

PHILIP D. STERN & ASSOCIATES, LLC
697 Valley Street, Suite 2-D
Maplewood, NJ 07040
Telephone: (973) 379-7500
Attorney of Record: Philip D. Stern
Attorneys for Plaintiffs, Karl W. Krug, and all
others similarly situated

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KARL W. KRUG, on behalf of himself and all
those similarly situated,

Plaintiffs,

vs.

FORSTER, GARBUS & GARBUS, a New
Jersey partnership, and
GLENN S. GARBUS, an individual,

Defendants.

**FIRST AMENDED
CLASS ACTION COMPLAINT
--and--
DEMAND FOR JURY TRIAL**

Plaintiff, Karl W. Krug, on behalf of himself and all others similarly situated, by way of
Complaint against Defendants, Forster, Garbus & Garbus and Glenn S. Garbus, says:

I. PARTIES

1. Plaintiff, KARL W. KRUG (“KRUG”) is a natural person.
2. KRUG, at all times relevant to this complaint, resided in the Township of Millville,
County of Cumberland, State of New Jersey.
3. Defendant, FORSTER, GARBUS & GARBUS (“FG&G”) is a for-profit general
partnership existing pursuant to the laws of the State of New Jersey. FG&G maintains its
principal business address at 7 Banta Place, Hackensack, New Jersey and formerly

maintained its principal business address at 100 Davidson Avenue, Suite 311, Somerset, New Jersey.

4. Defendant, GLENN S. GARBUS (“GARBUS”) is a natural person, is a partner in FG&G, and is engaged in the private practice of law in the State of New Jersey at 7 Banta Place, in the City of Hackensack, County of Bergen, State of New Jersey.

II. JURISDICTION & VENUE

5. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
6. Venue is appropriate in this federal district pursuant to 28 U.S.C. § 1391 because the events giving rise to Plaintiff’s claims occurred within this federal judicial district, and because the Defendants regularly transact business within this federal judicial district.

III. PRELIMINARY STATEMENT

7. Plaintiff, on his own behalf and on behalf of the class he seeks to represent, and demanding a trial by jury, brings this action for the illegal practices of Defendants who used false, deceptive, and misleading practices, and other illegal practices, in connection with their attempts to collect debts allegedly owed to Arrow Financial Services, L.L.C. by Plaintiff and members of the class he seeks to represent.
8. Plaintiff alleges that Defendants’ collection practices violate the Fair Debt Collection Practices Act, 15 U.S.C. §§1692 *et seq.* (“FDCPA”).
9. The FDCPA regulates the behavior of collection agencies attempting to collect a debt on behalf of another.
10. The United States Congress found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and determined that abusive debt collection practices contribute to a number of personal bankruptcies, marital

instability, loss of jobs, and invasions of individual privacy. Congress enacted the FDCPA to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote uniform State action to protect consumers against debt collection abuses. 15 U.S.C. § 1692(a) - (e).

11. The FDCPA is a strict liability statute, which provides for actual and statutory damages upon the showing of one violation. The Third Circuit has held that whether a debt collector's conduct violates the FDCPA should be judged from the standpoint of the "least sophisticated consumer." *Graziano v. Harrison*, 950 F.2d 107, 111n5 (3d Cir. 1991).
12. The FDCPA applies to lawyers regularly engaged in consumer debt-collection litigation. *Heintz v. Jenkins*, 514 U.S. 291 (1995).
13. The FDCPA creates no exceptions for attorneys of the laws applicable to all debt collectors – even when that conduct falls within conduct traditionally performed only by attorneys. *Heintz v. Jenkins*, 514 U.S. 291 (1995). Thus, there is no "litigation privilege" for debt collecting attorneys. *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007). "Attorneys who regularly engage in debt collection or debt collection litigation are covered by the FDCPA, and their litigation activities must comply with the requirements of that Act." *Piper v. Portnoff Law Associates*, 396 F.3d 227, 232 (3d Cir. 2005) (emphasis added).
14. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the use of false, deceptive, and misleading representations or means in connection with the

collection of any debt and sets forth a non-exhaustive list of certain *per se* violations of false and deceptive collection conduct. 15 U.S.C. § 1692e(1)-(16).

15. Among those *per se* violations are making false representations or implications that any individual is an attorney or that any communication is from an attorney. 15 U.S.C. § 1692e(3). A complaint filed under an attorney's name when there has been no meaningful attorney involvement in the preparation of the complaint violates 15 U.S.C. § 1692e(3) as there is a false representation that an attorney was meaningfully involved.
16. Plaintiff, on behalf of himself and all others similarly situated, seeks actual and statutory damages, attorney fees, costs, and all other relief, equitable or legal in nature, as deemed appropriate by this Court, pursuant to the FDCPA and all other common law or statutory regimes. Plaintiff, on behalf of himself and all others similarly situated, requests that he and the class members be awarded statutory and actual damages payable by FG&G.

IV. FACTS REGARDING PLAINTIFF

17. Defendants have alleged that, sometime prior to April 6, 2009, KRUG incurred a financial obligation ("KRUG DEBT") to Washington Mutual Bank.
18. Defendants have alleged that Arrow Financial Services, L.L.C., a Delaware limited liability company registered in New Jersey as a foreign limited liability company under the name Arrow F.S., L.L.C. ("ARROW") purchased the KRUG DEBT from Washington Mutual Bank.
19. Defendants have alleged that the KRUG DEBT is in default.
20. KRUG never incurred any debts in connection with a business or commercial activities and, therefore, the KRUG DEBT, if truly an obligation owed by him, could have only arisen from a financial obligation for primarily personal, family, or household purposes.

21. The KRUG DEBT is a “debt” as defined by 15 U.S.C. §1692a(5).
22. KRUG is, at all times relevant to this complaint, a “consumer” as defined by 15 U.S.C. §1692a(3).
23. ARROW purchases defaulted consumer debt and collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail, telephone, and/or internet.
24. In connection with its debt servicing operations, ARROW outsources collection activities to other collection agencies, such as FG&G.
25. ARROW retained the services of FG&G to attempt to collect the KRUG DEBT.
26. FG&G collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail, telephone, and/or internet.
27. FG&G is a “debt collector” as defined by 15 U.S.C. §1692a(6).
28. At all times relevant to the collection of the KRUG DEBT, there existed a principal-agent relationship wherein FG&G and GARBUS and FG&G acted as the agents for their principal, ARROW.
29. At all times relevant to the collection of the KRUG DEBT, FG&G and GARBUS were agents for ARROW, were acting within the course and scope of their employment, and were under the direct supervision and control of ARROW.
30. As the principal and a debt collector, ARROW is vicariously liable for the illegal collection activities of other debt collection companies and collectors such as FG&G and GARBUS who worked on behalf of ARROW to collect debts from consumers like KRUG.

31. In an attempt to collect the KRUG DEBT, FG&G sent KRUG a letter dated April 6, 2009 (“KRUG LETTER”).

32. A true and correct copy of the KRUG LETTER is attached as *Exhibit A* at page 14, *infra*.

33. In the KRUG LETTER, FG&G admits:

At this time, no attorney with this firm has personally reviewed the particular circumstance of your account.

34. On June 5, 2009, FG&G commenced an action (“KRUG COLLECTION ACTION”) in the Superior Court of New Jersey, Law Division, Special Civil Part in Cumberland County, New Jersey by the filing of a written complaint (“KRUG COLLECTION COMPLAINT”).

35. A true copy of the KRUG COLLECTION COMPLAINT is annexed as *Exhibit B* at page 15, *infra*.

36. The KRUG COLLECTION COMPLAINT is signed by GARBUS.

37. By signing the KRUG COLLECTION COMPLAINT and as an attorney admitted to practice in the State of New Jersey, GARBUS certified that he read it and that, to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances that the factual allegations had evidentiary support. See, New Jersey Court Rule 1:4-8.

38. The “least sophisticated consumer” would have perceived that the KRUG COLLECTION COMPLAINT was the work product of a licensed attorney who had conducted a meaningful review and investigation of, *inter alia*, the particular circumstances and reached a reasoned professional judgment about the validity of the ARROW DEBT and the merits of the KRUG COLLECTION COMPLAINT prior to filing it.

39. No licensed attorney was directly or personally involved in reviewing materials sufficient to make a professional judgment as to the basis for the claims alleged in the KRUG COLLECTION COMPLAINT. The foregoing factual contention is made on belief after inquiry that it will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. Such inquiry includes, but is not limited to, ARROW's discovery responses in the KRUG COLLECTION ACTION and the number of lawsuits filed by FG&G on behalf of all of its clients.
40. The KRUG COLLECTION COMPLAINT falsely represents and implies that GARBUS was directly or personally involved in reviewing the materials sufficient to make a professional judgment as to the validity of the claims alleged in the KRUG COLLECTION COMPLAINT.
41. On April 7, 2010, the court in the KRUG COLLECTION ACTION entered a final order which granted KRUG's motion for summary judgment.
42. A true copy of that order is attached as *Exhibit C* at page 16, infra.
43. As actual damages, KRUG has incurred costs of suit, his time and effort, and incurred legal fees and expenses which were sustained in defending against the KRUG COLLECTION ACTION all of which would not have been incurred had GARBUS not filed the KRUG COLLECTION COMPLAINT until after he was meaningfully involved a review of materials sufficient to make a professional judgment as to the merits of the KRUG COLLECTION COMPLAINT.

V. FG&G'S POLICIES AND PRACTICES

44. Based on the number of lawsuits filed by FG&G and signed by GARBUS, it is virtually impossible for FG&G or GARBUS to undertake the attorney involvement required under the FDCPA.
45. Consequently, it is FG&G's practice to file consumer collection complaints – including complaints on behalf of ARROW in the Superior Court of New Jersey, Law Division, Special Part, Cumberland County – without sufficient attorney involvement in violation of 15 U.S.C. §1692e(3).

VI. CLASS ALLEGATIONS

46. This action is brought as a class action. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.
47. The Class consists of each individual named as a defendant in a complaint which
 - a) was filed by FG&G in the Superior Court of New Jersey, Law Division, Special Civil Part venued in Cumberland County,
 - b) named ARROW as the plaintiff, and
 - c) was served on the individual.
48. The identities of all class members are readily ascertainable from the Defendants' records and from the public records of the Superior Court of New Jersey.
49. Excluded from the Class are the Defendants and all shareholders, officers, partners, managers, and directors of FG&G and ARROW, its employees and officers, and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.

50. The class period is one year prior to the filing of the complaint in this action for all claims under the FDCPA and continues up to and including the date of preliminary class certification.
51. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure.
52. With respect to Rule 23(a), Plaintiff asserts that, at the time of the class certification motion, it will be demonstrated that:
 - a) **Numerosity:** The Class defined above is so numerous that joinder of all members would be impractical; on information and belief, the class contains at least 75 members.
 - b) **Typicality:** Plaintiff's claims are typical of the claims of the class members in that Plaintiff's individual claims relate to FG&G's filing of a complaint without sufficient attorney involvement and the class members' claims relate to FG&G's practice of filing complaints without sufficient attorney involvement.
 - c) **Commonality:** Questions of fact and law concerning the class members' claims are common as they arise from FG&G's uniform course of conduct without regard to the facts which are unique to each individual class member.
 - d) **Adequacy:** Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor his counsel has any interests, which might cause them not to vigorously pursue the instant class action lawsuit.

53. With respect to Rule 23(b)(3), Plaintiff asserts that, at the time of the class certification motion, it will be demonstrated that:
- a) **Predominance:** The questions of law and fact common to members of the class predominate over any questions affecting an individual member as the principal issue is whether GARBUS filed collection complaints without the necessary attorney involvement to not violate 15 U.S.C. §1692e(3); and
 - b) **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy.
54. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class only as to particular issues pursuant to Fed.R.Civ.P. 23(c)(4).

VII. FIRST CAUSE OF ACTION (CLASS ACTION)

55. Plaintiff realleges and incorporates by reference the preceding allegations of this Complaint as if set forth at length herein.
56. In violation of 15 U.S.C. §1692e(3), the complaint in the KRUG COLLECTION ACTION and the complaints filed against the members of the Class falsely, deceptively, and misleadingly represented that there was meaningful review or involvement by a licensed attorney prior to those complaints being filed and served.
57. KRUG and some or all of the members of the Class sustained actual damages in the nature of fees, costs and legal expenses in the defense of the collection complaints filed by GARBUS in violation of 15 U.S.C. §1692e(3).

VIII. SECOND CAUSE OF ACTION

58. Plaintiff realleges and incorporates by reference the preceding allegations of this Complaint as if set forth at length herein.
59. During June 2009, FG&G left at least two voice messages (“KRUG MESSAGES”) on KRUG’s home answering machine. Two of the messages stated:
- “Personal and confidential message for Karl Krug. Karl, this is Mike Abrams – Forster, Garbus & Garbus attorneys. Please be advised it is imperative you return the call. I will be here tonight until 9 P.M. concerning a claim forwarded here to our office. Uh, you can reach me directly at 1-800-245-9943 extension 531. Good luck.”**
- “This message is for Karl Krug. Karl, this is Mike Abrams – Forster, Garbus & Garbus attorneys. Please be advised this is not a sales call. You can reach me directly at 1-800-245-9943, my direct extension is 531.”**
60. There is no attorney employed by or otherwise working on behalf of FG&G by the name of Mike Abrams or Michael Abrams. The foregoing factual contention is made on belief after inquiry that it will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.
61. Defendants’ violations with respect to the KRUG MESSAGES include, but are not limited to, the following:
- a) Placing telephone calls without providing meaningful disclosure of FG&G’s identity as the caller in violation of 15 U.S.C. § 1692d(6).
 - b) Making false, deceptive, and misleading representations that the person leaving the voice messages is an attorney or that the subject communication is from an attorney in violation of 15 U.S.C. § 1692e(3).

- c) Failing to disclose in its initial communication with the consumer that FG&G is attempting to collect a debt and that any information obtained will be used for that purpose, which constitutes a violation of 15 U.S.C. §1692e(11).
- d) Failing to disclose in all oral communications that FG&G is a debt collector in violation of 15 U.S.C. § 1692e(11).

IX. PRAYER FOR RELIEF

62. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and in favor of the putative class as follows:

a) **For the FIRST CAUSE OF ACTION:**

- i) An order certifying that the First Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and the undersigned counsel to represent the Class.
- ii) An order awarding against GARBUS and FG&G, jointly and severally, actual damages sustained by KRUG and each Class member including court costs and legal fees in the defense of the collection actions commenced by Defendants;
- iii) An order awarding against GARBUS and FG&G, jointly and severally, the maximum statutory damages for Plaintiff and the Class pursuant to 15 U.S.C. § 1692k(a)(B);
- iv) An order awarding against GARBUS & FG&G, jointly and severally, attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. §1692k(a)(B)(3); and
- v) Such other and further relief as may be just and proper.

b) **For the SECOND CAUSE OF ACTION:**

- i) An order awarding against FG&G the maximum statutory damages for Plaintiff pursuant to 15 U.S.C. § 1692k(a)(B);

- ii) An order awarding against FG&G attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. §1692k(a)(B)(3); and
- iii) Such other and further relief as may be just and proper.

X. JURY DEMAND

Plaintiff demands a jury on all issues so triable.

Dated: April 24, 2010

PHILIP D. STERN & ASSOCIATES, LLC
/s/ Philip D. Stern

PHILIP D. STERN
Attorneys for Karl W. Krug and all others similarly
situated

EXHIBIT A

Undeliverable Mail Only
100 Davidson Ave Ste 311
Somerset, NJ 08873-1312
.D60820312324031DGY.

7 14 00001003 A
602200



PERSONAL & CONFIDENTIAL



KARL W KRUG
12 EISENHOWER BLVD
MILLVILLE NJ 08332-4464

FORSTER, GARBUS & GARBUS **Attorneys at Law**

Ronald Forster Adm. in NY Only
Mark A. Garbus Adm. in NY Only
Glenn S. Garbus Adm. in NJ, CT & NY

April 6, 2009

AMOUNT DUE ▶ \$4,948.54
Reference Number ▶ D60820312324031
Account Number ▶ 4185820312324031
Re ▶ ARROW FINANCIAL SERVICES LLC
A/P/O WASHINGTON MUTUAL BANK

1-631-393-9585
1-800-245-9943 Ext. 585
Representative Name: FGG NEW CLAIMS
Monday thru Thursday 8:00AM - 9:00PM EST
Friday 8:00AM - 5:00PM EST

Dear Karl W Krug,

Your account has been placed with this office for collection. If this account is not disputed, we shall expect your payment in full.

At this time, no attorney with this firm has personally reviewed the particular circumstances of your account.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor. (Please note that we are required, under Federal Law, to advise you that we are debt collectors and any information we obtain will be used in attempting to collect this debt.)

Please mail all correspondence and payments to the address listed below.

Office Location: 100 Davidson Ave, Suite 311
Somerset, NJ 08873-1312

**PLEASE CONTACT OUR OFFICE FOR INFORMATION ON LOW COST,
QUICK AND EASY TRANSFER OF FUNDS**

• DETACH HERE •

MAKE CHECK PAYABLE TO: **FORSTER, GARBUS & GARBUS** AND RETURN COUPON WITH PAYMENT TO 100 DAVIDSON AVE STE 311, SOMERSET, NJ 08873-1312 IN ENCLOSED ENVELOPE

KARL W KRUG
12 EISENHOWER BLVD
MILLVILLE NJ 08332-4464

AMOUNT DUE ▶ \$4,948.54
Reference Number ▶ D60820312324031
Re ▶ ARROW FINANCIAL SERVICES LLC
A/P/O WASHINGTON MUTUAL BANK
Rep. Code ▶ 1H
Date ▶ April 6, 2009

➔ Please Note Current

Home Phone # _____

Work Phone # _____

Cell Phone # _____

D60820312324031



Forster, Garbus & Garbus
100 Davidson Ave Ste 311
Somerset, NJ 08873-1312

FGG
FGG.V7
602200

EXHIBIT B

FILED Jun 05, 2009

ATTORNEY(s): FORSTER, GARBUS & GARBUS
100 Davidson Avenue, Suite 311
Somerset, New Jersey 08873
(800) 245-9943 x531
Attorney(s): for Plaintiff

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY
LAW DIVISION

JUN - 5 2009

RECEIVED

CIVIL CASE
MANAGEMENT OFFICE

ARROW FINANCIAL SERVICES LLC
A/P/O WASHINGTON MUTUAL BANK
Plaintiff

) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION: SPECIAL CIVIL PART
) CUMBERLAND COUNTY

Vs.

KARL W KRUG

) DOCKET NO: DC- DC-002715-09

Defendant(s)

) CIVIL ACTION

Acct. No.: D60820312324031
Ref. No.: 4185820312324031

) COMPLAINT (ON CONTRACT)

Plaintiff: ARROW FINANCIAL SERVICES LLC
Located at: 5996 W TOUHY AVE
NILES IL 60714

complaining of defendant(s), say(s):

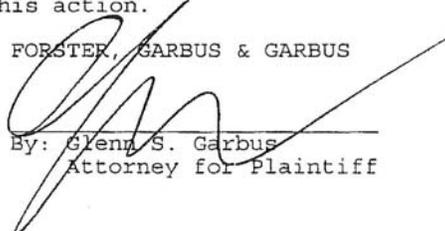
1. Upon information and belief, the defendant(s) KARL W KRUG in person or through an agent, made credit card purchases or took money advances under a credit card or line of credit account or promissory note or loan which a copy was furnished to defendant, or services rendered or used, as indicated above in the total amount of \$4947.46.
2. Defendant(s) KARL W KRUG has/have defaulted and there is now a balance due and owing of \$4947.46 which includes all charges, service charges and reasonable attorney's fees plus interest and costs which the defendant(s) did agree to pay in accordance with the terms of their contract.
3. Demand has been made upon defendant(s) for payment, but payment has been refused.

WHEREFORE, judgment is demanded for \$4947.46, including reasonable attorney's fees and lawful interest, plus costs of suit.

I CERTIFY that pursuant to Court Rule 4:5-1, the matter in controversy is not the subject of any other Action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action.

FORSTER, GARBUS & GARBUS

DATED: 5/28/09

By: 
Attorney for Plaintiff

(PLEASE NOTE THAT WE ARE REQUIRED, UNDER FEDERAL LAW, TO ADVISE YOU THAT WE ARE DEBT COLLECTORS AND ANY INFORMATION WE OBTAIN WILL BE USED IN ATTEMPTING TO COLLECT THIS DEBT.)

EXHIBIT C

PHILIP D. STERN & ASSOCIATES, LLC
697 VALLEY STREET, SUITE 2D
MAPLEWOOD, NJ 07040
(973) 379-7500
Attorney for Defendant, Karl W. Krug

SUPERIOR COURT OF N.J.
CLERK OF SUPERIOR COURT
CUMBERLAND COUNTY
CIVIL PART

APR 07 2010

RECORDED & FILED
CIVIL CASE
MANAGEMENT OFFICE

ARROW FINANCIAL SERVICES, LLC a/p/o
Washington Mutual Bank,
Plaintiff,

Superior Court of New Jersey
Law Division - Cumberland County
Special Civil Part

Civil Action

vs.

Docket No. DC-002715-09

KARL W. KRUG,
Defendant.

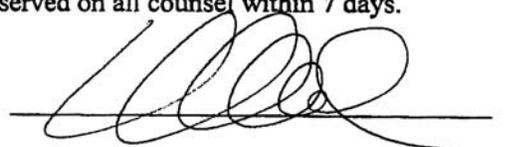
**ORDER GRANTING
SUMMARY JUDGMENT
IN FAVOR OF DEFENDANT**

This matter having come before the court on Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment and the court having read and considered the papers submitted, and having heard oral arguments, and it appearing that there are no genuine issues of fact and that Defendant is entitled to judgment as a matter of law, and or good cause shown;

IT IS ON THIS 7th DAY OF April, 2010; ORDERED & ADJUDGED:

1. Plaintiff's Motion is DENIED and Defendant's Motion is GRANTED.
2. Judgment be and hereby is entered in favor of Defendant, Karl W. Krug and against Plaintiff, Arrow Financial Services, LLC, with costs.
3. A true copy of this Order shall be served on all counsel within 7 days.

Date of Hearing:



Opposed: Yes No