

Debtor Remedies for Creditor Wrongs: RESPA/FDCPA/TILA

CONCURRENT SESSION

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MEMPHIS

JUNE 1, 2012

“Debtor Remedies for Creditor Wrongs: RESPA/FDCPA/TILA”

9:50- 10:35 A.M.

Presented by:

Joel G. Hargis, Crawley & DeLoache, PLLC – Jonesboro, Ark.

David Sweeney, Garrett & Sweeney, PLLC – Bartlett, Tenn.

William B. Mauldin, Pentecost & Glenn, PLLC – Jackson, Tenn.

MAKING THE MOST OF EVERY CASE

O. Max Gardner III

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O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

DATE

ADDRESS FOR CREDITOR
(See BLM Volume 12 – Creditor Addresses for Max Gardner’s Mega Creditor List)

**NOTICE OF LEGAL REPRESENTATION OF CONSUMER DEBTOR
(FDCPA)**

In the Matter of:

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
Chapter 13 Case
Court No: 05-49999
SSN: --- -- 1234 & --- -- 5678
File Date: 02 January 2001
Our File No: 11999
Your No: ----- - 322030

Dear Sir or Madam:

Please be advised that the consumer debtor in the matter referenced above has retained the services of MaxGardnerLaw, PLLC to assist in the matter of debt relief. The purpose of this letter is to provide you with written notice that our client, is in fact and in law **REPRESENTED BY AN ATTORNEY**. As a result of this notice, and pursuant to Section 1692(b)(6) of Title 15 of the United States Code and Section 75.55(3) of the North Carolina General Statutes, you are to immediately terminate any further direct or indirect contacts with our client. Please note that such prohibited contacts include, but are not limited to, all forms of communication by letter, phone, fax, email or any other means. This also includes any contact directly or indirectly with any employer, family member, friend, or other creditor of our client.

Upon receipt of this letter, any future direct or indirect contacts with our client will result in our office filing a claim against you with any available and applicable state or federal laws. You are also hereby placed on notice that if unlawful and illegal conduct persists or is egregious, then our client will also seek an award of punitive damages as may be determined at the discretion of the Bankruptcy Court.

MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com



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O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

Any future contacts regarding any possible property damage or personal injury settlement must be directed to my office. Any settlement will have to be approved by the court after notice, hearing and entry of an order.

In order to comply with the applicable laws, any further communications concerning our client and/or the subject accident must be directed to the **Law Offices of O. Max Gardner III, P.C.** Be advised that any request for information will be addressed in a reasonable time period.

Sincerely,

A handwritten signature in black ink, appearing to read 'O. Max Gardner III', with a stylized flourish at the end.

O. Max Gardner III
Attorney for the Consumer Debtor

OMGIII/cjh

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MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com

From: Metro Hi Speed E-Mail Fax [faxbounce@fax.metrohispeed.com]
Sent: Monday, June 30, 2011 12:52 PM
To: Casey Hopper
Subject: Your fax has been successfully sent to a.s.collection.assoc at 802-433-2124. RE: Your Client: Vrettos Pappas Consulting/B34890



Your fax has been sent successfully!

From:	CHopper@maxgardner.com
To Name:	a s collection assoc
To Number:	802-433-2124
Subject:	Your Client: Vrettos Pappas Consulting/B34890

Attempt 1

Date/Time: 6-30-2011 9:50:33 AM (GMT -08:00)
Pages: 4
Transmission Time: 00:54
Reason: Successful Send

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Max Gardner Law, PLLC.
Consumer Debtor Attorney

403 South Washington Street PO Box 1000 Shelby, NC 28151-1000

Office: (704)-487-0616

Fax: (888)-870-1647

DEBT COLLECTION CONTACT INSTRUCTIONS

The following are creditor violations that should be noted and reported to our office:

- If a creditor calls you on the phone please record that contact on the provided sheet noting the time, date, name and telephone number of the person calling. You do not need to get mad with the creditor or collector as this will only serve to terminate the call before you can get valuable information that we may be able to use if a decision is made to sue this party on your behalf. I tell clients to be nice, act stupid and basically get information. For example, you can say that your husband is not at home and, if they want you to pay a specific amount of money then ask them who the certified check be made payable to, the amount of the check, the mailing address to use, the name of any party at that mailing address, and the name of the original creditor if you are dealing with a debt collector. If they think you are going to send them money, they will gladly give you all of this information. You can get the first name and phone number (including the extension) of the caller by saying you want to discuss this with your husband and call them back. Again, if they think you are going to pay, you will get the information. So, the bottom line is to get the information for me and then let me get even with them for you.
- You have the right in North Carolina to record a telephone conversation from any person to you. This is called a two-party conversation. If you have someone at your home listen in on another line, then this is not lawful. However, any recording of a conversation between you and the caller is perfectly legal. If you record a conversation, be sure to state that "I am recording your call and if you continue talking that will be considered your consent to being recorded." Accordingly, if you have a recording device then use it and save the tape or the digital recording.
- If you use an answering machine, then save the tape or digital recording since most of these devices also record the time and date of each call.
- If a creditor sends you a letter keep the letter and the envelope and provide it to our office. The envelope via the post-mark date will provide us with evidence of where the letter was mailed and more importantly the date of the mailing.
- If a creditor talks with a minor in your home, then instruct and train all minors to tell the creditor to call back and leave a detailed "recording for mommy" if you have an answering machine.
- If you do not have an answering machine, then immediately go to Wal-Mart and buy one. It will be the best investment you have made in a long time.

If a creditor does the following please make a record on the provided sheet or bring the letter by the office:

- Creditor sends a letter to your friends, family or employer.
- Creditor calls your friend, family member or employer.
- Creditor threatens you with filing a lawsuit.
- Creditor warns that you may be arrested.
- Creditor sends someone to speak with you or your family.
- You are receiving mail that states you won a prize and request you send personal information to claim the prize.
- You receive letters that look like legal papers and may be signed by a lawyer or judge.
- Creditor threatens to garnish your wages.



MaxGardnerLaw, PLLC.

Consumer Debtor Attorney

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- Creditor threatens to repossess your furniture, clothes, jewelry or children's toys.
- Your employer suspends or fires you because a creditor has been calling you at work.
- You employer threatens to fire or suspend you if the creditors don't stop calling.
- Creditor threatens to contact a social worker.
- Letters that contain badges or government symbols.
- Creditor uses offensive or demeaning language.
- Creditor calls late at night, early in the morning, or numerous times during the day.

Any other action that made you or someone else sick, nervous, scared, and threatened or caused you to miss work or incur expenses should be reported.

You need to understand that since you are now represented by a consumer attorney the legal power between you and your creditors has shifted from them to you. Your attorney has made a career of suing creditors and collection agents for their violations of numerous consumer protection laws. He stands ready, willing and able to do the same for you. All he needs is your cooperation and good evidence gathering techniques.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME:

**Chapter 13 No.
Our File No.**

ADDRESS:

SSN:

Debtor.

PLAINTIFF,

Adv. Proc. No. 12- _____

versus

Allied Interstate, Inc.

DEFENDANT.

**COMPLAINT SEEKING DAMAGES IN CORE ADVERSARY PROCEEDING
PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT AND
THE NORTH CAROLINA UNFAIR AND DECEPTIVE ACT AND PRACTICES LAWS**

(The violations giving rise to this complaint center around pre-petition efforts by debt collection agency to collect on an account despite notice of legal representation of the debtor.)

Introduction

1. This action seeks redress for the unlawful and deceptive practices committed by the Defendants in connection with their pre-petition efforts to collect a debt. Defendants' conduct involves attempting to collect on a debt after receiving notice of the legal representation of the Plaintiff by an attorney. Plaintiff seeks monetary relief based on Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq* and the North Carolina Unfair and Deceptive Act and Practices Laws, G.S. Section 75-50 *et seq*.

2. The violations center around debt collection letters sent from the Defendant on or around May 15, 2011 and June 15, 2011 all letters having been sent to the Plaintiff following a Notice of Legal Representation from the Plaintiff's attorney to the Defendant dated April 25, 2011. The Plaintiff does not dispute that she owes the debt that is the subject of this action and in fact she has chosen to repay a percentage of this debt as part of her Chapter 13 plan. This claim for relief has also been duly listed on Schedule B of the petition filed in this case and has been designated as part of the funding mechanism for the Chapter 13 plan.

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 both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code, and pursuant to the Order entered by the Judges of the United States District Court for the Western District of North Carolina on July 30, 1984 (the Referral Order), which Order was entered in accordance with the Bankruptcy Amendments

and Federal Judgeship Act of 1984.

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

6. This Court also has jurisdiction to hear the Fair Debt Collection Practices Act violations pursuant to Section 1692 of Title 15 of the United States Code; thus, federal subject matter jurisdiction is properly founded upon Section 1331 of Title 28 of the United States Code.

7. This matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the entry of a final order by the Bankruptcy Judge.

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

Parties

9. _____ (the Plaintiff) is a citizen and resident of Shelby, Cleveland County, North Carolina. The Plaintiff is also a debtor under Chapter 13 of Title 11 of the United States Code.

10. The Defendant, Allied Interstate, Inc. ("Allied") upon information and belief is a corporation organized and existing under the laws of the state of _____.

Facts

11. The Chapter 13 case of the Plaintiff was commenced by the filing of a voluntary petition with the Clerk of this Court on _____.

12. The 341(a) meeting of creditors was held in Shelby, North Carolina on _____.

13. The Chapter 13 plan of the Plaintiff has been recommended for confirmation by the Chapter 13 Trustee.

14. The Chapter 13 plan includes an unsecured debt to Capital One Bank for alleged credit card charges of \$555.00.

15. On or about April 25, 2011 the attorney for the Plaintiff sent a Notice of Legal Representation letter to Allied advising them of his representation of the debtor. Said Notice stated in pertinent part:

Please be advised that the consumer debtor in the matter referenced above has retained the services of MaxGardnerLaw, PLLC to assist in the matter of debt relief. The purpose of this letter is to provide you with written notice in your capacity as a creditor, collection agent, or collection attorney that this consumer debtor, now our client, is in fact and in law **REPRESENTED BY AN ATTORNEY**. As a result of this notice, and pursuant to Section 1692(b)(6) of Title 15 of the United States Code and Section 75.55(3) of the North Carolina General Statutes, you are to immediately terminate any further direct or indirect contacts with our client. Please note that such prohibited contacts include, but are not limited to, all forms of communication by letter, phone, fax, email or any other means. This also includes any contact directly or indirectly with any employer, family member, friend, or other creditor of our client.

16. On or about May 15, 2011 the Plaintiff received a debt collection letter from the Defendant. This letter is attached to the Complaint as Exhibit "A".

17. On or about June 15, 2011 the Plaintiff received a debt collection letter from the Defendant. This letter is attached to the Complaint as Exhibit "B".

18. The letters both contained the following statements: "This account can no longer be neglected....it must be paid!" and "Please contact us immediately to make arrangements to pay your past due account".

FIRST CLAIM - VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

19. The allegations of paragraphs 1-18 above are realleged and incorporated herein by reference.

20. The Defendant's collection letters violate 15 U.S.C. Section 1692c(a)(2). This Section states, "Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt--if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer."

21. The Plaintiff is therefore entitled to an award of statutory damages, punitive damages and legal fees pursuant to 11 U.S.C. § 1692k.

SECOND CLAIM - NORTH CAROLINA UNFAIR AND DECEPTIVE ACTS AND PRACTICES

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

23. The Plaintiff is a "consumer" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.

24. The Plaintiff's relationship with the Defendants arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.

25. The Defendants were and are "debt collectors" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

26. Under the provision of Section 58-70-115 of the North Carolina General Statutes the Defendants were and are prohibited from collecting or attempting to collect a "debt by use of any unconscionable means, including: (3) communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer."

27. As a result, the Defendants are liable for statutory damages in the sum of no less than \$4,000.00 for violation of N.C.G.S. Section 75-50, et seq. and the payment of legal fees and expenses.

WHEREFORE, the Plaintiff having set forth his claims for relief against the Defendant respectfully prays of the Court as follows:

- A. That the Plaintiff recover against the Defendants a sum to be determined by the Court in the form of actual damages for its violations of the Fair Debt Collection Act and the North Carolina UDAP statute;
- B. That the Plaintiff recover against the Defendants a sum to be determined by the Court in the form of statutory damages including a separate amount for each individual violation of the North Carolina UDAP statute;
- C. That the Plaintiff recover against the Defendants a sum to be determined by the Court in the form of punitive damages for the willful violations of these acts and to prevent Defendants from making non compliance with Federal and State law a profit center;
- D. That the Plaintiff recover against the Defendants all reasonable legal fees and expenses incurred by their attorney;
- E. That the Plaintiff has such other and further relief as the Court may deem just and proper.

Date this the _____ day of _____, 2012.

O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for the Plaintiff
N.C. State Bar No. 6164
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Shelby, NC 28151-1000
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

**JOHN Q. PUBLIC and
MARY PUBLIC,**

Debtors.

**CHAPTER 13 CASE NO.
Our File No.**

**JOHN Q. PUBLIC and wife,
MARY PUBLIC,**

Plaintiffs,

versus

DEBT COLLECTOR,

Defendant.

Adversary Proc. No.

**Complaint Seeking Damages in Core Adversary Proceeding
(Demands for Violations of FTCPA, FDCPA and NCUDAP)**

Introduction

1. This is an action for actual and punitive damages filed by the debtors pursuant to Section 362 of the Bankruptcy Code, the Federal Telephone Consumer Protection Act, 47 U.S.C. Section 227 et seq. (hereinafter referred to as "FTCPA"), the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq. (hereinafter referred to as "FDCPA"), and the North Carolina Unfair and Deceptive Acts and Practices Laws, G.S. Section 75-50 et seq., (hereinafter referred to as "Acts" and "UDAP").

2. This action is also filed to enforce the Order of Confirmation duly entered in this Chapter 13 case and to enforce and to implement other Bankruptcy Code provisions and Rules related thereto.

Jurisdiction and Venue

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 both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code, and pursuant to the Order entered by the Judges of the United States District Court for the Western District of North Carolina on July 30, 1984 (the Referral Order), which Order was entered in accordance with the Bankruptcy Amendments and Federal Judgeship Act of 1984.

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

6. This Court also has jurisdiction to hear the Fair Debt Collection Practices Act violations pursuant to Section 1692 of Title 15 of the United States Code; thus, federal subject matter jurisdiction is properly founded upon Section 1331 of Title 28 of the United States Code.

7. This matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the entry of a final order by the Bankruptcy Judge.

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

Parties

9. The Plaintiffs in this case were and are debtors under Chapter 13 of Title 11 of the United States Code in case number _____, which case is presently pending before this court. The Plaintiffs are hereinafter referred to as the Plaintiffs or the debtors.

10. The Defendant, Debt Collector, is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business located Somewhere, Shelby, Cleveland County, North Carolina 28150.

11. The Chapter 13 case of the Plaintiffs was commenced by the filing of a voluntary petition with the Clerk of this Court on _____, 2011.

12. The 341(a) meeting of creditors was held in Shelby, North Carolina on May 10, 2011.

13. The Chapter 13 plan of the Plaintiffs was subsequently confirmed by order of this Court dated _____, 2011.

14. The Chapter 13 plan as confirmed included a debt to Debt Collector in the amount of \$100.00 which was scheduled as an unsecured claim for the credit card debt purchased by Debt Collector.

15. On or about _____, 2011, the attorney for the debtors, O. Max Gardner III, caused a written notice of his representation of the debtors, of the filing of the Chapter 13 case, and of the automatic stay to be mailed to all the creditors in this proceeding, including Debt Collector, via first class mail, postage prepaid.

16. The Trustee in this case caused a written notice of the filing, of the automatic stay, and of the 341 meeting of creditors to be mailed to all parties on the master mailing matrix by first class mail and that such notice was in fact received by Debt Collector.

17. The debtors allege upon information and belief that the notice mailed by the Trustee included the following warning to all creditors: "**CREDITORS MAY NOT TAKE CERTAIN ACTIONS:** The filing of the bankruptcy case automatically **stays** certain collection and other actions against the debtor, debtor's property, and certain co-debtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be **penalized.**"

18. The debtors aver that all of these documents were served on the Defendant and received by the Defendant including other documents filed in this case.

19. The claim of Debt Collector is identified on the records of the Trustee as claim number 0005. Debt Collector filed a sworn proof of claim for the unsecured claim in the amount of \$100.00 on the courts records as claim number 03.

20. Subsequent to filing their bankruptcy case, the debtors received a prerecorded voice message demanding payment for the subject Debt Collector debt. The prerecorded message, approximately 30 seconds in duration, did not identify the caller at the beginning of the message and did not give an address or phone number of the caller during the message. According to the Debtors' caller ID, the telephone call was generated by an automated dialer with a telephone number identified as coming from Debt Collector. The debtors attempted to return a phone call to

the number identified on debtors' caller ID, but the number did not receive incoming calls.

21. Within a week, the debtors received four more automated prerecorded telephone calls at their home telephone number identical to the call described in the preceding paragraph. All of the prerecorded messages demanded payment for the subject Debt Collector debt.

22. The debtors continue to receive automated prerecorded telephone calls on their home telephone number from Debt Collector's number and as of this date, have received five automated prerecorded telephone calls per week.

23. Plaintiff John Q. Public has also received two automated prerecorded voice messages per week from Debt Collector's number on his cell phone. These automated prerecorded collection calls were also generated by an automated dialer with the same telephone number identified on debtors' caller ID.

24. All of the prerecorded voice messages from Defendant were generated by an automated dialer and willfully made without the express consent of the Debtors.

25. The Plaintiffs have been harassed and damaged by the Defendant's repeated and continued actions in that they have been and continue to be forced to expend their time and expenses toward the defense of this contested matter.

**First Claim for Relief
(Violation of the Automatic Stay)**

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

27. The actions of the Defendant, in causing the improper demands for payment to the debtors, constitute a gross violation of the automatic stay as set forth in 11 U.S.C. Section 362(a)(3).

28. As a result of the above violations of 11 U.S.C. Section 362, the Defendant is liable to the Plaintiffs for actual damages, punitive damages and legal fees.

**Second Claim for Relief
(Federal Telephone Consumer Protection Act)**

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

30. The Defendant is in willful violation of the Federal Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

31. 47 U.S.C. § 227(b)(1)(B) prohibits Defendant from initiating a telephone call to Debtors' residential telephone line "using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party." Defendants willfully violated the Act by placing five such calls per week to Debtors' residential telephone number.

32. Pursuant to 47 U.S.C. § 227(b)(1)(A)(iii), it is unlawful for any person "to make any call using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a paging service, cellular telephone service...." Defendants willfully violated the Act by placing two such calls per week to Debtor John Q. Public's cell phone number.

33. Defendant, in violation of 47 U.S.C. § 227(d)(3)(A), transmitted to Debtors a prerecorded voice message via telephone (i) without clearly stating, at the beginning of the message, the identity of the business, individual, or entity initiating the call, and (ii) without, during or after the message, clearly stating the telephone number or address of such business, other entity, or individual.

34. Furthermore, the automated telephone calls from Defendant did not automatically release the Debtors' line "within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls." 47 U.S.C. § 227(d)(3)(B).

35. The actions and conduct of the Defendant were and are in willful violation of 47 U.S.C. § 227 et seq., and Defendant is liable for damages in the amount of \$500.00 for each violation, and because Defendant willfully and knowingly violated the FTCPA, such damages may be increased to an amount equal to not more than three times the amount awarded, plus legal fees and expenses.

**Third Claim for Relief
(North Carolina Unfair and Deceptive Acts and Practices)**

36. The allegations in paragraphs 1 through 35 of this complaint are realleged and incorporated herein by this reference.

37. The Plaintiffs are "consumers" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.

38. The Plaintiffs' relationship with the Defendant arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.

39. The Defendant was and is a "debt collector" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

40. Under the provision of Section 75-52 of the North Carolina General Statutes the Defendant was and is prohibited from engaging in any conduct the natural consequences of which is to oppress, harass or abuse any person.

41. The actions and conduct of the Defendant were and are oppressive and abusive in violation of the applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

42. As a result thereof, the Defendant is liable for statutory damages in the sum of no less than \$4,000.00 for violation of N.C.G.S. Section 75-50, et seq. and the payment of legal fees and expenses.

**Fourth Claim for Relief
(Fair Debt Collection Practices Act)**

43. The allegations in paragraphs 1 through 42 of this complaint are realleged and incorporated herein by this reference.

44. The Defendant violated the FDCPA. Defendant'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.

45. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiffs for actual damages, statutory damages and attorney's fees.

WHEREFORE, the Plaintiffs having set forth their claims for relief against the Defendant respectfully pray 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 a sum to be determined by the Court in the form of statutory damages;

- C. That the Plaintiffs have and recover against the Defendant a sum to be determined by the Court in the form of punitive damages;
- D. That the Plaintiffs have and recover against the Defendant all reasonable legal fees and expenses incurred by their attorney;
- E. That this Court order the Defendant to pay additional damages for each violation and statutory damages in a sum to be determined by the Court for violating the FTCPA pursuant to Federal Telephone Consumer Protection Act, 47 U.S.C. § 227(c)(5)(B) and (C).
- E. That this Court order the Defendant to pay additional actual damages and statutory damages in a sum to be determined by the Court for violation of N.C.G.S. Section 75-50, et seq.;
- F. That this Court order the Defendant to pay additional actual damages and statutory damages in a sum to be determined by the Court for violating the FDCPA pursuant to 15 U.S.C. Section 1692k;
- G. That the underlying debt to the Defendant be forever canceled and discharged; and
- H That the Plaintiffs have such other and further relief as the Court may deem just and proper.

Date this the _____ day of _____, 2012.

O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for Debtors/Plaintiffs
N.C. State Bar No. 6164
P.O. Box 1000
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maxgardner@maxgardner.com

“HIGHLIGHTS”

TELEPHONE CONSUMER PROTECTION ACT (TCPA) & FEDERAL COMMUNICATIONS COMMISSIONS (FCC)

Definitions (as defined in FCC rules):

“Unsolicited advertisement” is “any material advertising the commercial availability or quality of any property, goods, or services, which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.”

“Established business relationship” or “EBR” is “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration (payment), on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.”

Unlawful to send unsolicited advertisements to any fax machine – both business and residence – without recipient’s prior express invitation or permission. Fax advertisements MAY be sent to recipients with whom the sender has an EBR, as long as the fax number was provided voluntarily by the recipient. A fax advertisement may be sent to an EBR customer if the sender ALSO:

- Obtains the fax number directly from the recipient, through, for example, an application, contact information form, or membership renewal form; or
- Obtains the fax number from the recipient’s *own* directory, advertisement, or site on the internet, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the fax number in question; or
- Has taken reasonable steps to verify that the recipient consented to have the number listed, if obtained from a directory or other source of information compiled by a third party.
- If the sender had an EBR with the recipient and possessed the recipient’s fax number before July 9, 2005 (the date the Junk Fax Prevention Act became law), the sender may send the fax advertisements WITHOUT demonstrating how the number was obtained.

Senders of permissible fax advertisements must provide notice and contact information on the fax that allows recipients to “opt-out” of future faxes. The notice must:

- Be clear and conspicuous and on the FIRST PAGE of the advertisement;
- State that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful; and
- Include a telephone number, fax number, and cost-free mechanism (including a toll-free telephone number, local number for local recipients, toll-free fax number, Website address, or e-mail address) to opt-out of faxes. These numbers and cost-free mechanism must permit consumers to make opt-out requests 24 hours a day, seven days a week.

Opt-out Requests by Consumers must:

- Identify the fax number or numbers to which it relates; and
- Be sent to the telephone number, fax number, Website address, or e-mail address identified on the fax advertisement.

Fax Broadcasters – fax advertisements sent in bulk on behalf of a business or entity by separate professional fax broadcasters. Generally, the person or business on whose behalf a fax is sent or whose property, goods, or services are advertised is liable for a violation of the junk fax rules, even if the person or business did not physically send the fax. A fax broadcaster also may be liable if it has a “high degree of involvement” in the sender’s fax message, such as supplying the fax numbers to which the message is sent, providing a source of fax numbers, making representations about the legality of faxing to those numbers, or advising about how to comply with the junk fax rules. Also, if a fax broadcaster is “highly involved” in the sender’s fax messages, the fax broadcaster must provide its name on the fax.

REGISTERING A HOME PHONE NUMBER ON THE NATIONAL DO-NOT-CALL LIST PREVENTS ONLY TELEPHONE SOLICITATIONS DIRECTED TO THAT NUMBER, NOT FAX ADVERTISEMENTS TO YOUR HOME OR BUSINESS FAX NUMBER.

THE FCC’S JUNK FAX RULES PROHIBIT FAX ADVERTISEMENTS UNLESS YOU HAVE AN EBR WITH THE SENDER OR HAVE GIVEN YOUR PRIOR EXPRESS PERMISSION TO RECEIVE THE FAX ADVERTISEMENTS.

COMPLAINTS filed with FCC:

How the FCC can help: by issuing warning citations and imposing fines against companies violating or suspected of violating the junk fax rules – BUT DOES NOT AWARD INDIVIDUAL DAMAGES. If you receive a fax advertisement from someone who does not have an EBR with you or to whom you have not provided prior express permission to send fax advertisements, you can file a complaint with the FCC at esupport.fcc.gov/complaints.htm; by e-mailing fccinfo@fcc.gov; by calling 1-888-225-5322; by faxing 1-866-418-0232; or by writing to: Federal Communications Commission, Consumer & Governmental Affairs Bureau, Consumer Inquiries and Complaints Division, 445 12th Street, SW, Washington, DC 20554.

Complaint should include:

- Your name, address, e-mail address, phone number where you can be reached;
- Home or business number where you received the unsolicited fax advertisement;
- Date and time of the fax;
- Whether the fax advertised or sold any property, goods, or services;
- Sender’s name, phone number, or number of the sending fax machine, and whether this information was provided on the first page or in a margin at the top or bottom of each page;
- Any other information such as Website or e-mail address to help identify the sender or individual or company whose property, goods, or services were being advertised or sold;
- Any number, Website, or e-mail address provided to allow you to “opt-out” of future faxes;
- Whether you or anyone else in your household or business gave the sender permission to fax an advertisement to you;
- Whether you have an EBR with the sender (specifically, whether you or anyone else in your household or business made any purchases of property, goods, or services from the sender, or made any inquiry or filed an application with the individual or company prior to receiving the fax); and
- Whether you or anyone in your household or business previously asked the sender or individual or company whose property, goods, or services are being advertised or sold NOT to fax, and when and how (call, e-mail, or Website) you made the request.
- You may also submit a copy of the fax with your complaint, either electronically or by fax or mail using the Consumer Center contact information above.

You can also file TCPA-related complaints with your local or state consumer protection office of your AG's office.

You can also bring a private suit against the violator in an appropriate court of your state. Through a private suit, you can either recover the actual monetary loss that resulted from the TCPA violation, or receive up to \$500 in damages for each violation, whichever is greater. The court may TRIPLE THE DAMAGES for each violation if it finds that the defendant willingly or knowingly committed the violation. Filing a complaint with the FCC does not prevent you from also bring a private suit.

TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227

DEFINITIONS:

47 U.S.C. § 227(a)

- (1) The term "AUTOMATIC TELEPHONE DIALING SYSTEM" means equipment which has the capacity –
 - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and
 - (B) to dial such numbers.
- (2) The term "established business relationship", for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that –
 - (A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and
 - (B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G).
- (3) The term "telephone facsimile machine"....
- (4) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does NOT include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the called has an established business relationship, or (C) by a tax exempt nonprofit organization.
- (5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT –

(1) PROHIBITIONS. It shall be unlawful for any person within the United States...

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any “911” line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine...

(2) REGULATIONS, EXEMPTIONS AND OTHER PROVISIONS. The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent.

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to

the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.

The following actions by debt collectors, telemarketers, and other businesses are violations of the federal Telephone Consumer Protection Act (TCPA):

1. A person or entity may not use an auto dialer or an artificial or prerecorded voice message to call cell phones or pagers. All creditors and debt collectors use auto dialers and most use artificial or prerecorded voice messages. 47 U.S.C. § 227(b)(1)(A)(iii)
2. A person or entity may not leave an artificial or prerecorded voice message for calls to your residential land line without your prior express consent. 47 U.S.C. § 227(b)(1)(B)
3. A person or entity with whom you have no preexisting relationship may not send unsolicited marketing faxes. 47 U.S.C. § 227(b)(1)(C)
4. Anyone using an auto dialer or an artificial or prerecorded voice message to call any number must clearly state the identity of the caller at the beginning of the message and give the address or phone number of the caller during the call. 47 U.S.C. § 227(d)(3)(A) and (B)

Damages recoverable under the TCPA:

When a person or entity violates any of the above provisions of the TCPA, you may recover the following damages.

1. \$500 per call or fax in violation of the FTCPA, or your actual provable damages. If court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available.
2. Attorneys' fees.
3. The costs of the lawsuit.



Consumer Debtor Attorneys
403 S. Washington Street
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Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

DATE

Agent
Creditor
Address
City, State Zip

In the Matter of:

VERY SHORT QWR – PRE-FILING

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
SSN:
Our File No:
Your Account No: _____

Dear Sir or Madam:

Please treat this letter as a "qualified written request" under Section 6(e) 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 about the proper application of payments from the debtors to interest, principal, escrow advances and expenses (in that order of priority as provided for in the loan instruments); about your use of suspense accounts in connection with your receipt of the debtors' payments; about your use of legacy late charges with respect to mortgage payments; about your use of automatically triggered property inspections and broker price opinion charges and fees; and about legal fees and expenses that have been attached to this account in the form of corporate advances. Specifically, I am requesting the following information:

1. A complete and original life of loan transaction history to the date of your response to this letter prepared by the Servicer from its own records using its own system and default servicing personnel. Also, please identify the mortgage servicing software you use in connection with this loan (MSP, LSAMS, etc).
2. A copy of your Key Loan Transaction history, bankruptcy work form, XLS spreadsheet, or any other manually-prepared spreadsheet or record of all accounts associated with this mortgage loan (this would include both recoverable and non-recoverable and restricted and non-restricted accounts).
3. A full and complete plain-English definitional dictionary of all transaction codes and other similar terms used in the records requested above or any of the other documents or records requested or referred to herein.
4. If this is a MERS or MOM loan, please attach a copy of all MERS Milestone Reports

MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

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Email: klowery@maxgardner.com



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O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

5. If this is a MERS or MOM loan, please attach a copy of all MIN Reports.
6. Please identify the full name, address and telephone number of the current holder of the original mortgage note including the name, address and phone number of any Trustee under the Trust or other fiduciary. This request is being made pursuant to Section 1641(f)(2) of the Truth In Lending Act, which requires the servicer to identify the holder of the debt. This request is also being made pursuant to the amendments to RESPA under the Dodd-Frank Act.
7. Copies of all collection notes, collection records, communication files or any other form of recorded data with respect to any communications between you and the debtor.
8. An itemized statement of the full amount needed to reinstate the mortgage as of the date of your response along with an itemized pay-off statement.
9. Copies of all written or recorded communications between you and any non-lawyer third parties regarding this mortgage (including but not limited to LPS Desktop communiqués, NewTrak communications, NewInvoice transmittals, NewImage transmittals, electronic communications by email or otherwise, collection notes, and any other form of written or electronic document related to the servicing of or ownership of this loan).
10. All P-309 screen shots of the history all of the accounts (principal, interest, escrow, late charges, legal fees, property inspection fees, broker price opinion fees, statutory expense fees, miscellaneous fees, corporate advance fees, etc.) associated with this loan.
11. Please produce a full Life of Loan transaction history generated from the AS400 system, including Loan History Inquiry, Fees Due Inquiry, Monthly Statement Request and History, Impound/Escrow Account Review, Servicing Activities History (Combined View), Bankruptcy Department Screens if applicable, Bankruptcy Account Follow-Up if applicable, 1st mortgage Account Status, Field Service Inspection Selection, Fees Due Listing, all Comment Logs from BK, FC, Customer Service Departments, and all fees and costs and escrow accounting details.
12. Please produce copies of all invoices from the servicer for all third-party vendors including proof of payment.

You should be advised that you must acknowledge receipt of this qualified written request within five (5) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

You should also be advised that the debtor(s) herein will seek the recovery of damages, costs, and reasonable legal fees for each failure to comply with the questions and requests herein. The debtor(s) also reserve the right to seek statutory damages for each violation of any part of Section 2605 of Title 12 of the United States Code in the amount of \$2,000.00 for each violation.

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Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com



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O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

With best regards, I remain.

Very truly yours,

A handwritten signature in black ink, appearing to read 'O. Max Gardner, III'.

O. Max Gardner, III
OMGIII/cjh
Cc: Debtors

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MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com

DATE

DEBTOR'S REINSTATEMENT LETTER TO MORTGAGE SERVICER

Mortgage Servicer
Pay-Off Department
Street
City, State

Home Mortgage Loan
Loan No: _____
Property Address: _____

Dear Sirs:

We are requesting you to please provide us with the amount necessary to reinstate our home mortgage loan.

Please also provide a complete and itemized payoff statement, with an explanation of and documentation of any late fees, legal fees, or any other fees and charges that have been or may be included in the payoff.

With best regards, we remain

Very truly yours,

John and Mary Public



O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

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403 S. Washington Street
Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

DATE

CitiMortgage, Inc.
P.O. Box 9438
Gaithersburg, MD 20898-9438

TILA Request 131(f)

Re: My Clients/Borrowers:
Loan Number:
Property Address:

Dear Madam or Sir:

In accordance with RESPA and Section 131(f) of the Truth-in-Lending Act, 15 U.S.C. Section 1641(f)(2), please provide me with the name, address, and telephone number of the owner of the promissory Note signed by my clients and secured by the deed of trust in my clients' mortgage loan referenced above.

By their signatures below, my clients authorize you to furnish me with the requested information, and any other information regarding their account and their mortgage loan.

You should be advised that you must acknowledge receipt of this request within five (5) business days, and respond within thirty (30) business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).

Thanking you in advance, I am

Very truly yours,

O. Max Gardner III
OMGIII/cjh
cc: Client(s)

I authorize you to furnish the requested information regarding my mortgage loan to my attorney, O. Max Gardner III, at his office address as shown above, within thirty (30) days from the date of this request.

Signed this the ____ day of _____, 20____.

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MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

Email: klowery@maxgardner.com

DATE

CitiMortgage, Inc.
P.O. Box 9438
Gaithersburg, MD 20898-9438

TILA Request 131(f) from Client

Re: Borrower:
Loan Number:
Property Address:

Dear Madam or Sir:

In accordance with Section 131(f) of the Truth-in-Lending Act, 15 U.S.C. Section 1641(f), please provide my attorney, O. Max Gardner III, with the name, address, and telephone number of the owner of the promissory Note signed by me and secured by the deed of trust in my mortgage loan referenced above.

I request that you forward the information to my attorney within twenty (20) days from the date of this request, addressed to:

O. Max Gardner III
MaxGardnerLaw, PLLC
Post Office Box 1000
Shelby, NC 28150

Thanking you in advance, I am

Very truly yours,

(Borrower)

(Borrower)

cc: O. Max Gardner III

© Max Gardner's Bankruptcy Boot Camp

3. Jurisdiction is further conferred on this Court by 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331, 1337.

4. This Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code, and pursuant to the Order entered by the Judges of the United States District Court for the Western District of North Carolina on July 30, 1984 (the Referral Order), which Order was entered in accordance with the Bankruptcy Amendments and Federal Judgeship Act of 1984.

5. This Court has supplemental jurisdiction to hear all state law claims, if any, pursuant to Section 1367 of Title 28 of the United States Code.

6. The Plaintiff is informed and believes that this matter is primarily a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the entry of a final order by the Bankruptcy Judge.

Venue

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

Parties

8. The Plaintiff in this case was and is a debtor under Chapter 13 of Title 11 of the United States Code in case number <CASE>, which case was filed on <DATE> and is presently pending before this Court.

9. The Defendant, Suntrust Mortgage, Inc. ("Suntrust" or "Defendant") is a corporation that originates, purchases, sells, and services residential mortgage loans. Defendant is headquartered in Richmond, Virginia and is a wholly-owned subsidiary of Suntrust Banks, Inc., a bank holding company. Suntrust originated the mortgage loans that are the subject of this case.

*. The Defendant, _____ is a corporation that services residential mortgage loans. Upon information and belief _____ is the servicer of the mortgage loans which are the subject of this complaint. Defendant _____ is a corporation organized and existing under the laws of the State of _____, which a headquarters located at _____.

*. The Defendant, _____ is the Trust which upon information and belief actually owns and holds the subject notes.

Facts

10. On December 13, 2007 Defendant made two mortgage loans to Plaintiff for the purpose of acquiring a dwelling at <ADDRESS>, Shelby, North Carolina 28150 (the "Property"), referred to in this Complaint as the "First Mortgage Loan" and the "Second Mortgage Loan."

11. In connection with the First Mortgage Loan the Plaintiff executed a promissory

note (the "First Mortgage Note") in the original principal amount of \$417,000 payable to the Suntrust.

12. The First Mortgage Note was secured by a Deed of Trust on the Property dated <DATE> and recorded in the Cleveland County, North Carolina Office of the Register of Deeds in Deed Book <PAGE>, page <PAGE> (the "First Deed of Trust"), which named Jackie Miller as Trustee, the Defendant Suntrust as Lender, and Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS") as beneficiary of the Deed of Trust and as "nominee" for Defendant.

13. In connection with the Second Mortgage Loan the Plaintiff executed a promissory note (the "Second Mortgage Note") in the original principal amount of \$115,000 payable to Suntrust.

14. The Second Mortgage Note was secured by the a subordinate-lien Deed of Trust on the Property dated <DATE> and recorded in the said Office of the Register of Deeds in Deed Book <PAGE>, page <PAGE> (the "Second Deed of Trust"). Like the First Deed of Trust, the Second Deed of Trust named Jackie Miller as Trustee, the Defendant as Lender, and MERS as beneficiary of the Deed of Trust and as "nominee" for Defendant.

15. The First Mortgage Loan was made for the maximum amount acceptable for purchase by Fannie Mae. Upon information and belief, the reason Defendant offered home purchase financing divided into two loans was to allow Defendant to sell the First Mortgage Loan to Fannie Mae and to sell, or have available for sale, the Second Mortgage Loan such other investor as Defendant may choose, a practice that is typical in the mortgage industry.

16. Both the First Mortgage Loan and Second Mortgage Loan are consumer credit transactions within the meaning of, and subject to, TILA.

17. Both the First Mortgage Loan and the Second Mortgage Loan are "federally related mortgage loans" as defined in 12 U.S.C. § 2602(1).

COUNT 1

Failure to provide the identity of the owner or master servicer of the First Mortgage Note as required by TILA § 131(f) [15 U.S.C. § 1641(f)] and failure to respond to a "qualified written request" regarding the First Mortgage Loan § 6(e)(1)(B) of the Real Estate Settlement Procedures Act ("RESPA") [12 U.S.C. § 2605(e)(1)]

18. The allegations of paragraphs 1 through 17 of this Complaint are hereby re-alleged and incorporated by reference.

19. The debtor filed this case for relief under Title 11 of the United States Code on January 4, 2009.

20. At various times between January 20, 2009 and August 14, 2009 the attorney for the provided numerous notices to Suntrust that the Plaintiff was involved in an active Chapter 13 bankruptcy proceeding and as a result needed information about the current owner and holder of both of her mortgage notes.

21. On or about July 30, 2009 Plaintiff mailed a letter to Defendant-Suntrust requesting the name of the owner of the First Mortgage Note and clearly alerting Defendant to the fact that his request was being made pursuant to TILA § 131(f). An unsigned copy of

Plaintiff's request, the original of which Plaintiff signed and mailed, is attached hereto as Exhibit A along with Postal Form 3811, the certified receipt form, attached as Exhibit B.

22. The law firm for Suntrust that filed a Notice of Appearance in this case and that filed Proofs of Claim on both mortgage notes received a letter from Plaintiff's counsel dated August 7, 2009 that among other topics clearly informed Defendant's counsel that Plaintiff had sent his July 30, 2009 letter to Defendant and that Plaintiff's letter invoked Plaintiff's rights under TILA § 131(f) and that Plaintiff had not received any response to his letter.

23. Plaintiff's July 30, 2009 letter to Defendant is a "qualified written request" as defined in § 6(e)(1)(B) of the Real Estate Settlement Procedures Act ("RESPA") [12 U.S.C. § 2605(e)(1)(B)]. Thus Plaintiff's July 30, 2009 letter had the dual effect of invoking Plaintiff's rights under TILA § 131(f) as well Plaintiff's rights under RESPA § 6(e)(1).

24. The Defendant did not respond within 20 days to Plaintiff's request for the name of the owner and holder of the First Mortgage Note as required by § 6(e)(1) of RESPA [12 U.S.C. § 2605(e)(1), and as recently as September 9, 2009 has never provided Plaintiff with a response, thus violating both 12 U.S.C. § 2605(e)(1) (RESPA) and 15 U.S.C. § 1641(f) (TILA) with respect to the First Mortgage Loan.

COUNT 2

Failure to provide the identity of the owner or master servicer of the Second Mortgage Note as required by TILA §131(f) [15 U.S.C. §1641(f)] and failure to respond to a "qualified written request" regarding the Second Mortgage Loan § 6(e)(1)(B) of the Real Estate Settlement Procedures Act ("RESPA") [12 U.S.C. § 2605(e)(1)]

25. The allegations of paragraphs 1 through 24 of this Complaint are hereby re-alleged and incorporated by reference.

26. On August 7, 2009 Plaintiff instructed his attorney to mail a letter² to Defendant requesting the name of the owner and holder of the Second Mortgage Note and clearly alerting Defendant to the fact that his request was being made pursuant to TILA § 131(f). A copy of the request that Plaintiff directed to be made on his behalf, together with the certified mail receipt signed on behalf of Defendant upon receipt of that request is attached hereto as Exhibit C.

27. The August 7, 2009 letter to Defendant is a "qualified written request" as defined in § 6(e)(1)(B) of RESPA [12 U.S.C. §2605(e)(1)(B)]. Thus the said August 7, 2009 letter had the dual effect of invoking Plaintiff's rights under TILA § 131(f) as well Plaintiff's rights under RESPA § 6(e)(1).

28. The Defendant did not respond within 20 days to Plaintiff's request for the name of the owner of the Second Mortgage Note as required by § 6(e)(1) of RESPA [12 U.S.C. § 2605(e)(1), and as recently as September 9, 2009 has never provided Plaintiff with a response, thus violating both 12 U.S.C. § 2605(e)(1) (RESPA) and 15 U.S.C. § 1641(f) (TILA) with respect to the Second Mortgage Loan.

² This letter and the letter of the same date referred to in paragraph 22 of this Complaint are two separate letters.

COUNT 3

Failure to notify Plaintiff of the Assignment of the First Deed of Trust as required by TILA § 131(g) [15 U.S.C. § 1641(g)]

29. The allegations of paragraphs 1 through 28 of this Complaint are hereby re-alleged and incorporated by reference.

30. The First Mortgage Loan was a consumer credit transaction secured by the Plaintiff's principal dwelling within the meaning of TILA.

31. Upon information and belief, on July 15, 2009 Mortgage Electronic Registration Systems, Inc. ("MERS") assigned all of its right, title, and interest in the First Deed of Trust to the Defendant-Suntrust. A copy of an Assignment believed to constitute at least part of the documentation of that transaction is attached hereto as Exhibit C.

32. Defendant did not send Plaintiff any notice of the July 15, 2009 assignment of the First Deed of Trust from MERS to Defendant, thus violating TILA § 131(g) [15 U.S.C. § 1641(g)].

COUNT 4

Failure to notify Plaintiff of the Sale or Transfer of the First Mortgage Note as required by TILA § 131(g) [15 U.S.C. § 1641(g)]

33. The allegations of paragraphs 1 through 32 of this Complaint are hereby re-alleged and incorporated by reference.

34. Plaintiff believes, and evidence expected to be available through further investigation and discovery is likely to show, that at some time after the origination of the First Mortgage Loan, the First Mortgage Note was sold by Defendant to Fannie Mae.

35. Upon information and belief, at some time before July 11, 2009 Fannie Mae sold or otherwise transferred the First Mortgage Note to Defendant-Suntrust. A copy of a letter to Plaintiff's attorney from Defendant's bankruptcy law firm dated July 10, 2009, identifying the Defendant as the holder of the First Mortgage Note is attached hereto as Exhibit E. A "Notice Required by the Fair Debt Collection Practices Act" believed to have accompanied that July 10, 2009 letter, identifying the Defendant as "the creditor to whom the debt is owed" as of July 10, 2009 is attached hereto as Exhibit F.

36. Defendant did not send Plaintiff any notice of the sale or transfer of the First Mortgage Note from Fannie Mae to Defendant, thus violating TILA § 131(g) [15 U.S.C. § 1641(g)].

WHEREFORE, the Plaintiff having set forth his claims for relief against the Defendant respectfully prays of the Court as follows:

A. For an Order of this Court awarding Plaintiff the relief provided by TILA as to each of the four separate violations of TILA set forth above, including statutory damages in the amount of \$4,000.00 for each violation, actual damages if any be proven, reasonable attorney's fees, and costs expended in this proceeding.

B. That the Plaintiff have such other and further relief as the Court may deem just and proper.

This _____ day of _____, 2012.

O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for the Debtor/Plaintiff
NC State Bar #6164
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(704) 487-0616
e-mail maxgardner@maxgardner.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN RE	*	
	*	
	*	CASE NO.
	*	
DEBTOR	*	CHAPTER 13
	*	
	*	
Plaintiff	*	
	*	
VS.	*	Adv. Pro No.
	*	
AMERICAN HOME MORTGAGE SERVICING, INC.	*	
Defendant	*	
	*	

**COMPLAINT
(Failure to Respond to QWR per Dodd Frank Amendments)**

This is an action for damages brought by an individual consumer for Defendant’s violations of the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq. (“TILA”), and the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq. (“RESPA”). Specifically, Plaintiff seeks the remedies as provided in TILA and RESPA for Defendant’s failures to respond to requests for the identity of the creditors of Plaintiff’s three mortgage loans as required by 15 U.S.C. §1641(f) and 12 U.S.C. § 2605(e).

Jurisdiction

1. Jurisdiction is conferred on this Court pursuant to the provisions of 28 U.S.C § 1334 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.
2. This Court has both personal and subject matter jurisdiction to hear this case pursuant to 28 U.S.C §§ 157(b)(2), 1334.
3. This court has supplemental jurisdiction to hear all state law claims pursuant to 28 U.S.C. § 1367.
4. This Court has jurisdiction to hear the claims for relief under the Real Estate Settlement Procedures Act pursuant to 12 U.S.C. § 2614.

5. This matter is a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the event this case is determined to be a non-core proceeding then and in that event the Plaintiff consents to the entry of a final order by the Bankruptcy Judge.
6. Venue lies in this District pursuant to of 28 U.S.C. § 1391(b).

Parties

7. The Plaintiff, _____, is a natural person residing in Shelby, North Carolina.
8. Defendant, American Home Mortgage Servicing, Inc. is a corporation that services residential mortgage loans. Defendant is headquartered at 4600 Regent Boulevard, Suite 200, Irving, Texas 75063. Defendant was formerly a subsidiary of American Home Mortgage Investment Corporation (“AHM”) and was engaged in originating, purchasing, and selling residential mortgages before it was purchased by Wilbur Ross & Co. LLC.

Facts

9. The Chapter 13 case of the Plaintiff herein was commenced by the filing of a voluntary petition with the Clerk of this Court on July 14, 2010. On the same day the Bankruptcy Noticing Center notified Defendant of Plaintiff’s bankruptcy case.
10. The 341(a) meeting of creditors in this case was held in Shelby, North Carolina on _____
11. On November 23, 2005 AHM made a mortgage loan to Plaintiff for the purpose of acquiring a dwelling at _____ (the “First Property”), referred to in this Complaint as the “First Mortgage Loan”.
12. In connection with the First Mortgage Loan the Plaintiff executed a promissory note (the “First Mortgage Note”) in the original principal amount of \$267,000 payable to AHM.
13. The First Mortgage Note was secured by a Deed of Trust on the First Property dated November 23, 2005 and recorded in the Register of Deeds of Cleveland County, NC, which named Alvin E. Friedman as Trustee, AHM as Lender, and Mortgage Electronic Registration Systems, Inc., a Delaware corporation (“MERS”) as beneficiary of the Deed of Trust and as “nominee” for AHM.
14. On January 31, 2006 AHM made a mortgage loan to Plaintiff for the purpose of acquiring a dwelling at _____ (the “Second Property”), referred to in this Complaint as the “Second Mortgage Loan”.
15. In connection with the Second Mortgage Loan the Plaintiff executed a promissory note (the “Second Mortgage Note”) in the original principal amount of \$40,800 payable to AHM.

16. The Second Mortgage Note was secured by a Deed of Trust on the Second Property dated January 31, 2006 and recorded in the Office of the Cleveland County Register of Deeds (the “Second Deed of Trust”), which named Douglas Douglas and Connie Iampiere as Trustees, the Defendant as Lender, and MERS as beneficiary of the Deed of Trust and as “nominee” for AHM.
17. On April 7, 2006 Defendant made a mortgage loan to Plaintiff for the purpose of acquiring a dwelling at _____ (the “Third Property”), referred to in this Complaint as the “Third Mortgage Loan”.
18. In connection with the Third Mortgage Loan the Plaintiff executed a promissory note (the Third Mortgage Note”) in the original principal amount of \$101,500 payable to AHM.
19. The Third Mortgage Note was secured by a Deed of Trust on the Third Property dated April 7, 2006 and recorded in the Office of the Cleveland County Register of Deeds (the “Third Deed of Trust”), which named Douglas Douglas as Trustee, AHM as Lender, and MERS as beneficiary of the Deed of Trust and as “nominee” for AHM.
20. To the best of Plaintiff’s knowledge, information and belief, these Mortgage Loans are serviced by the Defendant.
21. Plaintiff believes and therefore alleges that the true holder and owners of the First, Second, and Third Mortgage Notes are unknown securitized trusts.
22. The First Mortgage Loan, Second Mortgage Loan, and Third Mortgage Loan are consumer credit transactions within the meaning of, and subject to, TILA.
23. The First Mortgage Loan, Second Mortgage Loan, and Third Mortgage Loan are “federally related mortgage loans” as defined in 12 U.S.C. §2602(1) and therefore subject to RESPA.

COUNT 1: Failure to provide the identity of the owner or master servicer of the First Mortgage Note as required by TILA §131(f) [15 U.S.C. §1641(f)] and failure to respond to a “qualified written request” regarding the First Mortgage Loan §6(e)(1)(B) of the Real Estate Settlement Procedures Act (“RESPA”) [12 U.S.C. §2605(e)(1)].

24. The allegations of paragraphs 1 through 23 of this Complaint are hereby re-alleged and incorporated by reference.
25. On or about July 26, 2010 Plaintiff, through counsel, mailed a letter to Defendant requesting the name of the owner of the First Mortgage Note and clearly alerting Defendant to the fact that his request was being made pursuant to TILA §131(f). A copy of Plaintiff’s request, the original of which Plaintiff’s counsel mailed certified with return receipt requested, is attached hereto as Exhibit A.
26. Plaintiff’s July 26, 2010 letter to Defendant is a “qualified written request” as defined in §6(e)(1)(B) of the Real Estate Settlement Procedures Act (“RESPA”) [12 U.S.C. 2605(e)(1)(B)]. Thus Plaintiff’s

July 26, 2010 letter had the dual effect of invoking Plaintiff's rights under TILA §131(f) as well Plaintiff's rights under RESPA §6(e)(1).

27. Defendant failed to acknowledge receipt of the Qualified Written Request within 5 days as required by U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).
28. On or about August 10, 2010, Defendant mailed a response which included the payment history, a copy of the Note, and a copy of the Deed of Trust but did not respond to Plaintiff's request for the name of the owner of the First Mortgage Note as required by §6(e)(1) of RESPA [12 U.S.C. §2605(e)(1)]. A copy of this is attached hereto as Exhibit B.
29. On or about August 19, 2010, Plaintiff's Counsel mailed a second letter to Defendant alerting Defendant of its noncompliance with RESPA and TILA and again requesting, within 5 days of receipt of the letter, the identification of the owner of the First Mortgage Note. A copy of this letter, the original of which Plaintiff's counsel mailed certified, return receipt requested, is attached hereto as Exhibit C.
30. On or about September 9, 2010, Plaintiff's counsel filed a Certificate of Service for both the Qualified Written Request and the letter sent on August 19, 2010.
31. Defendant failed to identify the owner of the First Mortgage note within 10 days of receipt of the letter as required by 12 U.S.C. 2605(k) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and as recently as September 13, 2010 has never provided Plaintiff with a response, thus violating both 12 U.S.C. §2605(e)(1) (RESPA) and 15 U.S.C. §1641(f) (TILA) with respect to the First Mortgage Loan.

WHEREFORE, the Plaintiff having set forth his claims for relief against the Defendant respectfully prays of the Court as follows:

That the Plaintiff be granted relief provided by TILA as to the violation of TILA set forth above, including statutory damages in the amount of \$4,000.00; and

That the Plaintiff be granted relief provided by RESPA as to the violation of RESPA set forth above, including statutory damages in the amount of \$2,000.00; and

That the Plaintiff be granted actual damages if any be proven, reasonable attorney's fees, and costs expended in this proceeding; and

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

COUNT 2: Failure to provide the identity of the owner or master servicer of the Second Mortgage Note as required by TILA §131(f) [15 U.S.C. §1641(f)] and failure to respond to a "qualified written request" regarding the Second Mortgage Loan §6(e)(1)(B) of the Real Estate Settlement Procedures Act

(“RESPA”) [12 U.S.C. §2605(e)(1)].

32. The allegations of paragraphs 1 through 31 of this Complaint are hereby re-alleged and incorporated by reference.
33. On or about July 26, 2010 Plaintiff, through counsel, mailed a letter to Defendant requesting the name of the owner of the Second Mortgage Note and clearly alerting Defendant to the fact that his request was being made pursuant to TILA §131(f). A copy of Plaintiff’s request, the original of which Plaintiff’s counsel mailed certified with return receipt requested, is attached hereto as Exhibit D.
34. Plaintiff’s July 26, 2010 letter to Defendant is a “qualified written request” as defined in §6(e)(1)(B) of the Real Estate Settlement Procedures Act (“RESPA”) [12 U.S.C. 2605(e)(1)(B)]. Thus Plaintiff’s July 26, 2010 letter had the dual effect of invoking Plaintiff’s rights under TILA §131(f) as well Plaintiff’s rights under RESPA §6(e)(1).
35. On or about August 12, 2010, Defendant mailed a response which included the payment history, a copy of the Note, and a copy of the Deed of Trust but did not respond to Plaintiff’s request for the name of the owner of the Second Mortgage Note as required by §6(e)(1) of RESPA [12 U.S.C. §2605(e)(1)]. A copy of this is attached hereto as Exhibit E.
36. On or about August 19, 2010, Plaintiff’s Counsel mailed a second letter to Defendant alerting Defendant of its noncompliance with RESPA and TILA and again requesting, within 5 days of receipt of the letter, the identification of the owner of the Second Mortgage Note. A copy of this letter, the original of which Plaintiff’s counsel mailed certified, return receipt requested, is attached hereto as Exhibit F.
37. On or about September 9, 2010, Plaintiff’s counsel filed a Certificate of Service for both the Qualified Written Request and the letter sent on August 19, 2010.
38. On or about September 10, 2010, the Defendant faxed over a cover letter alleging that it had responded to the Plaintiff’s Qualified Written Request. This fax included a copy of Defendant’s first response dated August 12, 2010 but still failed to respond to Plaintiff’s request for the name of the owner of the Second Mortgage Note. A copy of the cover letter is attached hereto as Exhibit G.
39. Defendant failed to identify the owner of the Second Mortgage Note within 10 days of receipt of the letter as required by 12 U.S.C. 2605(k) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and as recently as September 13, 2010 has never provided Plaintiff with a response, thus violating both 12 U.S.C. §2605(e)(1) (RESPA) and 15 U.S.C. §1641(f) (TILA) with respect to the Second Mortgage Loan.

WHEREFORE, the Plaintiff having set forth his claims for relief against the Defendant respectfully prays of the Court as follows:

That the Plaintiff be granted relief provided by TILA as to the violation of TILA set forth above, including statutory damages in the amount of \$4,000.00; and

That the Plaintiff be granted relief provided by RESPA as to the violation of RESPA set forth above, including statutory damages in the amount of \$2,000.00; and

That the Plaintiff be granted actual damages if any be proven, reasonable attorney's fees, and costs expended in this proceeding; and

That the Plaintiff have such other and further relief as the Court may deem just and proper.

COUNT 3: Failure to provide the identity of the owner or master servicer of the Third Mortgage Note as required by TILA §131(f) [15 U.S.C. §1641(f)] and failure to respond to a “qualified written request” regarding the Third Mortgage Loan §6(e)(1)(B) of the Real Estate Settlement Procedures Act (“RESPA”) [12 U.S.C. §2605(e)(1)].

40. The allegations of paragraphs 1 through 39 of this Complaint are hereby re-alleged and incorporated by reference.
41. On or about July 26, 2010 Plaintiff, through counsel, mailed a letter to Defendant requesting the name of the owner of the Third Mortgage Note and clearly alerting Defendant to the fact that his request was being made pursuant to TILA §131(f). A copy of Plaintiff's request, the original of which Plaintiff's counsel mailed certified with return receipt requested, is attached hereto as Exhibit H.
42. Plaintiff's July 26, 2010 letter to Defendant is a “qualified written request” as defined in §6(e)(1)(B) of the Real Estate Settlement Procedures Act (“RESPA”) [12 U.S.C. 2605(e)(1)(B)]. Thus Plaintiff's July 26, 2010 letter had the dual effect of invoking Plaintiff's rights under TILA §131(f) as well Plaintiff's rights under RESPA §6(e)(1).
43. Defendant failed to acknowledge receipt of the Qualified Written Request within 5 days as required by U.S.C. Section 2605(e)(1)(A) as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and Reg. X Section 3500.21(e)(1).
44. On or about August 9, 2010, Defendant mailed a response which included the payment history, a copy of the Note, and a copy of the Deed of Trust but did not respond to Plaintiff's request for the name of the owner of the Third Mortgage Note as required by §6(e)(1) of RESPA [12 U.S.C. §2605(e)(1)]. A copy is hereto attached as Exhibit I.
45. On or about August 12, 2010, Plaintiff's Counsel mailed a second letter to Defendant alerting Defendant of its noncompliance with RESPA and TILA and again requesting, within 5 days of receipt of the letter, the identification of the owner of the Third Mortgage Note. A copy of this letter, the

original of which Plaintiff's counsel mailed certified, return receipt requested, is attached hereto as Exhibit J.

46. On or about September 9, 2010, Plaintiff's counsel filed a Certificate of Service for both the Qualified Written Request and the letter sent on August 19, 2010.
47. On or about September 10, 2010, the Defendant faxed over a cover letter alleging that it had responded to the Plaintiff's Qualified Written Request. This fax included a copy of Defendant's first response dated August 9, 2010 but still failed to respond to Plaintiff's request for the name of the owner of the Third Mortgage Note. A copy of the cover letter is attached hereto as Exhibit K.
48. Defendant failed to identify the owner of the Third Mortgage note within 10 days of receipt of the letter as required by 12 U.S.C. 2605() as amended effective July 16, 2010 by the Dodd-Frank Financial Reform Act and as recently as September 13, 2010 has never provided Plaintiff with a response, thus violating both 12 U.S.C. §2605(e)(1) (RESPA) and 15 U.S.C. §1641(f) (TILA) with respect to the Third Mortgage Loan.

WHEREFORE, the Plaintiff having set forth his claims for relief against the Defendant respectfully prays of the Court as follows:

- A. That the Plaintiff be granted relief provided by TILA as to the violation of TILA set forth above, including statutory damages in the amount of \$4,000.00; and
- B. That the Plaintiff be granted relief provided by RESPA as to the violation of RESPA set forth above, including statutory damages in the amount of \$2,000.00; and
- C. That the Plaintiff be granted actual damages if any be proven, reasonable attorney's fees, and costs expended in this proceeding; and
- D. That the Plaintiff have such other and further relief as the Court may deem just and proper.

Dated this _____ day of _____, 2010.

O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for the Debtor/Plaintiff
NC State Bar #6164
P.O. Box 1000
Shelby, NC 28151-1000
(704) 487-0616 / FAX (888) 870-1647
e-mail maxgardner@maxgardner.com

After Recording Return To:

[Space Above This Line For Recording Data] _____

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated _____, together with all Riders to this document.

(B) "Borrower" is _____. Borrower is the trustor under this Security Instrument.

(C) "Lender" is _____. Lender is a _____ organized and existing under the laws of _____. Lender's address is _____. Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is _____.

(E) "Note" means the promissory note signed by Borrower and dated _____, _____. The Note states that Borrower owes Lender _____ Dollars (U.S. \$ _____) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] _____ |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

(I) “Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) “Community Association Dues, Fees, and Assessments” means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) “Electronic Funds Transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) “Escrow Items” means those items that are described in Section 3.

(M) “Miscellaneous Proceeds” means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) “Mortgage Insurance” means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) “Periodic Payment” means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) “RESPA” means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(Q) “Successor in Interest of Borrower” means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower’s covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee’s successors and assigns, in trust, with power of sale, the

following described property located in the _____ of
[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

which currently has the address of _____
[Street]
_____, North Carolina _____ (“Property Address”):
[City] [Zip Code]

TO HAVE AND TO HOLD this property unto Trustee and Trustee’s successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the “Property.”

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order;

(c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. If Borrower has breached any covenant or agreement in this Security Instrument and Lender has accelerated the obligations of Borrower hereunder pursuant to Section 22 then Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to

Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of

disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate

from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve, if permitted under Applicable Law, in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve, if permitted under Applicable Law. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, if permitted under Applicable Law, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the

insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights

under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the

change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance

with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of _____% of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

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CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
				DISPUTED		
ACCOUNT NO. 0805-40508782 American General Finance 181 Commercial St. Forest City, NC 28043-2850	J	1st d/t on debtors' residence; Debtors dispute this claim as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note			223,772.91	67,272.91
		VALUE \$ 156,500.00				
ACCOUNT NO. American General Finance P.O. Box 3212 Evansville, IN 47731-3212		Assignee or other notification for: American General Finance				
		VALUE \$				
ACCOUNT NO. Elizabeth B. Ells Substitute Trustee 8520 Cliff Cameron Dr., Suite 300 Charlotte, NC 28269		Assignee or other notification for: American General Finance				
		VALUE \$				
ACCOUNT NO. Hometown Servicing, Inc. P.O. Box 10 Asheville, NC 28802		Assignee or other notification for: American General Finance				
		VALUE \$				
Subtotal (Total of this page)					\$ 223,772.91	\$ 67,272.91
Total (Use only on last page)					\$	\$

4 continuation sheets attached

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. Rutherford County Clerk Of Court 07-SP-35890 P.O. Box 630 Rutherfordton, NC 28139-0630		Assignee or other notification for: American General Finance VALUE \$					
ACCOUNT NO. 0805-40508782 American General Finance P.O. Box 3212 Evansville, IN 47731-3212	J	1st mtg appears on residence thru Nov 2007 to be pd thru plan; debtors to resume direct pymts in Dec 2007. Debtors dispute this claim as to the total amount of the debt as of the petition date and as to the alleged arrears and also dispute that the scheduled party is the lawful owner and holder of the original mortgage note. VALUE \$ 156,500.00				8,936.21	
ACCOUNT NO. 907080504753**** American General Finance 181 Commercial St. Forest City, NC 28043-2850	W	Non-PMSI; \$100 for hhgs in lieu of lien avoidance purs to Section 522f VALUE \$ 100.00				5,096.00	4,996.00
ACCOUNT NO. American General Finance P.O. Box 3212 Evansville, IN 47731-3212		Assignee or other notification for: American General Finance VALUE \$ 156,500.00				0.00	
ACCOUNT NO. Audio Ethics, Inc. 2540 Beltway Blvd. Charlotte, NC 28214	J	Loan for asset purchase; to surrender collateral VALUE \$ 89,285.35				331,157.98	241,872.63
ACCOUNT NO. Brett E. Dressler, Esq. Sellers Hinshaw Ayers Dortch & Lyons PA 301 S. McDowell St., Suite 410 Charlotte, NC 28204-2686	J	Assignee or other notification for: Audio Ethics, Inc. VALUE \$				0.00	

Sheet no. 1 of 4 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

Subtotal (Total of this page)	\$ 345,190.19	\$ 246,868.63
Total (Use only on last page)	\$	\$

(Report also on
Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT		AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
			UNLIQUIDATED	DISPUTED		
ACCOUNT NO. Chris Callahan, Esq. Chris Callahan Law Office 252 Charlotte Rd Rutherfordton, NC 28139	J				0.00	
		VALUE \$				
ACCOUNT NO. 1003162929 Chrysler Financial P.O. Box 55000 Dept. 277001 Detroit, MI 48255	H	1st lien on 2004 Chrysler Town & Country; purch 10.31.03			14,185.00	
		VALUE \$ 18,375.00				
ACCOUNT NO. Chrysler Financial P.O. Box 9223 Farmington Hills, MI 48334		Assignee or other notification for: Chrysler Financial			0.00	
		VALUE \$				
ACCOUNT NO. Chrysler Financial P.O. Box 5055 Southfield, MI 48086-5055					0.00	
		VALUE \$				
ACCOUNT NO. Chrysler Financial P.O. Box 2993 Milwaukee, WI 53201-2993	H	1st lien on 2006 Sterling Expedito; to surrender and grant relief from stay			60,000.00	
		VALUE \$ 60,000.00				
ACCOUNT NO. 250-0043833-000** Daimier Chrysler Truck Financial P.L.O. Box 354 Lisle, IL 60532-0354	H	Lease for 2007 Chrysler Aspen SUV in name of Wilcom; to assume lease with direct payments by business			29,609.93	4,884.93
		VALUE \$ 24,725.00				

Sheet no. 2 of 4 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

Subtotal
(Total of this page) \$ **103,794.93** \$ **4,884.93**

Total
(Use only on last page) \$ \$

(Report also on
Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

Memphis Consumer Bankruptcy Conference

B6D (Official Form 6D) (12/07) - Cont.

IN RE **Wilson, John Terrell III & Wilson, Jeanna Ruppe**

Case No. **07-40693****

Debtor(s)

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 4315296 First National Bank P.O. Box 168 Shelby, NC 28151-0168	H	1st d/t on business location at 195 N. Main St., Rutherfordton, NC VALUE \$ 81,500.00				195,607.50	114,107.50
ACCOUNT NO. First National Bank P.O. Box 168 Shelby, NC 28151-0168	H	1st lien on 1995 Chevy Kodiak Expeditor; to surrender collateral and grant relief from stay VALUE \$ 20,000.00				20,000.00	
ACCOUNT NO. 3831**** Ford Motor Credit Company P.O. Box 689007 Franklin, TN 37068-9007		1st lien on 2005 Ford F650; to be surrendered and grant relief from stay VALUE \$ 50,000.00				39,834.00	
ACCOUNT NO. G. Abraham Investments, LLC 221 Daniel Rd Forest City, NC 28043		Assignee or other notification for: Daimier Chrysler Truck Financial VALUE \$				0.00	
ACCOUNT NO. Mecklenburg County Clerk Of Court File 07-CVS-19517 801 E. 4th Street Charlotte, NC 28202		Assignee or other notification for: Audio Ethics, Inc. VALUE \$				0.00	
ACCOUNT NO. Shelby Motors, LLC 1310 E. Dixon Blvd. Shelby, NC 28152		Assignee or other notification for: Chrysler Financial VALUE \$ 18,375.00				0.00	

Sheet no. **3** of **4** continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (Total of this page)	\$ 255,441.50	\$ 114,107.50
Total (Use only on last page)	\$	\$

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBETOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 2793207-57 State Employees Credit Union P.O. Box 1376 Forest City, NC 28043	H	1st lien on 2005 Chrysler 300; purch 7.9.04				15,845.44	
VALUE \$ 22,200.00							
ACCOUNT NO. State Employees Credit Union ATTN: Loss Mitigation P.O. Box 25279 Raleigh, NC 27611-5279		Assignee or other notification for: State Employees' Credit Union				0.00	
ACCOUNT NO.		VALUE \$					
ACCOUNT NO.		VALUE \$					
ACCOUNT NO.		VALUE \$					
ACCOUNT NO.		VALUE \$					
ACCOUNT NO.		VALUE \$					
ACCOUNT NO.		VALUE \$					

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Sheet no. 4 of 4 continuation sheets attached to
Schedule of Creditors Holding Secured Claims

Subtotal (Total of this page)	\$ 15,845.44	\$
Total (Use only on last page)	\$ 944,044.97	\$ 433,133.97

(Report also on
Summary of
Schedules.)

(If applicable, report
also on Statistical
Summary of Certain
Liabilities and Related
Data.)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

- Domestic Support Obligations**
Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).
- Extensions of credit in an involuntary case**
Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).
- Wages, salaries, and commissions**
Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).
- Contributions to employee benefit plans**
Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).
- Certain farmers and fishermen**
Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).
- Deposits by individuals**
Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).
- Taxes and Certain Other Debts Owed to Governmental Units**
Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).
- Commitments to Maintain the Capital of an Insured Depository Institution**
Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).
- Claims for Death or Personal Injury While Debtor Was Intoxicated**
Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

2 continuation sheets attached

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

Taxes and Other Certain Debts Owed to Governmental Units

(Type of Priority for Claims Listed on This Sheet)

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CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT		AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY	
			UNLIQUIDATED	DISPUTED				
ACCOUNT NO. 15162444 Rutherford Cty Tax Collector P.O. Box 143 Rutherfordton, NC 28139-0143	J	2006 - 2007 ad valorem taxes on residence			1,688.77	1,688.77		
ACCOUNT NO. 15171634 Rutherford Cty Tax Collector P.O. Box 143 Rutherfordton, NC 28139-0143		2007 personal property taxes for ASAPH			470.81	470.81		
ACCOUNT NO. 15191974 Rutherford Cty Tax Collector P.O. Box 143 Rutherfordton, NC 28139-0143		2007 property taxes on utility trailer owned by ASAPH			28.66	28.66		
ACCOUNT NO. 15206367 Rutherford Cty Tax Collector P.O. Box 143 Rutherfordton, NC 28139-0143		2007 personal property taxes for Wilcom			139.55	139.55		
ACCOUNT NO. 15191615 Rutherford Cty Tax Collector P.O. Box 143 Rutherfordton, NC 28139-0143		2005 - 2006 property taxes on vehicles for Wilcom			1,326.74	1,326.74		
ACCOUNT NO. S.C. Department Of Revenue 301 Gervais St. P.O. Box 125 Columbia, SC 29214	H	State income tax liability			1,234.25	1,234.25		
Sheet no. <u>1</u> of <u>2</u> continuation sheets attached to Schedule of Creditors Holding Unsecured Priority Claims					Subtotal (Totals of this page)	\$ 4,888.78	\$ 4,888.78	\$
(Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)					Total	\$		
(Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)					Total		\$	\$

Memphis Consumer Bankruptcy Conference

B6E (Official Form 6E) (12/07) - Cont.

IN RE Wilson, John Terrell III & Wilson, Jeanna Ruppe

Case No. **07-40693**

Debtor(s)

(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

Taxes and Other Certain Debts Owed to Governmental Units

(Type of Priority for Claims Listed on This Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT		AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
			UNLIQUIDATED	DISPUTED			
ACCOUNT NO. OSI Collections Services, Inc. Act 4540223 P.O. Box 939 Brookfield, WI 53008-0939		Assignee or other notification for: S.C. Department Of Revenue					
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							

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Sheet no. 2 of 2 continuation sheets attached to
Schedule of Creditors Holding Unsecured Priority Claims

Subtotal
(Totals of this page)

\$	\$	\$
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Total
(Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)

\$	4,888.78	
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Total
(Use only on last page of the completed Schedule E. If applicable,
report also on the Statistical Summary of Certain Liabilities and Related Data.)

	\$	4,888.78	\$
--	----	-----------------	----

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor;" include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

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CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 3715-510644-82006 American Express P.O. Box 297879 Ft. Lauderdale, FL 33329-7879	H	Credit Service - disputed as to the amount of late fees, overlimit fees, interest fees, late charges or any other additional fees or charges				6,471.00
ACCOUNT NO. Nationwide Credit, Inc. Act 07122159481 P.O. Box 740640 Atlanta, GA 30374-0640		Assignee or other notification for: American Express				
ACCOUNT NO. Nationwide Credit, Inc. Act 07122159481 3010 Corporate Way Miramar, FL 33025-6547		Assignee or other notification for: American Express				
ACCOUNT NO. 4178-0650-0020-3084 Bank Of America Bankruptcy Dept. Dept NC4-105-03-14 P.O. Box 26012 Greensboro, NC 27420	H	Credit Service - disputed as to the amount of late fees, overlimit fees, interest fees, late charges or any other additional fees or charges				17,935.76
Subtotal (Total of this page)						\$ 24,406.76
Total (Use only on last page of the completed Schedule F. Report also on the Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)						\$

6 continuation sheets attached

Memphis Consumer Bankruptcy Conference

B6F (Official Form 6F) (12/07) - Cont.

IN RE Wilson, John Terrell III & Wilson, Jeanna Ruppe

Case No. **07-40693**

Debtor(s)

(If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)**

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT		AMOUNT OF CLAIM
			UNLIQUIDATED	DISPUTED	
ACCOUNT NO. Bank Of America P.O. Box 15026 Wilmington, DE 19850-5026		Assignee or other notification for: Bank Of America Bankruptcy Dept.			
ACCOUNT NO. Bank Of America Bankruptcy Dept. Dept NC4-105-03-14 P.O. Box 26012 Greensboro, NC 27420	H	For notice purposes regarding personal liability for corporate credit card			27,000.00
ACCOUNT NO. 517805238467**** Capital One Bank P.O. Box 30285 Salt Lake City, UT 84130-0285	H	For notice purposes on account believed to have been satisfied			0.00
ACCOUNT NO. Capital One Bank P.O. Box 85167 Richmond, VA 23285		Assignee or other notification for: Capital One Bank			
ACCOUNT NO. L0705200354 Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill			252.02
ACCOUNT NO. Cleveland County HealthCare System P.O. Box 96072 Charlotte, NC 28296-0072		Assignee or other notification for: Cleveland Regional Medical Ctr			
ACCOUNT NO. Spartan Financial Services Act 5559013-501 P.O. Box 47248 Oak Park, MI 48237		Assignee or other notification for: Cleveland Regional Medical Ctr			

Sheet no. 1 of 6 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **27,252.02**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. (See Instructions Above.)	DEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. L0703600181 Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill				349.83
ACCOUNT NO. Spartan Financial Services Act 5482762-501 P.O. Box 580381 Charlotte, NC 28258-0381		Assignee or other notification for: Cleveland Regional Medical Ctr				
ACCOUNT NO. Spartan Financial Services Act 5482762-501 13730 S. Point Blvd., Suite B Charlotte, NC 28273		Assignee or other notification for: Cleveland Regional Medical Ctr				
ACCOUNT NO. L0626700038 Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill				210.56
ACCOUNT NO. Spartan Financial Services Act 5058703 13730 S. Point Blvd., Suite B Charlotte, NC 28273		Assignee or other notification for: Cleveland Regional Medical Ctr				
ACCOUNT NO. L0705100181 Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill				791.76
ACCOUNT NO. Spartan Financial Services Act 5549613-501 13730 S. Point Blvd., Suite B Charlotte, NC 28273		Assignee or other notification for: Cleveland Regional Medical Ctr				

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Sheet no. 2 of 6 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **1,352.15**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CREDITOR	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill				1,215.81
ACCOUNT NO. Spartan Financial Services Act 5058703-515 13730 S. Point Blvd., Suite B Charlotte, NC 28273		Assignee or other notification for: Cleveland Regional Medical Ctr				
ACCOUNT NO. 1538459 Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill				633.76
ACCOUNT NO. PMAB, Inc. Act J46766 P.O. Box 12150 Charlotte, NC 28220		Assignee or other notification for: Cleveland Regional Medical Ctr				
ACCOUNT NO. Cleveland Regional Medical Ctr 201 E. Grover St. Shelby, NC 28150	W	Medical bill				1,005.00
ACCOUNT NO. Spartan Financial Services Act 3332657 13730 S. Point Blvd., Suite B Charlotte, NC 28273		Assignee or other notification for: Cleveland Regional Medical Ctr				
ACCOUNT NO. 09180936 Laboratory Corp Of America Holdings P.O. Box 2240 Burlington, NC 27216-2240	W	Medical bill				244.00

Sheet no. 3 of 6 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **3,098.57**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBITOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT		AMOUNT OF CLAIM
			UNLIQUIDATED	DISPUTED	
ACCOUNT NO. G001668439 Rutherford Hospital, Inc. Attn: Collection Dept 288 S. Ridgecrest Ave. Rutherfordton, NC 28139	W	Medical bill			150.00
ACCOUNT NO. G001664614 Rutherford Hospital, Inc. Attn: Collection Dept 288 S. Ridgecrest Ave. Rutherfordton, NC 28139	W	Medical bill			150.00
ACCOUNT NO. 1563545 Rutherford Hospital, Inc. Attn: Collection Dept 288 S. Ridgecrest Ave. Rutherfordton, NC 28139	W	Medical bill			150.00
ACCOUNT NO. George Brown Associates, Inc. Act 2047960-1 2200 Crown Point Executive Dr. Charlotte, NC 28227		Assignee or other notification for: Rutherford Hospital, Inc.			
ACCOUNT NO. 03-27-41 Rutherford Orthopaedics 139 Doctor Henry Norris Dr. Rutherfordton, NC 28139	W	Medical bill			108.00
ACCOUNT NO. H859333 Rutherford Radiological Assoc., PA P.O. Box 886 Rutherfordton, NC 28139	W	Medical bill			270.00
ACCOUNT NO. Credit Financial Services Act 02801321 P.O. Box 451 Durham, NC 27702-0451		Assignee or other notification for: Rutherford Radiological Assoc., PA			

Sheet no. 4 of 6 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **828.00**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBITOR	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. H82805VV Rutherford Radiological Assoc., PA P.O. Box 886 Rutherfordton, NC 28139	W	Medical bill				40.00
ACCOUNT NO. Rutherford Radiological Assoc., PA P.O. Box 886 Rutherfordton, NC 28139	W	Medical bill				86.00
ACCOUNT NO. Credit Financial Services Act 5240660002801321 100 W. Morgan St. Durham, NC 27701		Assignee or other notification for: Rutherford Radiological Assoc., PA				
ACCOUNT NO. 7745 Shelby Anesthesiology Associates PA P.O. Box 890561 Charlotte, NC 28289-0561	W	Medical bill				100.48
ACCOUNT NO. Shelby Anesthesiology Associates PA 1106 N Washington St. Shelby, NC 28150		Assignee or other notification for: Shelby Anesthesiology Associates PA				
ACCOUNT NO. 36-01898947 Shelby Children's Clinic 709 Dekalb Street Shelby, NC 28150	H	Medical bill				1,221.00
ACCOUNT NO. Shelby Children's Clinic P.O. Box 70826 Charlotte, NC 28272-0826		Assignee or other notification for: Shelby Children's Clinic				

Sheet no. 5 of 6 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **1,447.48**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 35155 Shelby Women's Clinic, PA 110 West Grover Street Shelby, NC 28150	W	Medical bill				43.71
ACCOUNT NO. 3939688 Spartanburg Regional Hospital System P.O. Box 4595 Spartanburg, SC 29305	H	Medical bill				46.00
ACCOUNT NO. 2793207-93 State Employees' Credit Union P.O. Box 28540 Raleigh, NC 27611-8540	J	Personal loan				3,091.78
ACCOUNT NO. 907022938450**** Verizon Wireless 3 Verizon Place Alpharetta, GA 30004-8510	H	Terminated service				517.00
ACCOUNT NO. Verizon Wireless Bankruptcy Group P.O. Box 3397 Bloomington, IL 61702		Assignee or other notification for: Verizon Wireless				
ACCOUNT NO.						
ACCOUNT NO.						

Sheet no. **6** of **6** continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **3,698.49**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$ **62,083.47**



Consumer Debtor Attorneys
403 S. Washington Street
Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

DATE

Agent
Creditor
Address
City, State Zip

In the Matter of:

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
Chapter 13 No:
SSN:
File Date:
Our File No:
Your Account No: 1234567890

SECTION 362(A) NOTICE LETTER

Dear Sir or Madam:

Since the filing of this Chapter 13 case, the debtors have advised my office that they have received one or more demands for payment on a debt which is included in their bankruptcy proceeding. Since the debtors are protected from such debt collection efforts and other actions by virtue of his Bankruptcy case, you are hereby notified that this action is in willful violation of Section 362 of Title 11 of the United States Code. The contact itself may also violate the Federal Fair Debt Collection Practices Act and the North Carolina Unfair Debt Collection Practices Law.

Accordingly, THIS DEMAND FOR PAYMENT MUST BE WITHDRAWN, DISMISSED AND CANCELED WITHIN TEN (10) DAYS OF THE DATE OF YOUR RECEIPT OF THIS LETTER BY WRITTEN NOTICE TO MY LAW OFFICE or a motion for sanctions will be filed against you in the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division. If it becomes necessary to file such a motion, then we will ask the Court to award damages, legal fees, and punitive damages.

You should also be advised that your failure to withdraw this demand for payment on a timely basis will be used as evidence in this case to prove, among other things, the following:

1. That your violation of the automatic stay is continuing in nature and is further aggravated by your failure to withdraw the said demand for payment as requested herein;
2. That your failure to withdraw the demand for payment on a reasonable and a timely basis as requested herein enhances the claim of the debtor for the award of punitive

MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

75 of 162

Email: klowery@maxgardner.com



Consumer Debtor Attorneys
403 S. Washington Street
Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

-
- damages for a willful violation of the automatic stay;
3. That your collection/bankruptcy system suffers from serious defects and flaws as evidenced by your total failure to respond to this special certified notice from my law office;
 4. That you have failed to implement adequate procedures for the due and lawful receipt and processing of bankruptcy notices and for taking the necessary steps to terminate the collection process after the timely receipt of such notices;
 5. That you have failed to implement any adequate procedures for the timely and proper review of "certified letters" from attorneys representing debtors in pending bankruptcy cases;
 6. That you have failed to take timely, necessary, appropriate and proper actions in this case so as to avoid the filing of a motion for sanctions for an automatic stay violation;
 7. That you have willfully failed to take timely and necessary actions in an effort to mitigate the damages you will suffer in this case;
 8. That you have needlessly increased the legal fees and expenses that have been and will be incurred by the debtors in this case;
 9. That you have waived any right to object to the admission of this letter and of your failure to submit a timely response thereto into evidence at any court hearing in this matter;
 10. That you have admitted that the debtors are entitled to recover at least the amount of actual damages, punitive damages, and legal fees as set forth in this letter;
 11. That this letter may be introduced into evidence at any hearing in this case under Rule 803(6) of the Federal Rules of Evidence; and
 12. That your failure to respond on a timely basis as designated herein may be used against you as a Statement that this is contrary to your pecuniary or proprietary interest as provided for by Rule 804(b)(3) of the Federal Rules of Evidence.

Sincerely,

O. Max Gardner, III
OMGIII/cjh
cc: Steven G. Tate, Chapter 13 Trustee
John and Mary Public

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Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com



Consumer Debtor Attorneys
403 S. Washington Street
Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

DATE

Agent
Creditor
Address
City, State Zip

In the Matter of:

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
Chapter 13 No:
File Date:
Our File No:
Your Account No: 1234567890

**SECTION 362(A) NOTICE LETTER
SECOND AND FINAL NOTICE**

Dear Sir or Madam:

Since the filing of this Chapter 13 case, the debtors have advised my office that they are continuing to receive demands for payment on a debt which is included in their bankruptcy proceeding, despite my notice letter to you dated _____. Since the debtors are protected from such debt collection efforts and other actions by virtue of his Bankruptcy case, you are hereby notified that this action is in willful violation of Section 362 of Title 11 of the United States Code. The contact itself may also violate the Federal Fair Debt Collection Practices Act and the North Carolina Unfair Debt Collection Practices Law.

Accordingly, THIS DEMAND FOR PAYMENT MUST BE WITHDRAWN, DISMISSED AND CANCELED WITHIN TEN (10) DAYS OF THE DATE OF YOUR RECEIPT OF THIS LETTER BY WRITTEN NOTICE TO MY LAW OFFICE or a motion for sanctions will be filed against you in the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division. If it becomes necessary to file such a motion, then we will ask the Court to award damages, legal fees, and punitive damages.

This is your second and final notice.

Sincerely,

O. Max Gardner, III
OMGIII/cjh
cc: Steven G. Tate, Chapter 13 Trustee
John and Mary Public

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MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

Email: klowery@maxgardner.com



O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

Consumer Debtor Attorneys
403 S. Washington Street
Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

DATE

Certified Mail – Return Receipt Requested

Portfolio Recovery Associates
Disputes Department
140 Corporate Boulevard
Norfolk, VA 23502

CO-DEBTOR STAY VIOLATION LETTER

In the Matter of:

Debtor
Court No: 10-00000
SSN: --- -- ---
File Date:
Our No:
Your Account No:

Dear Sir or Madam:

I represent _____ in a Chapter 13 Case filed with the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division. I also represent his widow, _____ who is a co-debtor. Since the filing of this Chapter 13 case, the co-debtor has advised my office that she has received one or more demands for payment on a debt which is included in the estate's bankruptcy proceeding. Since the estate and co-debtor are protected from such debt collection efforts and other actions by virtue of the Bankruptcy case, you are hereby notified that this action is in willful violation of the CO-Debtor Stay provided by Section 1301 of Title 11 of the United States Code. The contact itself may also violate the Federal Fair Debt Collection Practices Act and the North Carolina Unfair Debt Collection Practices Law.

Accordingly, THIS DEMAND FOR PAYMENT MUST BE WITHDRAWN, DISMISSED AND CANCELED WITHIN TEN (10) DAYS OF THE DATE OF YOUR RECEIPT OF THIS LETTER BY WRITTEN NOTICE TO MY LAW OFFICE.

Sincerely,

O. Max Gardner, III
OMG/lej

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MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com



Consumer Debtor Attorneys
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Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

DATE

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999

In the Matter of:
Your Chapter 13 Case
Court No:
SSN:
File Date:
Discharge Date:
Our File No:

CHAPTER 13 DISCHARGE LETTER

Dear John and Mary:

Congratulations on the official completion of your Chapter 13 plan! Enclosed for your information and records is a copy of the Discharge of Debtor after Completion of Chapter 13 Plan issued by the United States Bankruptcy Court.

If any of your creditors hold liens on your motor vehicles, then they are required to release the liens and send you the titles within 30 days of the issuance of this Order. If you do not receive the titles within this time period, then please contact me as such action could provide grounds for legal action against such creditors.

Also enclosed for your use are letters to the credit reporting bureaus, notifying them of your discharge and requesting specific actions pursuant to your credit record. Along with these letters, you must send copies of your driver's license and Social Security Card or Birth Certificate to the credit reporting bureaus as proof of your identity. Please mail the letters **via certified mail** and when you have received the green Return Receipt cards bring them to my office for filing.

I recommend that you secure a credit report from all three of the Credit Reporting Agencies (Equifax, Experian and TransUnion) in about six (6) months and provide the same for me to review. All of your creditors must report only a "0" balance on your credit report after discharge and if they fail to do so, then we could have a violation of the Bankruptcy Code and the Fair Credit Reporting Act and the most recent Fair and Accurate Reporting Act.

The final enclosure is a pamphlet entitled "Using Credit Wisely after Bankruptcy" published

MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

79 of 162

Email: klowery@maxgardner.com



Consumer Debtor Attorneys
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Post Office Box 1000
Shelby, North Carolina 28151-1000
Office: (704)487-0616 Fax: (888) 870-1647
Webpage: www.maxgardner.com

O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

by the National Consumer Law Center. I believe this pamphlet contains much information which you may find useful as you begin life after bankruptcy.

With best regards, I remain

Very truly yours,

O. Max Gardner, III

Enclosures: Discharge Order
Letters to Credit Reporting Agencies (3)
"Using Credit Wisely"

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MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

Email: maxgardner@maxgardner.com

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Email: klowery@maxgardner.com

DATE

CERTIFIED MAIL – RETURN RECEIPT

EQUIFAX INFORMATION SERVICES, LLC
1550 Peachtree St NW
Atlanta, GA 30309-2468

In the Matter of:

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
Chapter 13 Case
Court No:
SSN:
File Date:
Discharge Date:
Our File No:

Dear Sir or Madam:

For your reference I am enclosing a copy of the Order Discharging Debtor after Completion of Chapter 13 Plan entered on _____ in my bankruptcy case. Please update the subject credit file(s) to reflect the discharged status of the debts as indicated on the Final Report from the Trustee. It is my understanding that the Fair Credit Reporting Act and the Regulations implemented by the Federal Trade Commission under the Act requires you to report a current balance of "0" on all of these accounts that have been discharged in my bankruptcy case.

To the extent that any of the discharged debts are reporting anything other than a "0" balance, please consider this letter as a Dispute under the Fair Credit Reporting Act. Consequently, I am requesting you to immediately activate the Automated Dispute Resolution System program with respect to this written notice.

It is also my understanding that pursuant to the Fair Credit Reporting Act you are required to conduct an investigation or reinvestigation of each of the items in my report that are disputed by me and that you will promptly notify me of the results of your investigation. In addition, it is my understanding that each of the above creditors is required to investigate my disputes upon receipt of notification from you of this information. In order to facilitate those investigations I request that you forward this letter, and the enclosures, to each of the creditors listed above. If for any reason you decline to send a copy of my letter and the enclosures to any of the creditors, I request that you promptly advise me so that I can take additional steps to protect myself.

Thank you for your assistance with this matter.

Sincerely,

John Q. Public
enclosures: Discharge Order
Trustee's Final Report & Account
Color copy of Driver's License
Color copy of Social Security Card

DATE

CERTIFIED MAIL – RETURN RECEIPT

EXPERIAN INFORMATION SOLUTIONS, INC.
475 Anton Blvd.
Costa Mesa, CA 92626-7037

In the Matter of:

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
Chapter 13 Case
Court No:
SSN:
File Date:
Discharge Date:
Our File No:

Dear Sir or Madam:

For your reference I am enclosing a copy of the Order Discharging Debtor after Completion of Chapter 13 Plan entered on _____ in my bankruptcy case. Please update the subject credit file(s) to reflect the discharged status of the debts as indicated on the Final Report from the Trustee. It is my understanding that the Fair Credit Reporting Act and the Regulations implemented by the Federal Trade Commission under the Act requires you to report a current balance of "0" on all of these accounts that have been discharged in my bankruptcy case.

To the extent that any of the discharged debts are reporting anything other than a "0" balance, please consider this letter as a Dispute under the Fair Credit Reporting Act. Consequently, I am requesting you to immediately activate the Automated Dispute Resolution System program with respect to this written notice.

It is also my understanding that pursuant to the Fair Credit Reporting Act you are required to conduct an investigation or reinvestigation of each of the items in my report that are disputed by me and that you will promptly notify me of the results of your investigation. In addition, it is my understanding that each of the above creditors is required to investigate my disputes upon receipt of notification from you of this information. In order to facilitate those investigations I request that you forward this letter, and the enclosures, to each of the creditors listed above. If for any reason you decline to send a copy of my letter and the enclosures to any of the creditors, I request that you promptly advise me so that I can take additional steps to protect myself.

Thank you for your assistance with this matter.

Sincerely,

John Q. Public
enclosures: Discharge Order
Trustee's Final Report & Account
Color copy of Driver's License
Color copy of Social Security Card

DATE

CERTIFIED MAIL – RETURN RECEIPT

TRANS UNION, LLC
1561 E. Orangethorpe Ave.
Fullerton, CA 92831-5210

In the Matter of:

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999
Chapter 13 Case
Court No:
SSN: -
File Date:
Discharge Date:
Our File No:

Dear Sir or Madam:

For your reference I am enclosing a copy of the Order Discharging Debtor after Completion of Chapter 13 Plan entered on _____ in my bankruptcy case. Please update the subject credit file(s) to reflect the discharged status of the debts as indicated on the Final Report from the Trustee. It is my understanding that the Fair Credit Reporting Act and the Regulations implemented by the Federal Trade Commission under the Act requires you to report a current balance of "0" on all of these accounts that have been discharged in my bankruptcy case.

To the extent that any of the discharged debts are reporting anything other than a "0" balance, please consider this letter as a Dispute under the Fair Credit Reporting Act. Consequently, I am requesting you to immediately activate the Automated Dispute Resolution System program with respect to this written notice.

It is also my understanding that pursuant to the Fair Credit Reporting Act you are required to conduct an investigation or reinvestigation of each of the items in my report that are disputed by me and that you will promptly notify me of the results of your investigation. In addition, it is my understanding that each of the above creditors is required to investigate my disputes upon receipt of notification from you of this information. In order to facilitate those investigations I request that you forward this letter, and the enclosures, to each of the creditors listed above. If for any reason you decline to send a copy of my letter and the enclosures to any of the creditors, I request that you promptly advise me so that I can take additional steps to protect myself.

Thank you for your assistance with this matter.

Sincerely,

John Q. Public
enclosures: Discharge Order
Trustee's Final Report & Account
Color copy of Driver's License
Color copy of Social Security Card

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME: PUBLIC, JOHN Q. CHAPTER 13 CASE NO.
PUBLIC, MARY E. OUR FILE NO.

ADDRESS: 100 MAIN STREET
ANYWHERE, NC 28999

SSN: --- -- 1234 & --- --5678

DEBTORS.

MOTION FOR EX PARTE ORDER REOPENING CASE
TO PURSUE DISCHARGE VIOLATIONS AND
OTHER RELIEF AGAINST CREDITORS IN THIS PROCEEDING**

COME NOW the above-named debtors, by and through their attorney of record, and respectfully move the Court pursuant to Section 350(b) of Title 11 of the United States Code, Rule 9024 of the Rules of Bankruptcy Procedure and Rule 60 of the Federal Rules of Civil Procedure for the entry of an ex parte order to REOPEN this case in order to pursue possible discharge violations against AMERICREDIT FINANCIAL SERVICES, INC., and possibly other creditors in this proceeding.

THE DEBTORS respectfully show unto this court that a Final Order of Discharge was duly entered in this proceeding on or about _____. Since their discharge, the debtors made multiple demands for the release of the lien on the title to their 1995 Mercury Mystique upon Americredit and Americredit has failed to release the lien on the title to the debtors' vehicle.

THE DEBTORS are informed and believe and therefore allege that it would be in the interest of justice to reopen this case and allow the debtors to proceed with the legal action described and they so move the Court for such relief and for such additional relief as the Court may deem just and proper. Pursuant to 28 U.S.C. § 1930 a fee to reopen should not be charged to the debtors, since this matter relates to their discharge.

Dated this the _____ day of _____ 2012.

O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for the Debtors
P.O. Box 1000
Shelby, NC 28151-1000
N.C. State Bar No. 6164
(704) 487-0616
e-mail: maxgardner@maxgardner.com

CERTIFICATE OF SERVICE

Casey J. Hopper, Legal Assistant, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **MOTION FOR EX PARTE ORDER**

REOPENING CASE TO PURSUE DISCHARGE VIOLATIONS AND OTHER RELIEF AGAINST CREDITORS IN THIS PROCEEDING on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Americredit Financial Services, Inc
801 Cherry St.
Ste 3900
Fort Worth TX 76102
(certified mail—return receipt)

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999

And via the Court's Electronic Case Filing System to:

Steven G. Tate, Trustee
P.O. Box 1778
Statesville, NC 28687-1778

John Bramlett
Bankruptcy Administrator
402 W. Trade St., Room 200
Charlotte, NC 28202-1664

4. I have also served copies of the **MOTION** on all creditors listed on the master mailing matrix, a copy of which is attached hereto, in the same manner and method as described in paragraph number 3 above;

5. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

6. Service as outlined herein was made within the United States of America.

Dated this the _____ day of _____, 2012.

Casey J. Hopper, Legal Assistant
MaxGardnerLaw, PLLC
P.O. Box 1000
Shelby, NC 28151-1000
(704) 487-0616

MATRIX ATTACHED HERETO AS EXHIBIT "A"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME: PUBLIC, JOHN Q. CHAPTER 13 CASE NO.
PUBLIC, MARY E. OUR FILE NO.

ADDRESS: 100 MAIN STREET
ANYWHERE, NC 28999

SSN: --- -- 1234 & --- --5678

DEBTORS.

EX PARTE ORDER REOPENING CASE

THIS CAUSE coming on to be heard, and being heard, before the undersigned Judge presiding over the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division, pursuant to the Motion for Ex Parte Order to Reopen this case in order for the debtors to pursue possible discharge violations against one or more creditors in this proceeding; and

IT APPEARING to the undersigned that this court has jurisdiction over the parties and over the subject matter of this motion; and

IT FURTHER APPEARING to the undersigned that all parties in interest received notice of this motion; and

IT FURTHER APPEARING to the undersigned that the debtors' motion for an ex parte order reopening this case, should be granted.

IT IS THEREFORE SO ORDERED.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order

United States Bankruptcy Court

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

**NAME: PUBLIC, JOHN Q. CHAPTER 13 CASE NO. 01-49999
PUBLIC, MARY E. OUR FILE NO. 11999**

**ADDRESS: 100 MAIN STREET
ANYWHERE, NC 28999**

SSN: --- -- 1234 & --- --5678

DEBTORS.

CERTIFICATE OF SERVICE

Casey J. Hopper, Legal Assistant, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **EX PARTE ORDER REOPENING CASE** on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, (or by certified mail, return receipt, postage prepaid, as indicated below), addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Americredit Financial Services, Inc
801 Cherry St.
Ste 3900
Fort Worth TX 76102
(certified mail—return receipt)

John Q. Public
Mary E. Public
100 Main Street
Anywhere, NC 28999

And via the Court's Electronic Case Filing System to:

Steven G. Tate, Trustee
P.O. Box 1778
Statesville, NC 28687-1778

John Bramlett, Bankruptcy Admin.
402 W. Trade St., Room 200
Charlotte, NC 28202-1664

4. I have also served copies of the **EX PARTE ORDER REOPENING CASE** on all creditors listed on the master mailing matrix, a copy of which is attached hereto, in the same manner and method as described in paragraph number 3 above;

5. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

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6. Service as outlined herein was made within the United States of America.

This the _____ day of _____ 2012.

Casey J. Hopper, Legal Assistant
MaxGardnerLaw, PLLC
P.O. Box 1000, Shelby, NC 28151-1000
(704) 487-0616

MATRIX ATTACHED HERETO AS EXHIBIT "A"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME:

CHAPTER 13 NO.

ADDRESS:

OUR FILE NO.

SSN:

DEBTOR(S)

Adv. Proc. No. 12-_____

PLAINTIFF,

versus

**REGIONS BANK D/B/A REGIONS MORTGAGE
And SELECT PORTFOLIO SERVICING, INC. F/K/A
FAIRBANKS CAPITAL CORPORATION,**

DEFENDANTS.

**Complaint for Contempt of the Permanent Discharge Injunction
and Complaint Seeking Damages in Core Adversary Proceeding
For Improper Fees and Charges in Violation of the Discharge Injunction
And Complaint for a Permanent Injunction**

Introduction

1. This is an action for actual and punitive damages filed by the debtor pursuant to Sections 105, 502(b) and 524 of the Bankruptcy Code and Rule 2016(a) of the Bankruptcy Rules for charging and attempting to collect improper bankruptcy fees and charges after the entry of the Discharge Order in the base case. Plaintiff seeks monetary, declaratory and injunctive relief based on violations of these Sections, the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq* and the North Carolina Unfair and Deceptive Act and Practices Laws, G.S. Section 75-50 *et seq*. The Plaintiff also seeks a Permanent Injunction pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure and Rule 65 of the Federal Rules of Civil Procedure.
2. This action is also filed to enforce the Discharge Order entered in this Chapter 13 case and to enforce and to implement other Bankruptcy Code provisions and Rules related thereto.

Jurisdiction and Venue

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 debtor in that case.
4. This Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code, and pursuant to the Order entered by the Judges of the United States District Court for the Western District of North Carolina on July 30, 1984 (the Referral Order), which Order was entered in accordance with the Bankruptcy Amendments and Federal Judgeship Act of 1984.
5. This matter is a core proceeding and therefore the Bankruptcy Court has jurisdiction to enter a final order. However, in the unlikely event this case is determined to be a non-core

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proceeding (which is denied by the Plaintiff) then and in that event the Plaintiff consents to the entry of a final order by the Bankruptcy Judge.

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

Parties

7. The Plaintiff in this case was a debtor under Chapter 13 of Title 11 of the United States Code in case number _____ filed before this Court. The Plaintiff has completed all of her Chapter 13 plan payments and received her Discharge. This case was reopened and is presently pending before this Court in order to enforce the bankruptcy violations of the Defendants.

8. The Defendant, Regions Bank d/b/a Regions Mortgage (hereinafter Regions Bank) is upon information and belief a Commercial Bank organized and existing under the laws of the State of Alabama with a principal office address of 417 20th Street North Birmingham, AL 35202-0247 and principal mailing address of P O Box 10247, Birmingham, AL 35202. At all times relevant to the allegations herein Regions Bank is the current servicer for the first mortgage loan on the Plaintiff's single family residence.

9. The Defendant Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation ("SPS") is a corporation organized and existing under the laws of the State of Utah with a principal office address of 3815 South West Temple, Salt Lake City, UT 84115. SPS was the former servicer for the debtor's first mortgage loan on her single family residence.

Factual Allegations

10. The Plaintiff filed a Chapter 13 Bankruptcy petition on December 22, 2001. The petition was assigned case number _____.

11. The Plaintiff listed in her Plan and in Schedule D a debt to Fairbanks Capital Corporation ("Fairbanks") secured by a first deed of trust on her residential real estate located at _____. The Plaintiff's plan proposed to pay mortgage arrears to Fairbanks through December, 2001 in the amount of \$2433.53 through her plan, with regular mortgage payments to resume in January, 2002. These regular mortgage payments were to be made by the Plaintiff directly to Fairbanks. After the case was filed, the servicing rights to the first mortgage loan were transferred from Fairbanks to SPS. Those servicing rights are now owned by Regions Bank.

12. During the course of her bankruptcy case, Fairbanks filed a Motion for Relief from Stay on August 23, 2002. This motion was resolved by agreement and was reported as settled at the hearing held on November 1, 2002; however a consent order was never prepared by Fairbanks and therefore no Order was entered as to this motion.

13. Fairbanks filed a second Motion for Relief from Stay on or about April 5, 2004, which was resolved by Consent Order filed with the Court on May 19, 2004.

14. The May 19, 2004 Consent Order provided, among other things, legal fees and expenses in favor of Fairbanks in the amount of \$600.00.

15. The claim for \$600.00 in legal fees and expenses was the only claim applied for and approved by this Court in favor of Fairbanks during the course of the debtor's bankruptcy case.

16. The Debtor received a lawful discharge on October 18, 2006.

17. In approximately October of 2006 Regions Bank took over the servicing rights to the debtor's first deed of trust on her residential real property.

18. On approximately June 26, 2007 the debtor's attorney caused a "Qualified Written Request" to be sent to Regions Bank at the debtor's request, due to the fact that she had some concerns about the servicing of her mortgage loan by Regions Bank.

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19. On approximately September 25, 2007, the debtor's attorney received a response to the "Qualified Written Request" (the "RESPA Response") from Charles N. Parrott of the law firm of Adams and Reese, LLP.

20. The said RESPA Response included a "Customer Account Activity Statement" from Regions Bank, as well as a "Payment History Report" from SPS.

21. The "Payment History Report" from SPS revealed the following post-petition, unauthorized, unapproved and improper corporate advances:

<u>Date:</u>	<u>Payee</u>	<u>Amount</u>	<u>Reason</u>
January 4, 2002	LOGS Financial Services	\$284.96	Statutory Expense Disbursement
January 4, 2002	LOGS Financial Services	\$500.00	Attorney Advance Disbursement
January 25, 2002	LOGS Financial Services	\$8.00	Statutory Expense Disbursement
January 25, 2002	LOGS Financial Services	\$200.00	Attorney Advance Disbursement
September 5, 2002	LOGS Financial Services	\$78.50	Statutory Expense Disbursement
September 5, 2002	LOGS Financial Services	\$200.00	Attorney Advance Disbursement
May 5, 2003	LOGS Financial Services	\$78.50	Statutory Expense Disbursement
May 5, 2003	LOGS Financial Services	\$200.00	Attorney Advance Disbursement
October 6, 2003	Residential Real Estate	\$85.00	Property Preservation Disbursement
April 19, 2004	LOGS Financial Services	\$150.97	Statutory Expense Disbursement
April 19, 2004	LOGS Financial Services	\$500.00	Attorney Advance Disbursement
April 23, 2004	Residential Real Estate	\$85.00	Property Preservation Disbursement
October 27, 2004	Residential Real Estate	\$85.00	Property Preservation Disbursement

22. The April 19, 2004 charges of \$650.97 are presumably for the April 5, 2004 Motion for Relief from Stay, but were charged to the debtor prior to the Court's approval of any fees and charges and are otherwise \$50.97 in excess of the amount approved.

23. The "Customer Account Activity Statement" from Regions Bank revealed the following post-discharge unauthorized, unapproved and improper bankruptcy related corporate advances:

<u>Date:</u>	<u>Amount</u>	<u>Reason</u>
October 20, 2006	\$2054.36	Miscellaneous Foreclosure and Bankruptcy Expenses

24. The debtor alleges that since Regions Bank charged these charges to the debtor two days following her discharge, these are bankruptcy related fees and charges and were not applied for by SPS or Regions Bank prior to her discharge or approved by the bankruptcy court.

25. The cover letter from Charles N. Parrott ("Parrott") which accompanied the RESPA Response stated in part, "Regions certainly understands that it is not allowed to charge the debtor with bankruptcy-related fees and expenses that have not been properly allowed and any corporate advances not allowed *have been deducted*." (Emphasis supplied). The Plaintiff alleges that this statement by Parrott constitutes an admission under Rule 801(d) of the Federal Rules of Evidence.

26. It appears from the "Customer Account Activity Statement" from Regions Bank that the only "deduction" of Corporate Advances occurred on May 24, 2007 in the amount of \$302.63. The remaining charges are well in excess of the \$600.00 approved by the bankruptcy court.

27. The Plaintiff alleges that due to threat of foreclosure and Regions Bank's charging the Plaintiff the improper, illegal and unauthorized bankruptcy related Corporate Advances as alleged herein, the Plaintiff felt forced into selling her property in order to avoid a foreclosure.

28. In connection with the sale of her property, Regions Bank provided the debtor a payoff dated November 26, 2007 which identifies "Recoverable Advance" fees of \$1082.33.

29. On or about November 26, 2008, at the closing of the sale of the Plaintiff's property, Regions Bank was paid the sum of \$50,541.03. On the payoff check, the Plaintiff retained her

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right to sue Regions Bank for the violations as alleged herein.

30. On or about December 12, 2007, the Plaintiff received a check from Regions Bank in the sum of \$324.50. On the face of the check the funds were identified as "escrow surplus refund."

31. The Plaintiff alleges that the escrow surplus refund check was not a refund of any amount of corporate advances improperly and illegally charged to her mortgage loan.

32. The Plaintiff alleges that Regions Bank has not deducted the corporate advances and no such fees were applied for or approved by the Bankruptcy Court during the pendency of her plan except in the amount of \$600.00, which the debtor contends was paid in full through her plan.

Count I – Violation of Discharge Order

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

34. The actions of the Defendants constitute a gross violation of the Discharge Injunction Order as set forth in 11 U.S.C. Section 524(a) and the Order entered in this case on October 18, 2006. The Defendants are clearly attempting to collect these fees in violation of 11 U.S.C. Section 524(a).

35. The imposition of the said unapproved fees constitutes unlawful and illegal bankruptcy fees inconsistent with the decision of this court in *In re Stark*, 242 B.R. 866 (W.D.N.C. 1999).

Count II – Improper Fees Not Approved by the Bankruptcy Court

36. The allegations in paragraphs 1 through 35 of this complaint are realleged and incorporated herein by this reference.

37. The actions of the Defendants by including the improper and unauthorized legal fees and expenses constitute willful and intentional and gross violations of the provisions of Sections 105 and 506 of Title 11 of the United States Code and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure.

38. Rule 2016(a) provides, in pertinent part, that: "An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." The Plaintiff alleges that no such application for fees or attorney services was filed with the Bankruptcy Court by the Defendants during the pendency of her case other than \$600.00 for the second Motion for Relief from Stay.

39. As a result of the above violations, the Defendants are liable to the Plaintiff for actual damages, punitive damages and legal fees.

Count III - Violation Of The Fair Debt Collection Practices Act

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

41. The foregoing acts and omissions by the Defendants constitute violations of the FDCPA, which include, but are not limited to, the following:

- (a) The Defendants 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.

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

Count IV – Additional Violation Of The FDCPA

43. The allegations in paragraphs 1 through 42 of this complaint are realleged and incorporated herein by this reference.

44. The Defendants additionally violated the FDCPA. Defendants' 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.

45. As a result of the above violations of the FDCPA, the Defendants are liable to the Plaintiff for actual damages, statutory damages of \$1,000.00, and attorney's fees.

Count V – Violation of North Carolina Unfair And Deceptive Acts And Practices Laws

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

47. The Plaintiff is a "consumer" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.

48. The Plaintiff's relationship with the Defendants arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.

49. The Defendants were and are "debt collectors" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

50. Under the provision of Section 75-52 of the North Carolina General Statutes the Defendants were and are prohibited from engaging in any conduct the natural consequences of which is to oppress, harass or abuse any person.

51. As a result, the Defendants are liable for statutory damages in the sum of no less than \$4,000.00 for violation of N.C.G.S. Section 75-50, et seq. and the payment of legal fees and expenses.

Count VI – Additional Violation Of NCUDAP

52. The allegations in paragraphs 1 through 51 of this complaint are realleged and incorporated herein by this reference.

53. The actions and conduct of the Defendants were oppressive and abusive in violation of the applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes as follows:

- (a) The Defendants violated 75-54(4) by falsely representing the character, extent, or amount of a debt owed by the debtor; and
- (b) The Defendants violated 75-54(4) by falsely representing the creditor's rights; and
- (c) The Defendants violated 75-55 by collecting or attempting to collect a debt by use of unconscionable means; and

54. The actions and conduct of the Defendants were oppressive and abusive in violation of the applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

55. As a result of the above violations of the NCUDAP, the Defendants are liable to the Plaintiff for actual damages, statutory damages and attorney's fees.

Count VII – Pattern and Practice

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

57. Upon information and belief, the Defendants have engaged in a pattern and practice of tracking and then charging undisclosed and improper legal fees and expenses during Chapter 13 cases and then attempting to collect those fees and expenses after the entry of a final discharge order. The Plaintiff alleges that the Defendants seeks to recapture these unlawful charges upon a mortgage refinance or after the case has been discharged and the debtor is not represented by an attorney or when Defendants' conduct is not subject to the direct scrutiny and control of the Bankruptcy Court.

58. As previously alleged, these unlawful fees and charges are often collected during closings or refinancing that occur post discharge where former Chapter 13 debtors want to sell their homes or refinance their mortgage loans in order to further promote their post discharge fresh start. Many times, instead of delaying the closing by contacting their former bankruptcy attorney or filing something with the Bankruptcy Court, the former debtors will simply pay off the illegal fees.

59. The Plaintiff is informed and believes and therefore alleges that the Defendants are aware of this collection model and have used and employed this model on a regular basis for years as part of their standard operating procedures.

60. The inclusion of these fees post discharge also requires both the debtor and the debtor's attorney to incur time and expense in investigating the source of these charges. Debtors become confused and frustrated by the appearance of these fees post discharge where they have made all of their required payments and then are faced with even more charges related to their bankruptcy. These unlawful practices result in many debtors calling their former bankruptcy attorney's office and complaining that the attorney did not do his or her job during the Chapter 13 case with respect to the mortgage claim.

61. Based on this pattern and practice, this Court should grant significant and substantial punitive damages sufficient enough to prevent the Defendants from continuing this pattern and practice and to deter its future conduct in the Western District of North Carolina.

Count VIII – Permanent Injunction

62. The allegations in paragraphs 1 through 61 of this complaint are realleged and incorporated herein by this reference.

63. The Plaintiff also alleges upon information and belief that pursuant to Rule 7065 of the FRBP and Rule 65 of the FRCP, this Court should issue a permanent injunction against the Defendants which would preclude them from charging such fees without court approval after proper notice and hearing.

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

- A. That the Plaintiff have and recover against the Defendants a sum to be determined by the Court in the form of actual damages;
- B. That the Plaintiff have and recover against the Defendants a sum to be determined by the Court in the form of punitive damages
- C. That the Plaintiff have and recover against the Defendants all reasonable legal fees and expenses incurred by her attorney;
- D. That this Court order the Defendants to pay additional actual damages and statutory damages in a sum to be determined by the Court for violation of N.C.G.S. Section 75-50, et seq.;

- E. That this Court order the Defendants to pay additional actual damages and statutory damages in a sum to be determined by the Court for violating the FDCPA pursuant to 15 U.S.C. Section 1692k;
- F. That the Defendants be permanently enjoined by this Court from attempting to collect such legal fees and charges unless and until such fees and charges have been approved by the Bankruptcy Court during the bankruptcy case with proper notice and hearing; and
- G. That the Plaintiff have such other and further relief as the Court may deem just and proper.

Dated this the _____ day of February, 2010.



O. Max Gardner III
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Attorney for the Debtor
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N.C. State Bar No. 6164
(704) 487-0616/Fax (888) 870-1647
e-mail: maxgardner@maxgardner.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME: Chapter 13 No. _____
Our File No. _____

ADDRESS:

SSN:

Debtors.

_____ **AND WIFE,**

Adversary Proc. No. 12-_____

Plaintiffs,

versus

LITTON LOAN SERVICING, LP

Defendant.

**COMPLAINT SEEKING DAMAGES IN ADVERSARY PROCEEDING
(FCRA, FDCPA & UDAP)**

Introduction

1. This is an action for actual damages, statutory damages, punitive damages, and legal fees and expenses filed by the Plaintiffs for the Defendant's breach of a negotiated Release and Settlement Agreement, 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 U.S.C. Section 1681), the Fair Credit Billing Act (15 U.S.C. Section 1666), the Fair Debt Collection Practices Act (15 U.S.C. Section 1692), the Discharge Injunction (11 U.S.C. Section 524), and the North Carolina Unfair Debt Collections Practices Act (Chapter 75 of the North Carolina General Statutes).

Jurisdiction

2. 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.

3. This Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 28 of the United States Code, and pursuant to the Order entered by the Judges of the United States District Court for the Western District of North Carolina on July 30, 1984 (the Referral Order), which Order was entered in accordance with the Bankruptcy Amendments and Federal Judgeship Act of 1984.

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. This Court also has jurisdiction to hear the Fair Debt Collection Practices Act violations pursuant to Section 1692 of Title 15 of the United States Code; thus, federal subject matter jurisdiction is properly founded upon Section 1331 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. However, in the event this case is determined not to be a core proceeding then and in that event the Plaintiffs consent to the entry of a final order by the Bankruptcy Judge.

Venue

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

Parties

8. Plaintiffs are citizens and residents of Grover, Cleveland County, North Carolina, and are debtors under Chapter 13 of Title 11 of the United States Code. The Plaintiffs are hereinafter referred to as the Plaintiffs or the Debtors.

9. The Defendant, Litton Loan Servicing, LP ("Litton") is a Limited Partnership organized and existing under the laws of the State of Delaware with its principal place of business located at 1013 Centre Road, Wilmington, DE 19805. Litton is the successor in interest to Litton Finance Servicing Corporation ("Litton") pursuant to a Notice of Transfer of Claim filed in the debtors' Chapter 13 case on _____. Pursuant to this Notice of Transfer, Litton became the servicer of the debtors' loan on a 1987 Sterling Providence manufactured home bearing serial number ending in "20807" which is the subject of this action.

Facts

10. On _____ the Plaintiffs purchased a 1987 Sterling Providence mobile home, bearing a serial number ending in "20807" from Quality Built Homes, Inc. in Cherryville, NC for the purchase price of \$26,200.00. The loan was originally financed by All Valley Acceptance Company who transferred, sold or assigned the loan to Litton sometime prior to the filing of the debtors' Chapter 13 petition.

11. On _____, the Plaintiffs sought protection from their creditors by filing a voluntary Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Western District of North Carolina.

12. The 341(a) meeting of creditors was held in Shelby, North Carolina on

_____.

13. The Chapter 13 plan of the Plaintiffs was subsequently confirmed by order of this Court dated _____.

14. In the schedules filed with the petition in this case and on the master mailing matrix filed with the Clerk of this Court, a secured debt was listed in favor of Litton for the first lien on the debtors' 1987 Sterling Providence manufactured home in the approximate amount of \$16,873.44, with \$5014.00 to be paid through the plan as a secured debt and \$11,859.44 to be paid as an unsecured split claim.

15. Litton filed an Objection to Confirmation, incorrectly identifying the subject personal property as a 1997 All Valley Services manufactured home, and identifying the serial number as "SMIINC20807." Litton alleged that the value of the property was \$16,309.15 and not \$5014.00 as set forth in the debtors' petition.

16. On _____, a Consent Order was entered in the debtors' bankruptcy case wherein the value of the subject mobile home was set at \$8500.00 to be paid as a secured claim in favor of Litton at 10% interest. The unsecured split claim was set on the records of the Trustee at \$7996.35.

17. The Trustee disbursed the total sum of \$8500.00 plus interest in the sum of \$1957.31 on the secured claim, and \$2333.43 on the unsecured split claim. The Trustee disbursed payments to Litton until _____ at which time the disbursements began going to Litton pursuant to the Notice of Transfer of Claim.

18. At all times alleged herein, the Plaintiffs state that the subject debt to Litton was secured by a mobile home which was and is a 1987 Sterling Providence manufactured home bearing a serial number ending in "20807" (said serial number is otherwise not accurately identifiable at the time of the filing of this complaint). However, Litton assigned the subject debt an account number of 8717043.

19. On _____, the Plaintiffs were granted a discharge of all dischargeable debts pursuant to 11 U.S.C. § 524. The Plaintiffs allege that this Discharge included the entire debt owed to Litton under the Plan on the subject mobile home.

20. On _____, the Plaintiffs' attorney sent via certified mail return receipt requested, a demand for the release of the lien on the title to the subject mobile home to Litton at 4828 Loop Central Drive, Houston, TX 77081-2226.

21. On _____, Litton responded with written correspondence which stated in pertinent part, "Litton Loan Servicing is in the process of releasing the lien on the property." The said letter referenced loan number 8717043.

22. On _____, Litton provided the Plaintiffs with Loan Satisfaction Documents including a Lien Release and a copy of the Manufactured Home Retail Installment Sales Contract and Security Agreement. The said Loan Satisfaction Documents referenced loan number 8717043.

23. The Plaintiffs filed an Adversary Proceeding bearing case number _____ on _____ alleging in part that Litton had violated the Discharge Injunction, and various state and federal laws, stemming from their attempts to collect on the loan that is the subject of this action.

24. The Adversary Proceeding was resolved by the terms of a Release and Settlement Agreement signed by the Plaintiffs on _____.

25. A Notice of Voluntary Dismissal of the Adversary Proceeding was filed by the Plaintiffs on _____ and the adversary case was closed on _____.

26. The Release and Settlement Agreement provided in Paragraph 2 that "Defendants will terminate any further collection efforts regarding the loan and agree that Claimants' debt relative to the Loan has been satisfied and/or discharged in the Claimants' Chapter 13 Bankruptcy Case. Defendants will not take any further collection action relative to the loan."

27. On approximately _____ the male debtor obtained a copy of his credit reports from the three major consumer credit reporting agencies.

28. The subject debt to Litton is being reported as follows. The male debtor filed a written dispute with Equifax and served a copy of the same on Litton in which he requested that the trade line be changed to eliminate the references to the "charge off" and to reflect a "0" balanced owed as required by the Fair Credit Reporting Act and Regulations promulgated thereunder by the Federal Trade Commission. The written notices were mailed by certified mail return receipt and counsel for the debtor has possession of the letters and the Postal confirmation of delivery forms. Notwithstanding this dispute, Litton has failed and refused to change the tradeline and it is still reported as follows:

<u>Account No.</u>	<u>Experian</u>	<u>Equifax</u>	<u>TransUnion</u>
871XXXX	Charge-Off	Bad debt & Placed for collection & skip CHARGED OFF ACCOUNT	unrated or bankrupt

29. At all times relevant to the allegations herein:

A. The Defendant has substantially frustrated the discharge order entered in this case and Defendant's 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 Plaintiffs were 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 Defendant at all times relevant to the allegations in this complaint knew that the Plaintiffs were represented by an attorney in connection with their 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 Plaintiffs 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, in violation of the applicable provisions of Chapter 75 of the North Carolina General Statutes, commonly known as the Unfair Debt Collection Practices Act, in violation of the North Carolina Retail Installment Sales Act, and in violation of Section 1692 of Title 15 of the United States Code, commonly known as the Fair Debt Collections Practices Act; and

E. The Defendant intentionally failed to correct the erroneous credit information in an effort to indirectly collect a discharged debt from the Plaintiffs in direct breach of the _____ Settlement Agreement.

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

31. As a result of these allegations the Plaintiffs are entitled to the recovery of actual damages, including emotional distress, punitive damages, statutory damages, legal fees and expenses.

32. The Plaintiffs have engaged in numerous meetings with their attorney and members of his staff about this matter.

33. The Defendant had an affirmative duty under *Nelson v Chase Manhattan Mortgage Corp.*, 282 F.3d 1057 (9th 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 May 19, 2006. The Defendant willfully, intentionally and without any just cause failed to comply with this duty. The receipt of the order of discharge by the Defendant 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.

34. The Defendant failed to cause the consumer credit reports of the Plaintiffs to be amended so as to list all debts discharged in bankruptcy has having a "0" credit balance. 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."

35. 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)

36. The allegations in paragraphs 1 through 35 of this complaint are realleged and incorporated herein by this reference.

37. As a result of the unlawful actions of the Defendant as alleged herein the

Plaintiffs have been required to devote countless and unnecessary hours to seek to correct the erroneous information on their consumer credit report. 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 inaccurate, and to report as disputed any information known to be disputed by the Plaintiffs. 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.

38. The Plaintiffs have constantly worried about this situation and have feared that the Defendant had some improper motive for the improper credit reporting.

39. As a result of the willful and intentional violations of this statute the Plaintiffs are entitled to the recovery of actual damages, statutory damages, costs and legal fees.

Second Claim for Relief
(Unfair Deceptive Acts and Practices)

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

41. The Plaintiffs are "consumers" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.

42. The relationship between the Plaintiffs and the Defendant arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.

43. The Defendant was and is a "debt collector" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

44. Under the applicable provision of Section 75-52 of the North Carolina General Statutes, the Defendant was and is prohibited from engaging in any conduct the natural consequences of which is to oppress, harass or abuse any person.

45. The actions and conduct of the Defendant were oppressive and abusive in violation of the applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

46. As a result thereof, the Defendant is liable to the Plaintiffs for statutory damages in the sum of no less than \$4,000.00 and the payment of legal fees and expenses.

Third Claim for Relief
(Fair Debt Collection Practices Act)

47. The allegations in paragraphs 1 through 46 of this complaint are realleged and incorporated herein by this reference.

48. The actions and conduct of the Defendant in this case constitute unfair and deceptive acts and practices in violation of the provisions of Fair Debt Collection Practices Act. The unfair acts and practice of the Defendant arose out of their willful neglect to amend, modify and correct the erroneous reporting of credit information months after entry

of the Order of Discharge, and months after negotiating a Release and Settlement Agreement to resolve the prior adversary proceeding, and out of their breach of the affirmative duty to report a zero balance owed on the Plaintiffs' account.

49. The actions of the Defendant were intentional and designed to coerce the Plaintiffs into paying a debt that had been discharged in bankruptcy in order to "clear" the negative information from their credit history.

50. As a result of the unfair acts and deceptive practices of the Defendant, the Plaintiffs are entitled to the recovery of actual damages, statutory damages, legal fees and expenses.

Fourth Claim for Relief
(Discharge Injunction)

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

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

53. 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 Defendant pursuant to the provisions of Section 105 of the Code.

54. In order to protect the Debtors who have completed their Chapter 13 plans and secured a full discharge thereunder this Court must impose sanctions against the Defendant for their misconduct in this case.

Fifth Claim for Relief
(Fair Credit Billing Act)

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

56. As a result of the allegations herein the Defendant has failed to comply with the applicable provisions of the Fair Credit Billing Act.

57. The Defendant has failed to institute any reasonable investigation about the disputed information on the consumer credit report of the Plaintiffs and have improperly and unlawfully failed to correct such erroneous information.

Sixth Claim for Relief
(Breach of Settlement Agreement)

58. The allegations in paragraphs 1 through 57 of this complaint are realleged and incorporated herein by this reference.

59. As a result of the allegations herein the Defendant has failed to comply with the terms of a negotiated Release and Settlement Agreement.

60. The Defendant intentionally failed to correct the erroneous credit information in an effort to indirectly collect a discharged debt from the Plaintiffs in direct breach of the _____ Settlement Agreement, which provides in Paragraph 2, "Defendants will terminate any further collection efforts regarding the loan and agree that Claimants' debt relative to the Loan has been satisfied and/or discharged in the Claimants' Chapter 13 Bankruptcy Case. Defendants will not take any further collection action relative to the loan."

61. 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 pray of the Court as follows:

- A. That the Plaintiffs have and recover against the Defendant a sum in excess of \$5,000.00 in the form of actual damages;
- B. That the Plaintiffs have and recover against the Defendant a sum in excess of \$5,000.00 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 this Court order the Defendant to pay additional actual damages and statutory damages in a sum to be determined by the Court for violation of N.C.G.S. Section 75-50, et seq.;
- E. 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; and
- F. That the Plaintiffs have such other and further relief as the Court may deem just and proper.

Date this the _____ day of _____, 2012.



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3. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

a) All discovery shall be commenced in time to be completed by _____ (date).

[if needed] Discovery on

(identify any issues requiring early discovery) will be completed by _____ (date).

b) Discovery Limits:

- 1) Maximum of _____ (ordinarily 20) interrogatories by each party to any other party.
- 2) Maximum of _____ (ordinarily 20) requests for admission by each party to any other party.
- 3) Maximum of _____ depositions by plaintiff(s) and _____ by defendant(s) (ordinarily 6 each) [or _____ by each plaintiff and _____ by each defendant].

c) Reports from retained experts under Rule 26(a)(2) will be due:

-from plaintiff(s) by _____ (date)

-from defendant(s) by _____ (date)

Supplementations under Rule 26(e) due _____ (list time(s) or interval(s))

4. Other Items. [Attach separate paragraphs as necessary if parties disagree.]

a) The parties [] request [] do not request a conference with the court before entry of the scheduling order.

b) All potentially dispositive motions should be filed by _____ (date, ordinarily one month after the close of discovery)

c) Settlement:

[] is likely

[] is unlikely

[] cannot be evaluated prior to _____ (date)

[] may be enhanced by use of the following ADR procedure:

[] Mediated Settlement Conference

[] binding arbitration

[] judicial settlement conference

[] other _____

The parties agree that the above selected ADR procedure would be most useful if conducted:

- after resolution of any outstanding dispositive motions, but prior to further discovery;
- after an initial round of preliminary discovery to be completed by _____ (date);
- after the completion of discovery;
- after resolution of summary judgment motions, if any
- not applicable.

- d) Final lists of witnesses and exhibits under Rule 26(a)(3) are due:
 - from plaintiff(s) by _____ (date)
 - from defendant(s) by _____ (date)
- e) If the case is ultimately tried, trial is expected to take approximately _____ days.

5. Please identify any other matters regarding discovery or case management which require the Court's attention (e.g., concerns re: confidentiality, protective orders, etc., unmovable scheduling conflicts)

Plaintiff's Counsel *Party* *Date*

Defendant's Counsel *Party/Date*

Plaintiff's Counsel *Party* *Date*

Defendant's Counsel *Party/Date*

(attach additional sheets if necessary)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME:

**CHAPTER 13 NO.
OUR FILE NO.**

ADDRESS:

SSN: --- -- 5707

DEBTOR(S).

**MALE DEBTOR, and wife,
FEMALE DEBTOR**

Adversary Proc. No. _____

Plaintiffs,

versus

**CITIGROUP, INC., AND
CITIFINANANCIAL MORTGAGE
COMPANY, INC.,**

DEFENDANTS.

RULE 26 INITIAL DISCLOSURES OF PLAINTIFFS

Plaintiffs, by and through their undersigned counsel, submit their initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, as made applicable pursuant to Rule 7026 of the Federal Rules of Bankruptcy Procedure, to Defendants, Citigroup, Inc. and CitiFinancial Mortgage Company, Inc. ("Defendants"). Plaintiffs will timely supplement these disclosures if and as required in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and any orders of the Court.

These initial disclosures are made subject to the following conditions and objections: (a) Plaintiffs disclose herein only information concerning the claims made in the complaint; (b) Plaintiffs disclose herein only information that is currently known to them; and (c) in accordance with Rule 26(a)(1)(A), Plaintiffs supply addresses and telephone numbers for individuals identified below, subject to and without waiving the attorney-client privilege as it relates to conversations between the individuals identified and counsel, and their current and former employees; and Plaintiffs object to any contacts between any parties and such employees without Plaintiffs' expressed consent.

A. Rule 26(a)(1)(A): The name, and if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information:

RESPONSE: In addition to both of the **Plaintiffs and their minor daughter**, the following individuals are likely to have discoverable information that Plaintiffs may use to support their claims:

- 1.
- 2.

These individuals are familiar with the file records of the Plaintiffs and will also be called as witnesses in this case:

4. S. Andrew Jurs, Esq.
Anna S. Gorman
Debbie Fletcher
Judy Thompson
Poyner & Spruill, LLP
One Wachovia Center
301 S. College Street,
Ste. 2300
Charlotte, NC 28202
5. David Schilli
Robinson, Bradshaw & Hinson, PA
101 N. Tryon St. Ste. 1900
Charlotte, NC 28246

These individuals have knowledge about the prior Motions for Sanctions cases referred to in Plaintiffs' complaint.

B. Rule 26(a)(1)(B): A copy of or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment:

RESPONSE: Plaintiffs may use the following documents in their possession custody or control to support their claims, unless solely for impeachment:

1. Loan documents pertaining to the second deed of trust including the Cancellation and Satisfaction.
2. TransUnion Credit Reports for both Plaintiffs and any subsequent credit reports obtained by the Plaintiffs since the filing of the complaint.
3. Chapter 13 Plan and Petition.
4. Motion for Sanctions dated September 10, 1999.
5. Motion for Sanctions dated July 20, 2001.
6. Motion for Sanctions dated April 15, 2002.
7. Release and Settlement Agreement dated December 16, 2000.
8. Release and Settlement Agreement dated October 17, 2001.
9. Release and Settlement Agreement dated December 9, 2002
10. Adversary Complaint bearing case number 05-4059.
11. July 9, 2004 Discharge Order.

*The Plaintiffs will also use all documents and records referred to in any of the motions identified herein, attached as Exhibits thereto, all discovery provided and produced

by all parties in the prior cases, all transcripts of all prior hearings, and any other document, record or other form of data used or referred to by any party in any of the prior cases.

C. Rule 26(a)(1)(C): A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

RESPONSE and Notice of Expert Witnesses: The Plaintiffs are in the process of retaining the services of a Mortgage Broker and a Certified Public Accountant to review the impact on the FICO credit score as a result of the actions of the Defendants. The Mortgage Broker is Terri Ellison and the Certified Public Accountant is Kevin Byers. The Plaintiffs are also in the process of securing an expert on Consumer Credit Reports, Evan Hendricks, to evaluate their claims. As soon as these parties have prepared reports the same will be produced and these experts can then be made available for depositions by the Defendants. The Plaintiffs will also submit redacted copies of the time and expense records of their attorneys and all of their out-of-pocket expenses for travel, long-distance calls, postage, and lost time from work related to this case.

D. Rule 26(a)(1)(D): For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

RESPONSE: Not Applicable.

Plaintiffs reserve the right to supplement this disclosure as matters pertaining to this dispute continue.

Dated this the _____ day of _____, 20_____.



O. Max Gardner III
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Attorney for the Plaintiffs
P.O. Box 1000, Shelby, NC 28151-1000
N.C. State Bar No. 6164
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CERTIFICATE OF SERVICE

O. MAX GARDNER III, attorney for the Plaintiffs, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **RULE 26 INITIAL**

DISCLOSURES OF PLAINTIFFS on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, (or by certified mail, return receipt, postage prepaid, as indicated below), addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Debtors

And via the Court's Electronic Case Filing System to:

Robert E. Harrington
Andrew W. J. Tarr
Robinson, Bradshaw & Hinson
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

Steven G. Tate, Trustee
P.O. Box 1778
Statesville, NC 28687-1778

John Bramlett
Bankruptcy Administrator
402 W. Trade St., Room 200
Charlotte, NC 28202-1664

4. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;
5. Service as outlined herein was made within the United States of America.

Dated this the _____ day of July, 2006.



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Attorney for the Plaintiffs
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O. Max Gardner, III Attorney at Law ~ Kerry L. Lowery, Of Counsel

January 26, 2012

Certified Mail – Return Receipt Requested

Alice Brown, Vice President
Oakdale Mortgage Servicers, Inc.
PO Box 1492
Oakdale, NC 28000

RE: Jim and Tammy Baker
Loan No: 000-123-456

**NOTICE TO PRESERVE
ELECTRONIC EVIDENCE**

Dear Ms. Brown:

I write as counsel for Sheila B. Laws and Ronnie E. Laws, and the punitive class of the persons identified in the lawsuit filed by the Laws (hereinafter "Plaintiffs") to advise you of a claim for damages and other relief against you growing out of the methods and tactics pursuant to which Moore, Schneider & Prior ("MSP") and Priority Trustee Services of NC, L.L.C. ("PTS") have conducted foreclosures in North Carolina.

I have enclosed a summons and complaint as service of process.

Plaintiffs demand that you preserve documents, tangible things and electronically stored information that are potentially relevant to the issues in this case. As used in this letter, the terms you and your refer to both MSP and PTS, and their predecessors, successor, parents, subsidiaries, divisions and affiliates and their respective officers, directors, agents, attorneys, accounts, employees, partners, and other persons occupying similar positions of performing any functions on their behalf.

Much of the information that is subject to disclosure or responsive to discover in this case will be stored on your current and former computer systems and other media and devices, including personal digital assistants, voice messaging systems, online repositories and cell phones. The term Electronically Stored Information (hereinafter "ESI") should be afforded the broadest possible meaning and includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically, optically or otherwise stored as:

- digital communications (for example email, voicemail, and instant messaging)
- email service stores (for example lotus domino.nsf or Microsoft exchange.edb)
- word processed documents (for example Word or WordPerfect files and all drafts thereof)
- spreadsheets and table

MaxGardnerLaw, PLLC. is designated as a Federal Debt Relief Agency by an Act of Congress and the President of the United States and has proudly assisted consumers seeking relief under the US Bankruptcy Code. We assist people in the filing of consumer bankruptcy cases under Chapters 7, 11, 12 and 13.

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- accounting application data
- imaging and facsimile files
- scan recording of any conversations with any putation class member
- databases (for example Access, Oracle, SQL Server data)
- Contact and relationship data management (for example Outlook, Ask or Interaction)
- Calendar and diary application data
- online access data (for example temporary internet files, history files and cookies)
- presentations (for example PowerPoint and Corel presentations)
- network access and server activity logs relating to information exchanged between defendants and by defendants with third parties
- project management application data
- backup and archival files

Plaintiffs hereby demand that you preserve both accessible and inaccessible ESI. That demand is reasonable and necessary. Pursuant to the North Carolina Rules of Civil Procedure you must identify all sources of ESI you decline to produce and demonstrate why such sources are not reasonably accessible. For good cause shown, the court may order production of ESI even if it is not reasonably accessible. Accordingly you must preserve ESI that you deem inaccessible so as not to preempt the court's authority.

Preservation requires immediate intervention

You must act immediately to preserve potentially relevant ESI, including, without limitation, information and the earlier of a created or last modified date for ESI concerning any foreclosure conducted by you in the State of North Carolina from or after February 1, 2004, through the date of this demand. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must immediately intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents or running any application may irretrievably alter the evidence contained therein and constitute spoliation of evidence.

Preservation requires action

You are directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things and to act diligently and in good faith to secure and audit compliance with that litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and devices, that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations that could result in spoliation include:

- purging the contents of email repositories by age, capacity or any other criteria
- using data or media wiping, disposal, erasure of encryption utilities or devices
- overriding erasing, destroying or discarding backup media
- reassigning, re-imaging or deposing of systems, servers, devices or media
- running antivirus or other programs affecting wholesale metadata alteration
- releasing or purging online storage repositories

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- using metadata stripper utilities
- disabling server, packet or local instant messaging login
- executing drive or file defragmentation or compression programs

Guard against deletion

You should anticipate that your officers, employees, or others may seek to hide, destroy or alter ESI. This is not a concern that is unique to you or your companies. Rather it is simply conduct that occurs with such regularity that any custodian of ESI and their counsel must anticipate and guard against its occurrence. You are directed to preserve complete backup tape sets (including differentials and incrementals) containing emails and ESI for any person involved in the foreclosure of any mortgage loan in North Carolina from February 1, 2004 through the present. You should also take affirmative steps to prevent anyone with access to your data, systems or archives from seeking to modify destroy or hide ESI.

System sequestration or forensic sound imaging

As an appropriate and cost effective means of preservation you should remove from service and securely sequester the systems, media and devices housing potentially relevant ESI of any lawyer that has appeared in any bankruptcy case in the State of North Carolina for any individual for whom PTS serves as a substitute trustee from February 1, 2004 through the present. In the event that you deem it impractical to sequester those systems, we believe that the breath of preservation required, coupled with the modest number of systems implicated, dictates that forensically sound imaging of the systems identified above is expedient and cost effective. As we anticipate the need for forensic examination of one or more of the systems and the presence of relevant evidence in forensically accessible areas of the drives, we demand that you employ forensically sound ESI preservation methods. Failure to use such methods imposes a significant threat of spoliation and data loss. Be advised that a conventional copy, backup or ghosting of a hard drive does not produce a forensically sound image because it only captures active, unlocked data files and fails to preserve forensically significant data existing in for example unallocated clusters and slack space.

You anticipate that certain ESI, including but not limited to spreadsheets and databases will be sought in the forms or form in which it was ordinarily maintained, that is in native form. Accordingly, you should preserve ESI in such native forms and should not employ methods to preserve ESI that remove or degrade the ability to search ESI by electronic means or that make it difficult or burdensome to use that information.

You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a files name, size, custodian, location and dates of creation and last modification or access. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files.

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As hard copies do not preserve electronic search ability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored version. If information exists in both electronic and paper forms, you should preserve both the forms.

We desire to work with you to agree upon an acceptable protocol for forensically sound preservation and can supply a suitable protocol if you will furnish an inventory and description of the systems and media to be preserved. Alternatively if you promptly disclose the preservation protocol you intend to employ, perhaps we can now identify any points of disagreement and resolve them.

A successful and compliant ESI preservation effort requires expertise. If you do not currently have such expertise, we urge you to engage the services of an expert in electronic evidence and computer forensics. Perhaps our respective experts can work cooperatively to secure a balance between evidence preservation and burden that's fair to both sides and acceptable to the court.

I am available to discuss reasonable preservation steps; however, you should not defer preservation steps pending such discussions if ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay of production of evidence to which we are entitled, that failure would constitute spoliation of evidence.

Please confirm no later than _____, that you have taken the steps outlined in this letter to preserve ESI and tangible documents potentially relevant to this action. If you have not undertaken the steps outlined above, or have taken other actions, please describe what you have done to preserve potentially relevant evidence.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'O. Max Gardner III'.

O. Max Gardner III
OMGIII/cjh

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SUBPOENA FOR RULE 2004 EXAMINATION

Purpose of the Form

This subpoena is for use in conjunction with an examination held pursuant to Fed. R. Bankr. P. 2004. It may be used to compel an entity to appear and testify and to produce documents for inspection and copying. A subpoena is not necessary to compel the debtor to attend a Rule 2004 examination. Service of the order for the examination is sufficient.

Variations of this form are used in adversary proceedings and bankruptcy cases. Form 255 is used to compel a witness to appear and testify at a trial or deposition in an adversary proceeding. The form also can be used to command the production of books, documents, electronically stored information, or tangible things for inspection and copying or to permit the inspection of premises. Form 256 is used for the same functions in a bankruptcy case.

Rule 45 of the Federal Rules of Civil Procedure, which is incorporated by Fed. R. Bankr. P. 9016, governs the use of subpoenas. Rule 45 was amended in 2006 “to conform the provisions for subpoenas to changes in other discovery rules, largely related to discovery of electronically stored information.” Advisory Committee Note to 2006 Amendments. The bankruptcy subpoena forms were revised to conform to the Rule 45 amendments.

Applicable Law and Rules

1. Fed. R. Bankr. P. 2004 permits any party in a bankruptcy proceeding to obtain a court order for the examination of any entity. (A copy of the order should be attached to the subpoena.) Rule 2004(b) limits the scope of the examination to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In chapter 11 cases, chapter 12 cases, and chapter 13 cases, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or the formulation of a plan.
2. Rule 2004(c) provides that “the attendance of an entity for examination and the production of documents . . . may be compelled in the manner provided in Rule 9016 for the attendance of a witnesses at a hearing or trial.”
3. Fed. R. Bankr. P. 9016, which incorporates Fed. R. Civ. P. 45, governs the use of a subpoena to produce evidence, to permit inspection of premises, or to command attendance at a trial, hearing, or deposition. Rule 45(a).

4. A subpoena is not necessary to compel the debtor to attend an examination under Rule 2004. 1983 Advisory Committee Note. Service of a copy of the order for the examination is sufficient to compel the debtor's attendance. There are no territorial limits on the service of an order for a Rule 2004 examination on the debtor. Rule 2004(d).
5. Because Rule 2004(d) applies only to the debtor, a subpoena must be used to compel a nondebtor to attend.
6. Although the order for the Rule 2004 examination is issued by the court in which the bankruptcy case is pending, the subpoena commanding attendance at the examination is issued by the court for the district in which the examination is to be held. *See*, Rule 45(a)(2).
7. At the request of a party, the clerk shall issue a subpoena, signed but otherwise in blank. The party must complete the subpoena before it is served. Rule 45(a)(3).
8. As an officer of the court, an attorney may issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice. An attorney also can issue a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is admitted to practice in that district or if the examination was ordered in a bankruptcy case in a court in which the attorney is authorized to practice. Rule 2004(c).
9. A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. Rule 45(c)(1). The court on behalf of which the subpoena was issued shall enforce this duty and impose an appropriate sanction upon a party or attorney in breach of the duty.
10. In addition to compelling testimony, a subpoena can require the person to whom it is directed "to produce documents, electronically stored information, or tangible things or to permit the inspection of premises . . ." Rule 45(a)(1)(C).
11. A subpoena may require a person who is not a party or an officer of a party to travel to an examination up to 100 miles from the place where that person resides, is employed, or regularly transacts business in person, or, subject to certain restrictions, to travel from anyplace within the state. Rule 2004(c), Rule 45(c)(3). The debtor may be ordered to attend an examination at any time and place designated by the court. Rule 2004(d).
12. If a person resides beyond the geographic limits of a subpoena from the court where the bankruptcy case is pending, the order for the Rule 2004 examination

may be entered and certified by the court where the case is pending, and then filed in the district where the person resides. Then the subpoena is issued in the name of the latter court and the examination is held in the district where the person resides. *In re Texas International Co.*, 97 B.R. 582 (Bankr. C.D. Calif. 1989).

13. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Rule 45(b)(1).
14. Service of a subpoena upon a person named therein is made by delivering a copy of the subpoena to the person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Rule 45(b)(1).
15. An entity other than the debtor shall not be required to attend a Rule 2004 examination unless the mileage and one day's witness fee are tendered first. Rule 2004(e). If debtor is to be examined, no fees need be tendered unless the deposition is to be taken more than 100 miles from the debtor's residence. If the debtor lives more than 100 miles away, the debtor shall be tendered mileage for the excess of 100 miles. Rule 2004(e).
16. Computation of the fees and allowances to be paid a witness for attending a Rule 2004 examination is governed by 28 U.S.C. § 1821.
17. As of December 1, 2008, the witness fee was \$40 per day, 28 U.S.C. § 1821(b), and the mileage allowance for an automobile was 58.5 cents per mile, 41 C.F.R. § 301-10.303.¹ Computation of the mileage allowance is set by a uniform table maintained by the General Services Administration. 28 U.S.C. § 1821(c)(2).
18. Subject to the restrictions in Rule 45(c)(3)(A)(ii), a subpoena may be served at any place within the district where it is issued, at any place within 100 miles of the place of examination or production (whether or not within the district), or at any place within the state where a state statute or court rule permits service of a subpoena issued by a state court of general jurisdiction sitting at the place of the examination. In addition, when provided by a federal statute, the court may, for cause, authorize the service of a subpoena at any other place. Rule 45(b)(2).
19. Subpoenas are an exception to the nationwide service of process in bankruptcy cases. Fed. R. Bankr. P. 7004(d).

¹ Current information on the mileage rate is available on the Code of Federal Regulations website at <http://www.gpoaccess.gov/cfr/index.html> by searching for 41 C.F.R. § 301-10.303.

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20. “Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.” Rule 45(b)(4).
21. The duties of a person responding to a subpoena to produce documents or electronically stored information are set out in Rule 45(d). The subdivision includes restrictions on the production of information subject to a claim that it is privileged or subject to protection as trial-preparation material, Rule 45(d)(2), and on the production of electronically stored information from sources that are not reasonably accessible, Rule 45(d)(1)(D).
22. Documents shall be produced as they are kept in the usual course of business or the records may be organized and labeled to correspond with the categories set out in the subpoena. Rule 45(d)(1)(A). If the subpoena does not specify the form for producing electronically stored information, the information shall be produced in the form in which the person responding to the subpoena ordinarily maintains it or in a form that is reasonably usable. Rule 45(d)(1)(B).
23. Rule 45(e) provides that failing to obey a subpoena without adequate excuse may be deemed contempt of court.

Instructions for Subpoena

Caption

1. Identify the judicial district in which the bankruptcy case was filed. Example: “Eastern District of California.”
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition.
3. “Case No.”: Insert the bankruptcy case number assigned by the court when the case was filed.
4. “Chapter”: Insert the chapter of the Bankruptcy Code under which the case is pending.

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To

Insert in this box the complete name and address of the witness to be examined. (The clerk may issue a subpoena, signed but otherwise in blank, but the form must be filled in, including the name and address, before the subpoena is served.)

Check boxes followed by “YOU ARE COMMANDED”

Check the appropriate box or boxes.

Place of Testimony (below first checkbox)

Insert in this box the complete address of the place where the witness is to appear and be examined. The address should include the name of the building, the room number, street number and name, city, state, and zip code.

Date and Time

Insert in this box the date and time of the Rule 2004 examination.

You Are Commanded to Produce (second checkbox)

Insert in this box the exact description of any and all books, documents, electronically stored information, or tangible things the witness is required to produce. If no evidence is to be produced, enter “NONE.”

Place

Insert in this box the complete address of the place where the witness is to produce the books, documents, electronically stored information, or tangible things. The address should include the name of the building, the room number, street number and name, city, state, and zip code. If no evidence is to be produced, enter “Not Applicable.”

Date and Time

Insert in this box the date and time at which the witness is to produce the books, documents, electronically stored information, or tangible things. If no evidence is to be produced, enter “Not Applicable.”

Issuing Officer’s Signature and Title (bottom of front of form)

The person who issues the subpoena signs here, states his or her title (for example, “deputy clerk” or “attorney”), and dates the signature.

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Issuing Officer's Name, Address, and Phone Number

If an attorney issues the subpoena, insert the attorney's name, street address, city, state, zip code and telephone number, including area code, in this box. If the subpoena is issued by the clerk, insert the information for the clerk's office.

Instructions for Proof of Service

The proof of service and declaration on the reverse of the form are to be completed, under penalty of perjury, by the person who serves the subpoena.

Served

Insert the date and place the subpoena was served. Specify the street address, city, state, and zip code of the place service of the subpoena was made.

Served On

Insert the full (printed or typed) name of the person who received the subpoena.

Manner of Service

Describe the manner of service.

Served By

Insert the full (printed or typed) name of the person who served the subpoena and specify the person's title.

Declaration of Server

The declaration is to be completed as follows:

“Date”: Insert on this line the month, day and year the certificate is signed.

“Signature of Server”: The person who served the subpoena must sign. This must be an ORIGINAL signature.

“Address of Server”: Print or type the address of the person who signs the declaration.

Protection of Persons Subject to Subpoenas

In order to protect persons subject to subpoenas, Rule 45(a)(1)(A)(iv) requires that every

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subpoena set forth the text of subdivisions (c) and (d) of the rule. Subdivision (e) is set out on the subpoena form to inform the person served that failing to obey a subpoena without adequate excuse may be deemed contempt of court. Furthermore, Rule 45(c)(1) provides that a party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena and that the court on behalf of which the subpoena was issued shall enforce this duty.

General Information for the Clerk

Fed. R. Bankr. P. 2004 permits any party in a bankruptcy proceeding to obtain a court order for the examination of any entity, subject to certain limitations. Form 254, Subpoena for Rule 2004 Examination, is used to compel an entity to appear and testify at an examination. The subpoena also can be used to require the entity to produce documents or other objects.

Fed. R. Civ. P. 45, which is incorporated by reference by Fed. R. Bankr. P. 9016, authorizes both the clerk and attorneys to issue subpoenas. In many cases the clerk will issue subpoenas, signed but otherwise in blank. The name of the party to be served need not be filled in when the clerk issues a subpoena, but the subpoena must be completed before it is served.

If the examination is to be conducted outside of the district where the bankruptcy case is pending, the subpoena for the Rule 2004 examination may be issued in the name of the bankruptcy court where the examination is to take place. Rules 2004(c) and 45(a)(2). When a clerk issues a subpoena for an examination in a case which is pending in another district, the issuing clerk should create a special file for noting the issuance of the subpoena and filing the related papers, including a certified copy of the order for the Rule 2004 examination issued by the court where the case is pending.

SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

Purpose of the Form

This subpoena is for use in a bankruptcy case. It may be used to compel a witness to testify in a trial or hearing before the bankruptcy court or at a deposition. The subpoena also may be used to command the production of books, documents, electronically stored information, or tangible things for inspection and copying and to compel the inspection of premises.

Variations of this form are used for Fed. R. Bankr. P. 2004 examinations and in adversary proceedings. Form 254 is a subpoena compelling a witness to appear and testify and to produce documents at a Rule 2004 examination. Form 255 is a subpoena compelling a witness to appear and testify at a trial or hearing in an adversary proceeding or at a deposition in the adversary proceeding. It also can be used to compel the production of books, documents, electronically stored information, or tangible things or the inspection of premises.

Rule 45 of the Federal Rules of Civil Procedure, which is incorporated by Fed. R. Bankr. P. 9016, governs the use of subpoenas. Rule 45 was amended in 2006 “to conform the provisions for subpoenas to changes in other discovery rules, largely related to discovery of electronically stored information.” Advisory Committee Note to 2006 Amendments. The bankruptcy subpoena forms were revised to conform to the Rule 45 amendments.

Applicable Law and Rules

1. Fed. R. Bankr. P. 9016 incorporates Fed. R. Civ. P. 45.
2. Rule 45 provides for the issuance of a subpoena at the request of a party to compel testimony at a trial, hearing, or deposition; command production of books, documents, electronically stored information, or tangible things; or permit the inspection of premises.
3. A subpoena commanding attendance at a trial or hearing shall issue from the court for the district in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court for the district designated by the notice of deposition as the district in which the deposition is being taken. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the district in which the production or inspection is to be made. Rule 45(a)(2).
4. At the request of a party, the clerk shall issue a subpoena, signed but otherwise in blank. The party must complete the subpoena before it is served. Rule 45(a)(3).

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5. As an officer of the court, an attorney may issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice. An attorney also can issue a subpoena on behalf of a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice. Rule 45(a)(3).
6. Fed. R. Civ. P. 30(b) and 31(a), which are incorporated by reference by Fed. R. Bankr. P. 7030 and 7031, govern dispositions. The rules require reasonable notice of a deposition in writing to every party to the action. (Fed. R. Bankr. P. 1018 and 9014 incorporate Rules 7030 and 7031.) The notice is served prior to the issuance of the subpoena. Permission from the court is required to take a deposition under certain circumstances set out in Rules 30(a)(2) and 31(a)(2). If discovery materials are filed in the court, copies of the notice, proof of service for the notice, subpoena, and proof of service for the subpoena should be filed in the court in which the subpoena was issued. *See*, Rule 45(b)(4).
7. A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. Rule 45(c)(1). The court on behalf of which the subpoena was issued shall enforce this duty and impose an appropriate sanction upon a party or attorney in breach of the duty.
8. In addition to compelling testimony, a subpoena can require the person to whom it is directed “to produce documents, electronically stored information, or tangible things or to permit the inspection of premises . . .” Rule 45(a)(1)(C).
9. A subpoena for production of evidence or to permit inspection may be joined with a subpoena to appear at a trial, hearing, or deposition, or a subpoena for production or to permit inspection of premises may be issued separately. Rule 45(a)(1)(C). If issued separately, a subpoena for production or inspection shall issue from the court for the district in which the production or inspection is to be made. Rule 45(a)(2).
10. A person commanded to produce books, documents, electronically stored information, or tangible things or to permit inspection need not appear in person at the time of production or inspection unless commanded to appear for a deposition, hearing, or trial. Rule 45(c)(2)(A).
11. A subpoena may require a person who is not a party or an officer of a party to travel to a trial, hearing, or deposition up to 100 miles from the place where that person resides, is employed, or regularly transacts business in person, or, subject to certain restrictions, to travel to trial from anyplace within the state in which the trial is held. Rule 45(c)(3).

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12. A subpoena may be served by any person who is not a party and is not less than 18 years of age. Rule 45(b)(1).
13. Service of a subpoena upon a person named therein is made by delivering a copy of the subpoena to the person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Rule 45(b)(1).
14. Computation of the fees and allowances to be paid a witness for attending a trial, hearing, or deposition is governed by 28 U.S.C. § 1821.
15. As of December 1, 2008, the witness fee was \$40 per day, 28 U.S.C. § 1821(b), and the mileage allowance for an automobile was 58.5 cents per mile, 41 C.F.R. § 301-10.303.¹ Computation of mileage is set by a uniform table of mileage maintained by the General Services Administration. 28 U.S.C. § 1821(c)(2).
16. Subject to the restrictions in Rule 45(c)(3)(A)(ii), a subpoena may be served at any place within the district of the court by which it is issued, at any place within 100 miles of the place of examination or production (whether or not within the district), or at any place within the state where a state statute or court rule permits service of a subpoena issued by a state court of general jurisdiction sitting at the place of the examination. In addition, when provided by a federal statute, the court may, for cause, authorize the service of a subpoena at any other place. Rule 45(b)(2).
17. Subpoenas are an exception to the nationwide service of process in bankruptcy cases. Fed. R. Bankr. P. 7004(d).
18. "Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server." Rule 45(b)(4).
19. The duties of a person responding to a subpoena to produce documents or electronically stored information are set out in Rule 45(d). The subdivision includes restrictions on the production of information subject to a claim that the information is privileged or subject to protection as trial-preparation material, Rule 45(d)(2), and on the production of electronically stored information from sources that are not reasonably accessible, Rule 45(d)(1)(D).

¹ Current information on the mileage rate is available on the Code Of federal Regulations website at <http://www.gpoaccess.gov/cfr/index.html> by searching for 41 C.F.R. § 301-10.303.

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20. Documents shall be produced as they are kept in the usual course of business or the records may be organized and labeled to correspond with the categories set out in the subpoena. Rule 45(d)(1)(A). If the subpoena does not specify the form for producing electronically stored information, the information shall be produced in the form in which the person responding to the subpoena ordinarily maintains it or in a form that is reasonably usable. Rule 45(d)(1)(B).
21. Rule 45(e) provides that failure to obey a subpoena without adequate excuse may be deemed a contempt of court.

Instructions for Subpoena

Caption

1. Identify the judicial district in which the bankruptcy case was filed. Example: “Eastern District of California.”
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition.
3. “Case No.”: Insert the bankruptcy case number assigned by the court when the case was filed.
4. “Chapter”: Insert the chapter of the Bankruptcy Code under which the case is pending.

To

Insert the complete name and address of the person to whom the subpoena is directed. (The clerk may issue a subpoena, signed but otherwise in blank, but the form must be filled in, including the name and address, before the subpoena is served.)

Check boxes followed by “YOU ARE COMMANDED”

Check the appropriate box or boxes.

Place of Testimony

Insert the complete address of the place where the witness is to appear and testify. The address should include the name of the building, street number and name, city, state, and zip code. If this is not a subpoena for testimony at a trial or hearing, indicate that this box is not applicable.

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Courtroom

Insert the number or name of the courtroom in which the witness is to testify. If this is not a subpoena for testimony at a trial or hearing, indicate that this box is not applicable.

Date and Time

Insert the date and time of the trial or hearing. If this is not a subpoena for testimony at a trial or hearing, indicate that this box is not applicable.

Place of Deposition (below second checkbox)

Insert the complete address of the place where the witness is to be deposed. The address should include the name of the building, room number, street number and name, city, state, and zip code. If this is not a subpoena for deposition testimony, indicate that this box is not applicable.

Date and Time

Insert the date and time of the deposition. If this is not a subpoena for deposition testimony, indicate that this box is not applicable.

You Are Commanded to Produce (third checkbox)

Insert the exact description of any and all books, documents, electronically stored information, or tangible things the witness is required to produce. If no evidence is to be produced, enter "NONE."

Place

Insert the complete address of the place where the witness is to produce the books, documents, electronically stored information, or tangible things. The address should include the name of the building, the room number, street number and name, city, state, and zip code. If no evidence is to be produced, enter "Not Applicable."

Date and Time

Insert the date and time at which the witness is to produce the books, documents, electronically stored information, or tangible things. If no evidence is to be produced, enter "Not Applicable."

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Premises (below fourth checkbox)

Insert the complete description of the premises to be inspected. The address should include the name of the building and the room number (if applicable), street number and name, city, state, and zip code or other information sufficient to identify the premises with particularity. If this is not a subpoena for inspection of premises, enter “Not Applicable.”

Date and Time

Insert the date and time at which the premises are to be inspected. If this is not a subpoena for inspection of premises, enter “Not Applicable.”

Issuing Officer’s Signature and Title

The person who issues the subpoena signs here, states his or her title (for example, “deputy clerk” or “attorney”), and dates the signature.

Date

Insert the date the subpoena was issued.

Issuing Officer's Name, Address, and Phone Number

If an attorney issues the subpoena, insert the attorney's name, street address, city, state, zip code, and telephone number, including area code. If the subpoena is issued by the clerk, insert the information for the clerk's office.

Instructions for Proof of Service

The proof of service and declaration on the reverse of the form are to be completed, under penalty of perjury, by the person who serves the subpoena.

Served

Insert the date and place the subpoena was served. Specify the street address, city, state, and zip code of the place service of the subpoena was made.

Served On

Insert the full (printed or typed) name of the person who received the subpoena.

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Manner of Service

Describe the manner of service.

Served By

Insert the full (printed or typed) name of the person who served the subpoena and specify the person's title.

Declaration of Server

The declaration is to be completed as follows

“Date”: Insert the month, day and year the certificate is signed.

“Signature of Server”: This must be the ORIGINAL signature of the person who served the subpoena.

“Address of Server”: Print or type the address of the person who signs the declaration.

Protection of Persons Subject to Subpoenas

In order to protect persons subject to subpoenas, Rule 45(a)(1)(A)(iv) requires that every subpoena set forth the text of subdivisions (c) and (d) of the rule. Subdivision (e) is set out on the subpoena form to inform the person served that failing to obey a subpoena without adequate excuse may be deemed contempt of court. Furthermore, Rule 45(c)(1) provides that a party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena and that the court on behalf of which the subpoena was issued shall enforce this duty.

General Information for the Clerk

Form 256 is for use in a bankruptcy case. It may be used to command a witness to testify in a hearing before the bankruptcy court or at a deposition. The subpoena also may be used to compel the production of books, documents, electronically stored information, or tangible things for inspection and copying and to command the inspection of premises.

Fed. R. Civ. P. 45, which is incorporated by reference by Fed. R. Bankr. P. 9016, authorizes both the clerk and attorneys to issue subpoenas. In many cases the clerk will issue subpoenas, signed but otherwise in blank. The name of the party to be served need not be filled in when the clerk issues a subpoena, but the subpoena must be completed before it is served.

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Fed. R. Civ. P. 30(b) and 31(a), which are incorporated by reference by Fed. R. Bankr. P. 7030 and 7031, require reasonable notice of a deposition to every party to the action. (Fed. R. Bankr. P. 1018 and 9014, in turn, incorporate Rules 7030 and 7031.) The notice is served prior to the issuance of the subpoena.

If a deposition is to be conducted outside the district in which the case is pending, Rule 45(a)(2)(B) provides that the subpoena shall be issued by the court for the district in which the deposition is to be taken. If separate from a subpoena commanding the attendance of a person, Rule 45(a)(2)(C) provides that a subpoena for production or inspection shall issue from the court in the district in which the production or inspection is to be made. When a clerk issues a subpoena for a case which is pending in another district, the clerk should create a special file for noting the issuance of the subpoena and filing the related papers.

If discovery materials are filed in the court, copies of the notice, proof of service of the notice, subpoena, and proof of service of the subpoena should be filed in the district in which the deposition is to be taken. *See*, Rule 45(b)(4).

Subpoena

United States Bankruptcy Court
Western District of North Carolina

In re
John Lane
Debbie Lane Debtors

SUBPOENA IN A CASE UNDER
THE BANKRUPTCY CODE

Case No.

To:
Litton Loan Servicing, LP

Chapter 13

YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date and time specified below to testify in the above case.

Place Courtroom
Date and Time

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

Place Date and Time

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

See Exhibit A attached hereto and incorporated herein by this reference.

Place Date and Time
MaxGardnerLaw, PLLC
403 S. Washington St.
Shelby, NC 28150

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Premises Date and Time

Any subpoenaed organization not a party to this proceeding shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Fed.R.Civ.P. 30(b)(6) made applicable to this proceeding by Rule 7030, Fed.R.Bankr.P. See Rules 1018 and 9014, Fed.R.Bankr.P.

Issuing Officer Signature and Title Date

Issuing Officer's Name, Address and Phone Number

Subpoena

PROOF OF SERVICE

Date	Place
SERVED	
Served on (Print Name)	Manner of Service
Served by (Print Name)	Title

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ Date _____ Signature of Server _____

Address of Server _____

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing or sampling. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing or sampling commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (1) of subparagraph (c)(3)(A).

EXHIBIT A
DOCUMENTS COMMANDED FOR PRODUCTION
TO BE INSPECTED AND COPIED

DEFINITIONS

The following definitions are incorporated by reference into each document request specified below. This request for production of documents is intended to cover all documents in your possession, custody or control wherever located, and specifically includes all documents in the possession, custody or control of your agents, attorneys, investigators, representatives and each of them.

“And” and **“or”** as used herein are terms of inclusion and not of exclusion, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request for production of documents any document or information that might otherwise be construed to be outside its scope.

“Any” means one or more.

“Bankruptcy Case” as used herein means the Chapter 13 Bankruptcy Case of Phillip L. Lane and Tammy J. Lane, being case number 04-40625

“Concerning” or **“concern”** shall mean in whole or in part, directly or indirectly, referring to, relating to, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, concerning, constituting, embodying, and/or mentioning.

“Debtors” as used herein means Phillip L. Lane and Tammy J. Lane.

“Describe,” “discuss,” “analyze,” “describing,” “discussion,” or **“analyzing,”** mean any document that, in whole or in part, characterizes, delineates, explicates, deliberates, evaluates, appraises, assesses or provides a general explanation of the specified subject.

“Document” or **“Documents”** means and is intended to have the broadest possible meaning and includes, without limitation, any writings, electronic transmissions, email, drawings, graphs, charts, photographs, recorded, digitally encoded, graphic, and/or other data compilations from which information can be obtained, translated if necessary through detection devices into reasonably usable form, or other information, including originals, copies (if the original is no longer available), translations and drafts thereof and all copies bearing notations and marks not found on the original. The term “document or documents” includes without limitation, account statements, affidavits, analyses, appraisals, confirmations, contracts, correspondence, communications, deeds of trust, diskettes, drafts, estimates, evaluations, filings, financial statements, forms, journals, ledgers, letters, lists, memoranda, minutes, notations, notes, opinions, orders, pamphlets, papers, employee’s review checklists, permanent files, pictures, press releases, projections, prospectuses, publications, receipts, recordings of conferences, conversations or meetings, reports, statements, statistical records, studies, summaries, tabulations, telegrams, telephone records, telex messages, transcripts, understandings, videotapes, vouchers, work papers, copies of records and documents, and sheets or things similar to any of the foregoing however denominated. The term “Document” or “Documents” further means any document now or at any time in the possession,

custody , or control of the entity to whom this document request is directed (together with any predecessors, successors, affiliates, subsidiaries or divisions thereof, and their officers, directors, employees, agents and attorneys). Without limiting the term "control" as used in the preceding sentence, a person is deemed to be in control of a document if the person has a right to secure the document or a copy thereof. Unless identified more precisely, a request for a document or documents means those that were effective and/or created between _____ and _____.

"Person" means any natural person, corporation, partnership, company, sole proprietorship, association, institute, joint venture, firm, governmental body, or other legal entity, whether privately or publicly owned or controlled, for profit or non-for-profit, or partially or fully government owned or controlled.

"Relate to" and **"relating to"** mean to make a statement about, refer to, discuss, describe, reflect, contain, comprise, identify, or in any way to pertain to, in whole or in part, or otherwise to be used, considered, or reviewed in any way in connection with, the specified subject. Thus documents that "relate to" a subject also include those which were specifically rejected and those which were not relied or acted upon.

"This case" or **"the case"** means the bankruptcy case that is captioned on the face of this subpoena.

"You" and/or **"Your"** refers to and means Litton Loan Servicing, LP and all officers, agents, attorneys and employees thereof.

1. Each Document in your possession, custody or control related to the origination of the mortgage loan in this case including but not limited to all applications, statements of assets and liabilities, credit reports, credit reviews, loan rate sheets or schedules, contracts, documents, agreements and other disclosure forms, written or electronic communications, notes, memoranda and records concerning the said mortgage loan.
2. Each document in your possession, custody, or control which constitutes, reflects, refers or relates to the possession, ownership, or servicing of the mortgage note, including but not limited to endorsements, assignments, trust agreements, nomination agreements, servicing agreements, or pooling agreements.
3. Each document in your possession, custody, or control which constitutes, reflects, refers or relates to instructions or directions received by You from any party concerning the origination of the mortgage note, the servicing of the note or mortgage, the preparing, filing, servicing or administering the proof of claim in the bankruptcy case of the Debtors, preparing, filing or prosecuting any motion for relief from stay, and preparing, filing or prosecuting any foreclosure.
4. Each document in your possession, custody, or control which constitutes, reflects, refers or relates to internal memoranda, instructional or operational memoranda, training materials and any other materials or documents relating to the foreclosure on the Debtors' home.

5. Each document in your possession, custody, or control which constitutes, reflects, refers or relates to any contract between You and any person or entity responsible for servicing the Debtors' mortgage note or loan.
6. All documents relating or referring to Debtors, or which are indexed, filed or retrievable under Debtors' names or any numbers, symbols, designations or codes (such as an account number or Social Security number) assigned to the Debtors or their mortgage loan.
7. All documents constituting, reflecting, referring or relating to the provision of any disclosure statements given to the Debtors and any other notices of Debtors' rights.
8. All documents constituting, reflecting, referring or relating to payments made to any party in connection with the Debtors' mortgage loan and included in either the "amount financed" or "finance charge" disclosed to the Debtors in connection with the origination of the mortgage note.
9. All documents constituting, reflecting, referring or relating to the calculation of the "amount financed" or "finance charge" disclosed to the Debtors in connection with the origination of their mortgage loan.
10. All documents relating or referring to any fees, commissions or payments you received in connection with the loan transactions, including sale of insurance.
11. Copies of both sides of the (i) bills and (ii) checks, wire transfers or other payment instruments for each disbursement in relation to the origination of the mortgage loan of the Debtors, issued by anyone in connection with this transaction, including all compensation paid to brokers whether as part of closing or outside closing.
12. If the current obligation resulted from a refinancing of an earlier obligation, all documents that relate or refer to the earlier obligation, including but not limited to: (a) the contract; (b) all disclosure statements; (c) the ledger sheet or other record, showing all payments, credits, late charges, other charges, and rebates; (d) documentation of the date, amount, and calculation of any rebates of finance charges, credit insurance, or other charges; (e) the mortgage or security agreement, if any; (f) all correspondence; (g) the calculation of the payoff amount.
13. All documents that concern, refer, or relate to any instructions or policies to Your agents or employees concerning the negotiation, documentation or servicing of home mortgage refinance loans.
14. All contracts between you and any provider of legal, inspection, insurance, or other services charged or related in any way to the Debtors' mortgage loan.
15. All documents that relate or refer to any relationship, affiliation, or course of conduct between you and any provider of legal, inspection, insurance, or other services charged or related to the Debtors' mortgage loan.
16. The underwriting guidelines and rate sheets that were in effect at the time of the loan transaction at issue in this case, and any written material, including definitions, memoranda, directives or other documents that explain, illustrate, apply,

elucidate or pertain to those underwriting guidelines, including the rate sheet that was used to determine the interest rate the Debtors would pay in this transaction.

17. If a third-party investor holds any interest in the obligation underlying this action, or if this obligation has been or is part of a pool of obligations that have been securitized, all prospectuses, pooling and servicing agreements or reports concerning that loan pool, including documents which describe the investment and those that describe the performance of the loans in such pool, and all documents relating or referring to same.

18. All documents setting forth your document destruction and retention policies, and all documents that relate or refer to same.

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**Max Gardner's Overlooked
DAMAGES IN A CONSUMER CASE**

1. Venes v. Professional Services Bureau, 353 N.W.2d 671, 674 (Minn. 1984) (fees incurred in opening invalid state court judgment -- as occurred here); Nunez v. Interstate Corporate Systems, Inc., 799 P.2d 30 (Ariz. App. 1990). See also Pennsylvania v. Delaware Valley Citizens' Council for Clear Air, 478 U.S. 546, 559-61 (1986); Miller v. Carson, 628 F.2d 346 (5th Cir. 1980)
2. Actual damages are suffered where the consumer incurs a debt (here, to Attorney X), even if the debt has not yet been paid (as courts recognize routinely in personal injury cases). Cox v. Sears, Roebuck & Co., 647 A.2d 454 (1994); Andrews v. Fleet Real Estate Funding Corp., 78 B.R. 78 (Bankr. E.D. Pa. 1987); Oil Country Haulers, Inc. v. Griffin, 668 S.W.2d 903 (Tex. Ct. App. 1984).
3. Travel to and from attorney's office at IRS approved rate per mile.
4. Long distance telephone calls.
5. Postage, envelopes, etc.
6. Cost of Child care.
7. Lost time from work for attorney meetings, hearings, depositions, etc.
8. Loss of employment.
9. Job demotions and downgrading in compensation.
10. Embarrassment.
11. Emotional trauma.
12. Medical and counseling services.
13. Loss of consortium.
14. Invasion of privacy.

Max Gardner's Overlooked Emotional Distress Damages

- Aggravated existing illness
- Anxiety
- Appetite loss
- Bedridden
- Chest pain
- Concentration loss
- Consortium loss
- Crying
- Dizziness
- Fear
- Headaches
- Humiliation or embarrassment
- Hypertension
- Hysteria
- Illness
- Irritability
- Job performance affected
- Job loss
- Medical expenses
- Muscle spasms
- Nausea
- Nightmares
- Privacy loss
- Relationships affected
- Reputation affected
- Shortness of breath
- Sleep loss
- Stomach pain
- Weight gain
- Weight loss

"emotional distress must be supported by evidence of genuine injury, such as the evidence of the injured party's conduct and the observations of others." He thus suggested testimony of friends, relatives, co-workers, etc.

And asking your client: How did your reactions manifest themselves in your daily life?

FDCPA and UDAP case

NORTH CAROLINA
CLEVELAND COUNTY

RELEASE AND SETTLEMENT
AGREEMENT

This SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is made and executed as of the ____ day of _____, 2012, by and between John Q. Public and Mary E. Public (“Public”) (with their heirs, agents, administrators, executors, trustees and assigns) and _____ (“Defendants”) (and their heirs, agents and assigns); is intended to extinguish all liabilities, causes of action, or damages either past or present, known or unknown, if any, which the Publics may be entitled to pursue against the Defendants.

RECITALS:

The Publics have alleged that the Defendants committed acts which may constitute violations of the Fair Debt Collections Practices Act and North Carolina Unfair and Deceptive Acts and Practices laws prior to the debtors’ filing of a bankruptcy case in the Western District of North Carolina, identified as Case Number _____ (“Bankruptcy Case”).

The mutual desire of the parties is to resolve these matters to avoid litigation.

The Defendants agree to tender to the Publics the sum of \$_____ in damages and to the Publics’ attorney the sum of \$_____ in legal fees, in satisfaction of all claims the Publics, and/or anyone deriving rights from the Publics, may have against the Defendants; and the Publics have agreed not to pursue litigation or further claims against Defendants. Any fees and expenses to which the attorney is entitled under the terms of his written fee agreement with the debtor(s) shall be deemed the sole and separate property of the attorney and to that extent the attorney shall have a lien on the said proceeds.

Plaintiffs agree to file a Motion for Approval of Settlement seeking the Court’s approval to enter into this Agreement. The Motion shall provide notice to all creditors in the Plaintiffs’ bankruptcy case. Upon the Court’s entry of the order approving the settlement, the Plaintiffs shall file a Stipulation of Voluntary Dismissal With Prejudice signed by all the parties.

NOW, THEREFORE, in consideration of the above recitals and the value set out above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Defendants and the Publics covenant and agree as follows:

1. The Publics hereby release and forever discharge Defendants of and from all claims, causes of actions, suits, debts, agreements, damages, judgments, executions, and demands whatsoever (“Claims”), in law or in equity, which the Publics may have or ever had or have now, known or unknown, which arise from, are based upon, or are related to any action committed related to the Publics’ Bankruptcy Case by Defendants.

2. The Publics hereby covenant that, they will now and forevermore forbear and refrain from the institution or prosecution of any Claims, court proceedings or causes of action whatsoever arising at any time prior to the effective date of this Agreement against Defendants.

This covenant may be pleaded as an absolute defense to any court pleading or action brought against Defendants by the Publics as of the date of this Agreement.

3. This Agreement releases any and all Claims based on any action or inaction of Defendants which occurred on or prior to the date of this Agreement.

4. This Agreement shall be construed under and in accordance with the laws of the State of North Carolina.

5. This settlement is made for the express purpose of avoiding the expense of litigation and to resolve the dispute among the parties and is not, nor shall it be construed as, an admission of liability on the part of Defendants.

6. The Publics acknowledge that they have (i) read this Agreement in its entirety and fully understand its tenor and effect, (ii) have discussed this Agreement with counsel, (iii) agree that this Agreement constitutes the entire agreement between the parties, and (iv) by their signatures represent that there have been no other promises or inducements made to them in connection with the execution of this Agreement other than the consideration set forth above.

IN WITNESS WHEREOF, John Q. Public and Mary E. Public have hereby executed this RELEASE AND SETTLEMENT AGREEMENT effective on the day and year written above.

Date

John Q. Public

Date

Mary E. Public

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THE FOREGOING
RELEASE AND SETTLEMENT AGREEMENT.

O. Max Gardner, III
Counsel for Plaintiffs

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THE FOREGOING
RELEASE AND SETTLEMENT AGREEMENT.

Dewey Cheatham
Counsel for Defendants

Stay Violation case

NORTH CAROLINA
CLEVELAND COUNTY

RELEASE AND SETTLEMENT
AGREEMENT

This SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is made and executed as of the ____ day of _____, 2011, by and between John Q. Public and Mary E. Public (“Public”) (with their heirs, agents, administrators, executors, trustees and assigns) and _____ (“Defendants”) (and their heirs, agents and assigns); is intended to extinguish all liabilities, causes of action, or damages either past or present, known or unknown, if any, which the Publics may be entitled to pursue against the Defendants.

RECITALS:

The Publics have alleged that the Defendants committed acts which may constitute bankruptcy violations related to a bankruptcy case filed in the Western District of North Carolina, identified as Case Number _____ (“Bankruptcy Case”).

The mutual desire of the parties is to resolve these matters to avoid litigation.

The Defendants agree to tender to the Publics the sum of \$_____ in damages and to the Publics’ attorney the sum of \$_____ in legal fees, in satisfaction of all claims the Publics, and/or anyone deriving rights from the Publics, may have against the Defendants; and the Publics have agreed not to pursue litigation or further claims against Defendants. Any fees and expenses to which the attorney is entitled under the terms of his written fee agreement with the debtor(s) shall be deemed the sole and separate property of the attorney and to that extent the attorney shall have a lien on the said proceeds.

Defendants agree to cancel the subject debt (_____) as to the debtor and his non filing spouse.

The Publics have provided a deed in lieu of foreclosure to the Defendants.

NOW, THEREFORE, in consideration of the above recitals and the value set out above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Defendants and the Publics covenant and agree as follows:

1. The Publics hereby release and forever discharge Defendants of and from all claims, causes of actions, suits, debts, agreements, damages, judgments, executions, and demands whatsoever (“Claims”), in law or in equity, which the Publics may have or ever had or have now, known or unknown, which arise from, are based upon, or are related to any action committed related to the Publics’ Bankruptcy Case by Defendants.

2. The Publics hereby covenant that, they will now and forevermore forbear and refrain from the institution or prosecution of any Claims, court proceedings or causes of action whatsoever arising at any time prior to the effective date of this Agreement against Defendants. This covenant may be pleaded as an absolute defense to any court pleading or action brought against Defendants by the Publics as of the date of this Agreement.

3. This Agreement releases any and all Claims based on any action or inaction of Defendants which occurred on or prior to the date of this Agreement.

4. This Agreement shall be construed under and in accordance with the laws of the State of North Carolina.

5. This settlement is made for the express purpose of avoiding the expense of litigation and to resolve the dispute among the parties and is not, nor shall it be construed as, an admission of liability on the part of Defendants.

6. The Publics acknowledge that they have (i) read this Agreement in its entirety and fully understand its tenor and effect, (ii) have discussed this Agreement with counsel, (iii) agree that this Agreement constitutes the entire agreement between the parties, and (iv) by their signatures represent that there have been no other promises or inducements made to them in connection with the execution of this Agreement other than the consideration set forth above.

IN WITNESS WHEREOF, John Q. Public and Mary E. Public have hereby executed this RELEASE AND SETTLEMENT AGREEMENT effective on the day and year written above.

Date

John Q. Public

Date

Mary E. Public

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THE FOREGOING
RELEASE AND SETTLEMENT AGREEMENT.

O. Max Gardner, III
Counsel for Plaintiffs

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THE FOREGOING
RELEASE AND SETTLEMENT AGREEMENT.

Dewey Cheatham
Counsel for Defendants

Improper Fees case

NORTH CAROLINA
CLEVELAND COUNTY

RELEASE AND SETTLEMENT
AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (“Agreement”), made and executed effective on this ____ day of _____, 2011, between J.P. Morgan Chase & Co. and Chase Manhattan Mortgage (“Chase”) and their heirs, agents and assigns and John Q. Public and Mary E. Public (“Public”) (with their heirs, agents, administrators, executors, trustees and assigns) is intended to extinguish all liabilities, causes of action, or damages either past or present, known or unknown, if any, which the Publics may be entitled to pursue against Chase.

RECITALS:

The Publics have alleged that Chase committed acts which may constitute bankruptcy violations related to a bankruptcy case filed in the Western District of North Carolina, identified as Case Number _____ (“Bankruptcy Case”).

The mutual desire of the parties is to resolve these matters to avoid litigation.

Chase agrees to tender to the Publics and the Publics’ attorney the sum of \$5,000.00 in damages, costs and legal fees, in satisfaction of all claims the Publics, and/or anyone deriving rights from the Publics, may have against Chase; and the Publics have agreed not to pursue litigation or further claims against Chase.

Chase agrees to remove all improper fees, charges and expenses from the mortgage account of the debtors or any account related thereto.

Chase agrees to vacate and set-aside all prior default orders in the Bankruptcy Case of the debtors.

Chase agrees not to charge, apply, assess or advance any future legal fees against the debtors’ mortgage account without filing a proper motion with the Bankruptcy Court, with a notice of hearing.

NOW, THEREFORE, in consideration of the above recitals and the value set out above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Chase and the Publics covenant and agree as follows:

1. The Publics hereby release and forever discharge Chase of and from all claims, causes of actions, suits, debts, agreements, damages, judgments, executions, and demands whatsoever (“Claims”), in law or in equity, which the Publics may have or ever had or have now, known or unknown, which arise from, are based upon, or are related to any action committed related to the Publics’ Bankruptcy Case by Chase.

2. The Publics hereby covenant that, they will now and forevermore forbear and refrain from the institution or prosecution of any Claims, court proceedings or causes of action whatsoever arising at any time prior to the effective date of this Agreement against Chase. This

covenant may be pleaded as an absolute defense to any court pleading or action brought against Chase by the Publics as of the date of this Agreement.

3. This Agreement releases any and all Claims based on any action or inaction of Chase which occurred on or prior to the date of this Agreement.

4. This Agreement shall be construed under and in accordance with the laws of the State of North Carolina.

5. This settlement is made for the express purpose of avoiding the expense of litigation and to resolve the dispute among the parties and is not, nor shall it be construed as, an admission of liability on the part of Chase. The parties, and their attorneys agree that none of them will publish, communicate or otherwise disclose, in any manner whatsoever, the terms of this Agreement or the related acts leading up to the Agreement unless ordered or compelled to do so by a court of competent jurisdiction after reasonable notice to all parties under this agreement.

6. The Publics acknowledge that they have (i) read this Agreement in its entirety and fully understand its tenor and effect, (ii) have discussed this Agreement with counsel, (iii) agree that this Agreement constitutes the entire agreement between the parties, and (iv) by their signatures represent that there have been no other promises or inducements made to them in connection with the execution of this Agreement other than the consideration set forth above.

IN WITNESS WHEREOF, The Parties have hereby executed this RELEASE AND SETTLEMENT AGREEMENT effective on the day and year written above.

Date

John Q. Public

Date

Mary E. Public

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THE FOREGOING
RELEASE AND SETTLEMENT AGREEMENT.

O. Max Gardner, III
Counsel for Plaintiffs

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THE FOREGOING
RELEASE AND SETTLEMENT AGREEMENT.

Dewey Cheatham
Counsel for Defendants

Improper Fees case/loan modification

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is made and executed as of the ____ day of August, 2011, by and between JOHN Q. PUBLIC (“Public”) and HOMEQ SERVICING CORPORATION, (“The Mortgage Servicer” or “Servicer”) and The Trustee for MBST;

W I T N E S S E T H:

WHEREAS, CMMC is the holder or servicer of an Adjustable Rate Note dated _____ in the original principal amount of \$ _____, loan no. _____ (the “Note”); and

WHEREAS, the Note is secured by a Deed of Trust encumbering property owned by Public with an address of _____ (the “Property”), which property is more particularly described in a Deed of Trust recorded in Deed Book _____ at Page _____, of the _____ County Registry (the “Deed of Trust”); and

WHEREAS, Public, as plaintiff, and The Mortgage Servicer, as defendant, are parties to an adversary proceeding pending in the United States Bankruptcy Court for the Western District of North Carolina, Case No. _____ (the “Adversary Proceeding”); and

WHEREAS, Public and The Mortgage Servicer now desire to settle and to resolve, on the terms set forth in this Agreement, all claims and disputes between them relating to the Note, the Deed of Trust or the Adversary Proceeding.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

1) The Mortgage Servicer and Trustee for the MBST will agree to enter into a loan modification with the Debtor for the entire mortgage, including all pre and post petition arrears, at a fixed rate of 9%. All arrearage claims will be removed from the plan. The loan modification must be signed by both the debtor and the non-filing spouse. No additional fees or charges will be assessed for any matter related to the execution, closing and recording of the loan modification.

2) Plaintiff’s attorney agrees to withdraw his request to the Servicer for the payment of his legal fees and expenses related to the pending Adversary Proceeding and will apply to the Court for approval of his fees and expenses to be paid from the funds he is holding in trust. These funds will be deemed the property of the debtor and the Servicer will release all claims thereto.

3) The Debtor will file a Motion for Approval of the Settlement. The Debtor and the non-filing spouse will sign a Release and Settlement Agreement.

4) The Adversary Proceeding will be dismissed with prejudice within 10 days after the Settlement Agreement is executed by all parties and the loan modification instruments are fully executed. The motion for relief from stay will also be dismissed within the same time period.

5) The Debtor agrees to withdraw any and all Qualified Written Requests. However, the debtor shall have the right to file any QWR in the future if any new dispute arises with respect to the loan or the servicing thereof.

6) All of the improper fees and charges that Plaintiff has identified will be permanently removed from the loan records. There are also three additional fees and charges of approximately \$975.00 that Plaintiff failed to identify and these charges will also be permanently removed.

7) No additional fees or charges of any type will be assessed to or charged against this loan with strict compliance with Rule 2016(a) of the FRBP either during the pendency of the Chapter 13 case or at any time after discharge to the extent the services were performed during the case. The Servicer reserves the right upon notice to the debtor and the right to object to seek any fees authorized by the loan instruments for post-discharge services.

8) The Bankruptcy Court will retain jurisdiction of the case for any enforcement action under the agreement both pre and post-discharge.

9) The loan modification shall not be conditioned on the entry of the discharge order.

10) No additional fees or expenses will be added to the loan for any matter or thing related to or arising out of this case.

11) The parties will agree to waive arbitration as to any future disputes related in any way to this loan and the servicing thereof.

12) Public, on behalf of himself, his heirs, successors and assigns, hereby remises, releases, acquits, and forever discharges the Servicer, as well as its officers, directors, employees, agents, assigns, affiliates, predecessors in interest, and successors in interest, and any holder of the Note for which The Servicer provides servicing, including without limitation _____, of and from any and all liability, obligation, claims, actions, causes of action, demands, damages, punitive damages, treble damages, statutory penalties, stay violations, costs, attorney's fees, and/or expenses whatsoever arising out of or relating to the Note or the Deed of Trust, whether such claims or causes of action are known or unknown, including but not limited to all claims alleged in the Adversary Proceeding.

13) Except as provided herein, the Servicer, on behalf itself and its successors and assigns, hereby remises, releases, acquits, and forever discharges Public and his heirs and successors, of and from any and all liability, obligation, claims, actions, causes of action, demands, damages, punitive damages, treble damages, statutory penalties, costs, attorney's fees, and/or expenses whatsoever arising out of or relating to the Note or the Deed of Trust, whether such claims or causes of action are known or unknown; provided, however, nothing in this Agreement shall

release or impair the right of the Servicer or its successors or assigns to pursue foreclosure, acquire title to the Property through foreclosure, or receive foreclosure or insurance proceeds in connection with the Property.

14) The parties agree that this Agreement constitutes settlement of doubtful and disputed claims, and that nothing stated herein shall constitute an admission of liability on the part of either party, such liability being expressly denied by the same.

15) This Agreement constitutes the entire agreement between the parties hereto, and shall inure to the benefit of the predecessors, successors and assigns of each. The parties hereto further state that they have carefully read the foregoing, understand the contents thereof, and each have been independently represented by counsel in entering this Agreement.

16) The parties agree to keep the terms and provisions of this Agreement confidential and shall not divulge the contents to third parties except as necessary for tax reporting purposes, to enforce this Agreement or to comply with law or regulations of the United States or any state thereof, other than to disclose that the Adversary Proceeding has been resolved.

17) Public and The Servicer authorize and direct counsel to file a Stipulation of Dismissal with Prejudice of the Adversary Proceeding upon the execution hereof.

18) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

JOHN Q. PUBLIC

HOMEQ SERVICING CORPORATION

By: _____
Name: _____
Title: _____

Improper Credit Reporting and Discharge Violation case

SETTLEMENT AGREEMENT AND RELEASE OF LIABILITY

This Settlement Agreement and Release of Liability (hereinafter referred to as the “Agreement”) is made and entered into this ____ day of _____, by and between:

- (a) John Q. Public and Mary E. Public (collectively, “Claimants”);
- (b) Avco Financial Services of Fayetteville, Inc., Associates First Capital Corporation, Associates Corporation of North America, Citifinancial Mortgage Company, and Citigroup, Inc. (collectively “Citifinancial”); and
- (c) National Asset Recovery Services, Inc. (“NARS”)

Collectively, Citifinancial and NARS are referred to herein as “Defendants.”

RECITALS

WHEREAS, Claimants allege that Defendants violated provisions of law, including, but not limited to § 524 of Title 11 of the United States Code (the “Bankruptcy Code”), and various North Carolina consumer protection statutes with respect to account number _____ (the “Account”) (all hereinafter referred to as the “Alleged Violations”);

WHEREAS, the Parties desire to fully resolve this dispute concerning the Alleged Violations and all claims for alleged personal injuries that were asserted, or could have been asserted in Claimants’ lawsuit filed as Adv. Pro. No. _____, pending in the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division (the “Lawsuit”);

WHEREAS, Defendants deny any liability in any way regarding the dispute with Claimants;

NOW, THEREFORE, IT IS HEREBY AGREED by and between Claimants and Defendants that:

1. Defendants agree to pay a total of _____ to Claimants, in exchange for Claimants’ dismissing the Lawsuit with prejudice, and their contemporaneous release of Defendants from any and all liability for alleged injuries concerning the Alleged Violations that were asserted, or that could have been asserted in the Lawsuit.

2. The Defendants will permanently remove the subject account from their respective data bases and agree to terminate any further collection efforts regarding the alleged debt and further agree that the alleged debt is paid in full, and no further collection activity shall occur relative to this alleged debt. The Defendants will agree to remove any negative credit entries on any and all of the Claimants’ consumer credit reports with regard to the alleged debt by making a written request for the removal of these entries from each of the major credit reporting agencies. Such removal shall be executed by a Uniform Data Report request or by any other type of written or

Improper Credit Reporting and Discharge Violation case

electronic communication. The Defendants also agree not to verify the debt if they receive a reinvestigation dispute from a credit reporting agency.

3. The parties hereto agree that the subject account be and the same is hereby forever canceled and discharged in full and final settlement of any alleged liability of the Plaintiff or any other party. Defendant further covenants and agrees that it will not sell, assign or otherwise transfer the subject account or any rights to service the subject account (whether such rights are direct, derivative, contingent or otherwise) to any party at any time subsequent to the execution of this settlement agreement. To the extent that said account or the rights to service said account are so transferred, sold or assigned, then and in that event such action or actions shall be deemed a breach of this agreement and Defendant shall be jointly responsible with any transferee or transferees for any future attempts of any nature to collect all or any part of the subject account.

4. Claimants and their attorneys, heirs, executors and/or administrators, trustees, successors and assigns hereby release, waive and forever discharge any and all claims, liabilities, demands, costs or losses, expenses including attorney's fees and costs, damages, causes of action, controversies, adversary proceedings or suits, whether in law or in equity, known or unknown, including emotional distress, and any and all other loss and damage of every kind and nature, resulting from or to result from alleged actions and/or omissions, that they or their estate has or may have against Defendants and Defendants' companies, corporate parents, subsidiaries, affiliates, divisions, or any other business entity connected, or related to NARS and Citifinancial, including their predecessor and successor businesses, as well as assigns, including all related respective officers, directors, employees, agents, servants, representatives, attorneys, insurers, shareholders and agents up to and including the date of this Agreement.

5. Claimants, their attorneys, heirs, executors and/or administrators further represent and agree that the terms and conditions of this Agreement, all facts and circumstances regarding the lawsuit or the dispute between the parties, and the final negotiations regarding this Agreement are strictly confidential and have not previously and shall not in the future be disclosed, discussed or revealed to any persons, entities or organizations other than the parties hereto and their counsel. This confidentiality representation and agreement does not apply to: the Claimants' duly appointed Trustee in bankruptcy, tax preparers, accountants, spouses, and as may otherwise be required by federal, state or local law, rule, regulation, court or tribunal of competent jurisdiction; and further shall not apply to any necessary filing of a motion for approval of this Agreement with notice to all parties and entities as provided for by Bankruptcy Rule 9019(a).

6. The Parties acknowledge and state that the settlement of the Lawsuit between the parties is a compromise of all disputed claims. This settlement is made for the express purpose of avoiding the expense of litigation and to resolve the issues raised by the Lawsuit and is not, nor shall it be construed as, an admission of wrongdoing, negligence, or liability on the part of any Defendant.

7. Claimants, their heirs, executors and/or administrators represent that they will not individually, or as a member of a class commence any action or proceeding or solicit class members

Improper Credit Reporting and Discharge Violation case

against Defendants, agents or make any claim or complaint to any agency, federal, state or local regarding the subject matter of this Agreement.

8. None of the Defendants, nor anyone acting on their behalf, has made any representation or statement of fact or opinion to induce the execution of this Agreement by Claimants, other than as expressly set forth herein.

9. The terms of this Agreement are contractual and not merely a recital. This Agreement contains the entire understanding concerning the subject matter that exists between the parties and supersedes and replaces all prior negotiations and proposed agreements, written or oral, between the parties arising out of the facts alleged in and circumstances surrounding the Lawsuit. No modification or waiver of any provision of this Agreement, and no consent by any party to such modification or waiver, shall be effective unless such modification or waiver shall be in writing and signed by said party or duly authorized representative thereof, and then the same shall be in effect only for the period, and on the conditions and for the specific instances and purposes specified in such writing.

10. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina.

11. The Parties will bear their own respective attorney's fees, expenses and costs in connection with the preparation of this Agreement and the Lawsuit.

12. In the event that any of the provisions of this Agreement are held invalid or unenforceable, all other provisions shall continue in full force and effect.

13. This Agreement may be executed in multiple counterparts. All counterparts executed by the Parties shall be construed as one Agreement.

14. CLAIMANTS HAVE: (A) READ THIS AGREEMENT CAREFULLY; (B) OBTAINED THE ADVICE OF LEGAL COUNSEL, OR HAVE VOLUNTARILY ELECTED NOT TO DO SO; AND (C) ARE FULLY INFORMED OF THE CONTENT AND MEANING OF THIS SETTLEMENT AND RELEASE. CLAIMANTS ARE EXECUTING THIS NEGOTIATED SETTLEMENT AND RELEASE VOLUNTARILY AND NOT UNDER DURESS OF ANY KIND.

IN WITNESS WHEREOF, John Q. Public and Mary E. Public; Avco Financial Services of Fayetteville, Inc., Associates First Capital Corporation, Associates Corporation of North America, Citifinancial Mortgage Company, and Citigroup, Inc.; and National Asset Recovery Services, Inc. have caused this Agreement to be duly executed, effective on the date first written above.

John Q. Public

Improper Credit Reporting and Discharge Violation case

Mary E. Public

I HEREBY APPROVE THE TERMS AND CONDITIONS OF THIS AGREEMENT AS ATTORNEY FOR THE PLAINTIFFS AND CLAIMANTS NAMED HEREIN.

O. Max Gardner III, Attorney for the Plaintiffs

WE HEREBY ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS SETTLEMENT AGREEMENT

**AVCO FINANCIAL SERVICES OF
FAYETTEVILLE, INC.**

By: _____

Its: _____

ASSOCIATES FIRST CAPITAL CORPORATION

By: _____

Its: _____

ASSOCIATES CORPORATION OF NORTH AMERICA

By: _____

Its: _____

CITIFINANCIAL MORTGAGE COMPANY, INC.

By: _____

Its: _____

CITIGROUP, INC.

By: _____

Its: _____

NATIONAL ASSET RECOVERY SERVICES, INC.

Improper Credit Reporting and Discharge Violation case

By: _____

Its: _____

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME: **CHAPTER 13 CASE NO.**
OUR FILE NO.

ADDRESS:

SSN: **DEBTORS.**

_____ **AND WIFE,** **Adv. Proc. No.** _____

Plaintiffs,

versus

CITICORP TRUST BANK, FSB

Defendants.

MOTION FOR APPROVAL OF SETTLEMENT

COME NOW the above-named debtors, by and through their attorney of record, and respectfully move the Court pursuant to Section 1329 of Title 11 of the United States Code, Rule 9019 of the Rules of Bankruptcy Procedure, and Rule 9013-1 of the Local Bankruptcy Rules for the entry of an order approving the settlement agreement in this contested matter and in support hereof allege and say that:

1. The Plaintiffs ("Claimants") filed this adversary proceeding on _____ for various alleged acts of improper mortgage servicing, improper fees, RESPA and stay violations and violations of Federal and State collections statutes.
2. The Defendant CitiCorp Trust Bank, FSB ("CTB") was served with the Summons and Complaint.
3. Defendant filed an answer to the complaint on _____.
4. The parties have reached an agreement to resolve the issues between them and to settle the pending complaint.
5. The obligations of the parties as set forth in the settlement are as follows:
 - a) CTB agrees to pay a total of \$7,000.00 to Claimants, inclusive of attorney's fees and costs, in full and final settlement of the claims described in this Agreement. CTB will make the payment described in this Paragraph within fifteen (15) business days after the latest of (i) the full execution of this Agreement; (ii) the Claimants' providing CTB the address and taxpayer identification numbers for the

recipient(s) of this payment; and (iii) the entry of the Order described in Paragraph 7 of this Agreement (the "Final Order").

b) CTB will permanently remove fees and charges totaling \$7,167.17 from the balance of the Loan account. Within ten (10) business days after the entry of the Final Order, CTB will provide the Claimants with a payment history for the Loan reflecting that the \$7,167.15 in fees and charges has been removed from the Loan account.

c) CTB will provide the Claimants with a written statement that the Loan account is current for the period from the filing of the initial petition in the Bankruptcy Proceeding through the date of the Final Order. CTB will provide this statement within ten (10) business days after the entry of the Final Order. CTB's obligations under this Paragraph 3 shall be contingent upon the Claimants' timely making all payments on the Loan due through the date of the Final Order. All future fees and charges shall be subject to the approval of the Bankruptcy Court upon the filing of a detailed application with reasonable notice of a hearing.

d) In consideration of (i) CTB's obligations and representations described in Paragraphs 1, 2, and 3 of this Agreement; and (ii) the Parties' execution of this Agreement, the sufficiency of which is hereby acknowledged, Claimants (and each of them) and their attorneys, heirs, executors, administrators, trustees, successors, agents, and assigns release, waive, and forever discharge any and all claims, liabilities, demands, damages, debts, obligations, costs, losses, expenses (including attorney's fees and costs), causes of action, controversies, adversary proceedings, and suits, whether in law or in equity, including those based on usury and those based on emotional distress, and any and all other loss or damage of every kind and nature, resulting from or to result from alleged actions or omissions, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, that Claimants have or may have against CTB, its affiliated, parent, subsidiary, predecessor, or successor entities, and any other business entities connected with or related to CTB, including all principals, partners, shareholders, directors, officers, employees, agents, servants, representatives, attorneys, and insurers of each such entity, up to and through the date of this Agreement. This release includes, but is not limited to, all claims relating to the Loan, all claims related to the Deed or Trust, and all claims that were asserted or could have been asserted in the Lawsuit.

e) Claimants will dismiss all claims asserted in the Lawsuit, against CTB, with prejudice, immediately upon Claimants' receipt of the payment described in Paragraph 1 of this Agreement. This action shall be taken by the filing of a Stipulation of Dismissal to be signed by the attorneys for the respective parties and thereafter filed electronically with the Clerk of the Bankruptcy Court.

f) Claimants, their attorneys, heirs, executors, administrators, trustees, successors, agents, and assigns further agree to hold and keep the terms and conditions of this Agreement, all facts and circumstances regarding the Lawsuit and the dispute between the Parties, and the negotiations regarding this Agreement strictly confidential and represent that they have not previously and shall not in the future disclose, discuss, or reveal this information to any persons, entities, or organizations other than the Parties hereto and their counsel. This confidentiality representation and agreement does not prohibit disclosure to: the Claimants' duly appointed Trustee in bankruptcy, tax preparers, accountants, spouses, and as may otherwise be required by federal, state, or local law, rule, regulation or by any court or tribunal of competent jurisdiction; and further shall not apply to the filing of a motion for approval of this

Agreement with notice to all parties and entities as provided for by Bankruptcy Rule 9019.

g) The Parties' obligations under this Agreement shall be conditioned upon the entry of a Final Order in the form attached hereto as Exhibit A by the Bankruptcy Court, following such notice as may be required under the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of the Bankruptcy Court, to all necessary parties in the Bankruptcy Proceeding (including the Chapter 13 Trustee), approving the terms of this Agreement, as may be required by Rule 9019 of the Federal Rules of Bankruptcy Procedure. The term "Final Order" shall mean an Order entered by the Bankruptcy Court from which no appeal is timely taken or, if an appeal is taken, is subsequently affirmed by the appellate court. If the Parties are unable to procure the Final Order, the Agreement shall be null and void *ab initio*.

h) The Parties acknowledge and state that the settlement of the Lawsuit between the Parties is a compromise of all disputed claims. This settlement is made for the express purpose of avoiding the expense of litigation and to resolve the issues raised by the Lawsuit and is not, nor shall it be construed as, an admission of wrongdoing, negligence, or liability on the part of any party.

i) Claimants, their heirs, executors, administrators, trustees, successors, agents, and assigns represent that they will not individually, or as a member of a class commence any action or proceeding or solicit class members against CTB, its related, affiliated, parent, subsidiary, predecessor, or successor entities, or any other business entity connected with or related to CTB, including all principals, partners, shareholders, directors, officers, employees, agents, servants, representatives, attorneys, and insurers of each such entity or make any claim or complaint to any federal, state, or local agency regarding the subject matter of this Agreement.

j) Neither CTB nor anyone acting on its behalf has made any representation or statement of fact or opinion to induce the execution of this Agreement by Claimants, other than as expressly set forth herein.

k) The terms of this Agreement are contractual and not merely a recital. This Agreement contains the entire understanding concerning the subject matter that exists between the Parties and supersedes and replaces all prior negotiations and proposed agreements, written or oral, between the Parties arising out of the facts alleged in and circumstances surrounding the Lawsuit. No modification or waiver of any provision of this Agreement and no consent by any party to such modification or waiver, shall be effective unless such modification or waiver shall be in writing and signed by said party or the duly authorized representative thereof, and then the same shall be in effect only for the period and on the conditions and for the specific instances and purposes specified in such writing.

l) The release of and covenant not to sue entities who are not signatories to this Agreement as stated herein is made expressly for the benefit of those entities, and those entities shall be deemed to be third-party beneficiaries of this Agreement.

m) This Agreement shall be interpreted in accordance with the laws of the State of North Carolina.

n) The Parties will bear their own respective attorney's fees, expenses, and costs in connection with the Lawsuit and the preparation of this Agreement.

o) In the event that any of the provisions of this Agreement are held invalid or unenforceable, all other provisions shall continue in full force and effect.

p) This Agreement may be executed in multiple counterparts. All counterparts executed by the Parties shall be construed as one Agreement.

6. The debtors are therefore requesting the Court approve this settlement as set forth herein, and to allow the parties to enter into and execute the same in full settlement of this contested matter.

7. The debtors are also moving the court for such other and additional relief as to the court may seem just and proper.

WHEREFORE, the debtors respectfully pray of the Court as follows:

A. That the debtors' motion for approval of the Settlement Agreement, be granted and approved, for the parties to enter into and execute the same in full settlement of this contested matter;

B. That the debtors have such other and further relief as to the Court may seem just and proper.

This the _____ day of _____, 2012.



O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for the Debtor
P.O. Box 1000, Shelby, NC 28151-1000
N.C. State Bar No. 6164
(704) 487-0616/Fax (888) 870-1647
e-mail: maxgardner@maxgardner.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME:

**CHAPTER 13 CASE NO.
OUR FILE NO.**

ADDRESS:

SSN:

DEBTORS.

_____ **AND WIFE,**

Adv. Proc. No. _____

Plaintiffs,

versus

CITICORP TRUST BANK, FSB

Defendants.

**NOTICE OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND NOTICE OF OPPORTUNITY FOR HEARING**

**(No-Protest Notice: No Hearing Will Be Held
Unless Request For Hearing Is Filed)**

TAKE NOTICE that the above-named Plaintiff has filed papers with the United States Bankruptcy Court for the Western District of North Carolina for approval of a Settlement Agreement with the Defendant. A copy of these paper(s) is included with this Notice or copied on the reverse side of this Notice.

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested by the Plaintiff in the motion, or if you want the Court to consider your views on the motion, then on or before _____, you or your attorney must do three (3) things:

1. **File with the court a written response requesting that the Court hold a hearing and explaining your position. File the response at:**

United States Bankruptcy Court
Western District of North Carolina
P.O. Box 34189
Charlotte, NC 28234-4189

If you mail your request to the Court for filing, you must mail it early enough so the court

will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:**

O. Max Gardner III
Attorney for the Debtor(s)
P.O. Box 1000
Shelby, NC 28151-1000
Fax No. 888.870.1647

and to:

Steven G. Tate
Chapter 13 Trustee
P.O. Box 1778
Statesville, NC 28687-1778

3. **Attend the hearing scheduled for Friday, _____ at 9:30 a.m.** in Courtroom Number 5 at the Cleveland County Courthouse and Law Enforcement Center, 100 Justice Place, Shelby, North Carolina.

If you or your attorney do not take these steps, **A HEARING WILL NOT BE HELD**, and the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

This the _____ day of _____, 2012.



O. Max Gardner III
MaxGardnerLaw, PLLC
Attorney for the Debtor
P.O. Box 1000, Shelby, NC 28151-1000
N.C. State Bar No. 6164
(704) 487-0616/Fax (888) 870-1647
e-mail: maxgardner@maxgardner.com

CERTIFICATE OF SERVICE

_____, Legal Assistant, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **MOTION FOR APPROVAL OF**

SETTLEMENT AND NOTICE OF OPPORTUNITY FOR HEARING on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Debtors

And via the Court's Electronic Case Filing System to:

Attorney

Chapter 13 Trustee

Bankruptcy Administrator

4. I have also served copies of the **NOTICE OF OPPORTUNITY FOR HEARING** on all creditors listed on the master mailing matrix, a copy of which is attached hereto, in the same manner and method as described in paragraph number 3 above;

5. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

6. Service as outlined herein was made within the United States of America.

This the _____ day of _____, 2012.

Legal Assistant
MaxGardnerLaw, PLLC
P.O. Box 1000, Shelby, NC 28151-1000
(704) 487-0616/Fax (888) 870-1647

MASTER MAILING MATRIX ATTACHED HERETO

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME:

**CHAPTER 13 CASE NO.
OUR FILE NO.**

ADDRESS:

SSN:

DEBTORS.

_____ **AND WIFE,**
_____ ,

Adv. Proc. No. _____

Plaintiffs,

versus

CITICORP TRUST BANK, FSB

Defendants.

**ORDER APPROVING
SETTLEMENT AGREEMENT**

THIS CAUSE coming on to be heard, and being heard, before the undersigned Judge presiding over the United States Bankruptcy Court for the Western District of North Carolina, Shelby Division, pursuant to the motion filed by the Debtors to approve a settlement agreement with the Defendants; and

IT APPEARING to the undersigned that this court has jurisdiction over the parties and over the subject matter of this motion; and

IT FURTHER APPEARING to the undersigned that all parties in interest received notice of this motion and of the time, date and place of this hearing and that no such parties have filed any timely objections or otherwise appeared in opposition to the said motion and that the time for filing any such objection has

expired; and

IT FURTHER APPEARING to the undersigned that the relief requested by the debtors in their motion is consistent with the applicable provisions of Title 11 of the United States Code and that the debtors have established good and sufficient cause to grant said relief; and

IT FURTHER APPEARING to the undersigned that the debtors' motion for approval of the settlement with the Defendants as set forth in the motion should be granted; and

IT FURTHER APPEARING to the undersigned that the parties should be and hereby are allowed to enter into and execute the same in settlement of this contested case.

IT FURTHER APPEARING to the undersigned that the parties stipulate and agree that this case shall be dismissed with prejudice pursuant to the terms of the settlement of this matter and that this case shall be closed.

IT IS THEREFORE SO ORDERED.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order

United States Bankruptcy Court

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN THE MATTER OF:

NAME: **CHAPTER 13 CASE NO.**
OUR FILE NO.

ADDRESS:

SSN: **DEBTORS.**

_____ **AND WIFE,** **Adv. Proc. No.** _____

Plaintiffs,

versus

CITICORP TRUST BANK, FSB

Defendants.

CERTIFICATE OF SERVICE

_____, Legal Assistant, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **ORDER APPROVING SETTLEMENT**

on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Debtors

And via the Court's Electronic Case Filing System to:

Attorney

Chapter 13 Trustee

Bankruptcy Administrator

4. I have also served the **ORDER** on all parties listed on the master mailing matrix, a copy of which is attached hereto, in the same manner and method as described in paragraph number 3 above;

5. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

6. Service as outlined herein was made within the United States of America.

This the _____ day of _____, 2012.

Legal Assistant
MaxGardnerLaw, PLLC
P.O. Box 1000, Shelby, NC 28151-1000
(704) 487-0616/Fax (888) 870-1647

MASTER MAILING MATRIX ATTACHED HERETO

When to bring FDCPA cases

- In Bankruptcy, use when it would be futile for a consumer to pay one of their creditors when they owe so much to so many
- Pre-petition - quick settlement to help pay for bankruptcy preparation fees. Good marketing.
- FDCPA, use whether or not a consumer files bankruptcy, if their rights have been violated

4

Where I could I turn for help

- NCLC, Fair Debt Collection Practices Act, manual
- NCLC, Consumer Bankruptcy manual
- NCLC sponsored FDCPA training conferences

5

What are some of the pitfalls in a BK and FDCPA practice

- Don't forgot to list the FDCPA claims in the bankruptcy
- Don't list dollar value on actual damage claim
- If FDCPA claim not listed, you lose it
- Get familiar with controlling authority about whether you can bring an FDCPA claim for an attempt to collect after the bankruptcy filing

6

Can I file an FDCPA claim during my bankruptcy

- Chapter 7- Must have Court abandon first, just wait for the bankruptcy to be over
- Chapter 13- Debtor has right to bring claims. Cable v. Ivy Tech (7th Cir).
- Strategy: May be best to file after Ch. 13 confirmation

7

What if SOL is going to run and debtor in BK

- File Motion with Court to abandon the FDCPA claim
- Trustee usually does not oppose
- Court will grant this on an expedited basis

8

What if consumer failed to list an FDCPA claim

- Consumer has no standing to sue
- Reopen the bankruptcy case and list the asset
- If exempt trustee will likely not object

9

Attempts to collect after the stay

- Attempting to collect, after the bankruptcy automatic stay, may be an FDCPA violation.
- Violations after discharge
- See *Randolph v. IMBS* 7th Cir. (yes) and *Walls v. Wells Fargo* 9th Cir. (no).
- Cases distinguishing *Walls v. Wells Fargo*, *Church v. Onewest*, 2011 U.S. Dist. LEXIS 68718 (D. OR 2011)

10

What if the debt collector files bankruptcy

- Move for a modification of the automatic stay to go after insurance
- File an Adversary Complaint in the bankruptcy if the debt collector committed fraud, abuse, etc. (11 U.S.C. 523)

11

Preserving claims in bankruptcy

- For FDCPA purposes, the three most important schedules are Schedules B and C, and the schedules listing the creditors.
- Schedule B is important because this is where you list your clients' FDCPA claims.
- Schedule C is important because if the claims can be exempted under state or federal law, this is where you list them. Use your left over wild card.
- Open question: amount or no amount, and how specific you should be. Talk to local practitioners, trustees, etc. (up to \$1000 statutory plus actual damages)
- Does not apply to Discharge violations

What is the FDCPA?

- The FDCPA regulates how debt collectors and collection agencies are allowed to collect consumer debts
- Plead as separate claim in discharge violation adversaries

13

What does the FDCPA prohibit?

- Communicating with third parties. 1692b
- Failing to cease and desist. 1692c
- Abusive, annoying and harassing conduct. 1692d
- False and misleading statements. 1692e
- Unfair and unconscionable conduct. 1692f (includes violation of other laws i.e. discharge injunction)

14

Who is a debt collector

- Someone whose principal business is the collection of debts, and/or
- Someone who regularly collects consumer debts
- A company whose business is to purchase defaulted debts
- Attorneys that regularly collect debts

15

Who is excluded from being a debt collector

- Original creditors
- Repossession agents, Court Officers (with limited exceptions)
- Some states provide the ability to bring claims against original creditors

16

What is a consumer debt

- A debt incurred for personal, family or household purposes
- Credit card debts
- Medical bills
- Returned checks (no fraud exception)
- Gambling

17

FDCPA Standards

- 1) Least sophisticated consumer
- 2) strict liability
- 3) fee shifting
- 4) one narrow defense, bona fide error

18

What are impermissible communications. 1692b

- Calling a third-party and asking them to pass along a message (called nearbys, neighbors, multiples, etc.)
- Calling a consumer at work after being told they cannot take collection calls at work
- Failing to cease and desist after written request

19

What is abusive and annoying conduct. 1692d

- Threatening arrest in an attempt to collect a debt
- Repeated and continuous calls (War dialing)
- Leaving abusive phone messages
- Profanity

20

What is false, deceptive and misleading. 1692e

- Any false statement in an attempt to collect a debt
- Falsely threatening a lawsuit
- Threatening a lawsuit on a time barred debt
- Creating a false sense of urgency

21

FDCPA Remedies

- Actual Damages
- Statutory Damages
- Class actions
- Attorney's Fees and Costs
- No punitive damages
- No injunctive relief

22

What are Actual Damages?

- Actual damages not only include out of pocket expenses but damages for personal humiliation, embarrassment, mental anguish or emotional distress.
- Discharge violation allows debtor compensation for time spent enforcing the court's discharge order. In Re McClure.

23

Statutory Damages

- \$1,000 per action, per defendant
- The frequency and persistence of noncompliance
- The nature of such noncompliance, and
- The extent to which such noncompliance was intentional

24

Class Action Remedies

- Based on TILA
- 1% or \$500,000, which ever is lower
- Since FDCPA does not pre-empt state law, may want to combine with state law claim for injunctive relief

25

Attorney's Fees and Costs

- The amount of fees and costs need not be proportional to the amount of damages recovered
- Similar to civil rights cases

26

Damages for trying to collect debts discharged in Bankruptcy

- In re Crawford, 388 B.R. 506 (S.D. NY 2008)(\$60,000 punitive damages under BK law)
- Miele v. Sid Bailey, 129 B.R. 611 (S.D. NY 1996)(\$60,000+)

27

FDCPA damages for trying to collect debt not owed

- Consider suits for time barred debts-
- Thompson v. D.A.N. (M.D. AL)(\$38,000 actual damages), McCollough v. Johnson (D. MT)(\$250,000 actual damages, \$60,000 punitive damages);

28

Bona Fide Error Defense

- Debt collector must show the violation was unintentional
- The violation resulted from a Bona fide error (i.e., good faith mistake)
- Notwithstanding the maintenance of procedures reasonably adopted to avoid the avoid the violation

29

BFE is a Narrow Defense

- BFE is a narrow defense under the FDCPA. It applies to clerical errors.
- When the debt collectors acts are intentional the narrow BFE defense does not apply.
- A willful error by a collector's employee or agent, such as a harassing phone call, cannot be said to be unintentional even if it violates the collector's policies.

30

Debt collector answers for its employees

- A debt collector answers for its employees' violations of the FDCPA. McCullough v. Johnson, 2008 U.S. Dist. LEXIS 96823 (D. MT 2008).
- "I find that the debt collector, specifically the management of the corporation, has shown by a preponderance of the evidence that the violation was not intentional on the part of the corporate collector, but has not shown that it resulted from bona fide errors of its agents. Therefore, liability attaches." Bingham v. Collection Bureau, Inc., 505 F. Supp. 864 (D. N.D.)

31

What a consumer can do to protect themselves

- Make notes of dates and times of calls
- In certain states, record the phone calls
- Save all voice mails
- Obtain copies of cell phone bills
- Make photo of caller I.D. unit
- Send requests to verify the debt
- Send cease and desist letters
- Dispute debt with CRAs

32

Documents Needed (Discovery)

- Collection logs
- Procedure manuals
- Telephone billing records
- Procedure manuals
- Electronically Stored Information (ESI)
- Written TCPA compliance procedure
- Hierarchy chart of corporate officers

33
