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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

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Michael Andrew Collier, and Kim  
Collier-Dingman

No.

11

Plaintiffs,

12

13

v.

**COMPLAINT**

14

Gurstel Chargo, P.A.,

15

16

Defendant.

(Jury Trial Demanded)

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**I. Preliminary Statement**

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1. Plaintiffs bring this action for damages based upon Defendant's  
20 violations of the Fair Debt Collection Practices Act ("FDCPA"), 15  
21 U.S.C. §§ 1692 *et seq.*, for unreasonable debt collection and  
22 invasion of privacy, and for conversion. In the course of attempt-  
23 ing to collect a debt, Defendant engaged in deceptive, unfair and  
24 abusive debt collection practices in violation of the FDCPA, and  
25 took actions which constitute unreasonable debt collection and

1 invasion of privacy under the doctrine enunciated in *Fernandez v.*  
2 *United Acceptance Corporation*, 610 P.2d 461 (Ariz. App. 1980).  
3 Defendant also took affirmative actions and converted to its own  
4 use property which belonged to Plaintiffs. Plaintiffs seek to re-  
5 cover actual damages, statutory damages, and punitive damages,  
6 as well as reasonable attorney's fees and costs.

## 7 **II. JURISDICTION**

- 8 2. Jurisdiction of this Court, over this action and the parties herein,  
9 arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331.  
10 Venue lies in the Phoenix Division of the District of Arizona as  
11 Plaintiffs' claims arose from acts of the Defendant perpetrated  
12 therein.

## 13 **III. PARTIES**

- 14 3. Plaintiffs, Michael Collier and Kim Collier-Dingman, reside in  
15 Maricopa County, Arizona.
- 16 4. Michael and Kim are natural persons obligated to pay a consumer  
17 debt.
- 18 5. Michael and Kim are "consumers" as that term is defined by  
19 FDCPA § 1692a(3).
- 20 6. Defendant Gurstel Chargo, P.A. ("Gurstel") is a Minnesota profes-  
21 sional corporation doing business within the state of Arizona as a  
22 third party debt-collection law firm.
- 23 7. Gurstel uses Arizona licensed attorneys and Minnesota legal  
24 assistants to collect or attempt to collect debts owed or asserted  
25 to be owed or due another.

1 8. Gurstel is a “debt collector” as that term is defined by FDCPA §  
2 1692a(6).

3 **IV. Factual Allegations**

4 9. The underlying debt which Gurstel was attempting to collect was  
5 a student loan incurred by Michael for family, personal or house-  
6 hold purposes.

7 10. Several years ago, while serving in the United States Army, Mi-  
8 chael suffered spine and head injuries, resulting in a determina-  
9 tion by the Army of Michael to be one-hundred percent disabled.

10 11. As a result, the Army provides disability benefits to both Michael  
11 and Kim which, under federal law, are exempt from execution.

12 12. Included in Michael’s disability benefits, is an amount paid to Kim  
13 to allow her to pursue a college degree.

14 13. Kim is currently, and was at all times relevant herein, enrolled in  
15 the University of Phoenix.

16 14. Upon information and belief, sometime before January 2011,  
17 National Collegiate Student Loan Trust 2005-1 (“NCSLT”) assigned  
18 Michael’s defaulted student loan to Gurstel for collection pur-  
19 poses.

20 15. On January 12, 2011, Gurstel filed suit against Plaintiffs in the  
21 Maricopa County Superior Court on behalf of National Collegiate  
22 Student Loan Trust 2005-1 (“NCSLT”) in order to collect on the  
23 student loan.

24 16. Ultimately, in June 2011 the Superior Court entered a default  
25 judgment against the Plaintiffs and in favor of the NCSLT.

- 1 17. Several months later, in April 2012, Gurstel filed and served a writ  
2 of garnishment on Kim's savings account held by Desert Schools  
3 Federal Credit Union.
- 4 18. Upon service of the writ of garnishment, the credit union froze  
5 \$6,143.88 in Kim's savings account, and notified Plaintiffs of their  
6 right to object and request a hearing concerning the garnishment  
7 of the account.
- 8 19. Upon Notice of the garnishment, Plaintiffs immediately filed an  
9 objection and request for hearing.
- 10 20. The court initially set the garnishment objection hearing for May  
11 10, 2012.
- 12 21. At that time, Michael showed up to the hearing in person, how-  
13 ever, no one appeared in person from Gurstel's office.
- 14 22. The court finally was able to reach Gurstel's office and got attor-  
15 ney Amara W. Edblad to appear for the hearing telephonically.
- 16 23. After listening to Plaintiffs' position concerning the garnishment,  
17 the court decided to continue the hearing to May 24, 2012.
- 18 24. On May 24, 2012 Michael appeared at the hearing, with attorney  
19 Edward O'Brien from Gurstel's office appearing on behalf of  
20 NCSLT .
- 21 25. During this hearing, Michael provided copies of the credit union  
22 statements showing that the funds which Gurstel had garnished  
23 were veterans benefits Kim received as a result of Michael's  
24 disability.
- 25 26. During the hearing, attorney O'Brien advised the court that upon

1 his review of the bank statements provided by Michael, that he  
2 too agreed that the funds were exempt.

3 27. During the hearing, the court asked attorney O'Brien when the  
4 funds would be returned, to which O'Brien stated "Right away."

5 28. The court then issued its ruling finding that the garnished funds  
6 were exempt from execution, and entered an order quashing  
7 garnishment on the credit union effective that day, May 24, 2012.

8 29. After the hearing, while heading to the parking lot, and after  
9 Michael asked when he would be getting the money back, attor-  
10 ney O'Brien told Michael that he would need to get a lawyer in  
11 order to get his money back.

12 30. Subsequent to the hearing, Michael engaged an unidentified legal  
13 assistant from Gurstel's office concerning the return of the gar-  
14 nished funds, and was told that he would have to sue in order to  
15 get the funds back.

16 31. He was also told during this conversation that he should just sign  
17 the funds over as it would make a good down payment on the  
18 judgment, but was emphatically told that he would not be getting  
19 the money back.

20 32. During this conversation, after Michael told the legal assistant  
21 that the funds were exempt veteran disability payments, the  
22 assistant told Michael "F- - - you! Pay us your money! You can't  
23 afford an attorney. You owe us. I hope your wife divorces you're  
24 a- -. If you would have served our country better you would not  
25 be a disabled veteran living off social security while the rest of us

1 honest Americans work our a - - off. Too bad; you should have  
2 died.”

3 33. After hanging up the phone with Gurstel’s office, Michael became  
4 very distraught and physically upset.

5 34. Upon Kim’s learning of what has transpired on the phone with  
6 Gurstel and Michael, she too became very upset knowing that this  
7 would have a significant impact on Michael’s psyche.

8 35. Defendant’s actions as stated herein were intended to cause  
9 Michael extreme emotional distress, and did in fact cause him  
10 extreme emotional distress.

11 36. As a result and proximate cause of Defendant’s actions, Plaintiffs  
12 have suffered actual damages, including, but not limited to, loss  
13 of \$6,143.88, GGFemotional distress, physical illness, embarrass-  
14 ment, humiliation, fear, anxiety, and other extreme emotional  
15 distress.

16 **V. Causes of Action**

17 **a. Fair Debt Collection Practices Act**

18 37. Plaintiffs repeat, reallege, and incorporate by reference the  
19 foregoing paragraphs.

20 38. Defendant’s violations of the FDCPA include, but are not necessar-  
21 ily limited to, 15 U.S.C. §§ 1692d, 1692d(2), 1692e, 1692e(5),  
22 1692e(7), 1692e(10), 1692f, and 1692f(1).

23 39. As a direct result and proximate cause of Defendant’s actions in  
24 violation of the FDCPA, Plaintiffs have suffered actual damages.

25 **b. Invasion of Privacy.**

40. Plaintiffs repeat, reallege, and incorporate by reference the fore-

1 going paragraphs.

2 41. Defendant's actions constitute unreasonable debt collection and  
3 an invasion of Plaintiffs' privacy pursuant to the doctrine enunci-  
4 ated in *Fernandez v. United Acceptance Corporation*, 610 P.2d 461  
5 (Ariz. App. 1980).

6 42. As a direct result and proximate cause of Defendant's actions,  
7 Plaintiffs have suffered actual damages for which Defendant is  
8 liable.

9 **c. Conversion.**

10 43. Plaintiffs repeat, reallege, and incorporate by reference the fore-  
11 going paragraphs.

12 44. Defendant's actions in taking and failing to return money gar-  
13 nished from Plaintiffs' bank account constitutes civil conversion.

14 45. As a direct result and proximate cause of Defendant's actions,  
15 Plaintiffs have suffered actual damages for which Defendant is  
16 liable.

17 **d. Punitive Damages.**

18 46. Plaintiffs repeat, reallege, and incorporate by reference the fore-  
19 going paragraphs.

20 47. Defendant's actions as alleged above show willful and malicious  
21 conduct in conscious disregard of the rights of Plaintiffs, and  
22 sufficient to justify ad warrant an award of punitive damages.

23 **VI. DEMAND FOR JURY TRIAL**

24 Plaintiffs hereby demand a jury trial on all issues so triable.

25

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that judgment be entered against Defendant for:

- a) Actual damages;
- b) Statutory damages;
- c) Punitive damages;
- d) Costs and reasonable attorney's fees; and
- e) Such other relief as may be just and proper.

DATED October 10, 2012 .

s/ Floyd W. Bybee  
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