

Handout #1

CONSUMER LAW RETAINER AND FEE AGREEMENT

Client(s):

Creditor(s):

Agreement: The Bledsoe Law Firm (“We”, “Our” and “Us”) agree to represent Client(s) (“You” and “Your”) in your consumer law matter and its related claims. You have not hired us to defend any state court action filed or served upon you, nor will we pursue any appeal on your case. We will handle your matter, explain your rights, keep you updated, and advise you of your legal options. We cannot and do not guarantee particular results. You authorize us to make an initial demand on your case and associate with anyone we deem necessary to litigate your claims. You agree to keep us informed about your current address, telephone numbers and other contact information at all times during our representation of you. If you move, you will tell us immediately to where you have moved and how our firm can reach you. You authorize us to use and disclose any recorded tapes or material you provide to us to pursue your case, to educate others about collection matters, or to use for broadcast with radio, television, or internet media, but we will not do so if you instruct us in writing not to when you provide us the materials. You have been advised and understand that any time you or we use electronic communications, such as cellular phones, fax, or email to communicate about your case there is always a risk of inadvertent or deliberate interception of these communications by others. You agree that you will contact us if you have questions about your legal matter and our office will endeavor to promptly respond to you. Consumer law claims often become more valuable over time, especially collection cases. For this reason, you may not hear anything from our office for several months. We encourage you to check in regularly with us if you are being contacted by any collection agency or lawyer for the payment of a debt, or you just want to know what’s going on in your case. You will not make any complaints, blog entries, emails, letters, phone calls, etc. to anyone regarding this collector’s conduct including the FTC, Commerce Department or BBB, unless agreed to in advance and in writing with Us. This agreement is made in the State of North Carolina and only North Carolina laws will apply to its interpretation.

Legal Fees: You may be entitled to several different types of damages in connection with this matter, including actual damages, statutory damages and punitive damages. In some circumstances, you may also be entitled to have the other side pay all or a portion of your legal fees and costs if your case is successful. Our fee for handling this case for you will be **40%** of the amount of the total recovery or the amount that the Court orders or the other side agrees to pay us in attorney's fees, **whichever is higher**. In the event the Court orders the other side to pay, or the other side agrees to pay, our attorneys fees, but the amount to be paid by the other side is less than 40% of the total recovery, our fee will **still be** 40% of the amount of the total recovery, but the amount the other side pays will be credited against the amount of Our fee, and only the difference will be paid from the total recovery.

Cash payments, debt relief or any other tangible economic benefit will be added to and included in calculating your total recovery in your case. Our current hourly

Legal Fees: rates are \$____ for attorneys, and \$___ for paralegals. **You will pay us no legal fees or costs if there is no recovery in your matter.** **(Continued)** You hereby unequivocally and irrevocably assign to us all right, title, and interest of any kind in attorney's fees recovered or awarded in this case whether negotiated between the parties or ordered by the court.

Costs: There will be legal costs involved in handling your case, including but not limited to postage, filing fees, long distance, legal research, law clerks, copies, court reporters, and process servers. Costs will be subtracted from any recovery in your case after calculating the attorney's fees. This law firm will finance your legal costs unless otherwise agreed to in writing between you and us. You agree to pay us back for these legal costs out of any recovery we get for you, including paying us back for any interest or late charges that we incurred in financing your case. **You will pay us nothing for your costs incurred if there is no recovery in your matter.** However, you agree to pay reasonable copying and retrieval costs for your legal file if you request it after your case is over. You hereby unequivocally and irrevocably assign to us all right, title, and interest of any kind in cost amounts recovered or awarded in this case whether negotiated between the parties or ordered by the court..

Payment: Any recovery in your case, either by a settlement or a judgment, will be paid with a disbursement statement as follows: first, our attorney's fees will be paid to us; second, we will be reimbursed for all of your costs paid or payable in the case; and, third, any remaining funds will be paid to you.

Termination: We may withdraw in writing at any time as your lawyer, so long as you are not prejudiced by it. You may terminate us at any time as your lawyer, but we retain an attorney's lien for the work we have done in your case

By signing below, you agree to the terms of this Agreement and acknowledge that you have received a copy of it.

Client(s)

By _____
THE BLEDSOE LAW FIRM

Date

Handout #2

CLAIMS YOU MAY HAVE AGAINST YOUR CREDITORS

Has any collector ever threatened you with violence?	Yes	No
Has any creditor ever threatened to harm your property?	Yes	No
Other than someone collecting for a bounced check, has any creditor ever threatened to falsely accuse you of a crime, or to have you arrested if you did not pay a debt?	Yes	No
Has any collector ever told you they were going to sell your account, or turn your account over to someone else for collection? If so, did they tell you that when they sold or turned to account over, you would lose any defense you had regarding repayment? _____ Or, did they tell you that the business they were selling or turning the account over to would be harsh, or would harass you? _____	Yes	No
Has any collector, in connection with a credit card or medical bill, or other unsecured loan, ever threatened to take your property “this afternoon” or “this week” if you did not pay?	Yes	No
Has any collector ever used profane or obscene language with you, or with anyone else, in trying to collect from you?	Yes	No
Has any collector ever used language that you consider to be abusive?	Yes	No
Do you have any reason to believe that a collector has ever used a false name, or has falsely identified the company for which he/she works?	Yes	No
Other than on your cell phone, has any collector ever called you at work after you asked him/her not to do so? If so, do you have a home phone or cell phone? _____	Yes	No
Does your employer allow personal calls of <i>any</i> kind at work?	Yes	No
Has any collector ever called you at a particular time of day, or on a particular day of the week, <i>after</i> you told them that was not a good time for you to talk? If so, how long did it take them to call you after you told them the time or day was inconvenient? _____ How many times/how often have they called since you told them that the time or	Yes	No

day was inconvenient? _____		
Other than trying to get a good address and/or phone number for you, has any collector ever talked to <i>someone else</i> about your debt without your permission? If so, who did they talk to and what did they say?	Yes	No
Does any collector have a habit of not saying, “this is an attempt to collect a debt” when they call?	Yes	No
Has any collector ever sent you a collection letter which did not say, somewhere, “this is an attempt to collect a debt”? If so, do you still have that letter?	Yes	No
Has any collector ever identified him or herself as a “detective”, or implied they were a government or police official?	Yes	No
Has any collector ever called you more than once in a single day?	Yes	No
Does any collector call you on a regular basis? If so, how frequently do they call? _____ How long has this been happening? _____	Yes	No
Has any collector ever told you they had filed a lawsuit against you when they had not?	Yes	No
Has any collector ever told you that you had to pay a debt you believe was owed by someone else (a friend or family member) and for which you believe you are not liable?	Yes	No
Has any collector ever told you that not paying a debt was “fraud”?	Yes	No
Has any collector ever told you that a debt you owed was not one that could be included in bankruptcy?	Yes	No
Has any creditor ever tried to get you to sign something admitting that you owe an old debt? If so, how long before the collector tried to get you to sign something did you make the last payment? _____	Yes	No
Has any creditor ever tried to get you to sign something admitting that you owe a debt which was discharged in a previous bankruptcy?	Yes	No
Has any collector ever tried to get you to sign something waiving your legal	Yes	No

rights with respect to the collection of a debt?		
Has any collector sued you in a county OTHER THAN the county where you lived at the time? If so, how much did the collector say you owed at that time? _____ How far away was the place where the collector sued you? _____	Yes	No
Has any collector ever contacted you after you told them that you were being represented by an attorney?	Yes	No
Has any collector ever come to your house or work to try to collect a debt?	Yes	No
Has any collector ever threatened to tell your friends, family, neighbors or co-workers that you don't pay your debts?	Yes	No
Has any collector gone to your kids' school to try to collect a debt?	Yes	No
Have you ever notified a collector <i>in writing</i> either that you would not pay a debt, or that you just wanted them to stop contacting you? If so: Do you have any evidence that they received your letter? _____ Did the collector stop trying to collect after you sent your letter? _____ If they did not stop trying to collect after you sent the letter, how many times did they try to contact you after you sent the letter, and what did they send or say to you?	Yes	No
Has any collector called you, or come to your home, either before 8:00 in the morning after 9:00 at night, trying to collect a debt?	Yes	No
Has any collector <i>falsely</i> stated or implied that they were an attorney, or that they worked for an attorney?	Yes	No
Has any collector ever told you that not paying a debt is a crime?	Yes	No
Has any collector ever called you a "liar" or "cheat", or otherwise said something that questioned your honesty or character?	Yes	No

If so, what did they say?		
Have you ever told a collector that you dispute a debt? If so, who was the collector? _____	Yes	No
Has any collector ever sent you any documents that looked “official,” like they were court papers, or like they came from the federal or a state government, when in fact the documents were just from the collector?	Yes	No
Has any creditor ever told you that you did NOT need to respond to some legal paper it sent you, and then gotten a judgment against you?	Yes	No
Has any collector ever tried to get you to send them a post-dated check? If so, did they try to cash the check earlier that they said they would? _____ Did the check clear? _____ If it did not clear, did the collector then threaten you with criminal action for giving them a “bounced check”? _____	Yes	No

Your Name: _____

Your Phone Number: _____

Handout #3

AUTHORIZATION OF RELEASE OF INFORMATION

Creditor Name: _____

Address: _____

City, State Zip: _____

Re: Acct. Number: _____

TO WHOM IT MAY CONCERN:

Please be advised that I/we have designated the following law firm(s), and any attorney associated with such firm(s), to be authorized to receive copies of any and all documents and records related to any account placed with or established with your organization on which my/our name(s) appear (jointly or individually).

Please be advised that law firm(s), including any attorney associated with such firm(s), are also authorized to discuss, negotiate and/or settle any such account(s).

Finally, please be advised that we request all communications on such account(s) to hereafter be directed to our lawyer(s):

THE BLEDSOE LAW FIRM
Joseph A. Bledsoe, III
Attorney at Law
3217 Friendly Road
Fayetteville, NC 28304
Phone/Fax: (910) 555-5555
jbledsoe@attorneybledsoe.com

Client

Date: _____

Handout #4

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**IDA O. MONEY

DEBTOR.**

**CASE NO. 06-00000-8-AAA
CHAPTER 13**

IDA O. MONEY,

PLAINTIFF,

vs.

A.P. NO. _____

**WE BUY BANKRUPTCY DEBT, INC.,

DEFENDANT.**

COMPLAINT

Plaintiff, complaining of the defendant, says:

Introduction

1. This is an action for actual and punitive damages, including attorney's fees, filed by the plaintiff for the failure of the defendant to comply with applicable provisions of Title 11 of the United States Code, in particular, but not necessarily limited to, 11 U.S.C. § 362.

2. In addition, or in the alternative, this action is filed for actual and punitive damages, including statutory damages and attorney's fees, filed by the plaintiff for the failure of the defendant to comply with applicable North Carolina law.

3. In addition, or in the alternative, this action is filed for actual and statutory damages, including attorney's fees, filed by the plaintiff for the failure of the defendant to comply with the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et. seq.*

4. This action is also filed to preclude the frustration of the underlying purposes of the United States Bankruptcy Code.

Jurisdiction and Standing

5. This is a core proceeding as that term is defined by 28 U.S.C. § 157(b)(2), in that it concerns proceedings affecting the liquidation of assets of the estate or the adjustment of the debtor-creditor relationship. To the extent the Court may find this to be a non-core proceeding, the plaintiff consents to the entry of a final order in this matter by the Bankruptcy Court, in accordance with 28 U.S.C. § 157(c)(2).

6. This Court has jurisdiction to enter a final and dispositive order in this matter under the decision in Budget Service Co. v. Better Homes of Virginia, 804 F.2d 289 (4th Cir. 1986).

7. This Court has both personal and subject matter jurisdiction to hear matters herein raised pursuant to 28 U.S.C. §§ 157(b)(2) and 1334, and pursuant to the Order entered by the Judges of the United States District Court for the Eastern District of North Carolina on August 3, 1984 (Referral Order), which Order was entered in accordance with the Bankruptcy Amendments and Federal Judgeship Act of 1984.

8. This Court has supplemental jurisdiction to hear all state law and FDCPA claims pursuant to 28 U.S.C. § 1367.

Parties

9. The plaintiff is the debtor in the above-captioned bankruptcy case, filed under Chapter 13 of the United States Bankruptcy Code on June 1, 2006.

10. Upon information and belief, defendant is a limited liability company with corporate offices located at 1111 Nowhere Drive, Makethempay, MI 44444, and with a satellite office located at 55 DebtBuyer Street, GonnaGetY a, VA 00001. Donald D. Duck is an officer of defendant, with a mailing address at the Virginia location.

11. According to the Division of Business Services for the Michigan Department of State, the registered agent for defendant in the state of Michigan is Scrooge McDuck, who has a mailing address is 1111 Nowhere Drive, Makethempay, MI 44444.

12. Upon information and belief, defendant is not listed or registered with the office of the North Carolina Secretary of State.

13. Upon information and belief, defendant purchases secured and unsecured bankruptcy claims, and according to the Proof of Claim filed by the defendant in the plaintiff's underlying bankruptcy matter on August 21, 2006, it is the successor in interest on a pre-Petition debt allegedly owed by the plaintiff to Big Bank One.

Relevant Facts

15. Upon information and belief, in or about March of 2005, the plaintiff entered into a unsecured loan agreement with Big Bank One, and thereafter borrowed the amount of \$5,000 under such agreement.

16. On June 1, 2006, plaintiff filed a Voluntary Petition under chapter 13 of the United States Bankruptcy Code, and John F. Logan was duly appointed as the chapter 13 trustee.

17. Along with her Petition, plaintiff filed all necessary bankruptcy Statements and Schedules, along with a proposed Chapter 13 plan. Among the Schedules filed, was a Schedule F, on which defendant listed an obligation owed to Big Bank One.

18. On August 21, 2006, the defendant filed a Proof of Claim in the plaintiff's bankruptcy case, indicating thereon that it was the successor in interest to Big Bank One. No objection to the defendant's Proof of Claim was filed by the plaintiff, the Trustee or any other party in interest.

19. On August 26, 2006, the plaintiff's proposed Chapter 13 plan was confirmed and provided, among other things, that the holders of allowed unsecured claims would be paid \$0 through the Chapter 13 disbursements. The Court docket reflects that a copy of the Order confirming the plaintiff's plan was served on the defendant at the address it listed as a "noticing" address on its Proof of Claim.

20. On or about June 17, 2007, the defendant contacted the plaintiff by telephone demanding payment on its claim.

21. On June 21, 2007, Miss Pennyapple, a paralegal with the Bledsoe Law Firm, contacted Donald D. Duck and advised Duck that defendant's claim had been discharged in the plaintiff's underlying bankruptcy, and that any future collection attempts made by defendant against plaintiff or her property would be considered to have been made in wilful violation of the automatic stay of 11 U.S.C. § 362. Miss Pennyapple thereafter sent Duck a letter, restating the plaintiff's position in this matter. A copy of such letter, mailed to Duck at the address listed in paragraph 10, above, on June 22, 2007, is attached hereto as Exhibit A and is fully incorporated herein by reference.

22. Notwithstanding such communications from Miss Pennyapple, defendant continued its post-discharge collection efforts against the plaintiff, with such attempts being made both in writing and by telephone. In response, Miss Pennyapple contacted Duck again by phone, and again requested that defendant cease its collection efforts against the plaintiff. Again, Miss Pennyapple followed by sending defendant a letter, this time by facsimile transmission, sent on August 1, 2007. A copy of such August 1, 2007 letter, along with a copy of the fax confirmation received by Miss Pennyapple upon its sending, are attached hereto as Exhibits B and C, respectively, and are fully incorporated herein by reference.

23. Notwithstanding the additional notification on August 1, 2007, defendant continues its written and telephonic collection efforts against the plaintiff, having sent the plaintiff regular monthly demand letters in August, September, October, November and December of 2007, as well as in every month of 2008 up to the date of this Complaint. Such demand letters also contained threats that defendant "may opt to exercise its right to sue [plaintiff] if you continue to refuse to pay this just and owing debt." Copies of such demand letters are attached hereto, collectively, as Exhibit D, and are fully incorporated herein by reference.

First Claim for Relief - 11 U.S.C. § 362

24. The allegations contained in paragraphs 1 through 23, above, are hereby reincorporated herein by reference.

25. Defendant's post-confirmation collection attempts against the plaintiff have been in clear violation of the automatic stay of 11 U.S.C. § 362(a).

26. Inasmuch as defendant has been at least twice warned of the implications of its actions in this matter, its post-confirmation collection attempts against the plaintiff have been in wilful violation of the automatic stay.

27. As a result of defendant's violations, the plaintiff has suffered damages.

28. Accordingly, pursuant to 11 U.S.C. § 362(k)(1), the plaintiff is entitled to compensation. Further, under the facts of this matter, the imposition of punitive damages against the defendant is warranted.

Second Claim for Relief - the FDCPA

29. The allegations contained in paragraphs 1 through 28, above, are hereby reincorporated herein by reference.

30. The plaintiff is a "consumer" as defined in 15 U.S.C. § 1692a(3), and the defendant is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

31. The actions of the defendant as alleged herein above constitute an attempt to collect a "debt," as that term is defined in 15 U.S.C. § 1692a(5).

32. To the extent that the actions of the defendant have been in violation of the automatic stay, the defendant has violated various provisions of the Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et. seq.*), including but not limited to 15 U.S.C. §1692e(2)(A)

(falsely representing the character, amount, or legal status of any debt); and § 1692e(5)

(threatening to take any action which cannot legally be taken).

33. Pursuant to 15 U.S.C. § 1692k, to the extent that defendant's actions are found to have been in violation of the FDCPA, the plaintiff is entitled to recover any actual damages she has suffered as a consequence of those actions, including her reasonable attorney's fees, as well as statutory damages of up to \$1,000.

Third Claim for Relief - Article 2, Chapter 75, N.C.G.S

34. The allegations contained in paragraphs 1 through 33, above, are hereby reincorporated herein by reference.

35. The plaintiff herein is a "consumer" as that term is defined in N.C.G.S. § 75-50(1), and the plaintiff's relationship with the defendant arose out of a "debt" as that term is defined in N.C.G.S. § 75-50(2).

36. Defendant is a "debt collector" as defined by and contemplated in N.C.G.S. § 75-50(3); defendant is not a "collection agency" as contemplated in Article 70, Chapter 58 of the North Carolina General Statutes; and therefore the defendant is subject to the requirements and constraints of Chapter 75 of the North Carolina General Statutes.

37. To the extent that the actions of the defendant have been in violation of the automatic stay of 11 U.S.C. § 362(a), the defendant has violated various provisions of the Article 2, Chapter 75 of the North Carolina General Statutes (hereinafter "Article 2, NCGS"), including but not limited to N.C.G.S. § 75-51(8) (threatening to take any action not permitted by law); and/or § 75-54(4) (; falsely representing the creditor's rights or intentions).

38. Pursuant to N.C.G.S. § 75-56(b), to the extent that defendant's actions are found to have been in violation of Article 2, NCGS, the plaintiff is entitled to recover any actual damages she has suffered as a consequence of those actions, as well as civil penalties of up to \$4,000 per violation.

39. Pursuant to N.C.G.S. § 75-56(a), a violation of any of the provisions of Article 2, NCGS, shall constitute a violation of N.C.G.S. § 75-1.1.

40. Notwithstanding N.C.G.S. § 75-56(d), which limits the amount of *civil penalties* to \$4,000, N.C.G.S. § 75-56(b) provides for the imposition of civil penalties of up to \$4,000 *per violation*, and N.C.G.S. § 75-8 provides that each week that a violation continues is to be considered a separate offense. Furthermore, N.C.G.S. § 75-16 provides that any actual damages awarded to the plaintiff (as opposed to civil penalties) are to be trebled.

41. Pursuant to either N.C.G.S. §§ 75-16.1 and/or 75-56(b), the court may award to the plaintiff the amount of her attorney's reasonable fees incurred in connection with the prosecution

of this matter.

42. Pursuant to N.C.G.S. § 75-56(c), the court may assess punitive damages against defendant, and the remedies provided under N.C.G.S. § 75-56 are deemed to be cumulative and available in addition to any other remedies to which a plaintiff may be entitled.

WHEREFORE, the plaintiff having set forth her claims against the defendant, respectfully prays the Court as follows:

A. That in accordance with 11 U.S.C. § 362(k)(1), the plaintiff have and recover against and from the defendant her actual damages incurred in connection with the actions outlined above;

B. That in addition, the plaintiff have and recover against and from the defendant statutory damages in the amount of \$1,000 in accordance with 15 U.S.C. § 1692k; or, in the alternative, that the plaintiff have and recover against and from the defendant her actual damages incurred in connection with the actions outlined above, along with statutory damages in the amount of \$1,000, all in accordance with 15 U.S.C. § 1692k.

C. That additionally, the plaintiff have and recover against and from the defendant additional civil penalties of not less than \$4,000 per violation of the provisions of Article 2 of Chapter 75 of the North Carolina General Statutes;

D. That any actual damages awarded to the plaintiff be trebled in accordance with N.C.G.S. § 775-16;

E. That the plaintiff have and recover against and from the defendant punitive damages, as may be appropriate, in accordance with 11 U.S.C. § 362(k)(1) and/or N.C.G.S. § 75-56(c);

F. That the plaintiff have and recover against and from the defendant her reasonable attorney's fees incurred in connection with the prosecution of this matter, in accordance with 11 U.S.C. § 362(k)(1), 15 U.S.C. § 1692k, N.C.G.S. §§ 75-16.1, and/or N.C.G.S. § 75-56(b); and/or

F. For such other and further relief as this court deems just and proper.

This the 30th day of April, 2008.

THE BLEDSOE LAW FIRM by

s./ Joseph A. Bledsoe, III

Joseph A. Bledsoe, III

Handout #5

Statutes Referenced

Fair Debt Collection Practices Act: 15 U.S.C. § 1692-1692p

Telephone Consumer Protection Act: 47 U.S.C. § 227

Jurisdictional Statute: 28 U.S.C. §§ 151, 157, 1334

State Law Preemption by the National Bank Act:

12 U.S.C. § 25(b)

12 C.F.R. § 34.4

Cases Cited

Post-Petition Assets as Property of the Estate:

Carroll v. Logan, 735 F.3d 147 (4th Cir. 2013)

In re Castleberry, 10-11991, 2013 WL 1397705 (Bankr. S.D. Ga. Mar. 15, 2013)

Estoppel:

Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778 (9th Cir. 2001)

Preemption/Preclusion:

Walls v. Wells Fargo Bank, N.A., 276 F.3d 502 (9th Cir. 2002)

Simon v. FIA Card Servs., N.A., 732 F.3d 259 (3d Cir. 2013)

The National Bank Act:

Watters v. Wachovia Bank, N.A., 550 U.S. 1 (2007)

In re Pryor, 479 B.R. 694 (Bankr. E.D.N.C. 2012)