

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

GEORGE KIRCHHARR, an)
Individual,)

Plaintiff,)

v.)

Civil Action No.:

WACHOVIA BANK, N.A.,)
a Corporation; POPULAR)
MORTGAGE SERVICING, INC.,)
a Corporation,)

Defendants.)

COMPLAINT

COMES NOW the Plaintiff, by and through counsel, in the above styled cause, and for Plaintiff’s Complaint against the Defendants 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, George Kirchharr (“Plaintiff”), is a natural person who resides within the Middle Division of this District.

3. Defendant, Wachovia Bank, N.A. (“Defendant” or “Wachovia”), is a foreign company that engages in business in this judicial district.
4. Defendant Popular Mortgage Servicing, Inc. (“Defendant” or “Popular”), is a foreign company that engages in business in this judicial district.

FACTS

5. Plaintiff filed bankruptcy and was discharged on April 5, 2007, with all Defendants receiving a copy of the discharge order. The case number was 06-5247 and it was filed in the Northern District of Alabama Bankruptcy Court.
6. Despite the court order, Wachovia has continued to report Plaintiff’s account (43610611XXX) to Experian, one of the national consumer-reporting agencies (“CRAs”), as having a current balance owed of approximately \$3,095.00, which is incorrect and false.
7. Defendant Wachovia has intentionally not reported to the CRAs that the account was included in bankruptcy and that it should have a zero balance.
8. Wachovia has intentionally and maliciously refused to report the true balance to the CRAs when Wachovia knew that the debt was discharged in bankruptcy.

9. Despite the court order, Popular has continued to report Plaintiff's account (42XXX) to Experian, one of the national CRAs, as having a current balance owed of approximately \$119,547.00, which is incorrect and false.
10. Defendant Popular has intentionally not reported to Experian that the account was included in bankruptcy and that it should have a zero balance.
11. Defendant Popular has intentionally and maliciously refused to report the true balance to Experian when Popular knew that the debt was discharged in bankruptcy.
12. The effect of these errors on Plaintiff's credit reports has been to negatively impact Plaintiff's credit report, credit worthiness, and his credit score.
13. The conduct of the Defendants 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.
14. Defendants knew and continue to know that a discharge order means the consumer no longer owes the debt and has no personal liability to Defendants for the discharged debt but the Defendants have made a corporate decision to willfully and maliciously act contrary to their knowledge in their calculated decision to violate the requirements to properly report and update the Plaintiff's accounts.

15. The Defendants have 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 Defendants have known since discharge that no balance is owed) and intentionally refusing to show a current status of “included in bankruptcy” or “discharged in bankruptcy”.
16. Defendants update many accounts each month with allegedly the correct information regarding the balance but have willfully and maliciously refused to do so with Plaintiff and with others who have received a discharge order on Defendants’ debts.
17. The Defendants have 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.”
18. The Defendants have promised through their subscriber agreements or contracts to update accounts that have been discharged in bankruptcy but the Defendants have 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.

19. The Defendants have a policy to "park" their 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 Defendants' intentional and malicious conduct.
20. In the context of parking an account, the Defendants have an obligation and duty under federal and state law to accurately report the balance and the Defendants willfully and maliciously refuse to obey federal and state law.
21. The Defendants know 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 Defendants' actions with the goal to force the Plaintiff to pay on an account he does not owe.
22. When the consumer who has discharged the debt pays the "parked" account, the Defendants claim that such payment was purely "voluntarily" or was to

pay off a “moral obligation”. The Defendants know and intend 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.

23. Despite receiving dozens, if not hundreds, of disputes that their reporting on accounts included in bankruptcy was false, the Defendants intentionally and knowingly have not corrected their 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.
24. It is a practice of Defendants to maliciously, willfully, recklessly, wantonly, and/or negligently violate, ignore, and refuse to follow the requirements of the federal and state law.
25. All actions taken by employees, agents, servants, or representatives of any type for Defendants were taken in the line and scope of such individuals' (or entities’) employment, agency, or representation.
26. All actions taken by Defendants 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.

27. Defendants have engaged in a pattern and practice of wrongful and unlawful behavior with respect to accounts and consumer reports and such Defendants are subject to punitive damages, statutory damages, and all other appropriate measures to punish and deter similar future conduct by Defendants and similar companies.

FIRST CLAIM FOR RELIEF
State Law Claims

28. All paragraphs of this Complaint are expressly adopted and incorporated herein as if fully set forth herein.

29. Defendants published false information about Plaintiff by reporting the Defendants' 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 Defendants.

30. Plaintiff alleges that the publications and defamations were done maliciously, without privilege, and with a willful intent to injure Plaintiff.

31. Defendants assumed a duty, through the subscriber agreement and other actions, to accurately report the balances even after individuals, like the Plaintiff, received a discharge.

32. Defendants violated all of the duties the defendants had and such violations were made intentionally, willfully, recklessly, maliciously, wantonly, and negligently.

33. It was foreseeable, and Defendants did in fact foresee it, that refusing to properly update would cause the exact type of harm suffered by the Plaintiff.
34. 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 Defendants' accounts; the intentional refusal to properly update the accounts; and all other aspects as set forth in this Complaint.
35. Defendants invaded the privacy of Plaintiff as set forth in Alabama law, including publishing false information about Plaintiff's personal financial obligations.
36. Such negligence, malice, wantonness, recklessness, willfulness, and/or intentional conduct proximately caused the damages set forth in this complaint.

RELIEF SOUGHT

37. An award of statutory, actual, compensatory and punitive damages, and costs of the action including expenses, together with reasonable attorney's fees.
38. Plaintiff also requests all further relief to which Plaintiff 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.:

Wachovia Bank, N.A.
c/o CSC Lawyers Inc. Services, Inc.
150 South Perry Street
Montgomery, Alabama 36104

Popular Mortgage Servicing, Inc.
c/o The Corporation Company
2000 Interstate Park Dr, Suite 204
Montgomery, Alabama 36109