

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

KENNETH E. HASTINGS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	
CAPITAL ONE BANK,)	
)	
Defendant.)	

COMPLAINT

COMES NOW the Plaintiff, by and through counsel, in the above styled cause, and for his Complaint against the Defendant he states as follows:

Jurisdiction & Venue

1. This action is brought under Alabama state law. These claims are brought under 28 U.S.C. Section 1332 as there exists complete diversity and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000), exclusive of costs and interests.
2. The Plaintiff, Kenneth E. Hastings, is a natural person who resides within the Southern Division of this District.
3. Defendant Capital One Bank (“CapOne” or “Defendant”) is a foreign company that engages in business in this District.

FACTUAL ALLEGATIONS

4. Plaintiff filed bankruptcy and was discharged on February 6, 2006, with a case number of 03-09264-BGC13.
5. Despite the court order, CapOne continued to report on Plaintiff's Equifax credit report Plaintiff's accounts had a balance owed of \$956.00 and \$1,113.00, which is incorrect and false.
6. CapOne failed to report the true balance to Equifax when CapOne knew that the balance was wrong as the debt was discharged in bankruptcy.
7. The effect of these errors on Plaintiff's credit reports has been to substantially affect his credit report, credit worthiness, and credit score.
8. The conduct of the Defendant has proximately caused Plaintiff past and future monetary loss, past and future damage to his credit and credit worthiness, past and future mental distress and emotional anguish and other damages that will be presented to the jury.
9. CapOne has a policy and procedure to refuse to properly update credit reports of consumers, like the Plaintiff, who have discharged the debts. The reason is to keep false information on the credit report. The false information consists of a balance shown as owed (when CapOne knows no balance is owed) and intentionally refusing to show a current status of "included in bankruptcy" or "discharged in bankruptcy".

10. CapOne has the policy to “park” the account on at least one of the consumer’s credit report. This is a term in the industry for keeping a balance on the credit report so that the consumer will be forced to pay off the balance in order to obtain a refinancing or to qualify for a loan or to increase the consumer’s credit score from the artificially lowered score which directly resulted from the CapOne’s intentional and malicious conduct.
11. In parking the account, CapOne has falsely updated the account despite its obligation under federal and state law to accurately report the balance and CapOne has willfully and maliciously refused to do so.
12. CapOne agreed in the subscriber agreements or contracts with the Consumer Reporting Agencies (“CRAs”) including Equifax, to update accounts that have been discharged in bankruptcy. CapOne has willfully, maliciously, recklessly, wantonly, and/or negligently failed to follow this requirement as well as the others set forth under the FCRA and state law, which has resulted in the intended consequence of this information remaining on Plaintiff’s credit reports.
13. Defendant knows that parking a balance will lead to false and defamatory information being published every time the Plaintiff’s credit report was accessed and this was the malicious and intentional design behind the

Defendant's actions with the goal to force the Plaintiff to pay on accounts she does not owe.

14. When a consumer such as Plaintiff pays the "parked" account, CapOne claims that such payment was purely "voluntarily" or was to pay off a "moral obligation". CapOne knows and intends that by willfully and maliciously parking the account on the credit report, payment can be extorted from the consumer.
15. Despite receiving disputes that it's reporting on accounts included in bankruptcy was false, CapOne intentionally and knowingly has not corrected its policy of keeping false and damaging information on at least one of the Plaintiff's credit reports.
16. It is a practice of Defendant to maliciously, willfully, recklessly, wantonly, and/or negligently violate, ignore, and refuse to follow the requirements of the FCRA and state law.
17. All actions taken by employees, agents, servants, or representatives of any type for Defendant were taken in the line and scope of such individual's (or entities') employment, agency or representation.
18. All actions taken by Defendant were done with malice, were done willfully or recklessly, and were done with either the desire to harm Plaintiff and/or

with the knowledge that its actions would very likely harm Plaintiff and/or that its actions were taken in violation of the law.

19. Defendant has engaged in a pattern and practice of wrongful and unlawful behavior with respect to accounts and consumer reports and as such Defendant is subject to punitive damages and statutory damages and all other appropriate measures to punish and deter similar future conduct by Defendant and similar companies.

FIRST CLAIM FOR RELIEF
State Law Claims

20. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
21. Defendant published false information about Plaintiff by reporting the Defendant's account with a false balance and refusing to show it as included in bankruptcy. Each time the credit reports of Plaintiff were accessed, a new publication occurred which was intended by Defendant.
22. Plaintiff alleges that the publications were done maliciously, without privilege, and with a willful or reckless intent to injure Plaintiff.
23. CapOne assumed a duty, through the subscriber agreement and other actions, to accurately report the balances even after individuals, like the Plaintiff, received a discharge.

24. Defendant violated all of the duties the Defendant had and such violations were made intentionally, willfully, recklessly, maliciously, wantonly, and negligently.
25. It was foreseeable, and Defendant did in fact foresee it, that refusing to properly update and investigate would cause the exact type of harm suffered by the Plaintiff.
26. Defendant acted with negligence, malice, wantonness, recklessness, and/or intentional conduct in their dealings with and about Plaintiff as set forth in this Complaint. This includes the initial reporting of Defendant's accounts; the handling of the investigations on the accounts; and all other aspects as set forth in this Complaint.
27. Defendant invaded the privacy of Plaintiff as set forth in Alabama law, including publishing false information about Plaintiff's personal financial obligation.
28. Such negligence, malice, wantonness, recklessness, willful or intentional conduct proximately caused the damages set forth in this complaint and such conduct occurred before, during and after the disputes to the CRAs.

RELIEF SOUGHT

29. An award of statutory, actual, compensatory and punitive damages, and costs of the action including expenses, together with reasonable attorney's fees.
30. Plaintiff also requests all further relief to which he is entitled, whether of a legal or equitable nature.

Respectfully Submitted,

/s/ John G. Watts

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PLAINTIFF DEMANDS A TRIAL BY JURY IN THIS CAUSE.

/s/ John G. Watts
Attorney for Plaintiff

Serve defendant via certified mail at the following addresses.:

Capital One Bank
6356 Corley Road
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