

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

<b>SHELLY N. HOLT,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No.:</b>
	)	
<b>FIRST PREMIER BANK, a</b>	)	
<b>Corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

**COMES NOW** the Plaintiff, by and through counsel, in the above styled cause, and for Plaintiff’s Complaint against the Defendant she 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, Shelly N. Holt, (“Holt”), is a natural person who resides within the Southern Division of this District.
3. Defendant First Premier Bank (“Defendant” or “Premier”) is a foreign company that engages in business in this judicial district.

## FACTS

4. Plaintiff filed bankruptcy and was discharged on September 13, 2006 with all Defendants receiving a copy of the discharge order. The case number was 06-01255-TBB7 and it was filed in the Northern District of Alabama Bankruptcy Court.
5. Despite the court order, Premier has continued to report Plaintiff's account (517800715302XXX) to at least Equifax, one of the three national consumer-reporting agencies ("CRAs"), as having a current balance owed of approximately \$646.00, which is incorrect and false.
6. Defendant Premier has intentionally not reported to the CRAs that the account was included in bankruptcy and that it should have a zero balance.
7. Defendant Premier has intentionally and maliciously refused to report the true balance to the CRAs when Defendant Premier knew that the debt was discharged in bankruptcy.
8. The effect of these errors on Plaintiff's credit reports has been to negatively impact Plaintiff's credit report, credit worthiness, and her credit score.
9. The conduct of the Defendant has proximately caused Plaintiff past and future monetary loss, past and future damage to Plaintiff's credit and credit worthiness, past and future mental distress and emotional anguish and other damages that will be presented to the jury.

10. Defendant knew and continues to know that a discharge order means the consumer no longer owes the debt and has no personal liability to Defendant for the discharged debt but the Defendant has made a corporate decision to willfully and maliciously act contrary to its knowledge in its calculated decision to violate the requirements to properly report and update the Plaintiff's accounts.
11. The Defendant 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 Defendant has known since discharge that no balance is owed) and intentionally refusing to show a current status of "included in bankruptcy" or "discharged in bankruptcy".
12. Defendant updates many accounts each month with allegedly the correct information regarding the balance but has willfully and maliciously refused to do so with Plaintiff and with others who have received a discharge order on Defendant's debts.
13. The Defendant has willfully and maliciously failed to report the account as having a "0" balance as required by 16 CFR § 607 (6), which states, "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.”

14. The Defendant has promised through their subscriber agreements or contracts to update accounts that have been discharged in bankruptcy but the Defendant has willfully, maliciously, recklessly, wantonly, and/or negligently failed to follow this requirement as well as the requirements set forth under the Fair Credit Reporting Act and state law which has resulted in the intended consequences of this information remaining on Plaintiff’s credit reports.
15. The Defendant has a policy to “park” its accounts on at least one of the consumer’s credit report. This is a term in the industry for keeping a false balance (or false account) 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 Defendant’s intentional and malicious conduct.
16. In the context of parking an account, the Defendant has an obligation and duty under federal and state law to accurately report the balance and the Defendant willfully and maliciously refuses to obey federal and state law.

17. The Defendant knows that parking a balance will lead to false and defamatory information being published every time the Plaintiff's credit report is accessed and this is the malicious and intentional design behind the Defendant's actions with the goal to force the Plaintiff to pay on an account he does not owe.
18. When the consumer who has discharged the debt pays the "parked" account, the Defendant claims that such payment was purely "voluntarily" or was to pay off a "moral obligation". The Defendant knows and intends that by willfully and maliciously parking the account on the credit report, illegal payment can be extorted from the group of consumers in the same position as Plaintiff.
19. Despite receiving numerous disputes that its reporting on accounts included in bankruptcy was false, the Defendant intentionally and knowingly has not corrected its policy of keeping false and damaging information on at least one of the Plaintiff's credit reports and consumers who are in a similar position to Plaintiff.
20. It is a practice of Defendant to maliciously, willfully, recklessly, wantonly, and/or negligently violate, ignore, and refuse to follow the requirements of the federal and state law.

21. All actions taken by employees, agents, servants, or representatives of any type for Defendant were taken in the line and scope of such individuals' (or entities') employment, agency, or representation.
22. All actions taken by Defendant were done with malice, were done wantonly, recklessly, intentionally or willfully, 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.
23. Defendant has engaged in a pattern and practice of wrongful and unlawful behavior with respect to accounts and consumer reports and such Defendant is subject to punitive damages, 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**

24. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.
25. Defendant published false information about Plaintiff by reporting the Defendant's accounts with a false balance. Each time the credit reports of Plaintiff were accessed, a new publication occurred, which was the result intended by the Defendant.

26. Plaintiff alleges that the publications and defamations were done maliciously, without privilege, and with a willful intent to injure Plaintiff.
27. Defendant assumed a duty, through the subscriber agreement and other actions, to accurately report the balances even after individuals, like the Plaintiff, received a discharge.
28. Defendant violated all of the duties the defendants had and such violations were made intentionally, willfully, recklessly, maliciously, wantonly, and negligently.
29. It was foreseeable, and Defendant did in fact foresee it, that refusing to properly update would cause the exact type of harm suffered by the Plaintiff.
30. Defendants 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 intentional refusal to properly update the accounts; and all other aspects as set forth in this Complaint.
31. Defendant invaded the privacy of Plaintiff as set forth in Alabama law, including publishing false information about Plaintiff's personal financial obligations.

32. Such negligence, malice, wantonness, recklessness, willfulness, and/or intentional conduct proximately caused the damages set forth in this complaint.

**RELIEF SOUGHT**

33. An award of statutory, actual, compensatory and punitive damages, and costs of the action including expenses, together with reasonable attorney's fees.

34. Plaintiff also requests all further relief to which Plaintiff is entitled, whether of a legal or equitable nature.

Respectfully Submitted,

/s/ John G. Watts \_\_\_\_\_  
**John G. Watts ASB-5819-T82J**  
**Attorney for Plaintiff**

**OF COUNSEL:**

Watts Law Group, P.C.  
15 Office Park Circle, Suite 206  
P.O. Box 531168  
Birmingham, AL 35253  
(205) 879-2447  
(205) 879-2882 *facsimile*  
[john@wattslawgroup.com](mailto:john@wattslawgroup.com)

/s/ M. Stan Herring  
**M. Stan Herring ASB-1074-N72M**  
**Attorney for Plaintiff**

**OF COUNSEL:**

M. Stan Herring, P.C.  
201 Avon Place  
700 29<sup>th</sup> Street South  
Birmingham, AL 35233  
(205) 714-4443  
(205) 714-7177 *facsimile*  
[msh@mstanherringlaw.com](mailto:msh@mstanherringlaw.com)

**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.:**

First Premier Bank  
c/o Dana J. Dykhouse  
601 S. Minnesota Avenue  
Sioux Falls, SD 57104-4824