

United States Bankruptcy Court
Western District of Michigan

In re:

Sheldon [REDACTED]

xxx-xx- [REDACTED]

Coralyn [REDACTED]

xxx-xx- [REDACTED]

Debtor(s)

Address:

[REDACTED]

Case No: 09-05512-swd

Chapter: 7

Honorable Scott W. Dales

**Motion for Damages and Sanctions for
Violation of the Automatic Stay and Discharge Order**

Debtors Coralyn and Sheldon [REDACTED] through their attorney Wm Paul Slough, state in support of their motion against Respondent [REDACTED] Federal Credit Union as follows:

1. Debtors are individual debtors in the instant case pending before this court under Chapter 7 of Title 11 of the United States Code.
2. Respondent [REDACTED] Credit Union (" [REDACTED] ") is a federally chartered credit union with its principle place of business at [REDACTED]
3. Debtors initiated the instant Chapter 7 case on May 6, 2009.
4. On or about the date the petition was filed, Debtors' counsel filed and served Debtors' Statement of Intention to [REDACTED] notifying it of Debtors' chapter 7 filing and intentions

with regard to their 2005 Dodge Ram Pickup and 2004 Bri Mar Trailer ("the truck and trailer.")

5. 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 [REDACTED]
6. 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.**"
7. Debtors aver that all of these documents were served on [REDACTED] and received by it.
8. The 341(a) meeting of creditors was held in Traverse City, Michigan on June 10, 2009.
9. On June 2, 2009, Debtors' counsel received a proposed reaffirmation agreement from [REDACTED]
[REDACTED]
10. Debtors' counsel subsequently exchanged numerous emails and telephone calls with the vice-president of [REDACTED] between June 18 and July 21, 2009 in an attempt to negotiate a reaffirmation agreement.
11. On July 27, 2009, Debtors' counsel sent an email to the vice-president of [REDACTED] stating that the Debtors had opted to surrender the collateral, and Debtors subsequently surrendered the collateral to [REDACTED] as directed. See Exhibit 1.

12. On or about August 8, 2009, Debtors received a notice from [REDACTED] stating that their truck payment was past due, that a late charge was being assessed, that they should contact the billing department to make payment arrangements, and that failure to do so would impact their credit score. *See* Exhibit 2.
13. On or about August 11, 2009, Debtors received similar notice from [REDACTED] stating that their trailer payment was past due, that a late charge was being assessed, that they should contact the billing department to make payment arrangements, and that failure to do so would impact their credit score. *See* Exhibit 3.
14. On August 13, 2009, this court entered an order discharging Debtors of their debts under section 727 of title 11 of the United State Code. *See* Exhibit 4.
15. Upon information and belief, the discharge order was mailed to the mailing matrix on August 15, 2009, which listed [REDACTED] with the following mailing address: '[REDACTED]
[REDACTED]' *Id.*
16. Debtors aver that the discharge order was received by [REDACTED]
17. On August 19, 2009 counsel sent the vice-president of [REDACTED] an email warning him that the collection attempts were violations of the automatic stay and recent discharge order, entitling debtors to damages, and demanding that the collection efforts immediately cease. *See* Exhibit 5.
18. On August 20, 2009, the vice-president of [REDACTED] replied and stated that the problem was fixed. *Id.*

19. On or about August 26, 2009, Debtors began working with a sales representative at [REDACTED] [REDACTED] in Kalkaska, Michigan to obtain financing for a new vehicle.
20. Upon information and belief, Debtors' credit reports did not yet reflect a bankruptcy filing and Debtors had no way of verifying the truck had been returned to [REDACTED].
21. Upon information and belief, a representative from the dealership contacted [REDACTED] by telephone on speakerphone in the presence of Debtors and spoke with a loan officer to obtain verification that the truck and trailer had been surrendered.
22. Upon information and belief, a [REDACTED] loan officer acknowledged that Debtors' account reflected a bankruptcy filing, and then stated that Debtors still owed the money, that just because [REDACTED] couldn't try to collect it doesn't mean they don't owe it, and that any time Debtors tried to get a loan it would reflect that they owed the debt. The loan officer then hung up on the dealership employee. *See Exhibit 6 & 7- Affidavits.*
23. Debtors counsel contacted [REDACTED]' collection department the same day, obtained written proof that the collateral had been surrendered, and warned the collection employee that their loan officer's conduct was unacceptable.
24. The next day, Debtors received yet another statement dated August 26, 2009 from [REDACTED] [REDACTED] stating that their trailer payment was past due, that a late charge was being assessed, that they should contact the billing department to make payment arrangements, and that failure to do so would impact their credit score. *See Exhibit 8.*
25. The actions of the Defendants in causing the improper demands for payment to be sent to Debtors and verbal statements that Debtors continue to owe debt constitute a willful

violation of the automatic stay as set forth in 11 U.S.C. §362(a), or a willful violation of the discharge injunction set forth in 11 U.S.C. §524(a).

26. As a result of the above violations of 11 U.S.C. §362 and §524, Plaintiffs have suffered actual damages, including embarrassment, humiliation, and mental distress.

27. Defendants are liable to the Plaintiffs for actual damages, punitive damages, and reasonable legal fees.

For these reasons, Debtors request this court enter a judgment in their favor ordering Respondent to compensate Debtors' actual damages and reasonable legal fees, as well as punitive damages; enter an order forever discharging the above reference debt; and award Debtors all other relief to which they are legally or equitably entitled.

Respectfully submitted,
Slough Law

Dated: September 9, 2009

/s/ Wm Paul Slough
Wm Paul Slough
Attorney for Debtors
PO Box 58, Gaylord MI 49734
989.705.9025 f: 877.350.3479
paul@sloughlaw.com