

3. The Defendants are individuals residing at 20764 Idaho Avenue, Lakeville, Minnesota 55044.

4. This Complaint is brought under Rule 7001 of the Bankruptcy Rules of Federal Procedure ("Bankruptcy Rule") and this action arises under 11 U.S.C. § 523.

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and Bankruptcy Rule 7001. This Chapter 11 bankruptcy case (the "Case") was filed on October 15, 2003 (the "Petition Date"), and is now pending before this Court.

6. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

7. Alert Cable brings this Complaint against Defendants to determine the dischargeability of their debt to Alert Cable pursuant to 11 U.S.C. § 523 as described below.

BACKGROUND FACTS

8. From at least 1996 through June, 1998, Mr. Thielen converted cable services owned by Alert Cable which consisted of premium channels and pay-per-view cable programming without the authorization of Alert Cable.

9. From at least 1996 through June, 1998, Mr. Thielen assisted in the unauthorized interception or receipt of cable communications, signals, and services through the purchase, modification and sale of various cable signal theft devices under the name of S&S Industries, also known as S&S Wireless, in violation of Section 353 of the Cable Communications Policy Act of 1984, codified under 47 U.S.C. § 553.

10. From at least 1996 through June, 1998, Mr. Thielen participated in the purchase, distribution and modification of cable signal devices and equipment knowing or having reasons to know that the equipment and devices were primarily of assistance in the unauthorized decryption of satellite cable programming or were intended for the unauthorized interception,

receipt or publication of interstate or foreign radio and cable communications, signals and services, for the Defendants own benefit or the benefit of others not entitled thereto, in violation of the Federal Communications Act of 1934, as amended and codified in 47 U.S.C. § 605.

11. At all times material to this Complaint, Mr. Thielen willfully and intentionally undertook the aforementioned actions for purpose of commercial advantage or private financial gain, or both.

12. As a result of Mr. Thielen's conduct described above (herein referred to as the "Fraudulent Conduct"), Alert Cable sustained compensatory damages consisting of unpaid service charges, lost subscription revenue, the profits Defendants' received from their sale of the illegal cable signal theft devices, and other consequential losses.

13. As a result of the Fraudulent Conduct, Alert Cable was entitled to seek a separate award of up to \$100,000 in statutory damages for each violation of 47 U.S.C. § 605.

14. As a result of the Fraudulent Conduct, Alert Cable was entitled to seek its costs and attorneys' fees under 47 U.S.C. § 605.

15. As a result of the Fraudulent Conduct, Alert Cable was entitled to seek an award of punitive damages against Mr. Thielen.

16. On or about February 29, 2000, Alert Cable filed a civil action (the "Lawsuit") against Mr. Thielen in the United States District Court for the District of South Carolina, Case Number 2-00-0658-18 seeking the damages described above (collectively, "Alert Cable's Damages") as a result of the Fraudulent Conduct.

17. As a result of the Fraudulent Conduct, Mr. Thielen was indicted on criminal charges including the violation of 47 U.S.C. § 553. Mr. Thielen pled guilty to unlawful assistance in intercepting and receiving communications services offered over a cable system in violation of 47 U.S.C. § 553(a) and § 553(b)(1).

18. Alert Cable obtained physical evidence and records seized during the criminal prosecution of Mr. Thielen and introduced this evidence in the Lawsuit in connection with its motion for summary judgment filed therein.

19. In settlement of the Lawsuit, Mr. Thielen executed and delivered to Alert Cable a Confession of Judgment in the principal amount of \$125,000 (the “Confession of Judgment”).

20. In the Confession of Judgment, Mr. Thielen acknowledged that he was indebted to Alert Cable in the amount of \$125,000, and Mr. Thielen agreed to make consecutive monthly payments to Alert Cable each in the amount of \$1,250 until the indebtedness was paid in full, with interest accruing at the rate of 6.198% per annum.

21. Mr. Thielen subsequently defaulted in his payments under the Confession of Judgment, and Alert Cable filed the original Confession of Judgment, together with an affidavit setting forth the remaining amount due thereunder, with the United States District Court, for the District of South Carolina.

22. On September 30, 2003, a judgment was entered against Mr. Thielen in the amount of \$117,633.51 in the United States District Court for the District of South Carolina, Case Number 2-00-0658-18 (the “Judgment”).

23. On October 9, 2003, the Judgment was docketed in the Dakota County District Court, State of Minnesota, as File No. 19-C2-03-9956 (the “Judgment”).

24. Mr. Thielen’s debt to Alert Cable as evidenced by the Judgment is a non-dischargeable debt under 11 U.S.C. § 523.

25. In accordance with the U.S. Supreme Court’s decision in *Archer v. Warner*, ___ U.S. ___, 123 S.Ct. 1462, 155 L.Ed.2d 454, Bankr. L. Rep. ¶ 78,821 (Mar. 31, 2003), Mr. Thielen debt to Alert Cable under the Confession of Judgment in non-dischargeable as a result of the underlying Fraudulent Conduct that resulted in this debt.

26. In a deposition taken in the Lawsuit, Mr. Thielen testified that Mrs. Thielen assisted and participated in the Fraudulent Conduct and that Mr. Thielen was a co-owner of S&S Industries, also known as S&S Wireless, the entity that Mr. Thielen operated under with respect to his sale of various cable signal theft devices.

27. Mrs. Thielen is liable for the debt represented by the Judgment due to her assistance and participation in the Fraudulent Conduct.

COUNT I
(11 U.S.C. §523(a)(2)(A): False Pretenses, False Representation,
and Actual Fraud)

28. Alert Cable realleges paragraphs 1 through 27 hereinabove.

29. Section 523(a)(2)(A) of the Bankruptcy Code provides in relevant part that a debtor may not be discharged from any debt “for money, property [or] services . . . to the extent obtained by . . . false pretenses, a false representation, or actual fraud.”

30. As a result of the Fraudulent Conduct, Defendants obtained money, property and/or services from Alert Cable by false pretenses and actual fraud.

31. Upon information and belief, Defendants made false representations to Alert Cable in connection with the Fraudulent Conduct.

32. Defendants’ false representations to Alert Cable were made deliberately and intentionally for the purpose of inducing Alert Cable to suffer injury.

33. In reliance upon Defendants’ false representations, Alert Cable was injured.

34. As a proximate result of Defendants’ false pretenses, false representations and/or actual fraud Alert Cable sustained damages in excess of \$117,633.51.

35. All of the Fraudulent Conduct undertaken by any individual Defendant was on behalf of and benefited the marital estate of Defendants.

36. By reason of the foregoing, Defendants are liable to Alert Cable in at least the amount of \$117,633.51, which debt constitutes a nondischargeable debt under 11 U.S.C. § 523(a)(2)(A).

COUNT III
(11 U.S.C. § 523(a)(2)(6): Willful and Malicious Injury to Another)

37. Alert Cable realleges Paragraphs 1 through 36 hereinabove.

38. Section 523(a)(6) of the Bankruptcy Code provides that a debtor is not discharged from any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity.”

39. Defendants’ intentionally deprived Alert Cable of its property as evidenced by, among other things, the Fraudulent Conduct.

40. Defendants’ willfully and maliciously injured Alert Cable through the Fraudulent Conduct.

41. Defendants’ Fraudulent Conduct was willful and malicious actions and was done with the intent to cause injury to Alert Cable.

42. As a proximate result of Defendants’ willful and malicious actions toward Alert Cable, including but not limited to the Fraudulent Conduct, Alert Cable was damaged in excess of \$117,633.51.

43. All of the Fraudulent Conduct undertaken by any individual Defendant was on behalf of and benefited the marital estate of Defendants.

44. By reason of the foregoing, Defendants are liable to Alert Cable in at least the amount of \$117,633.51, which debt constitutes a nondischargeable debt under 11 U.S.C. § 523(a)(6).

WHEREFORE, Alert Cable respectfully requests:

(1) For a judgment against Defendants Scott Thielen and Stephanie Thielen, jointly and severally, and in favor of Plaintiff Alert Cable in the amount of \$117,633.51, plus accrued interest after the Petition Date the rate set forth in the Confession of Judgment, and all costs and attorney's fees incurred by Alert Cable as recoverable under paragraph 6 of the Confession of Judgment;

(2) For a declaration that Defendants' debt to Alert Cable is excepted from discharge under 11 U.S.C. §§ 523(a)(2)(A) and/or 523(a)(6); and

(3) Such other relief as the Court shall deem just and equitable under the circumstances.

Dated: January 16, 2004

MASLON EDELMAN BORMAN & BRAND, LLP

By: /e/ Amy J. Swedberg
Amy J. Swedberg (Atty No. 271019)
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 672-8200

**ATTORNEYS FOR PLAINTIFF ALERT CABLE
d/b/a TIME WARNER CABLE AND d/b/a
TIME WARNER ENTERTAINMENT**

308988v1