

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	*	Case No. 08-32599
		Adv. Case No. 08-03007
Oakland Gaerke	*	Judge Richard L. Speer
Debtor	*	
Oakland Gaerke	*	AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
Plaintiff	*	
vs.	*	
Ashley Gaerke, et. al.	*	
Defendants	*	
*	*	*

Now comes, Oakland Gaerke, by and through counsel, and for his amended complaint would state as follows:

**JURISDICTION, VENUE, PARTIES,
BACKGROUND AND COMMON FACTS**

1. That Oakland Gaerke, (hereinafter referred to as "Plaintiff"), commenced the related proceedings as a voluntary Chapter 13 under 11 USC §301.

2. This Court has jurisdiction of this proceeding under 28 USC §1334 and venue is proper in this Court pursuant to 28 USC §1408 and this matter is a core proceeding under 28 USC §157(b)(2).

3. That at the time of the commencement of this case, the Plaintiff was married, but separated from the Defendant, Ashley Gaerke.

4. That upon information and belief, all the named Defendants are credit card companies or accounts for which credit was incurred in the name of the Plaintiff by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and or by actual fraud and identify theft by the

Defendant, Ashley Gaerke.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, AMERICAN EXPRESS

5. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

6. That upon information and belief, accounts with the last 4 digits of 1003 and 1005 were opened in the name of the Plaintiff by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and thereafter charges made on such accounts.

7. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such accounts that the Plaintiff has no obligation or liability to the Defendant, American Express and that American Express is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, BANK OF AMERICA

8. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

9. That upon information and belief and as of the commencement of this case, five credit card accounts with the last 4 digits of 5538, 1367, 3526, 9023 and 8857 were in existence in the name of the Plaintiff with the Defendant, Bank of America.

10. That upon information and belief, each one of these accounts were either opened without the knowledge and consent of the Plaintiff or an account that had been originally opened by the Plaintiff and paid in full was reactivated by the Defendant, Ashley Gaerke without the

consent or knowledge of the Plaintiff.

11. That upon information and belief, subsequent to the opening of the accounts, charges and cash advances made on such accounts, solely by the Defendant, Ashley Gaerke and without any benefit to the Plaintiff.

12. That in particular, the account ending in 9023 was the subject of balance transfers and cash advances in excess of \$17,897.25 on a total credit line of \$21,500.00; account ending in 3526, a jewelry purchase of \$3,000.00 on May 17, 2007 on a credit line of \$3,200.00; and account ending in 5538 was the subject of a cash advance and balance transfer of \$18,500.00 on a total credit line of \$20,000.00. At the time of the filing of this amended complaint, the Plaintiff has no information as to the circumstances or facts as to any of the claimed indebtedness on accounts ending in 1367 and 8857.

13. That in each case, the Plaintiff was unaware of the existence of any balance due on such account until after separating from the Defendant, Ashley Gaerke and actual contact by representatives of the Defendant, Bank of America.

14. That the Defendant, Bank of America should have known or should have employed means of verification and authorization as to the identity of the accounts being opened in the name of the Plaintiff and the use thereof in order to avoid the fraud against the Plaintiff.

15. That as result of the foregoing, the Plaintiff would seek the determination and declaration by this Court that as a result of the foregoing allegations, that the Plaintiff has no obligation or liability to the Defendant, Bank of America and that Bank of America is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, JP MORGAN CHASE BANK**

16. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

17. That the Plaintiff caused to be opened an account with the last four digits of 1239 and originally authorized the use thereof by the Defendant, Ashley Gaerke.

18. That in September 2006, the Plaintiff was led to believe by the Defendant, Ashley Gaerke that such account was paid in full by the refinance of the residence and such account closed.

19. That upon information and belief while payments were made to pay such accounts not only was the account not closed, but additional accounts in the name of the Plaintiff with the last 4 digits of 1239, 0090 and 0082 were opened by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and thereafter charges made on all such accounts by the Defendant, Ashley Gaerke.

20. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such accounts that the Plaintiff has no obligation or liability to the Defendant, Chase Bank and that Chase Bank is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**FOURTH CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, AAA FINANCIAL SERVICES**

21. Plaintiff realleges as if fully rewritten herein, the allegations contained in

Paragraphs One (1) through Four (4).

22. That upon information and belief, an account with the last 4 digits of 8857 was opened in the name of the Plaintiff by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and thereafter charges made on such accounts by the Defendant, Ashley Gaerke.

23. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such accounts that the Plaintiff has no obligation or liability to the Defendant, AAA Financial Services and that AAA Financial Services is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**FIFTH CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, US BANK**

24. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

25. That upon information and belief, on or about May 1, 2007 an account with the last 4 digit of 9864 was opened in the name of the Plaintiff by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and thereafter charges made on such accounts by the Defendant, Ashley Gaerke.

26. That as the commencement of this case, the Defendant, US Bank has filed a claim in the amount of \$8,750.00 as a result of such account.

27. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such accounts that the Plaintiff has no obligation or liability to the Defendant, US Bank and

that US Bank is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**SIXTH CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, PROSPER MARKET PLACE, INC.**

28. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

29. That upon information and belief, on August 8, 2007, a loan of \$24,750.00 was extended by the Defendant, Prosper Marketplace, Inc. by the direct deposit to the joint checking account of the Defendant, Ashley Gaerke and the Plaintiff, Oakland Gaerke.

30. That upon information and belief, such loan was obtained by the Defendant, Ashley Gaerke by the submission of personal information of the Defendant without the knowledge and consent of the Plaintiff, including his income information, a copy of his driver's license and photographs and for the alleged purpose of "paying off credit card debt for my wife's dental surgeries."

31. That upon information and belief, all of the contact information provided by the Defendant, Ashley Gaerke was to either telephone numbers or e-mail addresses controlled or solely utilized by the Defendant, Ashley Gaerke.

32. That prior to the granting of the loan, the Plaintiff was not contacted nor did he speak to any representatives of the Defendant, Prosper Marketplace, Inc. and never signed any documents and was entirely unaware of the actions of the Defendant, Ashley Gaerke.

33. That upon information and belief, the entire proceeds of the loan were utilized by the Defendant, Ashley Gaerke for payments to various credit card accounts which were not for the alleged purpose of the loan but in furtherance of the concealment of her activities from the

Plaintiff or for cash advances for unknown purposes, all without any benefit to the Plaintiff or for which the Plaintiff had any obligation.

34. That the Defendant, Prosper Marketplace should have known or should have employed means of verification and authorization as to the identity of the accounts being opened in the name of the Plaintiff and the use thereof in order to avoid the fraud against the Plaintiff.

35. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such line that the Plaintiff has no obligation or liability to the Defendant, Prosper Marketplace, Inc. and that Prosper Market Place, Inc. is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**SEVENTH CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, CAPITOL ONE**

36. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

37. That upon information and belief, an account with the last 4 digits of 5321 was opened in the name of the Plaintiff by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and thereafter charges made on such accounts by the Defendant, Ashley Gaerke.

38. That as the commencement of this case, the Defendant, Capitol One has filed a claim in the amount of \$2,474.72 as a result of such account.

39. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such accounts that the Plaintiff has no obligation or liability to the Defendant, Capitol One and

that Capitol One is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**EIGHTH CAUSE OF ACTION
DECLARATORY JUDGMENT AS
TO DEFENDANT, CITI CARD**

40. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Four (4).

41. That upon information and belief, an account with the last 4 digits of 1721 was opened in the name of the Plaintiff by the Defendant, Ashley Gaerke without the knowledge and consent of the Plaintiff and thereafter charges made on such accounts by the Defendant, Ashley Gaerke.

42. That the Plaintiff would seek the determination and declaration by this Court that as a result of the fraud and identity theft of the Defendant, Ashley Gaerke in the creation and use of such accounts that the Plaintiff has no obligation or liability to the Defendant, CitiCard and that Citicard is required to remove any derogatory or delinquent account information from the credit report of the Plaintiff.

**EIGHTH CAUSE OF ACTION
JUDGMENT FOR DAMAGES BY
FRAUD AND IDENTITY THEFT**

43. Plaintiff realleges as if fully rewritten herein, the allegations contained in Paragraphs One (1) through Forty Two (42).

44. That the Defendant, Ashley Gaerke fraudulently utilized the name and credit of the Plaintiff in opening of the accounts which are the subject of this action.

45. That the Defendant, Ashley Gaerke concealed from the Plaintiff the creation and use of such accounts.

46. That the identify theft and fraud of Ashley Gaerke in creation and use of such accounts has irreparably damaged the credit of the Plaintiff, required the Plaintiff to resort to the filing of the related proceedings and damaged the Plaintiff in such amounts as will be shown at the trial in this cause.

WHEREFORE, the Plaintiffs prays that the Court determine whether any obligation is owing from Plaintiff to the named Defendants; for damages as will be shown at the trial in this cause against the Defendant, Ashley Gaerke, attorney fees and costs in bringing this action and other such relief as is just and equitable.

/s/Steven L. Diller
Steven L. Diller (0023320)
Attorney for Plaintiff
124 East Main Street
Van Wert, Ohio 45891
(419) 238-5025

CERTIFICATE OF SERVICE

I, Steven L. Diller, do hereby certify that a copy of the foregoing Amended Complaint was mailed or electronically sent to Randy L. Reeves, Esq. at 973 West North Street, Lima, Ohio 45805, to Lawrence G. Reinhold, Esq. at 25211 East Roycourt, Huntington Woods, MI 48070, Patricia B. Fugee, Esq. at Suite 1700, Toledo, Ohio 43604, to Dawn D. Johnson of Schnader, Harrison, Segal & Lewis, LLP One Montgomery Street, Suite 2200, San Francisco, CA 94104-5501, JP Morgan Chase Bank, Legal Department, Attention: Violet Cirillo, 1985 Marcus Avenue, New Hyde Park, NY 11042; to Michael G. Connelly, SPILMAN, THOMAS & BATTLE, PLLC, One Oxford Centre, Suite 3440, Pittsburgh, PA 15219, AAA Financial Services, PO Box 17220, Baltimore, Maryland, 21297-1220 and to CitiCard, PO Box 183064, Columbus, Ohio 43218-3064 by ordinary US mail this 29th day of April, 2008.

/s/Steven L. Diller
Steven L. Diller