

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

UNIFUND PORTFOLIO LLC, et al ,

Case No A0405897
Judge Beth A Myers

Plaintiffs,

VS

ACCOUNT MANAGEMENT SERVICES
LLC, et al ,

Defendants

NOTICE OF THE FILING OF THE
AFFIDAVIT OF MARK BOHN THAT WAS
INADVERTENTLY OMITTED FROM
DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

Defendants hereby give notice of the filing of the Affidavit of Mark Bohn This affidavit was referenced in Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction and was to have been attached thereto, with exhibits While the exhibits to the affidavit were, in fact, attached to the response memorandum upon filing, the affidavit itself was inadvertently omitted Notice of the filing of the affidavit is therefore given at this time The Affidavit of Mark Bohn should be affixed to, and be considered a part of the Defendants' response memorandum previously filed with the Court

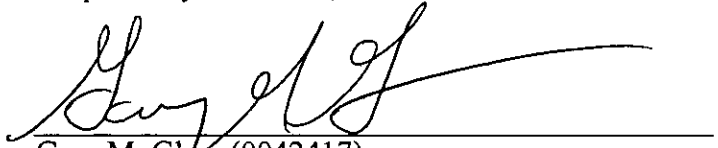
FILED

2004 SEP 20 P 12 50j

GREGORY HARTMAN
CLERK OF COURTS
HAMILTON COUNTY OH



Respectfully submitted,



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Trial Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon Alan H. Abes, Dinsmore & Shohl, 255 East Fifth Street, 1900 Chemed Center, Cincinnati, Ohio 45202, by hand delivery this 20th day of September, 2004.



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

UNIFUND PORTFOLIO LLC, et al ,

Case No A0405897
Judge Beth A Myers

Plaintiffs,

vs

AFFIDAVIT OF MARK BOHN

ACCOUNT MANAGEMENT SERVICES
LLC, et al ,

Defendants

STATE OF NEW YORK)
) SS
COUNTY OF MONROE)

The affiant, having been duly cautioned and sworn, deposes and testifies as follows

- 1 I am above the age of eighteen and am competent to testify to the matters set forth herein

- 2 I am the president and chief executive officer of Account Management Services, LLC, managing member of Account Management Services of New York, LLC, member of Account Management Services of Virginia, LLC, and former manager of Portfolio Management Associates, LLC (collectively "AMS") Through acting in this capacity, I have developed first hand knowledge of the facts surrounding the present dispute

- 3 Early in 2001, Unifund and AMS agreed that Unifund would sell certain accounts receivable to AMS (*i e* , credit card debt) The parties agreed that AMS would finance its purchase of the accounts receivable by making monthly payments to

Unifund for a specified term (financing period) AMS would pay Unifund 75% of the value of the given portfolio of receivables during the selected financing period AMS would then pay the balance of the purchase price after the expiration of the financing period by paying another predetermined sum, usually 25% of the remaining value of the portfolio of receivables The parties agreed that AMS owned the receivables that were the subject of these accounts receivable purchase agreements

- 4 At the insistence of Unifund, the parties agreed to call the accounts receivable purchase agreements "leases," the monthly finance payments "lease payments," and the financing period the "lease term " Unifund demanded this terminology because it would allow Unifund to maintain the "leased" debt on its books as an asset, instead of a receivable, for accounting purposes

- 5 From May, 2001 through May, 2003 AMS and Unifund entered into twenty-five (25) separate accounts receivable purchase agreements (hereinafter "AR purchase agreements"). The AR purchase agreements contained an exhibit specifying the final payment to be paid by AMS at the end of the agreement's financing term (25% of the remaining value of the portfolio) True and accurate representative copies of these exhibits are attached hereto as Exhibit A In addition, a number of the AR purchase agreements referred to AMS as both "lessee" and "buyer " A true and accurate copy of an AR purchase agreement containing these designations is attached hereto as Exhibit B

- 6 From the outset, the parties acknowledged that certain of the accounts receivables sold by Unifund to AMS would ultimately prove to be uncollectible, “bad” debt (e.g., accounts where the debtor was in bankruptcy or was deceased or where the account information supplied by Unifund was materially incorrect) These accounts were referred to as “non-qualifying” or “disqualified” receivables The parties also agreed that if Unifund or previous owners of the accounts received direct payments from various debtors on accounts that Unifund had sold to AMS, these monies rightfully belonged to AMS under the parties’ agreement These payments were known as “direct pays ”
- 7 The parties agreed that the final payment of the purchase price to be paid by AMS on each AR purchase agreement (i.e., 25% of the remaining value of the portfolio) would be reduced by both the amount of the non-qualifying receivables and all direct pays received by Unifund under each AR purchase agreement The parties also agreed that after the expiration of the financing period for each AR purchase agreement, they would cooperate with one another to determine the final payment that AMS owed on each AR purchase agreement The parties agreed that they would exchange information regarding direct pays and non-qualifying receivables in order to calculate the credit due to AMS and then arrive at the final payment that AMS was required to pay Unifund on each AR purchase agreement
- 8 The parties agreed that reconciliation of the credits (“offsets”) to arrive at the final payment due on each AR purchase agreement would not take place within a specific period of time In practice, reconciliation did not occur promptly after

the expiration of the financing period for the numerous AR purchase agreements at issue

9 During AMS' contractual dealings with Unifund, the financing period for several of the AR purchase agreements expired. When the financing period for these agreements expired, Unifund made no demands for AMS to return accounts receivable to it, nor did Unifund demand that AMS submit reports as to the status of AMS' collections on accounts receivable governed by those AR purchase agreements. Unifund also never demanded that AMS cease its collection efforts relative to these accounts.

10 Unifund also never made any demands of AMS that it provide reports regarding the status of its collection efforts relative to any accounts receivable under the few AR agreements for which the financing period did not expire.

11 By the spring of 2003, AMS was anxious to make its final payment on the numerous AR purchase agreements for which the financing period had long since expired, and it requested that Unifund participate in a reconciliation of these accounts.

12 In June of 2003, the parties cooperated in the reconciliation of AR purchase agreements 4, 7, 8 and 13, even though the financing period in those agreements had expired months before, in 2002. AMS then made its final payment to conclude its purchase of the receivables under these agreements. Because AMS had already paid 75% of the purchase price for the accounts governed by each of these agreements, during the reconciliation process, the parties simply accounted

for all direct pays and non-qualifying receivables, credited AMS for these items, and calculated the final payment owed on the purchase price, which AMS promptly paid. On or about May 6, 2003, the parties then entered into a formal accounts receivable purchase agreement to memorialize AMS' purchase of these accounts. True and accurate copies of documents reflecting AMS buyout of those accounts under the AR purchase agreements are attached as Exhibit C.

- 13 As to the remaining AR purchase agreements where the financing period had expired, Unifund was delinquent in reconciling the credits due to AMS for direct pays and non-qualifying receivables. As a result, Unifund consistently was unprepared to give AMS a final payment to complete the purchase on each of the remaining AR purchase agreements.
- 14 During most of 2003, AMS continued to communicate with Unifund regarding AMS' desire to finalize the reconciliation and purchase of all accounts receivable under the AR purchase agreements. For example, in November of 2003, AMS exchanged a "status report" with Unifund discussing the sums that would be needed to make the final payment to complete the buyout on the remaining AR purchase agreements. A true and accurate copy of this status report is attached as Exhibit D.
- 15 In mid 2003, right around the time that AMS finalized its purchase of AR purchase agreements 4, 7, 8 and 13, AMS entered into a separate agreement with Unirush Financial Services ("Unirush"). Under to this agreement, Unifund agreed to pay AMS for providing Unirush with telemarketing services for certain "pre-

paid” credit cards sold by Unirush (hereinafter “the call center agreement”)

Although AMS was to be compensated for providing services under the call center agreement, Unirush was delinquent in making full and timely payments to AMS under this agreement

16. By the spring of 2003, AMS wanted to make its final payments to complete the purchase of the accounts receivable under the remaining AR purchase agreements, as it had done before. However, the final balance owed on all remaining AR purchase agreements was not readily ascertainable because, before the balance on these AR purchase agreements could be calculated, it was necessary for the parties first to determine the amount of all credits due to AMS for all direct pays and non-qualifying receivables
17. Complicating matters was the fact that, by early 2004, Unirush owed AMS approximately \$600,000 for services provided by AMS under the call center agreement
18. At this same time, there were only six AR purchase agreements remaining with unexpired financing periods, agreements numbered 64, 74, 79, 82, 88 and 96. AMS had been making all necessary monthly finance payments under each of these agreements. However, because the sums owed by Unirush greatly exceeded the monthly finance payments owed by AMS under the remaining AR purchase agreements, in early 2004, AMS ceased making payments under those agreements with unexpired financing periods pending a final reconciliation of all accounts between the parties

- 19 In the first two months of 2004, Unirush, Unifund and AMS then agreed that the substantial sum owed to AMS under the call center agreement would be part of the reconciliation process and would be credited (along with the direct pays and non-qualified receivables) against the final payments to be made by AMS on the remaining AR purchase agreements. True and accurate copies of invoices and correspondence from Unifund and Unirush acknowledging the outstanding balance owed to AMS under the call center agreement are attached as Exhibit E
- 20 Negotiations designed to reconcile offsets and establish the final payment owed on each AR purchase agreement continued through the spring of 2004. During this period, AMS repeatedly demanded that Unifund exchange information with AMS regarding direct pays, non-qualifying receivables, and the outstanding call center balance in order to finalize reconciliation and allow AMS to make its final payment on all the outstanding AR purchase agreements.
- 21 Unifund continued to drag its feet, and failed to provide this necessary information or otherwise cooperate with AMS to reconcile the offsets in order to arrive at the final payment to be made on the AR purchase agreements still at issue.
- 22 By July of 2004, the relationship between AMS and Unifund had soured for unrelated reasons, and the reconciliation effort that would allow AMS to pay the final balance on the remaining AR purchase agreements had not been completed.
- 23 In early July, 2004, AMS received several letters from Unifund's lawyer dated July 6, 2004, purporting to address the status of the various AR purchase

agreements (or what Unifund calls "leases") Through its counsel, Unifund demanded that on or before July 14, 2004, AMS must tender the predetermined final payments (i.e., the predetermined buyout amount) on all remaining AR purchase agreements without any reconciliation of offsets for direct pays, non-qualifying receivables, or the call center balance

24 As to the few AR purchase agreements for which the financing period (or what Unifund calls the "lease term") had not expired, Unifund demanded payment of certain monthly payments that it claimed were past due, and that AMS provide detailed reports regarding the status of all accounts receivable governed by those agreements

25 While AMS was evaluating these issues, AMS received additional letters from Unifund's lawyer dated July 14, 2004, purporting to terminate all AR agreements with unexpired financing periods

26 AMS was determined to pay the balance of the purchase prices for all the remaining AR purchase agreements However, given the need to accurately determine the offsets to which it is entitled (i.e., direct pays, non-qualifying receivables and credits for services provided under the call center agreement), it was impossible for AMS to calculate the appropriate purchase price, much less tender payment, within the very brief timeframe unilaterally established by Unifund AMS also needed an adequate opportunity to fully evaluate Unifund's claims, particularly in light of the fact that Unifund's counsel had made numerous

demands relative to several AR purchase agreements that AMS had already purchased and should not have been in dispute

- 27 In the spirit of cooperation and consistent with the parties' agreement and course of dealing, on August 20, 2004, AMS tendered to Unifund a check for \$236,395 47, representing payment of the final amounts owed to complete the purchase or buyout on all of the AR purchase agreements for which the financing period had expired. This sum took into account historic discounts due AMS for non-qualifying receivables (but not yet verified or reconciled), direct pays (but not yet verified or reconciled) as well as offsets for sums owed to AMS under the call center agreement. Unifund rejected this payment and, instead, proceeded with the present lawsuit. True and accurate copies of correspondence reflecting AMS' tender of payment and Unifund's rejection of the same are attached as Exhibit F
28. Unifund has refused to cooperate in exchanging the information necessary to reconcile all AR purchase agreements and to allow AMS to pay the balance due on all such agreements. AMS remains ready, willing, and able to complete its purchase of all accounts receivable governed by all remaining AR purchase agreements.

FURTHER AFFIANT SAYETH NAUGHT.



Mark Bohn

Sworn to and subscribed before me this 17th day of September, 2004



Notary Public

501679 1

CARL A. STEINBRENNER
NOTARY PUBLIC, State of New York
Registration No. 02ST6033329
Qualified in Monroe County
Commission Expires November 15, 2005