

TREASURE TROVE  
OF CONSUMER CODE  
GEMS & JEWELS

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§522(g)&(A)

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if--

(1) (A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if--

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

**§ 101(10A)(A)(i)**

(10A) The term "current monthly income"—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii);

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
Debtor and ) CASE NO.: 09-00000  
Joint Debtor, )  
 )  
DEBTORS )

**MOTION FOR EXTENSION OF TIME TO FILE  
SCHEDULE OF INCOME AND REQUEST TO SET A NEW  
TIME PERIOD FOR DETERMINING THE DEBTORS'  
CURRENT MONTHLY INCOME AS ALLOWED BY 11 USC 101 (10A)(A)(ii)**

Debtors, through counsel, move the Court to enter an order to set a new time period date for determining the Debtors' current monthly income. As grounds therefore, it is averred that:

1. Debtors filed this case on November 1, 2009.
2. Shortly before filing the within captions cause, both Debtors lost their jobs. Debtors were both working for the same employer. Both the Debtors had been earning over \$12.00 per hour and had been receiving many hours of overtime.
3. Wife has found a job; post-petition, earning \$7.00 per hour. All of the paychecks are attached along with a statement from the employer.
4. Husband has found a job; post-petition, earning \$12.75 per hour. Overtime is not likely in this new job. All of the paychecks are attached along with a statement from the employer.
5. Assuming that the Debtors work 40 hours per week, the anticipated annual earnings are \$14,560.00 for the Wife (40 hours x \$7.00 x 52 weeks = \$14,560.00) and \$26,520.00 (40 hours x \$12.75 x 52 weeks = \$26,520.00) for the Husband.
6. The total anticipated annual income is \$41,080.00 (\$14,560.00 + \$26,520.00 = \$41,080.00).
7. In contrast to the anticipated income at this time, the annualized income shown on Form B-22 is \$67,402.56. This amount is approximately \$26,000.00 per year less than the annualized income shown on B-22 and is approximately 60% of the B-22 income.
8. 11 USC Section 521(a)(1)(B)(ii) allows the Court to excuse a debtor from the requirement of filing Schedule I imposed by 11 USC Section 521(a)(1)(B)(ii). In re McQueen, EDNC, 07-03011, entered 12-21-2007, Leonard, J.; In re Ingram, EDNC, 06-02714, entered 11-20-2006, Doub, J. Copies of the opinions are attached.

9. "If the debtor does not file a Schedule I, the debtor's "current monthly income" may be determined using a period other than the six-month period immediately preceding the filing." In re McQueen, EDNC, 07-03011, at page 2, entered 12-21-2007, Leonard, J. See, 11 USC Section 101(10A)(A)(ii).

10. The time period to be used can include time periods that occur after the bankruptcy case is filed. In re McQueen, EDNC, 07-03011, entered 12-21-2007, Leonard, J.; In re Ingram, EDNC, 06-02714, entered 11-20-2006, Doub, J.

11. Because of the dramatic drop in debtors' income, it is appropriate that the Court use a new time period for determining "current monthly income".

12. Debtors believe the appropriate period to determine current monthly income is December 1, 2009 to May 31, 2009.

Wherefore, Debtors pray that the Court establish a new time period for determining current monthly income as is allowed pursuant to 11 USC 101 (10A)(A)(ii), and for such other and further relief to which the Debtors may be entitled.

January 12, 2010

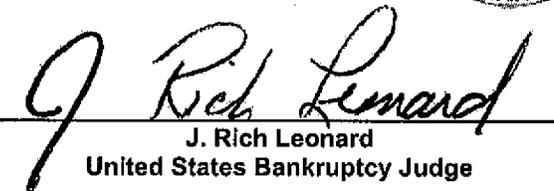
Respectfully submitted,

By/s/ Mark S. Zuckerberg  
Mark S. Zuckerberg #13815-49  
333 N. Pennsylvania, #100  
Indianapolis, IN 46204  
317-687-0000  
317-687-5151 (facsimile)  
[filings@mszlaw.com](mailto:filings@mszlaw.com)

SO ORDERED.

SIGNED this 21 day of December, 2007.



  
J. Rich Leonard  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION

IN RE:

FREDERICK M. MCQUEEN

DEBTOR

CASE NO. 07-03011-8-JRL

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ORDER

This case is before the court on the motion of Frederick M. McQueen ("debtor") to strike his original Schedule I filing, to excuse him from the Schedule I filing requirement, and to set an appropriate time period to more accurately determine his "current monthly income." On December 19, 2007, the court conducted a hearing on this matter in Wilmington, North Carolina.

On August 17, 2007, the debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code. Debtor's Schedule I lists his average monthly income as \$1,326.50, including \$1,169.00 per month in social security and \$157.50 in pension and retirement income. However, as a result of his receiving disability income from his employer during the six-month period preceding his filing, debtor's Form B22C lists his "current monthly income" as \$2,617.17. Debtor's monthly plan payments to the trustee were based on this figure, and he is now having difficulty meeting this obligation since his actual income has significantly decreased. Debtor's present motion requests that

the court (1) strike his original Schedule I, (2) excuse him from the Schedule I filing requirement, and (3) set the six-month period from which to determine his “current monthly income” as July 2007 to December 2007.

A consumer debtor filing for relief under chapter 13 is generally required to file a Schedule I. 11 U.S.C. § 521(a)(1)(b)(ii). However, the Bankruptcy Code permits the court to excuse a debtor from this requirement. *Id.* § 521(a)(1)(B). Whether a debtor files a Schedule I impacts the determination of the debtor’s “current monthly income” under § 101(10A). If a debtor files a Schedule I, the debtor’s “current monthly income” is calculated by averaging the monthly income during a six-month period immediately preceding the bankruptcy filing. *Id.* § 101(10A)(A)(i). If the debtor does not file a Schedule I, the debtor’s “current monthly income” may be determined using a period other than the six-month period immediately preceding the filing. *Id.* § 101(10A)(A)(ii).

The debtor’s objective, to have his “current monthly income” calculated based on a six-month period other than the six months immediately preceding his bankruptcy filing so that it more accurately reflects his financial condition, is quite clear. However, the method he suggests to accomplish this objective is problematic. Excusing the debtor from the Schedule I filing requirement would, as the debtor requests, permit the court to set a six-month time period other than the six-month period prior to his bankruptcy filing. 11 U.S.C. § 101(10A)(A)(ii). However, excusing the debtor from this requirement might arguably subject him to the automatic dismissal provision of 11 U.S.C. § 521(i)(1), which provides: “[I]f an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case *shall* be automatically dismissed effective on the 46th day after the date of the filing of the petition.”

The court recognizes that there is a solution, not advanced by the debtor, that would still bring

about the proper result. The court strikes the debtor's original Schedule I and Form B22C and hereby grants the debtor permission to re-file both documents by January 10, 2008. In completing the new Form B22C, the court directs the debtor to use the six-month period of July 1, 2007 to December 31, 2007. This is the period dictated by 11 U.S.C. § 101(10A)(A)(i), but it also serves the debtor's objective of providing a more accurate representation of the debtor's actual current monthly income.

**"END OF DOCUMENT"**

**§707**

**§ 707 Dismissal of a case or conversion to a case under chapter 11 or 13**

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and

- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

(b) (1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

**United States Bankruptcy Court  
Southern District of Indiana**

**Voluntary Petition**

Name of Debtor (if individual, enter Last, First, Middle): <b>debtor, debtor</b>	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): <b>Parker City, IN</b>  ZIP Code <b>47368</b>	Street Address of Joint Debtor (No. and Street, City, and State):  ZIP Code
County of Residence or of the Principal Place of Business: <b>Randolph</b>	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):  ZIP Code	Mailing Address of Joint Debtor (if different from street address):  ZIP Code

Location of Principal Assets of Business Debtor (if different from street address above):

<b>Type of Debtor</b> (Form of Organization) (Check one box) <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i></li> <li><input type="checkbox"/> Corporation (includes LLC and LLP)</li> <li><input type="checkbox"/> Partnership</li> <li><input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)</li> </ul>	<b>Nature of Business</b> (Check one box) <ul style="list-style-type: none"> <li><input type="checkbox"/> Health Care Business</li> <li><input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B)</li> <li><input type="checkbox"/> Railroad</li> <li><input type="checkbox"/> Stockbroker</li> <li><input type="checkbox"/> Commodity Broker</li> <li><input type="checkbox"/> Clearing Bank</li> <li><input checked="" type="checkbox"/> Other</li> </ul> <hr/> <b>Tax-Exempt Entity</b> (Check box, if applicable) <ul style="list-style-type: none"> <li><input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).</li> </ul>	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box) <ul style="list-style-type: none"> <li><input type="checkbox"/> Chapter 7</li> <li><input type="checkbox"/> Chapter 9</li> <li><input type="checkbox"/> Chapter 11</li> <li><input type="checkbox"/> Chapter 12</li> <li><input checked="" type="checkbox"/> Chapter 13</li> <li><input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding</li> <li><input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding</li> </ul> <hr/> <b>Nature of Debts</b> (Check one box) <ul style="list-style-type: none"> <li><input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."</li> <li><input checked="" type="checkbox"/> Debts are primarily business debts.</li> </ul>
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<b>Filing Fee</b> (Check one box) <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Full Filing Fee attached</li> <li><input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.</li> <li><input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.</li> </ul>	Check one box: <b>Chapter 11 Debtors</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).</li> <li><input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).</li> </ul> Check if: <ul style="list-style-type: none"> <li><input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000.</li> </ul> Check all applicable boxes: <ul style="list-style-type: none"> <li><input type="checkbox"/> A plan is being filed with this petition.</li> <li><input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).</li> </ul>
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**Statistical/Administrative Information**

Debtor estimates that funds will be available for distribution to unsecured creditors.

Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

**Estimated Number of Creditors**

<input checked="" type="checkbox"/>	<input type="checkbox"/>								
1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	OVER 100,000

**Estimated Assets**

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	\$100,000,001 to \$500 million	\$500,000,001 to \$1 billion	More than \$1 billion

**Estimated Liabilities**

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	\$100,000,001 to \$500 million	\$500,000,001 to \$1 billion	More than \$1 billion

**THIS SPACE IS FOR COURT USE ONLY**

In re debtor debtor  
 Debtor(s)  
 Case Number: \_\_\_\_\_  
 (If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

The presumption arises.

The presumption does not arise.

The presumption is temporarily inapplicable.

### CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Unless the exclusion in Line 1C applies, joint debtors may complete a single statement. If the exclusion in Line 1C applies, each joint filer must complete a separate statement.

<b>Part I. MILITARY AND NON-CONSUMER DEBTORS</b>	
1A	<p><b>Disabled Veterans.</b> If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>Declaration of Disabled Veteran.</b> By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>
1B	<p><b>Non-consumer Debtors.</b> If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input checked="" type="checkbox"/> <b>Declaration of non-consumer debts.</b> By checking this box, I declare that my debts are not primarily consumer debts.</p>
1C	<p><b>Reservists and National Guard Members; active duty or homeland defense activity.</b> Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. <b>During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.</b></p> <p><input type="checkbox"/> <b>Declaration of Reservists and National Guard Members.</b> By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> I was called to active duty after September 11, 2001, for a period of at least 90 days and</p> <p style="margin-left: 80px;"><input type="checkbox"/> I remain on active duty /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;</p> <p style="margin-left: 80px; text-align: center;">OR</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> I am performing homeland defense activity for a period of at least 90 days /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.</p>

11 USC § 523

&

11 USC § 1328

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

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**§ 1328 Discharge**

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or

before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

**§109(e)**

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$336,900<sup>1</sup> and noncontingent, liquidated, secured debts of less than \$1,010,650,<sup>2</sup> or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$336,900<sup>3</sup> and noncontingent, liquidated, secured debts of less than \$1,010,650<sup>4</sup> may be a debtor under chapter 13 of this title.

**28 USC §1408**

**28 USC § 1408. Venue of cases under title 11.**

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

# **OUTLINE OF VIOLATIONS**

1. § 362 Stay Violation
2. Warehouseman's Lien – Vehicle Storage Lien
3. Fair Credit Reporting Act
4. Improper and Unauthorized Fees
5. Failure to Release Lien – on vehicles
6. Fair Debt Collection Practice Act
7. RESPA/Violation of Discharge Injunction (Mortgage)
8. Motion for Relief from Stay Violations
9. Electronic Funds Transfer Act

362

Violation

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**IN THE MATTER OF:**

**JOHN DOE**

**CASE NO. XXXXXXXX**

**DEBTORS.**

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**JOHN DOE**

**Adversary Proc. No. 0XXXXXXX  
Plaintiffs,**

**vs**

**ABC BANK**

**Defendants.**

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**Complaint Seeking Damages in Core Adversary Proceeding**

**Introduction**

1. This is an action for actual damages, statutory damages, punitive damages, legal fees and expenses for ABC Bank's, (hereinafter "ABC") for improper and illegal actions and conduct which are in direct violation of the Automatic Stay(Section 362).

**Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court pursuant to Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the Debtors in that case.

3. Jurisdiction is also conferred on this Court pursuant to Section 1681p of Title 15 of the United States Code, Section 1692(d) of Title 15 of the United States Code; Section 1640 of Title 15 of the United States Code; and Section 1331 of Title 28 of the United States Code.

4. This court has supplemental jurisdiction to hear all state law claims pursuant to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Sections 1391(b) and 1409 of Title 28 of the United States Code.

6. To the extent of the non-bankruptcy claims for relief, this matter is a core proceeding and the Debtors consent to the entry of a final order in this case by the Bankruptcy Judge.

### **Parties**

7. The Debtor is a natural person residing in the City of Vernon, County of United, State of Indiana, and are also Debtors under the provisions of Chapter 13 of Title 11 of the United States Code.

8. The Debtor is a "consumer" and "debtor" as those terms are defined under the applicable Federal and State statutes.

9. The Defendant, ABC Bank, (hereinafter "ABC") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 123, USA City, AL. ABC transacts business within the State of Indiana and has significant and substantial contacts with this State.

### **Factual Allegations**

10. Prior to filing Debtor entered into a second mortgage with ABC.

11. Debtor's Chapter 13 case XXXXXX was commenced by the filing of a voluntary petition on August XXXXX.

12. On or about August XXXXX, the clerk of the court caused a written notice of the filing of the Chapter 13 case, and of the automatic stay to be mailed to ABC via first class mail, postage prepaid. A true and accurate copy of the Notice is attached hereto and marked as Exhibit "A".

13. The written notice of the bankruptcy filing advised all creditors, including ABC that:

"The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized."

14. ABC was properly listed on Debtor's Schedule D bearing the account #XXXXX. A true and accurate copy of Debtor's schedule D wherein ABC was listed as a creditor is attached hereto and marked as Exhibit "B".

15. The 341(a) meeting of creditors was held in Indiana on October XXXX.

16. On or about September 2006 Debtor received several phone calls from ABC demanding payment for the same account #XXXXX. Debtor advised ABC he had filed bankruptcy and to contact his attorney.

17. On or about February XX, 2007, more than 5 months after having been notified of the bankruptcy filing, ABC filed a lawsuit, in County Circuit Court, Cause #XXXXXX, against Debtor. A True and Accurate copy of lawsuit is attached as Exhibit "C".

18. On or about June XX, 2007 ABC filed court documents Cause #XXXXX, Motion for Proceedings Supplemental Hearing and Notice of Garnishment Proceedings and Order to Answer Interrogatories, Notice of Hearing and Interrogatories to National City Bank. A true and accurate copy of the correspondence is attached hereto and marked as Exhibit "D".

19. On or about June X, 2007, Sample City Bank placed a hold on Debtors checking account freezing \$179.30. A True and accurate copy of the correspondence is attached hereto and marked as Exhibit "E".

20. On or about June 8, 2007, Debtor received a letter from Sample City Bank stating his checking account had been placed on a 90 day hold. A True and accurate copy of this correspondence is attached hereto and marked as Exhibit "F".

21. On or about June XX 2007, Debtor contacted their bankruptcy attorneys office regarding the Sample City Bank letter.

22. On or about June XX, 2007, counsel for debtor contacted Sample and Associates to advise them to release the Sample Bank checking account.

23. On or about June XX, 2007, Debtor received a collection letter and copies of court documents Cause #XXXX ordering Debtor to court July XX, 2007. A true and accurate copy of this correspondence is attached hereto and marked as Exhibit "G".

24. The last day to file an Adversary Proceeding so as to dispute the dischargeability of the debt is December XX, 2006.

25. To date no Creditors have filed an Adversary Proceeding objecting to the discharge of any debts owed by Debtor.

**FIRST CLAIM - WILLFUL VIOLATION OF AUTOMOTIAC STAY**

26. The allegations in paragraphs 1 through 25 of this complaint are realleged and incorporated herein by this reference.

27. The phone calls made August 2006 by ABC were made during the pending of the bankruptcy case.

28. The filing of the lawsuit on February XX 2007, Cause No.XXXX against Debtor was filed during the pending bankruptcy case.

29. The bank garnishment with SAMPLE Bank dated June XX 2007, sent by ABC was during the pending bankruptcy case.

30. The collection notice dated June XX 2007, sent by ABC was sent during the pending of the bankruptcy case.

31. This conduct constitutes a gross and willful violation of the Automatic Stay as set forth in 11 U.S.C. Section 362(a)(3).

32. As a result of the above violations of 11 U.S.C. Section 362, ABC , is liable to the Debtors' for actual damages, punitive damages and legal fees.

**WHEREFORE**, the Debtor having set forth his claims for relief against ABC respectfully prays the Court as follows:

- A. That Debtor have and recover against ABC , actual damages;
- B. That Debtor have and recover against ABC , punitive damages;
- C. That Debtor have and recover against ABC , all reasonable legal fees and expenses incurred by their attorney;
- D. That Debtor have such other and further relief as the Court may deem just and proper.

Date this the \_\_\_\_\_ day of August, 2007.

---

Mark S. Zuckerberg #13815-49  
Law Offices of Mark S. Zuckerberg  
Bankruptcy Law Office of Mark S. Zuckerberg P.C.  
333 N. Pennsylvania Street, Suite 100  
Indianapolis, IN 46204  
(317) 687-0000 – phone  
(317) 685-5151 Fax  
[Filings@mszlaw.com](mailto:Filings@mszlaw.com)

Warehouseman' Lien

Vehicle

Storage Letter

October 6, 2008

Sample Bank Finance  
123 Street  
Any City, USA 15105

**IN THE MATTER OF:**

John Brown  
Bankruptcy Case#0XXXX  
File Date: October XX, 2005  
Discharge Date: January XX, 2008

Dear Sir or Madam:

The above debtors have surrendered the collateral, 2004 Dodge Intrepid, which was listed in their Chapter 13 Petition and Schedules. Please make arrangements to recover this vehicle from their residence at **1234 Road, Indianapolis, IN** as soon as possible to avoid storage fees.

Please note that storage charges of **\$25.00** per day will **begin November 8, 2008**, and thereafter, until the vehicle is removed.

Please contact my office if you need further assistance with this. Thank you. .

Very truly yours,  
BANKRUPTCY LAW OFFICE OF  
MARK S. ZUCKERBERG

MSZ/slf

Enclosures

Fair Credit

Reporting Act

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**IN THE MATTER OF:**

**JOHN DOE                      CASE NO. 0XXXX**

**DEBTORS.**

---

**JOHN DOE                      Adversary Proc. No.0XXX**

**Plaintiffs,**

**Vs.**

**BAD GUY GROUP**

**Defendants.**

---

**Complaint Seeking Damages in Core Adversary Proceeding**

**Introduction**

1. This is an action for actual damages, statutory damages, punitive damages, and legal fees and expenses filed by the Plaintiffs for the Defendants' improper and illegal actions and conduct which are not in compliance with and in fact are in violation of the Fair Credit Reporting Act, (15 USC Section 1681), and the Discharge Injunction (11 USC Section 524).

**Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court pursuant to Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 7 case under Title 11 and concerns property of the Debtors in that case.

3. Jurisdiction is also conferred on this Court pursuant to Section 1681p of Title 15 of the United States Code, Section 1692k(d) of Title 15 of the United States Code; Section 1640 of Title 15 of the United States Code; and Section 1331 of Title 28 of the United States Code.

4. This court has supplemental jurisdiction to hear all state law claims pursuant to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Sections 1391(b) and 1409 of Title 28 of the United States Code.

6. This matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order.

### **Parties**

7. The Debtor is a natural persons residing in the City of Indianapolis, County of Marion, State of Indiana, and are also Debtors under the provisions of Chapter 7 of Title 11 of the United States Code.

8. The Debtor is a "consumer" and "debtor" as those terms are defined under the applicable Federal and State statutes.

9. The Defendant, Bad Guy Group, is a corporation that maintains its principal place of business at 1 Bad Guy, Any City, NJ 07920.

### **Factual Allegations**

10. Prior to filing Debtor entered into an agreement for cell phone service with Bad Guy Group.

11. Debtor's Chapter 7 Case 0XXXXX-7 was commenced by the filing of a voluntary petition on August XX, 2005. A true and accurate copy of the Notice is attached hereto and marked as Exhibit "A".

12. Debtors Schedule F filed with the petition in this case and on the master mailing matrix filed with the Clerk of this Court, listed an unsecured debt in favor of Bad Guy Group for an unsecured revolving charge in the amount of \$83.00 for the same account#8130. A true and accurate copy of the Schedule F is attached hereto and marked as Exhibit "B".

13. On or about August XX, 2005, the attorney for the debtors caused a written notice of his representation of the debtors, of the filing of the Chapter 7 case, and of the automatic stay to be mailed to the Defendants via first class mail, postage prepaid.

14. The written notice of the bankruptcy filing advised all creditors, including Bad Guy Group that:

"Pursuant to section 362 of the Bankruptcy Code, creditors and other legal entities, upon the filing of the said petition, are automatically stayed from: 1. Commencing or continuing judicial, administrative or other proceedings against the Debtor that was or could have been started prior to the filing of this case, or to recover a claim against the Debtor that arose before the case was filed; 2. Enforcing a judgment obtained before the petition was filed against the Debtor or the Debtor's property; 3.

Attempting to obtain property of the Debtor; 4. Creating, perfecting or enforcing against property of the Debtor any lien to the extent it secures a claim that arose prior to commencement of the bankruptcy case; 5. Collecting or recovering a claim against the Debtor that arose prior to the commencement of the bankruptcy case and; 6. Setting off any debt owing to the Debtor that arose prior to the commencement of this bankruptcy case against any claim against the Debtor. **Contempt proceedings may result from a violation of the above automatic stay provided by the Bankruptcy Code.**"

15. The Defendants received the written notice of the Notice of Filing and the written notice of the 341(a) meeting of creditors.

16. The 341(a) meeting of creditors was held in Indiana on September XX, 2005.

17. On March XX, 2006, Debtor received his Order of Discharge. A true and accurate copy is attached hereto and marked as Exhibit "C".

### **Factual Allegations (Post-Discharge)**

18. On or about December 14, 2007, Plaintiff mailed **certified** letters to TransUnion, Equifax and Experian requesting updated credit files to reflect the discharged status of the debts including Bad Guy Group. A true and accurate copy of the letters are hereto attached and marked as Exhibit "D"

19. On or about January 16, 2008, Plaintiff mailed a second set of **certified** letters to TransUnion, Equifax and Experian requesting updated credit files to reflect the discharged status of the debts including Bad Guy Group. A true and accurate copy of the letters are hereto attached and marked as Exhibit "E"

20. On or about February 28, 2008, Plaintiff mailed a third set of **certified** letters to TransUnion, Equifax and Experian requesting updated credit files to reflect the discharged status of the debts including Bad Guy Group. A true and accurate copy of the letters are hereto attached and marked as Exhibit "F"

21. On or about March 28, 2008, Plaintiff mailed a fourth set of **certified** letters again to TransUnion, Equifax and Experian requesting updated credit files to reflect the discharged status of the debts including Bad Guy Group. A true and accurate copy of the letters and certified signed receipts are hereto attached and marked as Exhibit "G".

22. On or about April 8, 2008, Counsel for Debtor sent Bad Guy Group a harassment letter advising of the bankruptcy and request to update credit bureau file. A true and accurate copy of the correspondence is attached hereto and marked as Exhibit "H".

23. The Defendant has continued to report a debt owed to Bad Guy Group on the subject account as a "CHARGE-OFF ACCOUNT" on the Plaintiffs' public credit files as

indicated on consumer credit report secured by the Plaintiffs from FreeCreditReport.com. The report from Experian states that the discharged debt to the Defendant has a current past due balance of \$863.00; that the debt was originated in February 1, 2001; and that this information was reported to a consumer credit reporting agency in May 2008, more than two (2) years after the debt had been discharged in this case. A true and accurate copy of the credit bureau file is hereto attached and marked as Exhibit "I".

24. The Plaintiff is currently paying higher interest rates on his vehicle and mortgage due to Defendant's improper and the inaccurate information found on Plaintiff's credit report.

25. The Plaintiff has applied for and been denied credit by the following creditors:

ABC Motor Credit Corporation, Sample Bank, and Some Guy Bank. True and accurate copies of these letters are attached hereto and marked as Exhibits "J".

26. Section 350(b) of the Bankruptcy Code provides that "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

27. As a result of the conduct of the Defendant, as alleged in this complaint, the Plaintiff's filed a motion to reopen their Chapter 7 case and this motion was granted without objection on Friday, June 6, 2008.

28. The Plaintiff aver that at all times relevant to the allegations herein:

A. The Defendant has substantially frustrated the discharge order entered in this case and their conduct constitutes gross violations of the discharge injunction as provided by Section 524 of Title 11 of the United States Code and further have caused the Plaintiffs unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code;

B. The Defendant knew and in fact had actual knowledge that the Plaintiff was previously involved in bankruptcy and was therefore protected from any direct or indirect collection acts whatsoever by virtue of the Discharge Injunction provided for by Section 524 of Title 11 of the United States Code and notwithstanding such knowledge willfully failed to withdraw their erroneous credit information within the statutory time allowed by the Fair Credit Reporting Act (15 USC 1681s);

C. The Defendant at all times relevant to the allegations in this complaint knew that the Plaintiff was represented by an attorney in connection with his bankruptcy filing and that the underlying debt owed by the Plaintiffs was in fact a "consumer debt" as that term is defined by applicable Federal and State statutes;

D. The Defendant intentionally failed to correct the erroneous credit information in an effort to indirectly collect a discharged debt from the Plaintiff in direct violation of the specific provisions of Section 1681s of Title 15 of the United States Code, commonly known as the Fair Credit Reporting Act, and in violation of Section 1692 of Title 15 of the United States Code, commonly known as the Fair Debt Collections Practices Act;

29. The Plaintiff alleges that the violations of the non-bankruptcy laws justify and enhance the necessity for the award of substantial and significant punitive damages in this case.

30. The Plaintiff is informed and believed and therefore alleges that as a result of these allegations they are entitled to the recovery of actual damages, including emotional distress, punitive damages, statutory damages, legal fees and expenses.

31. The Plaintiff alleges that they have engaged in numerous meetings with his attorney and members of his staff about this matter.

32. The Plaintiff is informed and believes and therefore alleges that the Defendants had an affirmative duty under *Nelson v Chase Manhattan Mortgage Corp.*, 282 F.3d 1057 (9<sup>th</sup> Cir. 2002) to conduct a proper reinvestigation and to correct all erroneous consumer credit information after receiving notice of the order of discharge entered on July 27, 1999.

33. The Plaintiff alleges that the Defendant willfully, intentionally and without any just cause failed to comply with this duty.

34. The Plaintiff alleges that the receipt of the order of discharge constituted the receipt of a dispute with regard to the completeness and accuracy of the pre-bankruptcy information in their consumer credit reports as provided for by Section 1681i(a)(2) of Title 15 of the United States Code.

35. The Plaintiff also alleges that the Defendant failed to cause the consumer credit reports of the Plaintiff to be amended so as to list all debts discharged in bankruptcy has having a "0" credit balance.

36. The Plaintiff alleges that the Official Staff Commentary to Section 607 of the Fair Credit Reporting Act provides as follows: "A consumer report may include an account that was discharged in bankruptcy (as well as the bankruptcy itself), as long as it reports a zero balance due to reflect the fact that the consumer is no longer liable for the discharged debt."

37. The Plaintiff alleges that the issuance of the discharge order by this Court and the receipt of the same by Equifax, Experian and TransUnion and the Defendant, constituted the initiation of a dispute pursuant to Section 1681i of Title 15 of the United

States Code.

**First Claim for Relief**  
(Fair Credit Reporting Act)

38. The Plaintiff allegations in paragraphs 1 through 37 of this complaint are realleged and incorporated herein by this reference.

39. The Plaintiff avers that as a result of the unlawful actions of the Defendant as alleged herein they have been required to devote countless and unnecessary hours to seek to correct the erroneous information on their consumer credit report.

40. The Plaintiff further alleges that upon receipt of the Discharge Order in this case the Defendant was under a statutory duty to correct, update previously reported information determined to be incomplete or in accurate, and to report as disputed any information known to be disputed by the Plaintiffs.

41. The Plaintiff further alleges that the receipt of the Discharge Order in this case constituted notice pursuant to Section 1681i(a)(2) of Title 15 of the United States Code (the Fair Credit Reporting Act) that all debts previously reported as owed were no longer accurate and should be thereafter reported as having a "0" balance.

42. The Plaintiff also avers that he has constantly worried about this situation and have feared that the Defendant had some improper motive for the improper credit reporting.

43. The Plaintiff alleges that as a result of the willful and intentional violations of this statute they are entitled to the recovery of actual damages, statutory damages, costs and legal fees.

**Second Claim for Relief**  
(Discharge Injunction)

44. The allegations in paragraphs 1 through 43 of this complaint are realleged and incorporated herein by this reference.

45. The Plaintiff alleges that the conduct of the Defendant in this case has substantially frustrated the discharge order entered in this case and has caused the Plaintiff unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code.

46. The Plaintiff also alleges that in order to carry out the provision of the Code and to maintain its integrity this Court must impose actual damages, punitive damages and legal fees against the Defendants pursuant to the provisions of Section 105 of the Code.

47. The Plaintiff further alleges that in order to protect the Debtors who have secured a full discharge thereunder this Court must impose sanctions against the Defendant for their misconduct in this case.

**WHEREFORE**, the Plaintiff having set forth their claims for relief against the Defendants respectfully pray of the Court as follows:

- A. That the Plaintiff have and recover against the Defendant actual damages;
- B. That the Plaintiff have and recover against the Defendant punitive damages;
- C. That the Plaintiff have and recover against the Defendant all reasonable legal fees and expenses incurred by their attorney; and
- D. That the Plaintiff have such other and further relief as the Court may deem just and proper.

Date this the \_\_\_\_\_ day of June, 2008.

---

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Improper and  
Unauthorized  
Fees

January 18, 2007

ABS Law Firm  
123 Street  
Indianapolis, IN 46244

**IN THE MATTER OF:**

Joe Debtor  
122 Sample Lane  
Indianapolis, IN  
Case Number 0XXXX  
RE: Any Bank

Dear Lawyer:

Please treat this letter as a "qualified written request" under the Federal Service Act, which is a part of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e). This request is made on behalf of my clients, the above-named debtors, based on the pending dispute in their Chapter 7 case. Specifically, I am requesting the following information:

1. The amount of any legal fees added to the principal debt in the case or charged against the amount or tracked for any purpose in any account for any post-filing legal services, paralegal services, accounting services, claim preparation services, case review services, plan review services, or for any other similar service, professional or otherwise.
2. The amount of any property inspection fees, property preservation fees, broker price opinion fees, bankruptcy monitoring fees, or other similar fees or expenses added to the principal debt or charged against the account or tracked for any purpose post-petition or associated with any account related to this loan.
3. The total of any post-petition arrears including a complete explanation for the months in which payments were alleged missed, the aggregate late charges imposed for all such payments, the date and amount of all account payment postings post-petition, and the basis for the imposition of each late charge fee.
4. The current amount needed to pay-off the loan in full in the form of an itemized printed payoff report.
5. A complete post petition payment and transaction history for this loan, including all entries of any nature in the form of a debit, a credit, a transfer or otherwise. A complete copy of all transaction codes associated with this loan and the plain English definitions

for each such code. Also, please identify the mortgage servicing software you use in connection with this loan (MSP, LSAMS, etc).

6. The amount of any funds deposited in any post-petition suspense accounts or corporate advance accounts or any other similar accounts (including the amount and date of each transaction, the source of funds, and a description of the deposit account) and a description of all payments from any such accounts including the date of the payment, the purpose or nature of the payment, and the amount of each such payment.

7. A copy of any master pooling and servicing agreement, master servicing agreement, primary servicing agreement, default servicing agreement, or sub-servicing agreement that the creditor has with any party.

8. A copy of all your loss mitigation rules, regulations, and protocols as the same apply to this loan and a description of your efforts to implement the same in connection with the servicing of this loan

9. A copy of statements or bills for services submitted and paid by you to any attorney, law firm or third-party for any form legal services rendered post-petition with respect to this mortgage loan.

10. A copy of the most recent audit for your Bankruptcy or Default Mortgage Servicing Department by any rating agency such as Fitch or any internal unit.

To the extent that the servicer of this mortgage loan has charged the debtor's mortgage loan account, subsequent to the filing of their bankruptcy case, any appraisal fees, broker price opinion fees, property inspection/preservation fees, legal fees, Bankruptcy/Proof of Claim fees, recoverable corporate advances and other fees or costs that were not disclosed to the debtor(s) and approved by the bankruptcy court, the debtor(s) dispute(s) any such fees and costs and specifically requests that the mortgage loan account be corrected to remove any such fees that have not been approved by the Bankruptcy Court after with filing of a proper application for the same with notice and hearing and an order of approval.

With best regard, I remain

Very truly yours,

Mark S. Zuckerberg

cc: Trustee

Failure to  
Release Lien  
On Vehicle

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**IN THE MATTER OF:**

**JANE DOE** **CASE NO. 0XXX**  
  
**DEBTOR.**

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**JANE DOE** **Adversary Proc. No.0XXXX0**  
  
**Plaintiff,**  
  
**vs**  
  
**BAD GUYS,**  
  
**Defendant.**

---

**Complaint Seeking Damages**

**Introduction**

1. This is an action for actual and punitive damages filed by the debtor for the failure of Defendant to release its lien on the title to a motor vehicle in compliance with applicable Indiana law and for the adverse impact such State law violations have had on the applicable provisions of Title 11 of the United States Code.

2. This action is also filed to enforce the Order of Confirmation duly entered in this Chapter 13 case, the Order of Releasing Title and Deeming Bad Guy's Lien as Satisfied duly entered in this case, and to enforce and to implement other Bankruptcy Code provisions and Rules related thereto, and to prevent an abuse of process and to preclude the frustration of the orderly discharge of the claims in this case.

**Jurisdiction**

3. Jurisdiction is conferred on this Court pursuant to the provisions of Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the debtors in that case.

4. This Court has supplemental jurisdiction to hear all state law claims pursuant

to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Section 1391(b) of Title 28 of the United States Code.

6. This matter is a non-core proceeding and the Plaintiffs consent to the entry of a final order in this proceeding by the Bankruptcy Judge.

### **Parties**

7. The Plaintiff in this case is a debtor under Chapter 13.

8. The Defendant, Bad Guys, is upon information and belief a business entity organized and existing under the laws of the State of Delaware and has a principal office/ mailing address of XXXX.

### **Factual Allegations**

9. Before the commencement of the Chapter 13 case, the Plaintiff pledged security in a 1999 Cherokee to Bad Guys as and for a lien on the vehicle and Bad Guys had its security interest duly perfected by having its lien noted on the title to the vehicle issued by the Indiana Department of the Motor Vehicles. The account was assigned the number XXXX by Bad Guys. This claim was treated under the confirmed plan as a bifurcated claim.

10. The Chapter 13 case of the Plaintiff herein was commenced by the filing of a voluntary petition with the Clerk of this Court on September 10, 2003.

11. The 341(a) meeting of creditors in this case was held in Indiana on October 30, 2003.

12. The Chapter 13 plan of the Plaintiff and debtor herein was subsequently confirmed by order of this Court filed and entered on January 15, 2004. The confirmation order provided in pertinent part that all "lienholders" could "retain their liens pending payoff or discharge."

13. Bad Guys received notice of the 341(a) meeting from documents mailed by the Trustee's office and Bad Guys also received a "filed" copy of the Order of Confirmation. A true and accurate copy of the Notice is Attached hereto and marked as Exhibit "A".

14. Bad Guys filed a sworn proof of claim in this case with the Chapter 13 Trustee in the amount of \$775.00 (secured) and remainder to be treated as unsecured. The sworn proof of claim was identified on the records of the Trustee as claim number 00-. A true and accurate copy of the claims register is attached hereto and marked as Exhibit "B".

15. All of the monthly payments from the Trustee on Bad Guys' secured claim, totaling \$7,975.00, and Bad Guy's unsecured claim totaling \$99.19 were mailed to Bad Guys at XXXXX. A true and accurate copy of the trustee's distribution listing is attached hereto and marked as Exhibit "C"

16. During the pendency of this case the Trustee's office never received any

notice whatsoever of the assignment of the subject claim by Bad Guys to any other party or entity and that no notice of any such assignment of this claim was ever filed with the Clerk of this Court as required by Rule 3001 of the Federal Rules of Bankruptcy Procedure. As such, the debtors allege that Bad Guys is still the lienholder.

17. During the pendency of the debtors' Chapter 13 case numerous documents were served on the Defendant and received by the Defendant including but not limited to the first meeting notice, the Trustee's motion to allow secured and unsecured claims.

18. The Plaintiffs made all of the required Chapter 13 plan payments and duly completed their Chapter 13 payments to Bad Guys. As a result, an Order Releasing Title and Deeming Bad Guy's Lien as Satisfied was duly entered by this Court on or about October 26, 2007. A true and accurate copy of the Order is attached hereto and marked as Exhibit "D".

19. To date, neither the debtors nor their attorney have received the title to the subject vehicle with the lien released.

20. The violations of the non-bankruptcy laws as alleged herein further justify and enhance the necessity for the award of substantial and significant punitive damages in this case.

#### **First Claim for Relief**

21. The allegations in paragraphs 1 through 20 of this complaint are realleged and incorporated herein by this reference.

22. As a result of the failure of Bad Guys to release its lien on the title to the subject motor vehicle the debtors have found it necessary to devote countless and unnecessary hours to their efforts to secure such title and that all of this time was unwarranted and unnecessary.

23. The Plaintiffs have worried about this situation and have feared that the Defendant had some improper motive for holding the said title.

24. The actions of the Defendant in this case constitute a clear violation of the provisions of Indiana IC 9-17-5-1 and of Sections (1)(2) of the Lien Release Statues on Vehicles.

25. *IC 9-17-5-1 Indiana Statutes provides in pertinent part as follows:*

***"Satisfaction or discharge of lien; delivery of certificate of title":***

*Sec 1. A person having possession of a certificate of title for a motor vehicle, semi-trailer, or recreational vehicle because the person has a lien or an encumbrance on the motor vehicle, semi-trailer, or recreational vehicle must deliver not more than ten (10) business days after receipt of the payment the satisfaction or discharge of the lien or encumbrance indicated upon the certificate of title to the person who:*

*(1) is listed on the certificated of title as owner of the motor vehicle, semi-*

*trailer, or recreational vehicle; or*

*(2) is acting as an agent of the owner and who holds power of attorney for the owner of the motor vehicle, semi-trailer, or recreational vehicle.*

26. The Defendant did not comply with this statute after the entry of the Discharge Order in this case.

27. The actions of the Defendant in this case have been unlawful in nature and as a result the Plaintiffs are entitled to recover both actual and punitive damages as well as legal fees and expenses.

### **Second Claim for Relief**

28. The allegations in paragraphs 1 through 29 of this complaint are realleged and incorporated herein by this reference.

29. The conduct of the Defendant in this case has substantially frustrated the order entered in this case and has caused the debtors unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code.

30. In order to carry out the provisions of the Code and to maintain its integrity this Court must impose actual damages, punitive damages and legal fees against the Defendant.

31. In order to protect debtors who have completed their Chapter 13 plans and secured an order releasing title and deeming lien as satisfied thereunder this Court must impose sanctions against the Defendant for its misconduct in this case.

### **Third claim for Relief**

32. The allegations in paragraphs 1 through 33 of this complaint are realleged and incorporated herein by this reference.

33. The Confirmation Order in this case permitted Bad Guys to retain the title to the vehicle "pending the satisfaction" of its debt in this case.

34. The Confirmation Order imposed an affirmative duty on Bad Guys to release its lien on the title to the vehicle and to deliver the said title to the Plaintiffs upon entry of the Order Releasing Title and Deeming Bad Guy's Lien as Satisfied.

35. The failure of Bad Guys to provide an accurate release of its lien on the said title and to deliver the title to the Plaintiffs in a timely manner post-discharge was and is in violation of the Confirmation Order in this case.

36. As a result, the Plaintiffs are entitled to the recovery of actual damages, punitive damages and legal fees.

#### **Fourth Claim for Relief**

37. The allegations in paragraphs 1 through 56 of this complaint are realleged and incorporated herein by this reference.

38. The title to the vehicle in this case was and is property of the debtors' Estate in Bankruptcy.

39. As a result thereof, the Plaintiffs are entitled to the recovery of actual damages, punitive damages and legal fees.

#### **Fifth Claim for Relief**

40. The allegations in paragraphs 1 through 39 of this complaint are realleged and incorporated herein by this reference.

41. The title to the vehicle in this case was and is property of the debtors' Estate in Bankruptcy.

42. The failure of the Defendant to immediately turnover the said title to the Plaintiffs constituted an unlawful act to exercise control over property of the Estate in violation of 11 U.S.C. Section 362 of the Bankruptcy Code.

43. As a result, the Plaintiffs are entitled to the recovery of actual damages, punitive damages and legal fees.

**WHEREFORE**, the Plaintiffs having set forth their claims for relief against the Defendant respectfully prays of the Court as follows:

- A. That the Plaintiffs have and recover against the Defendant a sum to be determined by the Court in the form of actual damages;
- B. That the Plaintiffs have and recover against the Defendant to be determined by the Court in the form of punitive damages;
- C. That the Plaintiffs have and recover against the Defendant all reasonable legal fees and expenses incurred by their attorney;
- D. That the Defendant be required to pay to the Plaintiffs as an additional damage award in this case all funds received from the Chapter 13 Trustee during the pendency of the plan in this case;

- E. That the Plaintiffs have such other and further relief as the Court may deem just and proper.

Date this the \_\_\_\_\_ day of January, 2008.

---

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Fair Debt  
Collection  
Practice Act

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**IN THE MATTER OF:**

**JOHN DOE**

**CASE NO. 0XXXXX**

**DEBTORS.**

---

**JOHN DOE**

**Adversary Proc. No. 0XXXXX  
Plaintiffs,**

**vs**

**BANK OF THE WORLD And SAMPLE CREDITOR**

**Defendants.**

---

**Complaint Seeking Damages in Core Adversary Proceeding**

**Introduction**

1. This is an action for actual damages, statutory damages, punitive damages, emotional distress, legal fees and expenses for Bank of The World's, (hereinafter "BANK") improper and illegal actions and conduct which are in direct violation of the Automatic Stay (Section 362) and the Fair Debt Collection Practices Act (15 USC Section 1692).

**Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court pursuant to Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the Debtors in that case.

3. Jurisdiction is also conferred on this Court pursuant to Section 1681p of Title 15 of the United States Code, Section 1692(d) of Title 15 of the United States Code; Section 1640 of Title 15 of the United States Code; and Section 1331 of Title 28 of the United States Code.

4. This court has supplemental jurisdiction to hear all state law claims pursuant

to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Sections 1391(b) and 1409 of Title 28 of the United States Code.

6. To the extent of the non-bankruptcy claims for relief, this matter is a core proceeding and the Debtors consent to the entry of a final order in this case by the Bankruptcy Judge.

### **Parties**

7. The Debtor is a natural person residing in the City of Greenwood, County of Johnson, State of Indiana, and are also Debtors under the provisions of Chapter 13 of Title 11 of the United States Code.

8. The Debtors are "consumers" and "debtors" as those terms are defined under the applicable Federal and State statutes.

9. The Defendant, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at XXXX. BANK transacts business within the State of Indiana and has significant and substantial contacts with this State.

### **Factual Allegations**

11. Prior to filing Debtor entered into a revolving charge credit card agreement with BANK.

12. Debtor's Chapter 13 case 07-XXXXX-13 was commenced by the filing of a voluntary petition on January XX, 2007.

13. On or about January XX, 2007, the clerk of the court caused a written notice of the filing of the Chapter 13 case, and of the automatic stay to be mailed to BANK via first class mail, postage prepaid. A true and accurate copy of the Notice is attached hereto and marked as Exhibit "A".

14. The written notice of the bankruptcy filing advised all creditors, including BANK that:

"The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized."

15. BANK was properly listed on Debtor's Schedule F bearing the account #XXXX. A true and accurate copy of Debtor's schedule F wherein BANK was listed as a creditor is attached hereto and marked as Exhibit "B".

16. The 341(a) meeting of creditors was held in Indiana on February XX, 2007.

17. On or about February 14, 2007 Debtor received a letter from BANK demanding payment in the amount of \$5,778.55 for the same account #4264-2911-4421-8599. A true and accurate copy of letter is attached hereto and marked as Exhibit "C".

18. On or about February 28, 2007 Counsel for debtors sent BANK a harassment letter advising of the bankruptcy. A true and accurate copy of the correspondence is attached hereto and marked as Exhibit "D".

19. On or about March 12, 2007 Debtor received a collection notice from Sample Creditor attempting to collect the debt for BANK. A True and accurate copy of the correspondence is attached hereto and marked as Exhibit "E".

20. The last day to file an Adversary Proceeding so as to dispute the dischargeability of the debt is April XX, 2007.

21. To date no Creditors have filed an Adversary Proceeding objecting to the discharge of any debts owed by Debtor.

**FIRST CLAIM - WILLFUL VIOLATION OF AUTOMATIC STAY**

22. The allegations in paragraphs 1 through 21 of this complaint are realleged and incorporated herein by this reference.

23. The collection notice dated February 14, 2007 sent by BANK was sent during the pending of the bankruptcy case.

24. The collection notice dated March 12, 2007 sent by Sample Creditor was sent during the pending of the bankruptcy case.

25. This conduct constitutes a gross and willful violation of the Automatic Stay as set forth in 11 U.S.C. Section 362(a)(3).

26. As a result of the above violations of 11 U.S.C. Section 362, BANK, Sample Creditor, is liable to the Debtors' for actual damages, punitive damages and legal fees.

**SECOND CLAIM - VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

27. The allegations of paragraphs 1-26 above are realleged and incorporated herein by reference.

28. The foregoing acts and omissions by BANK, Sample Creditor, constitute violations of the FDCPA, which include, but are not limited to, the following:

- (a) BANK and Sample Creditor, violated 15 U.S.C. § 1692f(1) by collecting or attempting to collect amounts not permitted by law and by otherwise using unfair and unconscionable methods; and
- (b) BANK and Sample Creditor, violated 15 U.S.C. Section 1692c(a)(2) in causing legal documents to be sent to Debtor when the BANK knew the Debtor was represented by an attorney.

29. The Debtor is therefore entitled to an award of statutory damages and legal fees pursuant to 11 U.S.C. § 1692.

**WHEREFORE**, the Debtor having set forth his claims for relief against BANK respectfully prays the Court as follows:

- A. That Debtor have and recover against the BANK and Sample Creditor, actual damages;
- B. That Debtor have and recover against the BANK and Sample Creditor, punitive damages;
- C. That Debtor have and recover against the BANK and Sample Creditor, all reasonable legal fees and expenses incurred by their attorney;
- D. That Debtor have such other and further relief as the Court may deem just and proper.

Date this the \_\_\_\_\_ day of April 2007.

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Violation of

Discharge

Injunction

(Mortgage)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**IN THE MATTER OF:**

**JANE DOE**

**CASE NO. XXXXX**

**DEBTORS.**

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**JANE JOE**

**Adversary Proc. No. XXXXX**

**Plaintiffs,**

**Vs.**

**ABC**

**Defendants.**

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**Complaint Seeking Damages in Core Adversary Proceeding**

**Introduction**

1. This is an action for actual damages, statutory damages, punitive damages, and legal fees and expenses filed by the Plaintiff for the Defendants' improper and illegal actions and conduct which are not in compliance with and in fact are in violation of the Fair Credit Reporting Act, (15 USC Section 1681), and the Discharge Injunction (11 USC Section 524).

**Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court pursuant to Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 7 case under Title 11 and concerns property of the Debtors in that case.

3. Jurisdiction is also conferred on this Court pursuant to Section 1681p of Title 15 of the United States Code, Section 1692k(d) of Title 15 of the United States Code; Section 1640 of Title 15 of the United States Code; and Section 1331 of Title 28 of the United States Code.

4. This court has supplemental jurisdiction to hear all state law claims pursuant to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Sections 1391(b) and 1409 of Title 28 of the United States Code.

6. This matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order.

### **Parties**

7. The Debtor is a natural persons residing in the City of Indianapolis, County of Marion, State of Indiana, and are also Debtors under the provisions of Chapter 7 of Title 11 of the United States Code.

8. The Debtor is a "consumers" and "debtors" as those terms are defined under the applicable Federal and State statutes.

9. The Defendant, is a corporation that maintains its principal place of business at 123 Street.

### **Factual Allegations**

10. Prior to filing Debtor entered into a mortgage loan with ABC on property located at XXXXXXXXXXXX, Indianapolis, IN.

11. Debtor's Chapter 7 case 0XXXX-7 was commenced by the filing of a voluntary petition on September XX, 2006. A true and accurate copy of the Notice is attached hereto and marked as Exhibit "A".

12. Debtors Schedule D filed with the petition in this case and on the master mailing matrix filed with the Clerk of this Court, listed a secured debt in favor of ABC for a secured mortgage on the property located at XXXXX, Indianapolis, IN for the account #XXXXXX and Cause No. XXXXXXXXXXXXX. A true and accurate copy of the Schedule D is attached hereto and marked as Exhibit "B".

13. On or about September 18, 2006, the attorney for the debtors caused a written notice of his representation of the debtors, of the filing of the Chapter 7 case, and of the automatic stay to be mailed to the Defendants via first class mail, postage prepaid. A true and accurate copy of the notice is attached hereto and marked as Exhibit "C".

14. The written notice of the bankruptcy filing advised all creditors, including ABC that:

"Pursuant to section 362 of the Bankruptcy Code, creditors and other legal entities, upon the filing of the said petition, are automatically stayed from: 1. Commencing or continuing judicial, administrative or other proceedings against the

Debtor that was or could have been started prior to the filing of this case, or to recover a claim against the Debtor that arose before the case was filed; 2. Enforcing a judgment obtained before the petition was filed against the Debtor or the Debtor's property; 3. Attempting to obtain property of the Debtor; 4. Creating, perfecting or enforcing against property of the Debtor any lien to the extent it secures a claim that arose prior to commencement of the bankruptcy case; 5. Collecting or recovering a claim against the Debtor that arose prior to the commencement of the bankruptcy case and; 6. Setting off any debt owing to the Debtor that arose prior to the commencement of this bankruptcy case against any claim against the Debtor. **Contempt proceedings may result from a violation of the above automatic stay provided by the Bankruptcy Code.**"

15. The Defendants received the written notice of the Notice of Filing and the written notice of the 341(a) meeting of creditors.

16. The 341(a) meeting of creditors was held in Indiana on October 24, 2006.

17. Debtor indicated in her Statement of Intentions she would surrender the property at XXXX., Indianapolis, Indiana in the bankruptcy. A true and accurate copy is attached hereto and marked as Exhibit "D"

18. On or about September 19, 2006 Counsel for ABC filed their Motion for Abandonment and Relief from the Stay.

19. On or about November 20, 2006 hearing held on Motion for Relief from Stay and Abandonment filed by Counsel for ABC continued to December 18, 2006.

20. On or about December 18, 2006 Stipulation on ABC Motion for Relief from stay and for Abandonment and Trustee's Objection was filed with the court. A true and accurate copy of document is attached hereto and marked as Exhibit "E".

21. On or about January 5, 2007, the property at XXXXXXXX., Indianapolis, IN, Cause#XXXXXX was sold at Marion Co. Sheriff sale. The property was sold back to ABC.

22. On January 8, 2007, Debtor received her Order of Discharge. A true and accurate copy is attached hereto and marked as Exhibit "F".

### **Factual Allegations (Post-Discharge)**

23. On or about May 1, 2007, Debtor received a letter from ABC advising ABC had forced place insurance on the property located at XXXXXXXXX, Indianapolis, IN for which Debtor would be liable. A true and accurate copy of the letter is hereto attached and marked as Exhibit "G".

24. On or about June 27, 2007, Debtor mailed letters to TransUnion, Equifax and Experian requesting updated credit files to reflect the discharged status of the debts including ABC. A true and accurate copy of the letters are hereto attached and marked as Exhibit "H"

25. On or about June 27, 2007 Counsel for debtor sent ABC a harassment letter advising of the bankruptcy. A true and accurate copy of letter is attached hereto and marked as Exhibit "I".

26. On or about June 30, 2007, Plaintiff applied for credit and received a Denial letter from Auto Corporation. A true and accurate copy of the letter is hereto attached and marked as Exhibit "J".

27. On or about July 5, 2007, Plaintiff applied for credit and received a Denial letter from PAV. A true and accurate copy of the letter is hereto attached and marked as Exhibit "K".

28. On or about July 10, 2007, Plaintiff applied for credit and received another Denial letter from ZAVI Credit Company. A true and accurate copy of the letter is hereto attached and marked as Exhibit "L".

29. On or about July 17, 2007, Plaintiff received yet another Denial letter form Finance LLC. A true and accurate copy of the letter is hereto attached and marked as Exhibit "M".

30. On or about September 17, 2007, Plaintiff applied for credit and received still another Denial letter from DFM. A true and accurate copy of the letter is hereto attached and marked as Exhibit "N".

31. The Defendants have continued to report the debt owed to ABC on the subject account as "Foreclosure Proceeding Started" on the Plaintiffs' public credit files as indicated on consumer credit report secured by the Plaintiff from Plus. This report states that the discharged debt to the Defendants has a current past due balance of \$27,538; that the debt was originated in July 2004; and that this information was reported to a consumer credit reporting agency in February, more than twelve (12) months after the debt had been discharged in this case. A true and accurate copy of the credit bureau file is hereto attached and marked as Exhibit "O".

32. On or about October 19, 2007 Equifax Credit requested Debtor to provide additional information before correcting the derogatory credit information.

33. On or about January 17, 2008 Plaintiff received a 2007 1099-form from ABC. A true and accurate copy of the form is attached and marked as Exhibit "P".

34. On or about January 30, 2008 Plaintiff received an advertisement letter from ABC. A true and accurate copy of the letter is attached and marked as Exhibit "Q".

35. On or about February 12, 2008, Plaintiff received still another Denial letter from Mutual. A true and accurate copy of the letter is hereto attached and marked as Exhibit "R".

36. On or about February 19, 2008, Plaintiff mailed a second set of letters again to TransUnion, Equifax and Experian requesting updated credit files to reflect the discharged status of the debts including ABC. A true and accurate copy of the letters and certified signed receipts are hereto attached and marked as Exhibit "S".

37. The Plaintiff is currently paying higher interest rates on her vehicle and can not obtain a mortgage due to Defendant's improper and the inaccurate information found on Plaintiff's credit report.

38. Section 350(b) of the Bankruptcy Code provides that "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

39. The Plaintiffs aver that at all times relevant to the allegations herein:

A. The Defendants have substantially frustrated the discharge order entered in this case and their conduct constitutes gross violations of the discharge injunction as provided by Section 524 of Title 11 of the United States Code and further have caused the Plaintiff unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code;

B. The Defendants knew and in fact had actual knowledge that the Plaintiff was previously involved in bankruptcy and were therefore protected from any direct or indirect collection acts whatsoever by virtue of the Discharge Injunction provided for by Section 524 of Title 11 of the United States Code and notwithstanding such knowledge willfully failed to withdraw their erroneous credit information within the statutory time allowed by the Fair Credit Reporting Act (15 USC 1681s);

C. The Defendants at all times relevant to the allegations in this complaint knew that the Plaintiff was represented by an attorney in connection with their bankruptcy filing and that the underlying debt owed by the Plaintiff was in fact a "consumer debt" as that term is defined by applicable Federal and State statutes;

D. The Defendants intentionally failed to correct the erroneous credit information in an effort to indirectly collect a discharged debt from the Plaintiff in direct violation of the specific provisions of Section 1681s of Title 15 of the United States Code, commonly known as the Fair Credit Reporting Act, and in violation of Section 1692 of Title 15 of the United States Code, commonly known as the Fair Debt Collections Practices Act;

40. The Plaintiff alleges that the violations of the non-bankruptcy laws justify and enhance the necessity for the award of substantial and significant punitive damages in this case.

41. She is informed and believes and therefore alleges that as a result of these allegations she is entitled to the recovery of actual damages, including emotional distress, punitive damages, statutory damages, legal fees and expenses.

42. The Plaintiff alleges that she has engaged in numerous meetings with her attorney and members of his staff about this matter.

43. The Plaintiff is informed and believes and therefore allege that the Defendants had an affirmative duty under *Nelson v Chase Manhattan Mortgage Corp.*, 282 F.3d 1057 (9<sup>th</sup> Cir. 2002) to conduct a proper reinvestigation and to correct all erroneous consumer credit information after receiving notice of the order of discharge entered on July 27, 1999.

44. The Plaintiff alleges that the Defendant willfully, intentionally and without any just cause failed to comply with this duty.

45. The Plaintiff alleges that the receipt of the order of discharge constituted the receipt of a dispute with regard to the completeness and accuracy of the pre-bankruptcy information in her consumer credit reports as provided for by Section 1681i(a)(2) of Title 15 of the United States Code.

46. The Plaintiff also alleges that the Defendant failed to cause the consumer credit reports of the Plaintiff to be amended so as to list all debts discharged in bankruptcy has having a "0" credit balance.

47. The Plaintiff alleges that the Official Staff Commentary to Section 607 of the Fair Credit Reporting Act provides as follows: "A consumer report may include an account that was discharged in bankruptcy (as well as the bankruptcy itself), as long as it reports a zero balance due to reflect the fact that the consumer is no longer liable for the discharged debt."

48. The Plaintiff alleges that the issuance of the discharge order by this Court and the receipt of the same by Equifax, Experian and TransUnion and the Defendants, constituted the initiation of a dispute pursuant to Section 1681i of Title 15 of the United States Code.

**First Claim for Relief**  
(Fair Credit Reporting Act)

49. The allegations in paragraphs 1 through 50 of this complaint are realleged and incorporated herein by this reference.

50. The Plaintiff avers that as a result of the unlawful actions of the Defendant as alleged herein she has been required to devote countless and unnecessary hours to seek to correct the erroneous information on her consumer credit report.

51. The Plaintiff further alleges that upon receipt of the Discharge Order in this case the Defendants were under a statutory duty to correct, update previously reported information determined to be incomplete or inaccurate, and to report as disputed any information known to be disputed by the Plaintiff.

52. The Plaintiff further alleges that the receipt of the Discharge Order in this case constituted notice pursuant to Section 1681i(a)(2) of Title 15 of the United States Code (the Fair Credit Reporting Act) that all debts previously reported as owed were no longer accurate and should be thereafter reported as having a "0" balance.

53. The Plaintiff also avers that she was constantly worried about this situation and has feared that the Defendant had some improper motive for the improper credit reporting.

54. The Plaintiff alleges that as a result of the willful and intentional violations of this statute she is entitled to the recovery of actual damages, statutory damages, costs and legal fees.

### **Second Claim for Relief (Discharge Injunction)**

55. The allegations in paragraphs 1 through 54 of this complaint are realleged and incorporated herein by this reference.

56. The Plaintiff alleges that the conduct of the Defendant in this case has substantially frustrated the discharge order entered in this case and has caused the Plaintiff unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code.

57. The Plaintiff also alleges that in order to carry out the provision of the Code and to maintain its integrity this Court must impose actual damages, punitive damages and legal fees against the Defendants pursuant to the provisions of Section 105 of the Code.

58. The Plaintiff further alleges that in order to protect the Debtors who have completed her Chapter 7 and secured a full discharge thereunder this Court must impose sanctions against the Defendants for their misconduct in this case.

**WHEREFORE**, the Plaintiff having set forth her claims for relief against the Defendants respectfully pray of the Court as follows:

- A. That the Plaintiff have and recover against the Defendant actual damages;
- B. That the Plaintiff have and recover against the Defendant punitive damages;
- C. That the Plaintiff have and recover against the Defendant all reasonable legal fees and expenses incurred by their attorney; and
- D. That the Plaintiff have such other and further relief as the Court may deem just and proper.

Date this the \_\_\_\_\_ day of March, 2008.

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Electronic  
Fund Transfer  
Act

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**IN THE MATTER OF:**

**CASE NO. 0XXXXXXXXXX**

**JANE DOE**

**DEBTORS.**

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**JANE DOE**

**Adversary Proc. No. \_\_\_\_\_**

**Plaintiffs,**

**VS**

**ABC MARKETING.**

**Defendants.**

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**Complaint Seeking Damages in Core Adversary Proceeding**

**Introduction**

1. This is an action for actual damages, statutory damages, punitive damages, emotional distress, legal fees and expenses for ABC Marketing's (hereinafter "ABC") improper and illegal actions and conduct which are in direct violation of the Automatic Stay (Section 362) and the Electronic Funds Transfer Statutes (15 USC § Section 1693) and Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq. (hereinafter referred to as "FDCPA").

**Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court pursuant to Section 1334 of Title 28 of the United States Code in that this proceeding arises in and is related to the above-captioned Chapter 7 case under Title 11 and concerns property of the Debtors in that case.

3. Jurisdiction is also conferred on this Court pursuant to Section 1681p of Title 15 of the United States Code, Section 1692(d) of Title 15 of the United States Code;

Section 1640 of Title 15 of the United States Code; and Section 1331 of Title 28 of the United States Code.

4. This court has supplemental jurisdiction to hear all state law claims pursuant to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Sections 1391(b) and 1409 of Title 28 of the United States Code.

6. To the extent of the non-bankruptcy claims for relief, this matter is a core proceeding and the Debtors consent to the entry of a final order in this case by the Bankruptcy Judge.

### **Parties**

7. The Debtor is a natural persons residing in the City of Indianapolis, County of Marion, State of Indiana, and are also Debtors under the provisions of Chapter 7 of Title 11 of the United States Code.

8. The Debtors are "consumers" and "debtors" as those terms are defined under the applicable Federal and State statutes.

9. ABC, is a company and maintains a place of business at XXXX.

### **Factual Allegations**

10. Debtor filed a Chapter 7 case# 0xxxxx on September 21, 2005.

11. On or about November 2006, prior to converting the bankruptcy to a Chapter 7, the Debtor, entered into a contract to obtain a payday loan with ABC.

12. On or about January 18, 2007 Debtor received a collection notice via e-mail from ABC. A true and accurate copy of the E-mail is attached hereto and marked as Exhibit A.

13. On or about January 24, 2007 Debtor received another collection e-mail from ABC. A true and accurate copy of the E-mail is attached hereto and marked as Exhibit B.

14. On or about January 25, 2007 Debtor received yet another collection e-mail from ABC. A true and accurate copy of the E-mail is attached hereto and marked as Exhibit C.

15. On or about February 13, 2007 Debtor received yet another collection e-mail from ABC. A true and accurate copy of the E-mail is attached hereto and marked as Exhibit. D.

16. Debtor's Chapter 13 case#0xxxxxx13 was converted to a Chapter 7 on February xx, 2007.

17. On or about February 26, 2007 Debtor amended her Schedule F to include the post petition debt with ABC as is allowed under the bankruptcy code.

18. On or about February 27, 2007, the clerk of the court caused a written notice of the filing of the Chapter 7 case, and of the automatic stay to be mailed to ABC via first class mail, postage prepaid. A true and accurate copy of the Notice is attached hereto and marked as Exhibit E.

19. The written notice of the bankruptcy filing advised all creditors, including ABC that:

"Pursuant to section 362 of the Bankruptcy Code, creditors and other legal entities, upon the filing of the said petition, are automatically stayed from:

1. Commencing or continuing judicial, administrative or other proceedings against the Debtor that was or could have been started prior to the filing of this case, or to recover a claim against the Debtor that arose before the case was filed; 2. Enforcing a judgment obtained before the petition was filed against the Debtor or the Debtor's property; 3. Attempting to obtain property of the Debtor; 4. Creating, perfecting or enforcing against property of the Debtor any lien to the extent it secures a claim that arose prior to commencement of the bankruptcy case; 5. Collecting or recovering a claim against the Debtor that arose prior to the commencement of the bankruptcy case and; 6. Setting off any debt owing to the Debtor that arose prior to the commencement of this bankruptcy case against any claim against the Debtor. **Contempt proceedings may result from a violation of the above automatic stay provided by the Bankruptcy Code.**"

20. The 341(a) meeting of creditors will be held in Indiana on March 21, 2007.

21. On or about March 6, 2007 Debtor received a voice message at her residence and another one at her place of employment from a John Sample with ABC.

22. Debtor returned the phone call to Mr. Sample on or about March 6, 2007.

23. During the March 6, 2007 conversation Mr. Sample told the Debtor that "this is a serious matter of Bank Fraud, Check Fraud and Internet Fraud and if she didn't cooperate she would go to jail and he would call the Indianapolis Police Department to report the fraud and contact her place of employment".

24. When Debtor attempted to speak, Mr. Sample told her "not to speak until he was finished speaking".

25. Debtor asked Mr. Sample to explain what he meant by that.

26. Again, Mr. Sample told her to quit talking.

27. Mr. Sample stated he was working for ABC Marketing and asked her to verify her e-mail address. Debtor verified her e-mail address to Mr. Sample.

28. Mr. Sample stated to debtor "you promised to repay this money and they trusted you to pay and you haven't.

29. Debtor said, "Sir, I don't understand I am confused. I have filed bankruptcy and this debt is included in my bankruptcy."

30. Mr. Sample stated "this has nothing to do with your bankruptcy and if you don't cooperate charges would be filed against you at 12:30 p.m. today".

31. Debtor told Mr. Sample she needed to contact her attorney to discuss the matter.

32. Mr. Sample told her again " if you don't pay this I will contact the Indianapolis Police Department and you will go to jail and if you hang up I will file these fraud charges immediately. If you are willing to pay with a debt card or charge card the charges will not be filed".

33. The debtor gave Mr. Sample her bank card number with Bad One to make a payment.

34. Mr. Sample stated he would take a payment of \$550.00 and not the total amount of \$820.00.

35. Mr. Sample put debtor on hold when he came back to the phone he asked her if the funds were in her bank account.

36. Debtor verified the funds were in her account.

37. Mr. Sample put Debtor on hold again when he came back Mr. Sample gave her a confirmation number of #xxxxxx. (A true and accurate copy of the bank account withdraw is attached hereto and marked as Exhibit F)

38. Mr. Sample stated thank you for resolving these serious charges and issues and hung up.

**FIRST CLAIM – WILLFUL VIOLATION OF AUTOMATIC STAY**

39. The allegations in paragraphs 1 through 38 of this complaint are realleged and incorporated herein by this reference.

40. The actions of ABC in causing the improper demands for payment to be sent to the Debtors' constitute a gross violation of the Automatic Stay as set forth in 11 U.S.C. Section 362.

41. As a result of the above violations of 11 U.S.C. Section 362, ABC is liable to the Debtors' for actual damages, punitive damages and legal fees.

**SECOND CLAIM – ELECTRONIC FUNDS TRANSFER STATUTE**

42. The allegation in paragraphs 1-41 of the complaint are realleged and incorporated herein by this reference.

43. Any authority given by the Debtor to ABC to initiate electronic funds transfers from the Account was revoked by operation of law upon the filing of the petition in the associated case.

44. Each of the electronic funds transfers described in paragraph 17 was an "unauthorized electronic fund transfer" with the meaning of 15 U.S.C. § 1693(m), for actual, consequential and statutory damages, together with her costs of action and the reasonable fees of her attorney.

**THIRD CLAIM – FAIR DEBT COLLECTIONS PRACTICE ACT**

45. The allegations in paragraphs 1 through 44 of this complaint are realleged and incorporated herein by this reference.

46. ABC violated the FDCPA. ABC's violations include but are not limited to engaging in any conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt, 15 U.S.C. Section 1692d.

47. ABC's conduct also violates 15 U.S.C. Section 1692 (e).

48. ABC's conduct also violates 15 U.S.C. Section 1692 (c).

49. As a result of the above violations of the FDCPA, ABC is liable to the Debtors' for actual damages, statutory damages, and attorney's fees.

**FOURTH CLAIM – EMOTIONAL DISTRESS**

50. The allegations in paragraphs 1-49 of this complaint are realleged and incorporated herein by this reference.

51. As a result of ABC's continued willful and contact Debtor has suffered emotional distress.

52. As a result of ABC's violations ABC is liable to debtor for damages suffered as a result of damages and emotional distress suffered by Debtor.

**WHEREFORE**, the Debtor having set forth his claims for relief against ABC respectfully prays the Court as follows:

- A. That Debtor have and recover against the ABC actual damages;
- B. That Debtor have and recover against the ABC punitive damages;
- C. That Debtor have and recover against the ABC all reasonable legal fees and expenses incurred by their attorney;
- D. The Debtor have compensation for damages sustained as a result of emotional distress.
- E. That Debtor have such other and further relief as the Court may deem just and proper.

Date this the \_\_\_\_\_ day of March 2007.

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