

11 U.S.C. § 107(c)  
11 U.S.C. § 105(a)  
Fed. R. Bankr. P. 9037  
Gramm-Leach-Bliley Act  
Invasion of Privacy  
Intentional/Negligent Infliction  
of Emotional Distress

Lenz v. Auto Acceptance, Adversary No. 10-3294-rld  
In re Lenz, Case No. 09-30778-rld7

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The debtors filed a complaint against Auto Acceptance for filing a proof of claim that included the social security number of one of the debtors. The debtors asserted in their complaint that Auto Acceptance was liable for damages and attorney's fees and costs for invasion of privacy and/or intentional or negligent infliction of emotional distress and under the Gramm-Leach-Bliley Act. The debtors also sought sanctions against Auto Acceptance under 11 U.S.C. §§ 105 and 107(c).

Auto Acceptance moved to dismiss the complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) and for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Civil Rule"), applicable through Rule 7012(b) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule").

Following oral argument and upon review and consideration of the relevant documents and relevant legal authorities, the bankruptcy court denied Auto Acceptance's motion to dismiss for lack of subject-matter jurisdiction under Civil Rule 12(b)(1). The bankruptcy court granted, however, Auto Acceptance's motion to dismiss for failure to state a claim upon which relief can be granted under Civil Rule 12(b)(6).

Below is an Opinion of the Court.

  
RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: )  
DERRICK ANDREW LENZ ) Bankruptcy Case  
ANNA MARIE LENZ, ) No. 09-30778-rld7  
Debtors. )  
\_\_\_\_\_) )  
DERRICK ANDREW LENZ )  
ANNA MARIE LENZ, )  
Plaintiffs, ) Adv. Proc. No. 10-03294-rld  
v. ) MEMORANDUM OPINION  
AUTO ACCEPTANCE, )  
Defendant. )

On February 11, 2011, I heard ("Hearing") defendant Berco Finance Corp. dba Auto Acceptance's ("Auto Acceptance") Motions to Dismiss and Alternative Motion for Withdrawal of Reference ("Motion to Dismiss") the Complaint for (1) Contempt of Court under § 105(a) for Violation of § 107(c) of the Bankruptcy Code, (2) Violation of Standard of Care of the Gramm-Leach-Bliley Act, & (3) Invasion of Privacy and

1 Intentional or Negligent Infliction of Emotional Distress ("Complaint")  
2 filed by the debtor-plaintiffs Derrick Andrew Lenz and Anna Marie Lenz  
3 (collectively, "Debtors").<sup>1</sup> Following the Hearing, I allowed the parties  
4 until February 18, 2011, to file supplemental memoranda with respect to  
5 the recently issued decision of the Ninth Circuit in Barrientos v. Wells  
6 Fargo Bank, N.A., 2011 US App Lexis 2493, Case No. 09-55810 (9th Cir.  
7 Feb. 10, 2011). Both sides filed supplemental memoranda by the deadline,  
8 at which point, I took the matter under advisement.

9 In deciding this matter, I have considered carefully the  
10 Complaint and the claims for relief stated therein. I have reviewed  
11 applicable authorities, both as cited to me by the parties and that I  
12 have found through my own research. In addition, I have taken judicial  
13 notice of the dockets and documents filed in this adversary proceeding  
14 ("Adversary Proceeding") and in the Debtors' main chapter 7 case no. 09-  
15 30778-rld7 ("Main Case"). Federal Rule of Evidence 201; In re Butts, 350  
16 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006). Based on that review and  
17 consideration, I have come to a decision, and I will grant the Motion to  
18 Dismiss pursuant to Civil Rule 12(b)(6), applicable in this Adversary  
19 Proceeding under Rule 7012(b), for failure to state a claim upon which  
20 relief can be granted. The reasons for my decision follow.

#### 21 Factual Background

22 The following facts are taken from the allegations of the  
23 Complaint and events occurring and documents filed as noted on the  
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25 <sup>1</sup> Unless otherwise indicated, all chapter, section and rule  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the  
Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal  
Rules of Civil Procedure are referred to as Civil Rules.

1 dockets of the Adversary Proceeding and the Main Case.

2           The Debtors filed their petition for relief under chapter 7 of  
3 the Bankruptcy Code on February 10, 2009. Auto Acceptance was identified  
4 as a creditor of the Debtors in the Debtors' schedules. Auto Acceptance  
5 filed a secured proof of claim ("Proof of Claim"), designated as Claim  
6 No. 4-1, in the amount of \$7,647 on or about March 27, 2009. See Main  
7 Case Docket No. 18. The Proof of Claim consisted of a total of six  
8 pages, including five pages of attachments. On the second page of the  
9 attachments to the Proof of Claim, Auto Acceptance revealed Ms. Lenz's  
10 full social security number.

11           On October 12, 2010, the Debtors filed a Motion for Ex Parte  
12 Order Restricting Public Access to Filed Document of Creditor Auto  
13 Acceptance ("Motion to Restrict Access"), requesting that the court  
14 immediately restrict public access to the Proof of Claim and permanently  
15 seal it. See Main Case Docket No. 18. Following an expedited hearing,  
16 on October 22, 2010, the court entered an order granting the Motion to  
17 Restrict Access and directing the clerk of the court to redact the Proof  
18 of Claim to remove Ms. Lenz's social security number from view. See Main  
19 Case Docket No. 25. The Proof of Claim was redacted accordingly. See  
20 Claim No. 4-1 in the Claims Register.

21           On October 12, 2010, the Debtors also filed and served the  
22 Complaint to initiate the Adversary Proceeding. See Adversary Proceeding  
23 Docket Nos. 1 and 3. Auto Acceptance filed the Motion to Dismiss on  
24 November 15, 2010. See Adversary Proceeding Docket No. 4. At the  
25 initial pretrial conference for the Adversary Proceeding held on  
26 November 23, 2010, the court scheduled the deadlines for the Debtors'

1 response to the Motion to Dismiss and any reply by Auto Acceptance and  
2 scheduled the Hearing date and thereafter entered a corresponding  
3 scheduling order. See Adversary Proceeding Docket Nos. 5 and 6. As  
4 noted above, after the Hearing and the filing of the parties'  
5 supplemental memoranda, the court took the Motion to Dismiss under  
6 advisement.

### 7 Jurisdiction

8 At the outset in the Motion to Dismiss, Auto Acceptance moves  
9 to dismiss the Complaint pursuant to Civil Rule 12(b)(1), applicable  
10 under Rule 7012(b), for lack of subject-matter jurisdiction. That motion  
11 is denied because consideration of the claims for relief stated in the  
12 Complaint falls within the core jurisdiction of this court. All three  
13 claims for relief stated in the Complaint fundamentally relate to the  
14 substantive content and procedure for filing creditors' proofs of claim  
15 in a pending bankruptcy case. This court has jurisdiction to consider  
16 the claims for relief stated in the Complaint pursuant to 28 U.S.C.  
17 §§ 1334 and 157(b)(1) and (2)(A) and (O). "In a very pragmatic sense,  
18 ... the act of filing a claim constitutes the foundation for creditor  
19 participation" in a bankruptcy case. B-Real, LLC v. Chaussee (In re  
20 Chaussee), 399 B.R. 225, 233 (BAP 9th Cir. 2008). Resolving disputes as  
21 to proofs of claim is an important aspect of bankruptcy administration,  
22 central to adjustments in debtor/creditor relationships. Auto  
23 Acceptance's Motion to Dismiss for lack of jurisdiction is denied as  
24 without merit.

### 25 Standards for Consideration of a Motion to Dismiss

26 A motion to dismiss a complaint under [Civil Rule]

1 12(b) (6) for failure to state a claim (applicable to  
2 bankruptcy adversary proceedings under Rule 7012)  
3 challenges the sufficiency of the complaint.  
4 Dismissal is appropriate if the plaintiff can prove no  
5 set of facts in support of its claim that would  
6 entitle it to relief[.] General Elec. Capital Corp. v.  
7 Lease Resolution, 128 F.3d 1074, 1080 (7th Cir. 1997).

8 Matthys v. Green Tree Servicing, LLC (In re Matthys), 2010 WL 2176086  
9 (Bankr. S.D. Ind. May 26, 2010).

10 In determining whether a complaint states a claim that is  
11 sufficient to warrant relief, the court should "construe the complaint in  
12 the light most favorable to the plaintiff, accept all the factual  
13 allegations [in the complaint] as true, and determine whether the  
14 plaintiff can prove a set of facts in support of its claims that would  
15 entitle it to relief." Bovee v. Coopers & Lybrand, C.P.A., 272 F.3d 356,  
16 360 (6th Cir. 2001).

17 Civil Rule 8, generally applicable in adversary proceedings  
18 under Rule 7008, sets out general rules for pleading in litigation in  
19 federal court. Civil Rule 8(a) (2) provides that a claim for relief need  
20 contain no more than "a short and plain statement of the claim showing  
21 that the pleader is entitled to relief . . . ." However, factual  
22 allegations in a complaint "must be enough to raise a right to relief  
23 above the speculative level," Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
24 555 (2007), and must be adequate to "state a claim to relief that is  
25 plausible on its face." Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S. Ct.  
26 1937, 1949 (2009).

27 I. Count One: § 107(c), Rule 9037 and Contempt

28 In Count One of the Complaint, the Debtors request sanctions,  
29 attorney's fees and expenses against Auto Acceptance pursuant to § 105(a)

1 for violating § 107(c)(1) and Rule 9037 by disclosing Ms. Lenz's social  
2 security number in the attachments to the Proof of Claim.

3 Section 105(a) provides that "[t]he court may issue any order,  
4 process or judgment that is necessary or appropriate to carry out the  
5 provisions of [Title 11]." As I stated in Concretize, Inc. v.  
6 Fireshield, Inc. (In re Concretize, Inc.), 2009 LEXIS 3568, Adversary  
7 Proceeding No. 09-03312-rld (Nov. 18, 2009) (where I dismissed an  
8 adversary proceeding complaint filed by a corporate plaintiff under  
9 § 362(k) for failure to state a claim upon which relief could be granted  
10 where that statute only provides a claim for relief to "an individual"),  
11 "use of the word 'provisions' rather than 'purposes' in § 105(a) suggests  
12 that its authority is limited to implementing other provisions of the  
13 Bankruptcy Code rather than existing as an independent authority."

14 While the bankruptcy courts have fashioned relief  
15 under Section 105(a) in a variety of situations, the  
16 powers granted by that statute may be exercised only  
17 in a manner consistent with the provisions of the  
18 Bankruptcy Code. That statute does not authorize the  
19 bankruptcy courts to create substantive rights that  
20 are otherwise unavailable under applicable law, or  
21 constitute a roving commission to do equity.

19 United States v. Sutton, 786 F.2d 1305, 1308 (5th Cir. 1986). In this  
20 context, § 105(a) only can be used to support a personal claim for relief  
21 for the Debtors if the Debtors are entitled to pursue such a claim for  
22 relief under the terms of § 107(c) and/or rule 9037.

23 The Ninth Circuit addressed this situation generally, albeit  
24 with respect to a different claim for relief, in Walls v. Wells Fargo  
25 Bank, 276 F.3d 502 (9th Cir. 2002). In Walls, a former chapter 7 debtor  
26 filed a class action on behalf of chapter 7 debtors generally against

1 Wells Fargo Bank for violating the discharge injunction provisions of  
2 § 524 by attempting to collect a debt after it had been discharged in  
3 bankruptcy. Id. at 504. The district court determined that the remedy  
4 Congress intended for violations of the discharge injunction was  
5 contempt. It referred the plaintiff's claim for a contempt remedy to the  
6 bankruptcy court but dismissed her claims for relief under § 524. Id.  
7 The Ninth Circuit affirmed, concluding that § 524 did not provide a  
8 private right of action for violations of the discharge injunction and  
9 further determining that "violations of [§ 524] may not independently be  
10 remedied through § 105 absent a contempt proceeding in the bankruptcy  
11 court." Id. at 506. The Ninth Circuit forcefully reaffirmed its  
12 conclusions in Walls in Barrientos v. Wells Fargo Bank, N.A., 2011 US App  
13 Lexis 2493, No. 09-55810 (9th Cir. Feb. 10, 2011) ("We have previously  
14 ruled after significant discussion that the availability of contempt  
15 proceedings under § 105 for violation of a discharge injunction under  
16 § 524 does not create a private right of action for damages.").

17 As with § 524, by their terms, neither § 107(c) nor Rule 9037  
18 provides for a private right of action. In relevant part, § 107(c)(1)  
19 provides:

20 The bankruptcy court, for cause, may protect an  
21 individual, with respect to the following types of  
22 information to the extent the court finds that  
23 disclosure of such information would create undue risk  
24 of identity theft or other unlawful injury to the  
25 individual or the individual's property:

26 (A) Any means of identification (as defined  
in section 1028(d) of title 18) contained in  
a paper filed, or to be filed, in a case  
under this title.

(B) Other information contained in a paper  
described in subparagraph (A). (Emphasis  
added.)



1 In contrast, § 107(b), dealing with trade secrets and "scandalous or  
2 defamatory matter," provides:

3 On request of a party in interest, the bankruptcy  
4 court shall, and on the bankruptcy court's own motion,  
the bankruptcy court may-

- 5 (1) protect an entity with respect to a  
trade secret or confidential research,  
6 development, or commercial information; or  
7 (2) protect a person with respect to  
scandalous or defamatory matter contained in  
a paper filed in a case under this title.  
8 (Emphasis added.)

9 Nothing in the legislative history of § 107(c)(1) indicates that Congress  
10 intended to provide debtors with a private right of action in the event  
11 any subject information is disclosed by a creditor. See H.R. Rep. 109-  
12 31(I), Pub. L. 109-8 (Apr. 8, 2005), U.S. Code Cong. & Admin. News 2005,  
13 at p. 88.

14 Rule 9037, entitled "Privacy Protection for Filings Made with  
15 the Court," provides:

16 (a) Redacted Filings. Unless the court orders  
17 otherwise, in an electronic or paper filing made with  
the court that contains an individual's social-  
18 security number, taxpayer-identification number, or  
birth date, the name of an individual, other than the  
19 debtor, known to be and identified as a minor, or a  
financial-account number, a party or nonparty making  
the filing may include only:

- 20 (1) the last four digits of the social-  
security number and taxpayer-identification  
21 number;  
22 (2) the year of the individual's birth;  
23 (3) the minor's initials; and  
(4) the last four digits of the financial-  
account number.

24 (b) Exemptions from the Redaction Requirement. The  
redaction requirement does not apply to the following:

- 25 (1) a financial-account number that  
identifies the property allegedly subject to  
26 forfeiture in a forfeiture proceeding;  
(2) the record of an administrative or

1 agency proceeding unless filed with a proof  
of claim;

2 (3) the official record of a state-court  
proceeding;

3 (4) the record of a court or tribunal, if  
the record was not subject to the redaction  
4 requirement when originally filed;

5 (5) a filing covered by subdivision (c) of  
this rule; and

6 (6) a filing that is subject to § 110 of the  
[Bankruptcy] Code.

7 (c) Filings made under Seal. The court may order that  
a filing be made under seal without redaction. The  
8 court may later unseal the filing or order the entity  
that made the filing to file a redacted version for  
the public record.

9 (d) Protective Orders. For cause, the court may by  
order in a case under the [Bankruptcy] Code:

10 (1) require redaction of additional  
information; or

11 (2) limit or prohibit a nonparty's remote  
electronic access to a document filed with  
12 the court.

13 (e) Option for Additional Unredacted Filing under  
Seal. An entity making a redacted filing may also  
file an unredacted copy under seal. The court must  
14 retain the unredacted copy as part of the record.

15 (f) Option for Filing a Reference List. A filing that  
contains redacted information may be filed together  
with a reference list that identifies each item of  
16 redacted information and specifies an appropriate  
identifier that uniquely corresponds to each item  
17 listed. The list must be filed under seal and may be  
amended as of right. Any reference in the case to a  
18 listed identifier will be construed to refer to the  
corresponding item of information.

19 (g) Waiver of Protection of Identifiers. An entity  
waives the protection of subdivision (a) as to the  
20 entity's own information by filing it without  
redaction and not under seal. (Emphasis added.)  
21

22 Nothing in the Advisory Committee notes to Rule 9037 indicates that it  
23 was intended to provide for a private right of action in the event of a  
24 violation of the rule.

25 The great majority of courts that have considered this issue  
26 have determined that neither § 107(c) nor Rule 9037 provides a private

1 right of action, independent of a potential contempt proceeding. See,  
2 e.g., Davis v. Eagle Legacy Credit Union (In re Davis), 430 B.R. 902, 909  
3 (Bankr. D. Colo. 2010) (“[B]ecause . . . § 107 does not provide for a  
4 private right of action and because rules governing procedure in federal  
5 courts do not give rise to private causes of action, Plaintiff does not  
6 properly state a claim for relief.”); In re Matthys, 2010 WL 2176086  
7 (Bankr. S.D. Ind. May 26, 2010) (“[N]othing in § 107 expressly creates a  
8 private right of action. Nor has Congress implied that a private right  
9 of action exists. This section grants the court the power to restrict  
10 the filing of certain information, but addresses the operation of the  
11 court, not the behavior of the parties.”): Carter v. Checkmate, Cash  
12 Advance Centers, LLC (In re Carter), 2009 WL 3425828 (Bankr. N.D. Ala.  
13 Oct. 23, 2009); Lentz v. Bureau of Medical Economics (In re Lentz), 405  
14 B.R. 893, 898 (Bankr. N.D. Ohio 2009); Carter v. Flagler Hospital, Inc.  
15 (In re Carter), 411 B.R. 730, 737-38, 740-41 (Bankr. M.D. Fla. 2009) (“If  
16 Congress meant to create a private right of action through § 107(c), it  
17 would have included the same or similar language that it included in  
18 § 107(b), which specifically provides for a private right of action. To  
19 hold otherwise would seem contrary to Congress’ intent.”); In re  
20 Gjestvang, 405 B.R. 316, 320 (Bankr. E.D. Ark. 2009); and French v.  
21 American Gen’l Fin. Serv. (In re French), 401 B.R. 295, 304-08 (Bankr.  
22 E.D. Tenn. 2009).

23           The Debtors present a twofold response to that weight of  
24 authority. First, the Debtors argue that a private right of action  
25 should be implied from § 107(c) and Rule 9037 based on the four factors  
26 enunciated in the Supreme Court’s decision in Cort v. Ash, 422 U.S. 66,

1 78 (1975):

- 2 1. Whether the plaintiff is a member of a class for  
whose special benefit the statute was enacted;
- 3 2. Whether there is any explicit or implicit  
4 indication of congressional intent to create or deny a  
private remedy;
- 5 3. Whether a private remedy would be consistent with  
the underlying purpose of the legislative scheme;
- 6 4. Whether the cause of action is one traditionally  
relegated to state law.

7 As cited in Walls v. Wells Fargo Bank, N.A., 276 F.3d at 507 n.2. I note  
8 that the Supreme Court, in a decision subsequent to Cort v. Ash, has  
9 warned that implying a private right of action from federal statutes "is  
10 a hazardous enterprise, at best." Touche Ross & Co. v. Redington, 442  
11 U.S. 560, 571 (1979). See also the Supreme Court's recent decision in  
12 Astra USA, Inc. v. Santa Clara County, Cal., \_\_\_ U.S. \_\_\_, No. 09-1273  
13 (March 29, 2011).

14 The bankruptcy court in In re French, 401 B.R. at 304-06,  
15 analyzed § 107(c) in light of the Cort v. Ash factors, and concluded that  
16 a private right of action could not be implied from the statute.

17 Clearly, the Plaintiff falls within the scope of  
18 individuals as referenced in [§ 107(c)]; however,  
19 taking the statute as a whole, the court does not  
believe that § 107(c) was enacted for the special  
20 benefit of any specific class of persons. Rather,  
the purpose of § 107 as a whole is to ensure that  
21 papers filed in a bankruptcy case are public records,  
and the purpose of § 107(c), specifically, is to set  
22 forth a limited exception to the general rule that all  
records are public, allowing a court to limit public  
23 access [to] certain identification information if it  
determines that cause exists and dissemination of the  
information would constitute an undue risk of identity  
24 theft.

25 . . .

26 T[he] legislative history evidences that Congress did  
not intend for § 107(c) to create a private right of

1 action or to be a remedial statute in any way.  
2 Instead, it expressly discusses the duty of the court  
3 to restrict public access to the extent the court  
4 finds that disclosure of information creates an undue  
5 risk, and as such, reinforces that the sole purpose  
6 [of] § 107(c) was to establish public access to court  
7 documentation with very limited exceptions and not to  
8 create a private right of action for the Plaintiff to  
9 seek damages for the filing of private personal  
10 information.

11 Id. at 305-06. (Emphasis in original.)

12 Since the authority to administer and resolve disputes as to  
13 claims is within the core jurisdiction of bankruptcy courts (see 28  
14 U.S.C. § 157(b) (2) (B)), the subject matter of Count One of the Complaint  
15 clearly does not qualify under the fourth Cort v. Ash factor as a matter  
16 "traditionally relegated to state law." Cort v. Ash, 422 U.S. at 78.

17 I agree with the French analysis and conclude, consistent with  
18 the decisions of most other courts that have considered this issue, that  
19 § 107(c) and Rule 9037 do not as a substantive matter, either expressly  
20 or by implication, provide for a private right of action based on the  
21 filing by a creditor of a debtor's personal information in the  
22 attachments to a proof of claim.

23 The Debtors' second argument is that Count One of the Complaint  
24 seeks a contempt remedy and appropriately is pursued in the Adversary  
25 Proceeding, either on its own merits or in conjunction with the other  
26 claims for relief asserted in the Complaint. The problem with Debtors'  
27 argument is that it conflicts directly with the Rules and Ninth Circuit  
28 authority.

29 Rule 9020 provides that, "Rule 9014 governs a motion for an  
30 order of contempt made by the United States trustee or a party in

1 interest." Rule 9014(a), in relevant part, provides that, "In a  
2 contested matter in a case under the [Bankruptcy] Code, not otherwise  
3 governed by these rules, relief shall be requested by motion, and  
4 reasonable notice and opportunity for hearing shall be afforded the party  
5 against whom relief is sought." As stated by the Ninth Circuit in  
6 Barrientos, "In other words, a contempt proceeding by . . . a party in  
7 interest is a contested matter." Barrientos v. Wells Fargo Bank, N.A.,  
8 2011 US App Lexis 2493, No. 09-55810 (9th Cir. Feb. 10, 2011).  
9 Accordingly, contempt proceedings are initiated by a motion in the main  
10 case and not by adversary proceeding.

11 At oral argument, Appellant argued that because  
12 Bankruptcy Rule 9014 invokes certain rules utilized  
13 for adversary proceedings under Part VII of the  
14 Bankruptcy Rules, any motion brought pursuant to  
15 Bankruptcy Rule 9014 could also impliedly be brought  
16 as an adversary proceeding. Such a construction does  
17 not follow, and if adopted it would obliterate the  
18 difference between contested matters and adversary  
19 proceedings, obviating the list [of matters required  
20 to be pursued as adversary proceedings] under Rule  
21 7001, because under this construction any contested  
22 matter under Bankruptcy Rule 9014 could necessarily  
23 be brought as an adversary proceeding under Rule  
24 7001.

25 . . .

26 The district court correctly ruled that contempt  
proceedings . . . must be initiated by motion in the  
bankruptcy case under Rule 9014 and not by adversary  
proceeding.

Id.

My ultimate conclusion is that Count One of the Complaint is  
fundamentally flawed, both substantively and procedurally, and must be  
dismissed for failure to state a claim upon which relief can be granted.

1 II. Count Two: Gramm-Leach-Bliley

2 In Count Two of the Complaint, the Debtors seek actual damages,  
3 future damages, reimbursement of credit and identity theft monitoring  
4 fees, attorney's fees and costs for Auto Acceptance's alleged violation  
5 of the standard of care established in the Gramm-Leach-Bliley Act  
6 ("Gramm-Leach-Bliley") "to respect the privacy of its customers and to  
7 protect the security and confidentiality of those customers' nonpublic  
8 personal information." 15 U.S.C. § 6801(a). In Paragraph 23 of the  
9 Complaint, the Debtors explicitly "recognize that [Gramm-Leach-Bliley]  
10 does not provide a private right of action for an individual." Rather,  
11 they argue that the existence of a standard of care set forth in Gramm-  
12 Leach-Bliley entitles them to ignore that inconvenient fact and sue for  
13 damages, attorney's fees and costs anyway.

14 The Gramm-Leach-Bliley Act emphasizes the need for  
15 protecting a consumer's privacy and confidentiality of  
16 nonpublic personal information. Consistent with that  
17 purpose, it also provides that the law and the  
18 regulations prescribed thereunder are to be enforced  
by federal and state authorities. By its terms,  
however, the law does not create a private cause of  
action, nor is one implied. No court has ruled to the  
contrary.

19 In re Davis, 430 B.R. at 908. See, e.g., Dunmire v. Morgan Stanley DW  
20 Inc., 475 F.3d 956, 960 (8th Cir. 2007); In re Matthys, 2010 WL 2176086  
21 (Bankr. S.D. Ind. May 26, 2010); In re Chubb, 426 B.R. 695, 698 (Bankr.  
22 E.D. Mich. 2010); In re Carter, 2009 WL 3425828 (Bankr. N.D. Ala. Oct.  
23 23, 2009); In re Lentz, 405 B.R. at 898-900; In re Gjestvang, 405 B.R. at  
24 320; and In re French, 401 B.R. at 310. The Debtors cite no contrary  
25 authority.

26 Section 6805 of Gramm-Leach-Bliley provides that its provisions

1 are to be enforced by the "Federal functional regulators, the State  
2 insurance authorities, and the Federal Trade Commission" and other  
3 federal and state regulatory authorities under specific federal  
4 legislation. See 15 U.S.C. § 6805. "The fact that Congress expressly  
5 provided for one method of enforcing [Gramm-Leach-Bliley] suggests that  
6 Congress intended to preclude others." Briggs v. Emporia State Bank and  
7 Trust Co., 2005 WL 2035038, at \*2 (D. Kan. Aug. 23, 2005). "Like  
8 substantive federal law itself, private rights of action to enforce  
9 federal law must be created by Congress." Alexander v. Sandoval, 532  
10 U.S. 275, 286 (2001), citing Touche Ross & Co. v. Redington, 442 U.S. at  
11 578 (available remedies are those "that Congress enacted into law"). No  
12 private right of action is provided for in Gramm-Leach-Bliley.

13 The Debtors' attempt to descry a personal claim for relief from  
14 the penumbra of Gramm-Leach-Bliley is creative but ultimately unavailing.  
15 Try as the Debtors might to find one, there is no private right of action  
16 under Gramm-Leach-Bliley, and Count Two of the Complaint must be  
17 dismissed for failure to state a claim upon which relief can be granted.

18  
19 III. Count Three: State Law Claim for Invasion of Privacy and Intentional  
or Negligent Infliction of Emotional Distress

20 Finally, in Count Three of the Complaint, the Debtors seek  
21 actual damages, punitive damages, attorney's fees and costs from Auto  
22 Acceptance for its intentional, negligent or "grossly careless" conduct  
23 in disclosing Ms. Lenz's social security number and thus invading the  
24 Debtors' privacy. The Debtors do not cite any statutory basis for Count  
25 Three of their Complaint, referring only to the Restatement (Second) of  
26 Torts, § 652D. However, in their Response to the Motion to Dismiss, the



1 Debtors characterize Count Three as a claim "under state law breach of  
2 privacy." Response to Defendant's Motions to Dismiss and Defendant's  
3 Alternative Motion for Withdrawal of Reference, Docket No. 11, at p. 33.  
4 For the reasons stated below, I conclude that Count Three of the  
5 Complaint is preempted by the provisions of the Bankruptcy Code and  
6 Rules.

7 The Ninth Circuit Bankruptcy Appellate Panel ("Panel") faced a  
8 dispositively similar claim for relief in B-Real, LLC v. Chaussee (In re  
9 Chaussee), 399 B.R. 225 (BAP 9th Cir. 2008).

10 In this appeal, the Panel is called upon to decide an  
11 issue of first impression in our circuit: whether the  
12 act of filing a proof of claim in a bankruptcy case  
13 may, alone, subject the claimant to liability for  
14 violation of state and federal fair debt collection  
15 laws.

16 Id. at 227. See McCarthur-Morgan v. Asset Acceptance, LLC (In re  
17 McCarther-Morgan), 2009 Bankr. LEXIS 4579, BAP No. SC-08-1093-KwMoJu (BAP  
18 9th Cir. Jan. 27, 2009).

19 In Chaussee, the debtor filed an adversary proceeding complaint  
20 ("AP Complaint") alleging that the creditor-defendant violated the  
21 Washington Consumer Protection Act ("WCPA") and the federal Fair Debt  
22 Collection Practices Act ("FDCPA") by filing two proofs of claim in the  
23 debtor's bankruptcy case for debts the debtor alleged she did not owe and  
24 were barred by the statute of limitations. The creditor filed a motion  
25 to dismiss under Civil Rule 12(b)(6) for alleged failures to state claims  
26 upon which relief could be granted, that the bankruptcy court denied.  
The Panel reversed, concluding that the debtor's FDCPA claim was  
precluded by the Bankruptcy Code, and the debtor's WCPA claim was

1 preempted by the Bankruptcy Code. Id. It is the latter determination  
2 that is relevant in this case.

3 For purposes of its discussion, the Panel took as given that  
4 the facts alleged in the AP Complaint were true. Id. at 229. The Panel  
5 then discussed the doctrine of preemption:

6 The preemption doctrine has its roots in the Supremacy  
7 Clause of the United States Constitution and is  
8 implicated only when there is a conflict between  
9 federal and state regulations. MSR Exploration,  
10 [Ltd.,] 74 F.3d [910,] 913 [(9th Cir. 1996)] Under  
11 this doctrine, state laws interfering with, or  
12 contrary to, federal law are preempted. See Perez v.  
13 Campbell, 402 U.S. 637, 652, 91 S. Ct. 1704, 29 L. Ed.  
14 2d 233 (1971).

15 Id. at 230.

16 The Panel relied in its analysis on the decision of the Ninth  
17 Circuit in MSR Exploration, where creditors had filed proofs of claim in  
18 the debtor's chapter 11 case to which the debtor objected. The  
19 bankruptcy court sustained the debtor's claim objections. Later, after  
20 the debtor's chapter 11 plan had been confirmed and substantially  
21 consummated, the debtor sued the subject creditors for malicious  
22 prosecution in federal district court. MSR Exploration, 74 F.3d at 912.  
23 The district court dismissed the action, and the Ninth Circuit affirmed.

24 The Ninth Circuit justified its decision on several bases.  
25 First, the intent of Congress, as expressed in 28 U.S.C. § 1334, is that  
26 bankruptcy matters be handled in a federal forum. Id. at 913. Second,  
in light of the complexity and comprehensive nature of the Bankruptcy  
Code, the Ninth Circuit concluded that Congress did not intend to allow  
state law remedies to impinge on bankruptcy administration.

[A] mere browse through the complex, detailed, and

1 comprehensive provisions of the lengthy Bankruptcy  
2 Code . . . demonstrates Congress's intent to create a  
3 whole system under federal control which is designed  
4 to bring together and adjust all of the rights and  
5 duties of creditors and embarrassed debtors alike.  
6 While it is true that bankruptcy law makes reference  
7 to state law at many points, the adjustment of rights  
8 and duties within the bankruptcy process itself is  
9 uniquely and exclusively federal. It is very unlikely  
10 that Congress intended to permit the superimposition  
11 of state remedies on the many activities that might be  
12 undertaken in the management of the bankruptcy  
13 process.

14 Id. at 914.

15 Third, the Ninth Circuit pointed out that the "unique,  
16 historical and even constitutional need for uniformity" in bankruptcy  
17 administration militates against the juxtaposition of state law remedies  
18 on the bankruptcy process. Id. at 914-15 ("Congress has considered the  
19 need to deter misuse of the process and has not merely overlooked the  
20 creation of additional deterrents."). Finally, the Ninth Circuit pointed  
21 to its history of concluding that preemption was needed in the bankruptcy  
22 area, citing its previous decision in Gonzales v. Parks, 830 F.2d 1033  
23 (9th Cir. 1987), where "the court rejected a creditor's contention that a  
24 debtor's filing of a bankruptcy petition allegedly in bad faith could  
25 support an action for abuse of process under state law." In re Chaussee,  
26 399 B.R. at 231.

27 The Ninth Circuit subsequently "confirmed the vitality" of its  
28 rationale in MSR Exploration in its decision in Miles v. Okun (In re  
29 Miles), 430 F.3d 1083 (9th Cir. 2005), where it affirmed the dismissal of  
30 state law claims for relief for damages based on the alleged improper  
31 filing and prosecution of involuntary bankruptcy petitions. Id. at 1086-  
32 92 ("We do not hold all state actions related to bankruptcy proceedings

1 are subject to the complete preemption doctrine," but "[r]emedies and  
2 sanctions for improper behavior and filings in bankruptcy court . . . are  
3 matters on which the Bankruptcy Code is far from silent and on which  
4 uniform rules are particularly important."), as characterized in In re  
5 Chaussee, 399 B.R. at 231.

6 The claim for relief stated in Count Three of the Complaint, as  
7 in MSR Exploration and In re Chaussee, relates specifically to the claims  
8 process and alleges wrongful conduct in a pending bankruptcy case.  
9 Specifically, the Debtors allege that Auto Acceptance committed a state  
10 law tort by filing the Proof of Claim in the Main Case. Allowing Count  
11 Three of the Complaint to proceed to trial has enormous potential  
12 disruptive and distorting effects in bankruptcy cases.

13 Generally, under §§ 501 and 502, and Rule 3002(a), a creditor  
14 must file a proof of claim in order for its claim to be allowed in a  
15 bankruptcy case.

16 In a very pragmatic sense, then, the act of filing a  
17 claim constitutes the foundation for creditor  
18 participation in this case. Allowing debtors to  
19 recover under the [WCPA] solely because a creditor  
20 filed a proof of claim may skew the incentive  
21 structure of the [Bankruptcy] Code and its remedial  
22 scheme and could discourage creditors from filing a  
23 claim. See MSR Exploration, 74 F.3d at 916 (noting  
24 that [e]ven the mere possibility of being sued in tort  
25 . . . could in some instances deter persons from  
26 exercising their rights in bankruptcy.").

In re Chaussee, 399 B.R. at 233-34.

23 In this case, the Debtors seek to sue Auto Acceptance in tort  
24 for having included Ms. Lenz's social security number on one page of the  
25 attachments to the Proof of Claim. If the disclosure of Ms. Lenz's  
26 personal information was inadvertent, I have acted to fix the problem by

1 hearing the Motion to Restrict Access in an expedited fashion and  
2 granting the motion, with the personal information redacted from the  
3 Proof of Claim, as contemplated in § 107(c). If the Debtors have  
4 suffered damages from Auto Acceptance's conduct (noting that no specific,  
5 actual damages are alleged in the Complaint), they may be able to pursue  
6 contempt remedies in the Main Case. However, as to allowing Count Three  
7 of the Complaint to proceed, I am guided by the conclusion of the Panel  
8 in In re Chaussee:

9 Consistent with the teachings of our circuit's case  
10 law, we fear that the purposes and policies of the  
11 [Bankruptcy] Code, together with the need for its  
12 uniform application, may be undercut if debtors can  
13 pursue state law claims . . . against those accused of  
14 filing an improper proof of claim.

15 Id. at 234.

16 Consistent with the reasoning and determination of the Panel in  
17 In re Chaussee, I conclude that the claim for relief stated in Count  
18 Three of the Complaint is preempted by the Bankruptcy Code and Rules and  
19 therefore must be dismissed for failure to state a claim upon which  
20 relief can be granted.

#### 21 Conclusion

22 As discussed in detail above, I have concluded that all of the  
23 claims for relief stated in the Complaint fall within the core  
24 jurisdiction of this court pursuant to 28 U.S.C. §§ 1334 and 157(b)(1)  
25 and (2)(A) and (O). Accordingly, I deny Auto Acceptance's Motion to  
26 Dismiss pursuant to Civil Rule 12(b)(1), applicable under Rule 7012(b).  
However, for the reasons stated above, I grant Auto Acceptance's Motion  
to Dismiss the Complaint for failure to state a claim upon which relief

1 can be granted pursuant to Civil Rule 12(b)(6), again applicable under  
2 Rule 7012(b). The court will prepare and enter an order consistent with  
3 this Memorandum Opinion.

4 # # #

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6 cc: Christopher J. Kane  
7 Martin W. Jaqua

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