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MICHAEL K. JEANES
Clerk of the Superior Court

By MONSERRAT VEJAR, Deputy
Date 04/24/2009 Time 11:57 AM
Description Qty Amount
----- CASE# CV2009-012940 -----
CIVIL NEW COMPLAINT 001 301.00

TOTAL AMOUNT 301.00
Receipt# 00010879213

6 Attorneys for the Plaintiff
7 Jennifer Dicks

10 **SUPERIOR COURT OF ARIZONA**
11 **COUNTY OF MARICOPA**

12 **HYDE & SWIGART**
13 Phoenix, Arizona

<p>Jennifer Dicks,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Auto Financing Network, Inc. and Michael Fischer and Does 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p>Case Number: CV2009-012940</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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- 21 1. Jennifer Dicks, (Plaintiff), through Plaintiff's attorneys, brings this action to
22 challenge the actions of Auto Financing Network, Inc. and Michael Fischer,
23 ("Defendants"), with regard to attempts by Defendants to unlawfully and
24 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
25 Plaintiff damages.
- 26 2. Plaintiff makes these allegations on information and belief, with the exception
27 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
28 Plaintiff alleges on personal knowledge.

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1 3. Unless otherwise stated, Plaintiff alleges that any violations by Defendants
2 were knowing and intentional, and that Defendants did not maintain
3 procedures reasonably adapted to avoid any such violation.

4 **JURISDICTION AND VENUE**

5 4. Jurisdiction of this Court is proper because the events leading to Plaintiffs'
6 causes of action occurred in the County of Maricopa and the State of Arizona.

7 5. Because Defendants do business within the State of Arizona, personal
8 jurisdiction is established. In addition, CASH1 and AAA have the same
9 statutory agent listed with the Arizona Corporation Commission.

10 6. Venue is proper as the acts complained of herein occurred in the County of
11 Maricopa, State of Arizona.

12 **PARTIES**

13 7. Plaintiff is a natural person who resides in the City of Phoenix, County of
14 Maricopa, State of Arizona.

15 8. Defendants are located in the City of Phoenix, the County of Maricopa, and
16 the State of Arizona.

17 9. Defendant is an Arizona domestic corporation with its principal office located
18 at 2540 West Camelback Road, Phoenix, Arizona and is a person as defined
19 by A.R.S. § 44-1521(6).

20 10. The true names and capacities of DOES 1 through 20 are currently unknown
21 to Plaintiffs who allege that DOES 1 through 20 are responsible in some
22 manner for the injuries sustained by Plaintiffs as hereinafter alleged.
23 Plaintiffs' request leave to file amendments to this Complaint alleging the true
24 names and capacities of DOES 1 through 20 when the same have been
25 ascertained.

26 11. At all relevant times alleged herein, all of the Defendants were agents,
27 servants and employees of each other and were acting within the scope of
28 such agency or employment while engaged in the acts, omissions and other

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1 conduct alleged in this complaint, or the alleged acts, omissions and other
2 conduct of each defendant were subsequently ratified or adopted by the other
3 Defendants

4 **FACTUAL ALLEGATIONS**

5 12. At all times relevant to this matter, Plaintiff was an individual residing within
6 the State of Arizona.

7 13. At all times relevant, Defendants conducted business within the State of
8 Arizona.

9 14. On or about March 8, 2008, Plaintiff purchased a car from Defendant Auto
10 Financing Network, Inc.

11 15. This purchase was a "sale" of "merchandise" within the meaning of A.R.S. §
12 44-1521.

13 16. This financial obligation was primarily for personal, family or household
14 purposes.

15 17. Sometime thereafter, but after March 8, 2008, Plaintiff allegedly fell behind in
16 the payments allegedly owed on the alleged debt.

17 18. On or about late January 2009, Defendants' agent Tiffany, contacted Plaintiff
18 and demanded payment of the alleged debt.

19 19. During this conversation, Defendant informed Plaintiff the weekly automatic
20 withdrawals had stopped coming out of Plaintiff's bank account and Plaintiff
21 was two months behind.

22 20. At that time Plaintiff gave Defendant authorization to withdrawal the past due
23 amount from Plaintiff's account.

24 21. On or about five days after this conversation, Plaintiff's car was repossessed.

25 22. Plaintiff was informed her phone payment did not clear her account.

26 23. On or about January 30, 2009, Plaintiff then made a payment to Defendant to
27 regain possession of her automobile.

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- 1 24. At this time Plaintiff was informed that Defendant was able to find the car to
- 2 repossess it, because a global positioning system (aka a GPS) was hidden in
- 3 Plaintiff's car.
- 4 25. Defendant's actions of hiding a GPS within Plaintiff's automobile were an
- 5 intentional deceptive act, practice, fraud, false pretense, false promise,
- 6 misrepresentation, or concealment, suppression or omission of any material
- 7 fact with intent that others rely upon such concealment, suppression or
- 8 omission, in connection with the sale of merchandise in violation of A.R.S. §
- 9 44-1522.
- 10 26. These actions were also an intentional invasion of Plaintiff's privacy.
- 11 27. Plaintiff was eventually able to locate and disable the GPS unit hidden in her
- 12 automobile.
- 13 28. In early April Plaintiff again became past due in her car payment.
- 14 29. Sometime during the month of April, Defendant created a website using
- 15 Plaintiff's name. The website www.jenniferdicks.com was created. The title
- 16 of this website states "Jennifer Dicks isn't paying for her Cavalier!"
- 17 30. The content of this website is the same content on Defendant's website for the
- 18 business Auto Financing Network, Inc.
- 19 31. This website was created without the permission of Plaintiff.
- 20 32. Because Defendant uses Plaintiff's full name, and references her private
- 21 financial situation, as well as her automobile, this action amounts to an
- 22 invasion of privacy, an intrusion into private affairs, and public disclosure of
- 23 private facts.
- 24 33. At this time Defendant Michael Fischer began repeatedly texting Plaintiff in
- 25 an attempt to collect the alleged debt.
- 26 34. Throughout the first week of April 2009, Defendant Michael Fischer
- 27 repeatedly sent Plaintiff text messages stating "Call me" to Plaintiff's cell
- 28 phone.

- 1 35. On or about April 8, 2009 Defendant Fischer sent Plaintiff a text message
2 stating, "You need to call me. This has put me in a bad spot. I know you don't
3 give a shit but I do. I need the car back."
- 4 36. On or about April 9, 2009 Defendant Fischer sent Plaintiff a text message
5 stating, "What is the address? I'm at your house now or the address you gave
6 me."
- 7 37. On or about April 10, 2009 Defendant Fischer sent Plaintiff a text message
8 stating, "Can you quit playing games and give me the car? You no longer own
9 it, registration is in my name, and I need to get it sold asap. Where is it?"
- 10 38. On or about April 11, 2009 Defendant Fischer sent Plaintiff a text message
11 stating, "I'm 2 miles away coming to your house... are you home? Neee [sic]
12 the car"
- 13 39. After informing Defendant that Plaintiff was not home, Defendant Fischer
14 sent Plaintiff a text message stating, "I will stop by anyway."
- 15 40. On or about April 14, 2009 Defendant Fischer sent Plaintiff a text message
16 stating, "Please tell me where the car is."
- 17 41. On or about April 14, 2009 Defendant Fischer sent Plaintiff a text message
18 stating, "wht's his number?" in an apparent attempt to get Plaintiff's fiance's
19 phone number.
- 20 42. On or about April 14, 2009 Defendant Fischer sent Plaintiff a text message
21 stating, "Is he home? I'm headed to your place now."
- 22 43. On or about April 14, 2009 Defendant Fischer sent Plaintiff a text message
23 stating, "What is Steve's number?"
- 24 44. On or about April 15, 2009 Defendant Fischer twice again sent Plaintiff a text
25 message stating,, "What is Steve's number?"
- 26 45. On or about April 15, 2009 Defendant Fischer sent Plaintiff a text message
27 stating, "You need to call me... This isn't fair to me. Do you have no soul?"
28

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- 1 46. On or about April 15, 2009 Defendant Fischer sent Plaintiff a text message
2 stating, "I have written your co. I'm putting a website up which will be
3 updated daily with ur text messages, pictures, videos, repos etc.
4 JenniferDicks.com."
- 5 47. On or about April 8, 2009 Defendant Fischer sent Plaintiff a text message
6 stating, "I sent the repo to your credit reports yesterday for 10,000. I was also
7 able to put it on steves credit too since your married. Gotta love public
8 records."
- 9 48. These actions by Defendants were an intentional deceptive act, practice,
10 fraud, false pretense, false promise, misrepresentation, or concealment,
11 suppression or omission of any material fact with intent that others rely upon
12 such concealment, suppression or omission, in connection with the sale of
13 merchandise in violation of A.R.S. § 44-1522.
- 14 49. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
15 stating, "I mailed something important to po box 963 mohave address. Read it
16 when you get it. Its from phx pd."
- 17 50. These actions by Defendants were an intentional deceptive act, practice,
18 fraud, false pretense, false promise, misrepresentation, or concealment,
19 suppression or omission of any material fact with intent that others rely upon
20 such concealment, suppression or omission, in connection with the sale of
21 merchandise in violation of A.R.S. § 44-1522.
- 22 51. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
23 stating, "I rather mail it. It's a police report."
- 24 52. On or about April 18, 2009 Plaintiff informed Defendant Fischer that Plaintiff
25 had retained a lawyer and for Defendant to stop contacting her. Defendant
26 Fischer then sent Plaintiff a text message stating, "LOL. I'm sure he is really
27 good You will need him because az allows us to call the car in stolen. Please
28 send him this, you are f*cked!"

- 1 53. These actions by Defendants were an intentional deceptive act, practice,
2 fraud, false pretense, false promise, misrepresentation, or concealment,
3 suppression or omission of any material fact with intent that others rely upon
4 such concealment, suppression or omission, in connection with the sale of
5 merchandise in violation of A.R.S. § 44-1522.
- 6 54. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
7 stating, "Check this out. You are driving a car that isn't registered to you. I
8 have the judgement on ur and ur hubbys credit."
- 9 55. These actions by Defendants were an intentional deceptive act, practice,
10 fraud, false pretense, false promise, misrepresentation, or concealment,
11 suppression or omission of any material fact with intent that others rely upon
12 such concealment, suppression or omission, in connection with the sale of
13 merchandise in violation of A.R.S. § 44-1522.
- 14 56. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
15 stating, "All you do is lie. It isn't registered to you so call again. I wish you
16 died when you fell off the roof. If ur not married good. He can do sooo much
17 better."
- 18 57. Ignoring Plaintiff's repeated pleas to stop harrassing her, on or about April 18,
19 2009 Defendant Fischer sent Plaintiff a text message stating, "I drive by all
20 addresses each day and have a skip traces looking for you. I talk to your old
21 neighbors and offering them cash if they see u. I'm not stopping..."
- 22 58. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
23 stating, "And the website is almost done... what's up isn't all it. All about you
24 and you being a deadbeat. I can't wait."
- 25 59. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
26 stating, "I offered 2 teens 100 to call me when they see the car. Title is in my
27 name not urs. Your credit has a repo on it. Your a crook so enjoy it. Thought
28 you were good."

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- 1 60. These actions by Defendants were an intentional deceptive act, practice,
2 fraud, false pretense, false promise, misrepresentation, or concealment,
3 suppression or omission of any material fact with intent that others rely upon
4 such concealment, suppression or omission, in connection with the sale of
5 merchandise in violation of A.R.S. § 44-1522.
- 6 61. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
7 stating, "No you didn't or you would be so stupid. Do you actually think you
8 get a free car? Are you that fucking retarded. You are just a loser. Don't text
9 me."
- 10 62. On or about April 18, 2009 Defendant Fischer sent Plaintiff a text message
11 stating, "I'm done with this. You will soon see. Remember, you have a car
12 without a payment for 90 days. You think Im in the wrong? Goodbye. See ya
13 soon."
- 14 63. On multiple occasions Plaintiff offered to make her past due payments in an
15 attempt to put an end to the harassment and abuse. Defendant refused to
16 accept payment from Plaintiff.
- 17 64. On or about April 20, 2009, Plaintiff again asked how much she was past due,
18 and informed Defendant she wished to make her payments. Defendant Fischer
19 responded with a text message stating, "Its not cancelled its in repo,
20 collections, and the lawsuit, I will email the lawsuit tomorrow. U asked about
21 payments and its past that point."
- 22 65. Since Plaintiff had made a payment on January 30, 2008, Plaintiff was less
23 than 90 days late and should have been afforded the opportunity to make her
24 past due payment when requested.
- 25 66. Defendant's actions were a breach of the automobile sales contract between
26 the parties.
- 27 67. These actions by Defendants were also an intentional deceptive act, practice,
28 fraud, false pretense, false promise, misrepresentation, or concealment,

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suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of merchandise in violation of A.R.S. § 44-1522.

68. On or about April 22, 2009 Defendant Fischer sent Plaintiff a text message stating, "lol. I love you. You are acting like th [sic] victim and its you that isn't paying... so funny. Okay, got a date so see you in court."

69. On or about April 18, 2009 Plaintiff again requested that Defendant take down the website www.jenniferdicks.com, and Plaintiff informed Defendant she thought the website was defamatory. Defendant Fischer then sent Plaintiff a text message stating, "Trust me. Its not. The website I'm putting up has all public records and more importantly its true. I also have pics of steve in hospital after his cycle wreck."

70. These actions by Defendants were an intentional deceptive act, practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of merchandise in violation of A.R.S. § 44-1522.

71. These repeated text messages from Defendant to Plaintiff establish a pattern of harassing, stalking, and invading Plaintiff's privacy.

72. At all times Defendant Fischer was acting on the behalf of and for the financial benefit of Defendant Auto Financing Network, Inc.

73. Out of fear for her personal safety Plaintiff has had to contact the City of Phoenix Police Department and the State of Arizona's Attorney General's office.

74. Due to Defendants' actions Plaintiff has suffered from severe emotional distress and mental anguish in the form of sleeplessness, frequent nightmares, feelings of hopelessness, pessimism, nervousness, change in appetite, restlessness, irritability, guilt, helplessness, embarrassment, humiliation,

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depression, fear of answering the telephone, and fear of answering the door which have all greatly impacted her personal relationships.

75. Plaintiff is also currently afraid for her own personal safety as well as the safety of those close to her.

CAUSES OF ACTION CLAIMED BY PLAINTIFF

COUNT I

VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT

A.R.S. §§ 1521-1534 - ALL DEFENDANTS

76. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

77. The foregoing acts and omissions constitute numerous and multiple violations of the Arizona Consumer Fraud Act.

78. As a result of each and every violation of the Arizona Consumer Fraud Act, Plaintiffs individually are statutorily entitled to actual damages, punitive damages and attorneys fees in sums to be determined at trial.

COUNT II

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – ALL DEFENDANTS

79. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

80. Defendants intentionally or recklessly inflicted severe emotional distress on Plaintiffs by and through their extreme and outrageous conduct.

81. Such infliction was caused by extreme and outrageous conduct, which was intentional or reckless, and which caused severe emotional distress to Plaintiffs.

82. In addition to compensatory damages, Defendants' willful, wanton and malicious conduct entitles Plaintiffs to punitive damages in an amount to be determined by a jury at trial.

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COUNT III

**INVASION OF PRIVACY BY INTRUSION UPON SECLUSION AND BY
REVELATION OF PRIVATE FINANCIAL DATA TO THIRD PARTY
AGAINST ALL DEFENDANTS**

- 83. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 84. Defendants intentionally interfered, physically or otherwise, with the solitude, seclusion and or private concerns or affairs of the Plaintiff, namely, by repeatedly and unlawfully attempting to collect a debt, and or attempted repossession of Plaintiff's automobile, by contacting third parties, creating a website and thereby invaded Plaintiff's privacy.
- 85. Defendants intentionally caused harm to Plaintiff's emotional well being by engaging in highly offensive conduct in the course of collecting this debt thereby invading and intruding upon Plaintiff's right to privacy.
- 86. Creating a website concerning the status of Plaintiff's financial affairs are examples of Defendants' conduct which violated Plaintiff's right to financial and other privacy.
- 87. Plaintiff had a reasonable expectation of privacy in Plaintiff's solitude, seclusion, and or private concerns or affairs.
- 88. These intrusions and invasions by Defendants occurred in a way that would be highly offensive to a reasonable person in that position.
- 89. As a result of such invasions of privacy, Plaintiff is entitled to actual and punitive damages in an amount to be determined at trial from each and every Defendant.

COUNT IV

NEGLIGENCE PER SE – ALL DEFENDANTS

- 90. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

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- 1 91. Defendants did not perform their attempted repossession of the vehicle with
2 due care; Defendants breached a duty, and such breach caused Plaintiffs harm.
3 Defendants' acts and omissions constitute negligence.
- 4 92. Defendants owed Plaintiff a duty to properly and lawfully carry out a
5 repossession of the vehicle and breached that duty to Plaintiff.
- 6 93. Defendants' violations of their statutory duties, including but not limited to
7 Defendants' willful violations of A.R.S. 47-9609 B., resulting in Plaintiff's
8 harm, constitutes negligence per se or statutory negligence.
- 9 94. Defendants violated a statutory duty to the Plaintiff, and are thus liable for
10 "Tort-in-se." The statute was designed to protect a class of persons including
11 Plaintiffs; was designed to protect the interest which Defendants invaded; to
12 protect that class against the harm which resulted; and to protect that interest
13 against the hazard from which the harm results.
- 14 95. Defendants engaged in extreme and outrageous acts with a willful intent to
15 injure. These acts went beyond the bounds of decency expected in a civilized
16 society.
- 17 96. Defendants intended to cause emotional distress, and/or engaged in reckless
18 disregard of the probability of causing Plaintiffs emotional distress.
- 19 97. As a direct and proximate result of Defendants' outrageous conduct, Plaintiff
20 has suffered severe and serious mental distress, mental suffering, and/or
21 mental anguish, including stress, frustration, nervousness, anxiety, worry,
22 humiliation, embarrassment, and lack of concentration and appetite..
- 23 98. As a proximate result of Defendants' conduct, Plaintiffs have suffered
24 damages in an amount to be determined by proof and a finder of fact at trial.
- 25 99. Defendants also acted with oppression, fraud, and/or malice, thereby entitling
26 Plaintiffs to punitive damages in an amount according to proof and a finder of
27 fact at trial.
- 28

COUNT V

DEFAMATION

ALL DEFENDANTS

100. Plaintiffs incorporate by reference all of the above paragraphs of this complaint as though fully stated herein.

101. Defendants communicated false statements, including but not limited to that Plaintiff was a criminal, committing criminal acts, committing felony acts, concealing her automobile, and embezzling property.

102. Defendants knew such statements were false or had serious doubts about the truth of such statements.

103. Defendants communicated these false statements to several parties including Plaintiff's neighbors, and unknown third parties.

104. Defendants' false communications, acts and omissions resulted in defamation of the Plaintiff.

105. Defendants' false communications, acts and omissions harmed the reputation of a Plaintiff.

106. Defendants' false communications, acts and omissions resulted in harm to Plaintiff's business, trade, profession or occupation.

107. Defendants' false communications were the type that would and/or did deter third persons from associating or dealing with Plaintiff.

108. Defendants' communications were the type that would injure Plaintiff's character, or subject her to ridicule, contempt, distrust, or would degrade her in the eyes of another.

109. Plaintiff has been seriously damaged as a result and is entitled to her damages, costs and attorneys fees.

110. Defendants acted with oppression, fraud, and/or malice toward Plaintiff in their collection communications, thereby entitling Plaintiff to punitive damages in an amount according to proof at trial.

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COUNT VI
BREACH OF CONTRACT
ALL DEFENDANTS

- 111. Plaintiffs incorporate by reference all of the above paragraphs of this complaint as though fully stated herein.
- 112. Plaintiff and Defendant Auto Financing Network Inc. had a written contract for Plaintiff to make payments on a loan with the automobile as collateral.
- 113. Defendants refused to provide Plaintiff with the necessary information to make her payments.
- 114. Defendants refused to accept payments from Plaintiff.
- 115. Defendants actions were in breach of the written agreement with Plaintiff, thereby entitling Plaintiff to actual damages.
- 116. Plaintiff's cause of action arises out of contract. Pursuant to A.R.S. § 12-341.01, Plaintiff is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray, individually, that judgment be entered against Defendant for:

ARIZONA CONSUMER FRAUD ACT

- Award of actual damages from each and every Defendant;
- Award of statutory damages from each and every Defendant;
- Award of costs of litigation and reasonable attorney's fees;

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

- Award actual and compensatory damages for the INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS in an amount to be determined at trial;
- Punitive damages to be determined at trial;

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**INVASION OF PRIVACY BY INTRUSION UPON SECLUSION AND BY
REVELATION OF PRIVATE FINANCIAL DATA TO THIRD PARTY**

- Award compensatory and punitive damages for concerted activity in an amount to be determined at trial;

NEGLIGENCE PER SE

- Award actual and compensatory damages for NEGLIGENCE in an amount to be determined at trial;

DEFAMATION

- Award compensatory and punitive damages for concerted activity in an amount to be determined at trial;

BREACH OF CONTRACT

- Award actual and compensatory damages for NEGLIGENCE in an amount to be determined at trial;
- Award of reasonable attorneys' fees and costs pursuant to A.R.S. § 12-341.01.

TRIAL BY JURY

117. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: April 24, 2009

Hyde & Swigart

By: 
David J. McGlothlin

Attorneys for the Plaintiff