notice of Removal within the thirty days provided under 28 U.S.C. §1446(b).

## NATURE OF THE SUIT

4. According to the allegations in the Complaint, Plaintiffs Contonius Gill and Raymond Bell are residents of Cabarrus County, North Carolina. (Ex. 2, Compl. at ¶ 2,3). The Complaint alleges that Plaintiffs had loans for vehicles serviced by non-party Santander Consumer USA, Inc. (“Santander”). (*Id.* at ¶¶ 7-9, 11-13.) The Plaintiffs allege that they made payments on their respective loans online and by telephone using Western Union’s Speedpay payment system. (*Id.* at ¶ 10, 14.) Plaintiffs both allege that they were charged fees for using Speedpay that are prohibited by North Carolina law. (*Id.* at ¶¶ 10, 14, 15-18.)

5. Plaintiffs rely on N.C. Gen. Stat. § 75-56 to support their claim for damages. (*Id.* at ¶ 18.) That statute allows the court to impose penalties of up to \$4,000 per violation:

(b) Any debt collector who fails to comply with any provision of this Article with respect to any person is liable to such person in a private action in an amount equal to the sum of (i) any actual damage sustained by such person as a result of such failure and (ii) civil penalties the court may allow, but not less than five hundred dollars (\$500.00) nor greater than four thousand dollars (\$4,000) for each violation. ...

(d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of four thousand dollars (\$4,000) shall not be imposed.

N.C. Gen. Stat. § 75-56(b), (d) (2009).

6. Plaintiffs seek to prosecute their claims as a class action. Plaintiffs ask the Court to certify a class defined as:

All individuals with consumer loans who, while residing in the state of North Carolina and within the four years preceding the filing of this complaint, paid fees for making online or telephone payments using the Western Union Speedpay service.

(Compl. at ¶ 19.)

7. According to the allegations in the Complaint, Defendant Western Union is a Delaware limited liability corporation with its principal place of business in Englewood, Colorado. (*Id.* at ¶ 4.)

8. The only member of that limited liability corporation is Ruesch Holding, LLC, which is a Delaware limited liability corporation with its principal place of business in Englewood, Colorado. (Corporate Disclosure Statement)

9. The only member of Ruesch Holding, LLC is RII Holdings, Inc., which is a Delaware corporation with its principal place of business in Colorado. (Corporate Disclosure Statement.)

10. Thus, at the time of the filing of the Complaint and at the time of the filing of this Notice of Removal, complete diversity of citizenship exists between Plaintiffs and Defendant.

11. Plaintiffs' Complaint does not demand a specific amount of monetary relief. However, Defendant's research indicates that the fees associated with only two years of transactions (not four, as noted in Plaintiffs' proposed class definition) with Santander and related entities only (not all loan servicers, as implied in Plaintiffs' proposed class definition) paid by consumers using the Speedpay service exceeds \$1 million. (Aff. of Joseph LaVeglia ("LaVeglia Aff.") at ¶ 7.) Thus, if Defendant were required to refund the fees at issue in these transactions, the amount in controversy is more than \$75,000.00.

12. Defendant's research also indicates that the number of transactions in the past two years (not four, as noted in Plaintiffs' proposed class definition) with Santander and related entities only (not all loan servicers, as implied in Plaintiffs' proposed class definition) paid by consumers using the Speedpay service and having a billing address in North Carolina is more than 500,000. (LaVeglia Aff. at ¶ 6.) If the minimum statutory penalty under N.C. Gen. Stat. § 75-56(b) were awarded for each of these transactions, the total award would be \$250 million. The amount in controversy would increase if

additional statutory penalties were assessed or damages were otherwise trebled under Chapter 75. Thus, the jurisdictional threshold of \$75,000.00 in controversy is satisfied.

### **BASIS FOR REMOVAL**

13. Removal is proper, because this Court has original jurisdiction over civil actions where the amount in controversy exceeds \$75,000 and the suit is between citizens of different States. 28 U.S.C. § 1332.

14. This action is removable to this Court pursuant to 28 U.S.C. § 1441 because this Court would have had original jurisdiction over the claims herein had Plaintiffs elected to file this action, in its current form, initially in the United States District Court. The Middle District of North Carolina is the proper district and division embracing the place where the State Court Action is pending and is, thus, the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

15. Defendant has attached to this Notice all pleadings, process, orders, and any other filings in the State Court Action, as required by 28 U.S.C. § 1446(a). *See* Exhibits 1-2.

16. By filing this Notice of Removal, Defendant does not waive and hereby expressly reserves the right to assert any defense or motion available.

17. Promptly after filing the Notice of Removal, written notice will be given to Plaintiffs and to the Clerk of Court for the General Court of Justice, Superior Court Division, Cabarrus County, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant prays that this entire action be removed from the General Court of Justice, Superior Court Division, Cabarrus County, North Carolina, and that the United States District Court for the Middle District of North Carolina assume full jurisdiction over this case, as provided by law.

This the 18<sup>th</sup> day of December, 2014.

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, I electronically filed the foregoing ***NOTICE OF REMOVAL BY DEFENDANT WESTERN UNION BUSINESS SOLUTIONS (USA), LLC*** with the Clerk of Court using the CM/ECF system and I hereby certify that I have served via U.S. first class mail, postage prepaid and addressed as follows:

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This the 18th day of December, 2014.

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