

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
Huntington Division**

MICHAEL PHELPS,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. <u>3:21-cv-00417</u>
	)	
ALLY FINANCIAL INC.,	)	
	)	
Defendant.	)	
	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. sections 1332, 1441(a) and 1446, Defendant Ally Financial Inc. (“Ally”) hereby gives notice of the removal of this action from the Circuit Court of Wayne County, West Virginia, to the United States District Court for the Southern District of West Virginia, Huntington Division. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because Plaintiff Michael Phelps (“Phelps”) is a citizen of a State different from Ally and because the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. As grounds for removal, Ally states as follows:

**I. BACKGROUND**

1. On June 17, 2021, Phelps filed a Complaint (the “Complaint”) in the Circuit Court of Wayne County, West Virginia, against Ally. The Complaint is captioned *Michael Phelps v. Ally Financial, Inc.*, and was assigned Civil Action No. 16-C-167-D3 (the “State Court Action”). A true and correct copy State court docket, the Complaint and all other documents served upon Ally are attached hereto as **Exhibit A**. See 28 U.S.C. § 1446(a).

2. Through its registered agent, Ally was served with the Complaint on June 23, 2021.

3. The Notice of Removal is timely because it is being filed with the Court within 30 days from the date Ally was first apprised of this matter and served with a copy of the Complaint. *See* 28 U.S.C. §§ 1446(b), 1453(b); *Murphy Bros. Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

4. The Complaint asserts claims on behalf of Phelps and a class of similarly-situated individuals under the West Virginia Consumer Credit Protection Act (“WVCCPA”) and for breach of the covenant of good faith and fair dealing under state law, based upon the allegedly improper practice of accepting payments by telephone, including interactive voice recognition, for which a payment processing fee is charged to consumers located in West Virginia, who have obtained a loan or had their loan serviced by Ally.

5. Phelps seeks relief for himself and purported class members, including civil penalties and attorneys’ fees and costs. *See* Ex. A, Compl. pp. 7-8.

6. Ally denies the allegations set forth in the Complaint, denies that Phelps has stated a claim for which relief may be granted, individually or otherwise, and denies that Phelps or any member of the purported class has been damaged in any manner.

7. However, presuming, for jurisdictional purposes only, that Phelps’s claims are valid, the Complaint could have originally been filed in this Court pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(1)-(11) (“CAFA”).

8. Accordingly, removal is proper because this Court has original jurisdiction over this action based on diversity of citizenship pursuant to 28 U.S.C. section 1332(d)(2). *See* 28 U.S.C. § 1441.

## II. GROUNDS FOR REMOVAL

9. This Court has original subject matter jurisdiction over Phelps's class claims under CAFA.

10. CAFA provides for original jurisdiction in federal court of any claim brought under Federal Rule of Civil Procedure 23 or any similar state statute authorizing a person to represent a class of claimants. *Id.* § 1332(d)(1)(B); *Delebreau v. Bayview Loan Serv., LLC*, No. 6:09-cv-245, 2011 U.S. Dist. LEXIS 4694, at \*9 (S.D.W. Va. Jan. 18, 2011). The purported class must have at least one putative member who is of diverse citizenship to the defendant ("minimal diversity"), 100 or more class members, and claims that in the aggregate exceed \$5,000,000. *Id.* § 1332(d)(2)(A), (d)(5)(B); *Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys.*, 928 F.3d 325, 330 (4th Cir. 2019). A class action filed in state court that satisfies the requirements of section 1332(d) may be removed to federal court. *See* 28 U.S.C. § 1457; *Dominion Energy*, 928 F.3d at 330. Because all of the above elements are satisfied, this Court has original subject matter jurisdiction over this case.

11. Phelps filed the class claims pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, which govern procedure in the courts of the State of West Virginia. Phelps defined the purported class as follows:

All persons in the [sic] West Virginia (1) with property secured by a loan where the lender is Ally or [the loan] is serviced by Ally, and (2) who were charged one or more payment processing fees.

Ex. A, Compl. ¶ 17.

12. Phelps seeks damages for purported class members, as outlined above, actual and compensatory damages, injunctive relief, maximum civil penalties, pre- and post-judgment interest, costs and attorney's fees under the WVCCPA.

**A. Diversity of Citizenship**

13. Minimal diversity exists between the parties, meaning at least one member of the class of plaintiffs—here, Phelps, the only named plaintiff—is a citizen of a state different from any defendant—here, Ally, the only named defendant. 28 U.S.C. § 1332(d)(2)(A).

14. Ally is a Delaware corporation with its principal place of business in Detroit, Michigan.

15. Under CAFA, a corporation is a citizen of every State by which it has been incorporated and of the State where it has its principal place of business. 28 U.S.C. § 1332(c)(1).

16. Accordingly, Ally is a citizen of both Delaware and Michigan.

17. Phelps and every member of the purported class is a resident and citizen of West Virginia. *See* Ex. A, Compl. ¶¶ 1, 17.

18. Accordingly, Phelps and every member of the class is of diverse citizenship to Ally, the only defendant; therefore, minimal diversity is met. *See* 28 U.S.C. § 1332(d)(2)(A).

**B. Size of Purported Class Exceeds 100 Members**

19. Pursuant to CAFA, there must be at least 100 members in a proposed class for the federal court to have original jurisdiction. *See* 28 U.S.C. § 1332(d)(5)(B).

20. Phelps describes the class as class of persons that have property secured by a loan obtained from or serviced by Ally, who were charged one or more payment processing fees. *See* Ex. A., Compl. ¶ 17.

21. Phelps states in the Complaint the class consists of “hundreds if not thousands of class members” and contends that “the members of the Class are so numerous that joinder is impracticable.” Ex. A, Compl. ¶ 20.

22. Further, Ally has identified at least 100 members the purported class. Specifically, upon review of its business records, created and maintained in the ordinary course

of business, Ally has identified hundreds of loans secured by personal property located in West Virginia, on which borrowers made payments by phone or interactive voice recognition and paid convenience fees in connection therewith.

23. Thus, based on the purported class definition in the Complaint, the 100-member threshold required by CAFA is satisfied.

**C. Amount in Controversy Exceeds \$5,000,000**

24. This action also satisfies the amount in controversy requirement of 28 U.S.C. § 1332(d)(2).<sup>1</sup>

25. Phelps seeks, among other things, to recover, for herself and the putative class members, civil penalties under the WVCCPA for each convenience fee charged to a customer who elected to pay by phone. *See* Ex. A., Compl. ¶¶ 31, Relief Sought (B).

26. Ally reviewed its records from July 6, 2017 through June 21, 2021 for loans secured by personal property located in West Virginia serviced by Ally and identified in excess of 5,000 instances in which a consumer was charged a convenience fee after the consumer elected to make a payment by phone and agreed to pay the convenience fee. Thus, Ally has identified at least 5,000 potential violations of the WVCCPA, as alleged by Plaintiff.

27. The WVCCPA allows for civil penalties of \$1,000 for each violation, which the Court may increase for inflation pursuant to the current consumer price index. W. Va. Code § 46A-5-101(1) (“the consumer has a cause of action to recover: (a) Actual damages and (b) a right in an action to recover from the person violating this chapter a penalty of \$1,000 per violation”); W. Va. Code § 46A-5-106 (“the court may adjust the damages awarded pursuant to section one

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<sup>1</sup> By statute, interest and costs are excluded from the calculation of the jurisdictional amount under CAFA. *See* 28 U.S.C. § 1332(d)(6) (“In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”). All other damages, including punitive damages and attorneys’ fees, are included.

hundred one of this article to account for inflation from 12:01 a.m. on September 1, 2015 to the time of the award of damages in an amount equal to the consumer price index”). As adjusted for inflation, the current potential civil penalty per violation is approximately \$1,130.

28. At \$1,130 per violation of the WVCCPA, applied to the more than 5,000 instances identified by Ally in which a West Virginia borrower paid a convenience fee, the civil penalties alone for these claims total \$5,650,000. This calculation is limited to the instances identified and does not include the “actual damages” Phelps seeks for each violation of the WVCCPA or his attorneys’ fees and costs.

29. As noted above, Phelps requests attorneys’ fees pursuant to W. Va. Code § 46A-5-104. The Court may consider the amount of attorneys’ fees in its jurisdictional amount calculus. *See McGraw v. Discover Fin. Servs., Inc.*, No. 2:05-0215, 2005 U.S. Dist. LEXIS 37111, \*19 (S.D. W.Va. July 26, 2005). Phelps’s claims potentially entitle the class, if certified, to recover their reasonable attorneys’ fees and costs pursuant to the fee shifting provision under the WVCCPA. W. Va. Code § 46A-5-104 (“In any claim brought under this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the consumer.”). Given the extensive litigation one might reasonably expect in this type of case, including discovery, motions practice, and trial, the Court can presume that the claim for attorneys’ fees will be substantial.

30. Thus, when added together, the potential actual and compensatory damages, potential civil penalties, statutory entitlement to attorneys’ fees, and other incidental and consequential damages certainly exceeds the \$5,000,000 jurisdictional amount. Accordingly, this case qualifies for federal diversity jurisdiction under CAFA and is properly removable.

**III. ADDITIONAL REQUIREMENTS FOR REMOVAL**

31. Venue is proper in this Court because it is the District and Division embracing the place where the State Court Action is pending pursuant to 28 U.S.C. § 1441(a). This action is being removed from the Wayne County Circuit Court, which lies within the Southern District of West Virginia. *See* 28 U.S.C. §§ 93(a), 1441(a) and 1446(a).

32. Pursuant to 28 U.S.C. § 1446(d), copy of Ally's Notice of Filing of Notice of Removal is being filed contemporaneously with the Clerk of the Circuit Court of Wayne County, West Virginia, a copy of which is attached as **Exhibit B**.

WHEREFORE, Defendant Ally Financial, Inc. respectfully gives notice that this action is hereby removed from the Circuit Court of Wayne County, West Virginia to the United States District Court for the Southern District of West Virginia, Huntington Division.

Dated: July 23, 2021

Respectfully submitted,

ALLY FINANCIAL INC.

By: /s/ Jason E. Manning  
Of Counsel

John C. Lynch (WV Bar No. 6627)  
Jason E. Manning (WV Bar No. 11277)  
Megan E. Burns (WV Bar No. 13290)  
Counsel for Defendant  
TROUTMAN PEPPER HAMILTON SANDERS LLP  
222 Central Park Avenue, Suite 2000  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July, 2021, I electronically filed the foregoing *Notice of Removal* with the Clerk of the Court using the CM/ECF system, and I further certify that a true and correct copy of the foregoing Notice of Removal was sent via Federal Express, to the following:

**Counsel for Plaintiffs**

Patricia M. Kipnis  
Bailey & Glasser, LLP  
209 Capitol Street  
Charleston, West Virginia 25301

Kristina Thomas Whitaker  
The Grubb Law Group, PLLC  
1114 Kanawha Boulevard, East  
Charleston, WV 23501

/s/ Jason E. Manning \_\_\_\_\_  
Jason E. Manning (WV Bar No. 11277)  
Counsel for Defendant  
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**Case Docket Entries**

CC-50-2021-C-41

Court: **Circuit** County: **50 - Wayne** Created Date: **6/17/2021** Security Level: **Public**  
 Judge: **Jason Fry** Case Type: **Civil** Case Sub-Type: **Mass Litigation** Status: **Open**  
 Related Cases:  
 Style: **Michael Phelps v. Ally Financial, Inc.**

	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
1	6/17/2021 3:35:18 PM	E-Filed		Complaint
	1-1 6/17/2021	Civil Case Information Statement		
	1-2 6/17/2021	Complaint - Class Action Complaint		
	1-3 6/17/2021	Transmittal		
	1-4 6/17/2021	Summons		
2	6/17/2021 3:35:18 PM	Judge Assigned	J-50004	Jason Fry
3	6/17/2021 3:35:18 PM	Party Added	P-001	Michael Phelps
4	6/17/2021 3:35:18 PM	Party Added	D-001	Ally Financial, Inc.
5	6/17/2021 3:35:18 PM	Attorney Listed	P-001	A-12896 - Patricia M Kipnis
6	6/17/2021 3:35:18 PM	Service Requested	D-001	Plaintiff - Private Process Server
7	7/7/2021 2:59:21 PM	E-Filed		Service Return - Affidavit of Service Returned - Ally Financial
	7-1 7/7/2021	Service Return - Affidavit of Service Returned on Ally Financial		
	7-2 7/7/2021	Transmittal		



E-FILED | 6/17/2021 3:35 PM  
CC-50-2021-C-41  
Wayne County Circuit Clerk  
Regina Thompson

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

MICHAEL PHELPS,

PLAINTIFF

v.

CIVIL ACTION NO. 16-C-167-D3

ALLY FINANCIAL, INC.

DEFENDANT

**COMPLAINT**

1. The Plaintiff, Michael Phelps is a resident of West Virginia. Mr. Phelps is visually impaired.
2. The Defendant, Ally Financial, Inc., (herein "Ally") is a bank holding company having its principal offices in a state other than West Virginia and which does business in West Virginia.
3. Mr. Phelps bought a 2017 Ford Fusion from River City Ford, in Lavalette, WV for his daughter's personal use. Mr. Phelps signed a Retail Installment Sales Contract with River City Ford dated June 14, 2017 ("RISC").
4. The RISC provided that Mr. Phelps would make regular monthly payments of \$394.73.
5. In 2019, the collection of Mr. Phelps' car loan was made by Ally.
6. By letter dated September 13, 2019, Ally stated that Mr. Phelps owed the total amount of \$1,336.25 due by September 26, 2019.
7. Mr. Phelps called Ally about payment workout options. Ally told Mr. Phelps that they required immediate payment of at least \$205.26 by certified check. After Mr. Phelps explained his disability and limited mobility, Ally still insisted on a certified check.
8. Mr. Phelps took on additional personal expense and considerable time to do as Ally requested and sent a certified check after visiting his bank in person.

9. Despite doing as Ally requested, and after many phone calls with Ally staff to inquire about the certified check's receipt, Ally informed Mr. Phelps that his loan workout request had been rejected.

10. Mr. Phelps received a statement that reflected a reduced monthly payment owed of \$308.03.

11. On October 1, 2019, Mr. Phelps used Ally's phone payment system to submit a \$308.03 payment and also a \$4.00 pay by phone fee. After sending payment, Mr. Phelps was sent a receipt.

12. Although not generally known to the public, the typical cost for phone payment service through Western Union is approximately 50 cents. Western Union engages in private servicing agreements with debt collectors, like Ally, that provide either a low processing cost that is marked-up by Ally for profit, or a revenue sharing agreement between Ally or its parent companies, and Western Union, or its successor, ACI Worldwide.

13. Notwithstanding any private agreement between Ally and Western Union, the processing payment defrays Ally's costs of collection and shifts the financial burden of Ally's collection costs onto Mr.

14. Mr. Phelps's RISC does not authorize the lender or any person collecting the debt on the lender's behalf to collect a payment processing fee.

15. Through his counsel, Mr. Phelps sent three different letters to Ally, the last dated November 3, 2020, explaining that the \$4.00 fee is not authorized by Mr. Phelps' RISC and violated the West Virginia Consumer Credit and Protection Act ("WVCCPA").

16. Ally, through counsel, responded by letter dated December 17, 2020, refusing to provide any cure or relief to Mr. Phelps.

### **CLASS ALLEGATIONS**

17. Mr. Phelps brings this action on his own behalf and on behalf of all similarly situated individuals, pursuant to Rule 23 of the West Virginia Rules of Civil Procedure:

All persons in the West Virginia (1) with property secured by a loan where the lender is Ally or is serviced by Ally, and (2) who were charged one or more payment processing fees.

18. Mr. Phelps reserves the right to modify or amend the proposed class definitions before the Court determines whether certification is appropriate.

19. Excluded from the Class are Defendant, and Defendant's parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all mortgagors who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members, and members of the staffs of the judges to whom this case should be assigned.

20. The members of the Class are so numerous that joinder is impractical. While the exact number of members of the Class cannot be determined without discovery, Plaintiff believes that the Class consist of hundreds, if not thousands of members, the identity of whom, upon information and belief, can be readily determined upon review of records maintained by Defendant.

21. Plaintiff's claims are typical of the claims of other members of the Classes, in that they arise out of the same acts of Ally, namely collecting fees from borrowers that are not authorized by the underlying loan agreements or by West

Virginia law. Plaintiff has suffered the harms alleged and have no interests antagonistic to the interests of any other member of the Class.

22. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual members of the Class.

23. The predominating common questions of law and fact include:

a. Whether, and in what amount, Ally may collect a payment processing fee from borrowers;

b. Whether collecting such fees is authorized by the Plaintiff or class members' Security Instrument;

c. Whether collecting such fees is authorized by any statute or regulation

d. Whether collecting Pay-to-Pay fees violates the WVCCPA;

e. What is the proper method or methods by which to measure damages caused by Ally's violations; and

f. Whether Ally should be enjoined from further collections, or attempted collections, of Pay-to-Pay fees from members of the Class.

24. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the members of the Class.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each of the Class Member's claims is small relative to the complexity of the litigation, and due to the financial resources of Ally, no member of the Class could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Ally's misconduct will proceed without remedy.

26. Even if members of the Class could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

27. Alternatively, certification is appropriate pursuant to Rule 23(b)(2) because it is clear that declaratory and injunctive relief is appropriate respecting the Class as a whole.

**COUNT I**  
***VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND***  
***PROTECTION ACT***

28. Mr. Phelps incorporates paragraphs 1 through 27 above as if fully set forth herein.

29. Mr. Phelps is a “person” who falls under the protection of Article 2 of the WVCCPA, and as a “consumer” under Section 46A-2-122(a).

30. Ally is a “debt collector” as defined by the WVCCPA under Section 46A-2-122(d) as an organization that engages directly in debt collection in Wayne County, WV.

31. Ally has engaged in violations of Article 2 of the WVCCPA, including but not limited to:

- a. Collecting or attempting to collect from Mr. Phelps all or any part of Ally’s fee or charge for services rendered in violation of Section 46A-2-128(c);
- b. Collecting any charge, fee or expense incidental to the principal obligation unless such incidental fee, charge or expense is expressly authorized by the agreement creating the debt, the RISC and by statute or regulation, in violation of Section 46A-2-128(d); and
- c. Utilizing fraudulent, deceptive, or misleading representations or means in collecting an unauthorized extra payment processing fee, in violation of Section 46A-2-127.

32. Mr. Phelps and class members have been damaged financially by Ally’s violations of the WVCCPA.



**COUNT II**

***VIOLATION OF THE COVENANT OF GOOD FAITH AND FAIR DEALING***

33. Mr. Phelps incorporates paragraphs 1 through 32 above as if fully set forth herein.

34. Implied in every contract is a duty of good faith and fair dealing, which prohibits either party from taking such action that denies the other party the benefit of the contract.

35. Ally became a party to the contract by becoming Mr. Phelps's lender or by assignment of the right to collect the debt from Mr. Phelps.

36. Ally routinely breaches its covenant of good faith and fair dealing by collecting extra payment processing fees not authorized in the underlying loan agreement.

37. Mr. Phelps and members of the class have been damaged by Ally's violations of the covenant of good faith and fair dealing.

**DEMAND FOR RELIEF**

Mr. Phelps demands from Ally:

A. Actual damages for Mr. Phelps and class members for violations of the WVCCPA and for Ally's breach of the covenant of good faith and fair dealing;

B. Statutory damages for Mr. Phelps and class members for violations of the WVCCPA for all such violations that have occurred;

- C. Injunctive Relief for Mr. Phelps and class members enjoining Ally collecting any further payment processing fee;
- D. Attorneys' fees and costs for Mr. Phelps and class members; and
- E. Any such further relief that the Court may grant as appropriate.

Respectfully submitted,

PLAINTIFF  
BY COUNSEL

/s/ Patricia M. Kipnis  
Patricia M. Kipnis (WVSB #12896)  
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Charleston, WV 25301  
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304-345-3355 (facsimile)

**SUMMONS**

E-FILED | 6/17/2021 3:35 PM  
CC-50-2021-C-41  
Wayne County Circuit Clerk  
Regina Thompson

IN THE CIRCUIT OF WAYNE WEST VIRGINIA  
**Michael Phelps v. Ally Financial, Inc.**

Service Type: Plaintiff - Private Process Server

NOTICE TO: Ally Financial, Inc., 1627 Quarrier Street, Charleston, WV 25311

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY:

Patricia Kipnis, 923 Haddonfield Rd Ste 300, Cherry Hill, NJ 08002

THE ANSWER MUST BE MAILED WITHIN 20 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

SERVICE:

6/17/2021 3:35:15 PM

Date

/s/ Regina Thompson

Clerk

RETURN ON SERVICE:

Return receipt of certified mail received in this office on \_\_\_\_\_

I certify that I personally delivered a copy of the Summons and Complaint to \_\_\_\_\_

Not Found in Bailiwick

Date

Server's Signature

**SUMMONS**

**Case Number:**  
CC-50-2021-C-41

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IN THE CIRCUIT OF WAYNE WEST VIRGINIA  
**Michael Phelps v. Ally Financial, Inc.**

Service Type: Plaintiff - Private Process Server

NOTICE TO: Ally Financial, Inc., 1627 Quarrier Street, Charleston, WV 25311  
THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY:

Patricia Kipnis, 923 Haddonfield Rd Ste 300, Cherry Hill, NJ 08002

THE ANSWER MUST BE MAILED WITHIN 20 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

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SERVICE:

6/17/2021 3:35:15 PM

Date

/s/ Regina Thompson

Clerk

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RETURN ON SERVICE:

Return receipt of certified mail received in this office on \_\_\_\_\_

I certify that I personally delivered a copy of the Summons and Complaint to \_\_\_\_\_

Not Found in Bailiwick

\_\_\_\_\_  
Date

\_\_\_\_\_  
Server's Signature



CC-50-2021-C-41

**Michael Phelps v. Ally Financial, Inc.**

P-001 - Michael Phelps

Plaintiff

v. D-001 - Ally Financial, Inc.

Defendant

**SERVICE RETURN**

## SERVED PARTIES

**Name:** Ally Financial, Inc.

**Address:** 1627 Quarrier Street, Charleston WV 25311

**Days to Answer:** 20                      **Type of Service:** Plaintiff - Private Process Server

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**IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA**

**MICHAEL PHELPS,**

**Plaintiff,**

v.

**Civil Action No. 16-c-167-D3**

**ALLY FINANCIAL, INC.,**

**Defendant.**

**NOTICE OF FILING OF NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that a Notice of Removal of this action from the Circuit Court of Wayne County, West Virginia to the United States District Court for the Southern District of West Virginia, Huntington Division (a copy of which, including exhibits, is attached as **Exhibit 1**) was filed on the 22nd day of July, 2021 in the United States District Court for the Southern District of West Virginia, Huntington Division, thereby effecting removal of this action, and pursuant to 28 U.S.C. § 1446(d), this Court shall proceed no further.

Dated: July 23, 2021

Respectfully submitted,

ALLY FINANCIAL, INC.

By: /s/ Jason E. Manning

Of Counsel

John C. Lynch (WV Bar No. 6627)  
Jason E. Manning (WV Bar No. 11277)  
Megan E. Burns (WV Bar No. 13290)  
TROUTMAN PEPPER HAMILTON SANDERS LLP  
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**IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA**

**MICHAEL PHELPS,**

**Plaintiff,**

**v.**

**Civil Action No. 16-c-167-D3**

**ALLY FINANCIAL, INC.,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July, 2021, a true and correct copy of the foregoing *Notice of Filing Notice of Removal* was sent via Federal Express, to the following:

**Counsel for Plaintiffs**

Patricia M. Kipnis  
Bailey & Glasser, LLP  
209 Capitol Street  
Charleston, West Virginia 25301

Kristina Thomas Whiteaker  
The Grubb Law Group, PLLC  
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/s/ Jason E. Manning  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michael Phelps

(b) County of Residence of First Listed Plaintiff Wayne County, WV (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Patricia M. Kipnis, Esq., Bailey & Glasser, LLP, 209 Capitol Street, Charleston, WV 25301 856-324-8219

DEFENDANTS

Ally Financial Inc.

County of Residence of First Listed Defendant Wayne County, MI (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Jason E. Manning, Esq., Troutman Pepper, 222 Central Park Ave., Ste. 2000, Va. Beach, VA 23462 757-687-7564

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Foreign Nation, etc.)

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332, 1441, 1446. Brief description of cause: Alleged violations WVCCPA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/23/2021 SIGNATURE OF ATTORNEY OF RECORD s/ Jason E. Manning

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE