

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL ERMILIO,

Plaintiff,

Case No. 21-cv-652-wmc

v.

TRANSPORTATION ALLIANCE
BANK, INC. d/b/a TAB BANK,

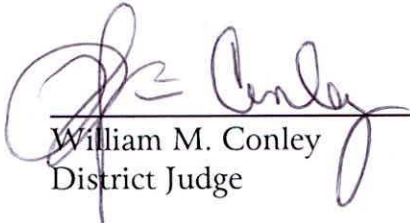
Defendant.

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff Michael Ermilio against defendant Transportation Alliance Bank, Inc. d/b/a TAB Bank in the amount of \$2,000.

IT IS FURTHER ORDERED AND ADJUDGED that the debt incurred by plaintiff under an Installment Loan Agreement with TAB Bank dated June 6, 2021, is eliminated.

Approved as to form this 15th day of November, 2021.



William M. Conley
District Judge



Peter Oppeneer
Clerk of Court

11/15/21

Date

11/15/21
Fischer Cygnus

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

<p>Michael Ermilio,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>Transportation Alliance Bank, Inc., d/b/a/ TAB Bank,</p> <p style="text-align:center">Defendant.</p>	<p>Court File No.: 3:21-cv-00652</p>
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RULE 68 OFFER OF JUDGMENT

1. Pursuant to Federal Rule of Civil Procedure 68, Defendant Transportation Alliance Bank, Inc., d/b/a/ TAB Bank (“TAB Bank”) hereby offers to allow judgment to be taken against it by Plaintiff Michael Ermilio (“Plaintiff”) in this action as follows:
 - a. Damages in the amount of \$2,000;
 - b. Elimination of the debt Mr. Ermilio incurred under the Installment Loan Agreement dated June 6, 2021; and
 - c. Reasonable attorney fees and costs through the date of the acceptance of this offer. The amount of attorney fees and costs will be agreed upon by the parties, but if no agreement can be made as to the amount of reasonable attorney fees and costs, they shall be determined by the Court.

2. This Offer of Judgment shall be in full satisfaction of all federal and state law claims or rights that Plaintiff may have for damages, or any form of relief, arising out of the alleged acts or omissions of Defendant, its agents and assigns.

3. This Offer of Judgment is an offer to compromise under Federal Rule of Evidence 408, and is not, and shall not be construed as an admission that TAB Bank, or any other party, is liable in this action, or that Plaintiff, or any person whose rights or interests Plaintiff purports to represent, or on whose behalf Plaintiff purports to sue, has suffered any damages or has standing to recover such damages. TAB Bank tenders this Offer solely to avoid the uncertainty and expense of further litigation and solely for the purpose of settlement.

4. Acceptance of this Offer of Judgment will act to release and discharge the Defendant from any and all claims that were or could have been asserted by Plaintiff in the above-referenced action. This Offer is made specifically according to the provisions of Rule 68 of the Federal Rules of Civil Procedure and will expire at the end of fourteen days as specified in Rule 68(a).

DATED: October 29, 2021

BALLARD SPAHR LLP

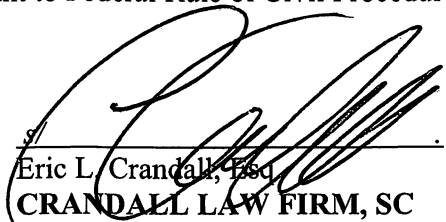
By: /s/ Karla M. Vehrs
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Telephone: (612) 371-3211

**Attorneys for Defendant Transportation
Alliance Bank, Inc. d/b/a TAB Bank**

ACCEPTANCE OF OFFER OF JUDGMENT

Plaintiff Michael Ermilio, by and through his undersigned counsel of record, hereby accepts the above Offer of Judgment pursuant to Federal Rule of Civil Procedure 68.

Dated Oct. 29, 2021



Eric L. Crandall, Esq.
CRANDALL LAW FIRM, SC
421 West Second Street
PO Box 27
New Richmond, WI 54017
715-243-9996 (p.)
WisconsinConsumerLaw@frontier.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29th day of October, 2021, I served the foregoing Rule 68 Offer of Judgment upon Plaintiff via email to Plaintiff's counsel as follows:

Eric L. Crandall, Esq.
CRANDALL LAW FIRM, SC
421 West Second Street
PO Box 27
New Richmond, WI 54017
715-243-9996 (p.)
WisconsinConsumerLaw@frontier.com

Dated the 29th day of October, 2021.

/s/ Karla M. Vehrs
Karla M. Vehrs

EXHIBIT A

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

DATED: September 16, 2021

Electronically signed by Eric Crandall
Eric L. Crandall, Esq.
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Wis. Attorney Lic. No. 1001833

ATTORNEY FOR PLAINTIFF

FILED
09-16-2021
Barron County, WI
Sharon Millermon
HONORABLE JAMES C.
BABLER
Branch 1

STATE OF WISCONSIN

CIRCUIT COURT

COUNTY OF BARRON

Michael Ermilio,

Case No. 2021-CV-____

Plaintiff,

vs.

Transportation Alliance Bank, Inc.,
d/b/a/ TAB Bank,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for damages brought by Michael Ermilio (“Ermilio”) for violations of the Wisconsin Consumer Act (“Consumer Act”) committed by Transportation Alliance Bank, Inc., d/b/a/ TAB Bank, (“TAB Bank”).

II. JURISDICTION

2. Jurisdiction of this court arises under Wis. Stat. § 421.201-203 (WCA jurisdiction), and Wis. Stat. § 801.04 (general jurisdiction).
3. Venue is appropriate under Wis. Stat. § 421.401 (WCA venue) and Wis. Stat. § 801.50 (general venue).

III. PARTIES

4. Plaintiff Michael Ermilio is an individual residing in Barron County, Wisconsin.
5. While Ermilio is of normal intelligence, he lacks sophistication in the specific businesses of money lending, rent to own transactions, and/or deferred deposit services.
6. Ermilio was and is a “consumer” or “customer” as defined by Wis. Stat. § 421.301(17).
7. Ermilio was and is a “person” as defined by Wis. Stat. § 990.01(26).

8. Defendant TAB Bank is a Utah based and licensed bank engaged in the making of consumer loans to finance furniture purchases, and the subsequent collection of debt from those transactions.
9. TAB Bank is a sophisticated business, operating throughout western Wisconsin.
10. TAB Bank is engaged in the collection of debts owed itself using the mail and telephone.
11. TAB Bank regularly attempts to collect debts to be owed itself, and was and is a “debt collector” as defined by Wis. Stat. § 427.103(3).
12. TAB Bank was and is a “merchant” as defined by Wis. Stat. § 421.301(25), as it is an “assignee” of Hometown Mattress. Wis. Stat. § 422.407(1).
13. TAB Bank was and is a “person” as that term is used in Wis. Stat. § 100.18, and as defined by Wis. Stat. § 990.01(26).
14. TAB Bank is liable for the acts of its employees, agents, and independent contractors under theories of respondeat superior, agency, and vicarious liability.
15. As a business conducting its affairs within the United States generally, and Wisconsin specifically, TAB Bank is deemed to know what is lawful and what is unlawful under US and Wisconsin law. *Barlow v. United States*, 8 L. Ed. 728 (1833)(“ignorance of the law will not excuse any person, either civilly or criminally”); *Atkins v. Parker*, 472 U.S. 115, 130 (1985)(“all citizens are presumptively charged with knowledge of the law”); *Putnam v. Time Warner Cable of Southeastern Wisconsin, LP*, 2002 WI 108, ¶ 13 & footnote 4, 255 Wis.2d 447, 458, 649 N.W.2d 626 (Wis. 2002)(“Wisconsin has adopted the mistake of law doctrine”).

IV. FACTUAL ALLEGATIONS

16. At all relevant times, Michael Ermilio was in need of money to pay for his basic needs, including food, clothing, housing, home furnishings, utilities, and to pay existing debts. His income at that time was limited, and he had few, if any, options for credit.
17. Given his lack of choice of lenders, Michael Ermilio approached Hometown Mattress, for the purchase on credit of home furnishings.
18. On June 6, 2021, Ermilio visited Hometown Mattress at its store located in Rice Lake, Wisconsin.
19. Ermilio completed an application for credit and provided Hometown Mattress with information requested by Hometown Mattress, its assignor TAB Bank.
20. After reviewing the information, Hometown Mattress and its assignor TAB Bank presented Ermilio with an “installment loan agreement (“ILA”),” presenting the contract to Ermilio on the computer screen of a tablet.
21. This contract was offered to Michael Ermilio on a take-it-or-leave-it basis, and was not subject to negotiation.
22. The contract was not explained to Ermilio.
23. The contract was written in single space 9 point type, making the contract difficult to read.
24. The contract contained an arbitration clause, one which was later duly rejected by Ermilio.
25. The contract provided for the recovery of a “Returned payment fee of \$25.00.” (June 6, 2021 ILA p. 2, ¶ 7).
26. The Consumer Act limits returned payment fees to \$15.00. Wis. Stat. § 422.202 (1)(d).
27. The contract’s governing law clause sought to impose “the laws of ... the State of Utah.” (June 6, 2021 ILA p. 4, ¶ 4).

28. The Consumer Act disallows such provisions, instead requiring that the laws of the State of Wisconsin control. Wis. Stat. § 421.201(10).
29. The contract purported to hold Ermilio in default if “any payment” is not made “in full within 10 days after the corresponding Payment Due Date.” (June 6, 2021 ILA p.4, ¶ 9).
30. This provision is contrary to the default definition provisions imposed by the Wisconsin Consumer Act, which only finds a consumer in default if he has “outstanding an amount exceeding one full payment” for “more than 10 days after the scheduled or deferred due dates.” Wis. Stat. § 425.103 (2)(a). See *Indianhead Motors v Brooks*, 2006 WI App 266, 297 Wis. 2d 821, 726 N.W.2d 352 (Wis. App. 2006).
31. The contract provided for the recovery of TAB Bank’s “reasonable attorney’s fees” associated with the collection of the account. (June 6, 2021 ILA p. 4, ¶ 9).
32. The Consumer Act prohibits such attorney fee shifting provisions. Wis. Stat. § 422.411.
33. The contract unlawfully provided for a class action and jury trial waiver. (June 6, 2021 ILA p. 4, ¶¶ 10, 11).
34. The Consumer Act prohibits such waivers. Wis. Stat. § 421.106.
35. The contract unlawfully imposed a 30 day pre suit notice of claim procedure and requirement. (June 6, 2021 ILA p. 7, ¶ 6).
36. Wisconsin Consumer Act prohibits any reduction in its remedies. Wis. Stat. § 421.106.
37. The contract unlawfully imposed a waiver of Ermilio’s right to seek injunctive relief, further purported to prevent Ermilio from serving as a “private attorney general,” and also claimed to limit Ermilio’s right to join his case with those of others. (June 6, 2021 ILA p. 7, ¶ 2, p. 8, ¶ 8).
38. The Wisconsin Consumer Act prohibits any reduction in its remedies. Wis. Stat. § 421.106.

39. An “exact copy” of the contract was not given to Ermilio by any agents, representatives or staff of TAB Bank or its predecessors, before any payment was due under the contract.
40. The Consumer Act requires agents, representatives or staff of TAB Bank or its predecessors, to give Ermilio an “exact copy of the contract” “before any payment [was] due.” Wis. Stat. § 422.302 (3).
41. Having no meaningful choice or options, and given the gross disparity of bargaining positions between the parties, Ermilio accepted TAB Bank’s offer and signed the contract on April 11, 2021 in Rice Lake, with the contract immediately assigned by Hometown Mattress to TAB Bank.
42. The transaction arose from a “consumer transaction” as that term is defined by Wis. Stat. § 421.301(13).
43. Ermilio’s obligation to repay TAB Bank constitutes a consumer “debt” or “claim” as that term is defined by Wis. Stat. § 427.103(1).
44. Under the contract, Ermilio borrowed less than \$25,000.00 from TAB Bank, and agreed to repay the amount borrowed from TAB Bank.
45. Ermilio agreed to the terms of the contract as proposed and without negotiation, as TAB Bank and its agents presented the agreements as nonnegotiable.
46. Ermilio incurred this contractual debt for personal, family or household purposes.
47. As part of the agreement to sell goods on credit to Ermilio as described above, TAB Bank charged and later collected from Ermilio simple interest on the loan at the annual rate exceeding 153.00%.
48. As a result of the acts alleged above, Ermilio has suffered and is entitled to recover damages.

V. CAUSES OF ACTION

COUNT 1. WISCONSIN CONSUMER ACT

49. Michael Ermilio repeats and realleges the above paragraphs.

50. Defendant violated the Wisconsin Consumer Act. Defendant's violations include, but are not limited to the following:

(A) Prohibited practice / Prohibited contract term

Defendant violated Wis. Stat. § 421.106 by including and imposing a term in its contract purporting to waive Ermilio's right to initiate a class action, and to join his claims with the claims of other consumers.

(B) Prohibited practice / Prohibited contract term

Defendant violated Wis. Stat. §§ 421.106 and 421.201(10) by including and imposing a term in its contract purporting to impose "Utah Law" rather than Wisconsin law.

(C) Prohibited practice / Prohibited contract term

Defendant violated Wis. Stat. § 421.106 by including and imposing a term in its contract purporting to waive Ermilio's right to seek injunctive relief, and to serve as an private attorney general.

(D) Prohibited practice / Unlawful fees / Prohibited contract term

Defendant violated Wis. Stat. § 422.411 by imposing an unlawful attorney fee shifting clause in the parties agreement.

(E) Prohibited Practice / Unlawful fees / Prohibited contract term

Defendant violated Wis. Stat. § 422.202 (1)(d) by including in the parties contract a \$ 25.00 returned check fee on any check returned for non payment, when the Consumer Act limits such fees to \$ 15.00.

(F) Prohibited Practice / Unlawful fees / Prohibited contract term

Defendant violated Wis. Stat. § 421.106, as the parties contract unlawfully imposed a 30 day pre suit notice of claim procedure and requirement, when the Wisconsin Consumer Act prohibits any reduction in its remedies.

(G) Prohibited practice / Prohibited contract term

Defendant violated Wis. Stat. §§ 421.106, and 425.103 - .105, by including in the parties contract a term that unlawfully provided for a shortening of the default provisions of the Wisconsin Consumer Act.

(H) Prohibited practice

Defendant violated Wis. Stat. §§ 421.106, and 422.302(3), by failing to give Ermilio an exact copy of the contract before any payments were due.

51. As a result of the above violations of the Wisconsin Consumer Act, TAB Bank is liable to Michael Ermilio in the sum of his actual damages, statutory damages, costs, disbursements and reasonable attorney's fees.

VI. REQUEST FOR RELIEF

52. **WHEREFORE**, Michael Ermilio respectfully requests that Judgment be entered against Transportation Alliance Bank, Inc., d/b/a/ TAB Bank, in the amount of:

- (a) plaintiff's actual damages;
- (b) \$25.00 statutory damages per violation, pursuant to Wis. Stat. § 425.302;
- (c) \$100.00 statutory damages per violation, pursuant to Wis. Stat. § 425.303;
- (d) \$1,000.00 statutory damages per violation, pursuant to Wis. Stat. § 425.304;
- (e) Costs and reasonable attorney's fees, pursuant to Wis. Stat. § 425.308; and,
- (f) Such other and further relief as the court deems just and equitable.

VII. DEMAND FOR TRIAL BY JURY

53. Michael Ermilio hereby demand that, to the extent provided by the United States and Wisconsin Constitutions, United States and Wisconsin Statutes, and United States and Wisconsin Common Law, these claims be determined by a jury of his peers.

Dated: September 16, 2021

electronically signed by Eric Crandall
Eric Leighton Crandall, Esq.
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**ATTORNEY FOR PLAINTIFF
MICHAEL ERMILIO**

STATE OF WISCONSIN

CIRCUIT COURT

BARRON

Michael Ermilio vs. Transportation Alliance Bank, Inc.

**Electronic Filing
Notice**

Case No. 2021CV000249
Class Code: Money Judgment

FILED
09-16-2021
Barron County, WI
Sharon Millermon
2021CV000249
Honorable James C.
Babler
Branch 1

TRANSPORTATION ALLIANCE BANK, INC.
SUITE 200
4185 HARRISON BLVD
OGDEN UT 84403

Case number 2021CV000249 was electronically filed with/converted by the Barron County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: c64790

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 715-537-6265.

Barron County Circuit Court
Date: September 16, 2021