

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 07-80031-CIV-MIDDLEBROOKS/JOHNSON**

**MICHAEL L. YOUNG,**

**Plaintiff,**

**v.**

**REED ELSEVIER, INC., SEISINT, INC.,  
CITIBANK, FEDERAL SAVINGS  
BANK, CITIBANK (WEST), FSB,  
CITIMORTGAGE, INC., and  
TRANS UNION, LLC,**

**Defendants.**

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**YOUNG'S FIRST MOTION IN LIMINE -  
TO EXCLUDE EVIDENCE OF CONVICTIONS, PUNISHMENT, AND  
ARRESTS AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, MICHAEL L. YOUNG ("YOUNG"), pursuant to Federal Rules of Evidence 609(a) & (b), 608(b), and 403, moves the court to enter an Order excluding from the admissible evidence in the upcoming trial in this cause YOUNG'S convictions and punishment and arrests and, as grounds therefore, states:

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### Statement of the Case

In this action, YOUNG alleges that TRANS UNION willfully and/or negligently failed to fulfill certain statutory obligations it had as a credit reporting agency under the Fair Credit Reporting Act, 15 U.S.C. §1681 et. seq. (“FCRA”), and that YOUNG was damaged by these failures.

Specifically, TRANS UNION willfully and/or negligently violated 15 U.S.C. §1681e(b) by its willful and negligent failure to follow reasonable procedures to assure **maximum possible accuracy** of the information concerning YOUNG in preparing a consumer report about YOUNG. This violation resulted in a statement appearing in YOUNG’s credit file and in consumer reports indicating the YOUNG had filed a Chapter 7 bankruptcy proceeding when this was not the case.

YOUNG disputed this bankruptcy on ten (10) occasions (one (1) time by telephone and nine (9) of times in writing) over a one and one half year period including providing TRANS UNION copies of correspondence from CITIBANK, the furnisher of the information, indicating that it had reported YOUNG as bankrupt in error. TRANS UNION willfully and/or negligently violated §1681li(a)

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by willfully and/or negligently failing to conduct a reasonable reinvestigation of bankruptcy information disputed by YOUNG including: willfully and/or negligently failing to provide prompt and accurate notice of YOUNG'S dispute of the bankruptcy information to CITIBANK, and willfully and/or negligently failing to include in such notice all relevant information regarding the dispute that TRANS UNION received from YOUNG; willfully and/or negligently failing to consider all relevant information regarding the dispute that was submitted to TRANS UNION by YOUNG; after being unable to verify the disputed bankruptcy information, willfully and/or negligently failing to modify or delete such information from YOUNG'S credit file, and willfully and/or negligently failing to provide YOUNG with a description of its reinvestigation procedure within 15 days of YOUNG'S request that it do so.

As a result of these willful and/or negligent failures to comply with the FCRA, YOUNG suffered damages including impairment of credit, abstention from applying for credit and ensuing lost economic and investment opportunities, pecuniary loss, damage to his reputation and credit standing, humiliation, physical pain and suffering, emotional distress, lasting psychological damage, mental

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anguish, loss of capacity for enjoyment of life, embarrassment, and other losses that are continuing in nature.

### **Conviction and Incarceration**

YOUNG has testified that, in 2001, he was convicted of **misdemeanor** driving under the influence and that he received eighteen months probation and served five months in jail for this offense which occurred in Broward County, Florida. There was also a conviction for misdemeanor resisting arrest without violence in Volusia County, Florida in 2004. There have also been arrests for resisting arrest with violence, contempt of court (having to do with non-payment in his divorce which was purged), leaving the scene of a crash YOUNG has not been convicted of these crimes. See, certified copy of records of Florida Department of Law Enforcement attached hereto.<sup>1</sup> There is also a charge for misdemeanor driving under the influence in 1995 in Marathon, Florida, where it is unclear

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<sup>1</sup> The conviction for misdemeanor DUI in Broward County, Florida is not listed on the history. Rather, the charge listed stemming from the Broward County, Florida 2001 event is a charge of violating Section 843.15 of the Florida Statutes - Failure of Defendant on Bail to Appear.

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whether there has been a conviction or not or not.<sup>23</sup>

Counsel for TRANS UNION has, in deposition, asked YOUNG how the emotional distress, mental anguish etc. of being incarcerated compares with the emotional distress, mental anguish etc. caused by the actions of TRANS UNION.

This evidence of YOUNG'S convictions, charges for which adjudication was withheld, and punishment are all inadmissible under Federal Rules of Evidence 609 and 608(b), or should be excluded under Federal Rule of Evidence 403.

WHEREFORE YOUNG respectfully requests the Court to enter an Order excluding from the admissible evidence in this trial YOUNG'S convictions and punishment and arrests and affording such other relief as justice requires.

### **MEMORANDUM OF LAW**

For the purposes of attacking the character of a witness, Federal Rule of

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<sup>2</sup> YOUNG testified he was placed on probation for this offense but it is unclear from the FDLE records whether adjudication was withheld.

<sup>3</sup> It is clear that YOUNG's conviction(s), for driving under the influence are misdemeanors. Under Section 316.193(2) b.1 of the Florida Statutes, one must be convicted of three (3) offenses of driving under the influence within ten (10) years in order for one to be guilty of a felony. YOUNG also testified that these charges were misdemeanors.

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Evidence 609(a) authorizes the admission into evidence, subject to the provisions Rule of Evidence 403, of a conviction of a felony or a conviction of a crime, regardless of how punishable, if the conviction required proof or admission of an act of dishonesty or false statement by the witness.

YOUNG has not been convicted of a felony. Moreover, a conviction for misdemeanor driving under the influence is “not admissible under Rule 609, F.R.E. for impeachment purposes” as it has “no bearing on [a witness’] credibility.” McDonald v. Hewitt, 196 F.R.D. 650, 652 (D. Utah 2000) (also noting that the conviction in that case was seven years old).<sup>4</sup> Similarly a conviction for misdemeanor resisting arrest without violence would have not any bearing on YOUNG’s credibility. An additional basis for excluding the 1995 possible conviction for driving under the influence is that it is more than ten (10) years old. see, Fed. R. Evid. 609(b).

Further, Federal Rule of Evidence of 608(b) provides that evidence of specific instances of conduct of the witness, for the purposes of attacking the witness’ character, may not be provided by extrinsic evidence. Although, Rule

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<sup>4</sup> The conviction here is six years old.

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608(b) allows cross examination of the witness regarding such instances if probative of the truthfulness, driving under the influence and resisting arrest without violence does not involve dishonesty and, thus, such evidence should also be excluded under Rule 608(b). See, United States v. Destefano, 1995 WL 398763, p.8 (N.D. Ill. 1995) (prior “bad acts” of arrests for possession of cocaine, assault and family violence, and driving under the influence ruled inadmissible under Fed. R. Evid. 608(b) and 609).

Additionally, whether or not YOUNG experienced emotional distress in 2001 due to being incarcerated (and/or being on probation) is wholly irrelevant or has little, if any, probative value as to whether YOUNG experienced emotional distress from June 2005 to the present as a result of TRANS UNIONS’ actions. YOUNG respectfully suggests that comparing the two is just a pretext for getting before the jury the fact that YOUNG was convicted and incarcerated for misdemeanor driving under the influence which, for the reasons stated above, is otherwise inadmissible.

Even if there is a scintilla of probative value in comparing these two separate events which occurred several years apart, there is a great danger of unfair

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prejudice and confusion of the issues which makes this evidence inadmissible under Rule 403 of the Federal Rules of Evidence.

For the foregoing reason, this motion should be granted.

Respectfully submitted,

**/s/ Barry S. Balmuth**  
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**Certificate of Service**

**I hereby certify** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, I filed this \_\_\_\_\_ through the CM/ECF filing system, which will cause a copy to be served on all counsel or parties of record on the attached service list and all other parties participating in the CM/ECF filing system, all served electronically.

**/s/ Barry S. Balmuth**  
**BARRY S. BALMUTH, ESQUIRE**

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## SERVICE LIST

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Counsel for TRANS UNION

# Criminal History Information Request

RECEIVED BY FI

Before submitting this request be sure to review our Memorandum related to requesting criminal history information.

Please print this form and mail it (along with the required \$23.00 processing fee) to:

Florida Department of Law Enforcement  
CJIS User Services  
P.O. Box 1489  
Tallahassee, FL 32302

Date: 4/26/2007 Contact Person: Barry S. Balmuth, Esq.  
Requested by: Barry S. Balmuth, P.A. Contact Telephone: (561) 242-9400  
1601 Forum Place, Suite 1101 ORI Number: \_\_\_\_\_  
West Palm Beach, FL 33401 (if applicable)

Pursuant to provisions of Chapter 119, F.S., I request a criminal history record check of your files on 1 individual(s).

Payment in the amount of \$23.00 is enclosed. (The fee is \$23.00 per individual inquired upon.)



Failure to supply the required information (name, race, sex and date of birth) will greatly reduce our chances of reasonably associating your subject with a possible record in our extensive files.

I request a criminal history record check on the following individual:

X2-4214790 CYS5907

Name: Young, Michael Lee  
(Last, First Middle or Maiden)  
Other Names Used: none  
Race: W Sex: M DOB: 04/13/1945  
Social Security Number: 456-72-4968  
Current Address:  
Street: 11 Wyndham Lane  
City, State: Palm Beach Gardens, FL 33418

Reserve this space for stamping FDLE's results

FDLE determined that the attached record for the State of Florida SID # 4214790, MAY be the same as the person you requested. Without fingerprints, FDLE cannot make a complete identification.

### Required Information

Name - Complete name of person Sex - Male or Female Date of Birth  
Race - White; Black; American Indian or Alaskan; Asian or Pacific Islander; or Unknown  
\*\*\*\*\*INDICATE HISPANIC PERSONS AS WHITE OR BLACK BASED ON SKIN COLOR\*\*\*\*\*

### Optional Information

Social Security Number Current Address

RECEIVED

MAY 21 2007

**BARRY S. BALMUTH, P.A.  
CENTURION TOWER  
1601 FORUM PLACE, STE 1101  
WEST PALM BEACH, FL 33401**

FLORIDA DEPARTMENT OF LAW ENFORCEMENT  
 Pursuant to federal regulation (28 CFR 20) this record may be used only for stated purpose for which it was requested. Charges and dispositions as coded herein reflect standardized uniform offense and disposition classifications for computerized criminal history records. More detailed and specific information may be available from contributors. The department does not warrant that these records are comprehensive or accurate, only that this record contains all information on the subject that the department has received and is presently authorized by law to disseminate.

REPORT FOR FDLE, CIB, NAMESEARCH SECTION BATCH 20070507101

THE FOLLOWING RECORD IS ASSOCIATED WITH TRANSACTION: 000018  
 CONTROL NBR: NAME: YOUNG, MICHAEL LEE

SID NBR: 4214790 PURPOSE CODE:P PAGE NBR: 1

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME,  
 A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR FUTURE USE

FLORIDA CRIMINAL HISTORY -

NAME	STATE ID NO.	FBI NO.	DATE REQUESTED
YOUNG, MICHAEL LEE	FL-04214790		05/09/2007

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE	SKIN
M	W	04/13/1945	6'01''	180	BLU	GRY	TX	

FINGERPRINT CLASS	SOCIAL SECURITY NO.	MISCELLANEOUS NO.	SCR/MRK/TAT
24 13 16 14 14	XXX-XX-4968		SC ABDOM
14 03 12 12 12			

IN AFIS - 2

OCCUPATION	ADDRESS	CITY/STATE
SAFETY OFFICER	599 S ATLANTIC AVE	ORMOND BCH, FL

AKA	DOB	SOC	SCR/MRK/TAT
YOUNG, MIKE			
YOUNG, MICHAEL			

ARREST-	1	10/28/1995	OBTS NO.-0008166370	
ARREST AGENCY-FHP-	MARATHON HISTORICAL ONLY-	STATION CLOSED		(FL0449000)
AGENCY CASE-	95008862	OFFENSE DATE-		
CHARGE 001-TRAFFIC OFFENSE-	DUI			
	STATUTE/ORDINANCE-FL316.193	LEVEL-		

DLE2N

SID NBR: 4214790 PURPOSE CODE:P PAGE NBR:

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 ARREST- 2 08/24/2001 OBTS NO.-0609001244  
 ARREST AGENCY-BROWARD COUNTY SHERIFF'S OFFICE (FL0060000)  
 AGENCY CASE-500123057 OFFENSE DATE-  
 CHARGE 001-BAIL-SECURED BOND-  
 CAPIAS - FEL ,N  
 STATUTE/ORDINANCE-FL843.15 (1A) LEVEL-FELONY , 3RD DEG  
 DISP-HELD  
 CHARGE 002-BAIL-SECURED BOND-  
 CAPIAS - FEL ,N  
 STATUTE/ORDINANCE-FL843.15 (1A) LEVEL-FELONY , 3RD DEG  
 DISP-HELD  
 CHARGE 003-BAIL-SECURED BOND-  
 CAPIAS - FEL ,N  
 STATUTE/ORDINANCE-FL843.15 (1A) LEVEL-FELONY , 3RD DEG  
 DISP-HELD  
 CHARGE 004-BAIL-SECURED BOND-  
 CAPIAS - FEL ,N  
 STATUTE/ORDINANCE-FL843.15 (1A) LEVEL-FELONY , 3RD DEG  
 DISP-HELD  
 CHARGE 005-BAIL-SECURED BOND-  
 CAPIAS - FEL ,N  
 STATUTE/ORDINANCE-FL843.15 (1A) LEVEL-FELONY , 3RD DEG  
 DISP-HELD  
 -----

ARREST- 3 12/16/2003 OBTS NO.-5003123532  
 ARREST AGENCY-PALM BEACH COUNTY SHERIFF'S OFFICE (FL0500000)  
 AGENCY CASE-2003355320 OFFENSE DATE-  
 CHARGE 001-CONTEMPT OF COURT-  
 REF ORDER OF COMMITMENT ,N  
 STATUTE/ORDINANCE-FL900.04 LEVEL-  
 DISP-HELD  
 -----

ARREST- 4 10/28/2004 OBTS NO.-6402074566  
 ARREST AGENCY-ORMOND BEACH POLICE DEPARTMENT (FL0640400)  
 AGENCY CASE-600215 OFFENSE DATE-  
 CHARGE 001-HIT AND RUN-  
 LEAVE SCENE OF CRASH INVOLVE DAMAGE TO PROP ,N  
 STATUTE/ORDINANCE-FL316.061 LEVEL-MISDEMEANOR, 2ND DEG  
 DISP-HELD  
 -----

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SID NBR: 4214790 PURPOSE CODE:P

PAGE NBR:

CHARGE 002-RESISTING OFFICER-  
OBSTRUCT WO VIOLENCE  
STATUTE/ORDINANCE-FL843.02  
DISP-HELD  
LEVEL-MISDEMEANOR, 1ST DEG

JUDICIAL-

AGENCY-STATE ATTORNEY'S OFFICE - DAYTONA BEACH (FL064015A)  
CHARGE 001 -COURT SEQ COURT NO.-642004MM053699XXXAES

SUPPLEMENTAL ARREST DATA-  
STATUS- LEVEL-MISDEMEANOR, 2ND DEG

PROSC DATA-SAME AS ABOVE, HIT AND RUN-  
C 8410DUJ 2 LV SCN W PROP DMG  
STATUTE/ORDINANCE-FL316.061 LEVEL-MISDEMEANOR, 2ND DEG  
STATUTE DESCRIPTN-LEAVE SCENE OF CRASH INVOLVE DAMAGE TO PROP  
DISP DATE-05/20/2005 DISP-DROPPED/ABANDONED  
COUNSEL-PRIVATE TRIAL- PLEA-

SPECIAL SENTENCE PROVISIONS-NOT APPLICABLE  
AGENCY-VOLUSIA COUNTY COURT (FL064023J)  
CHARGE 002 -COURT SEQ COURT NO.-642004MM053699XXXAES

SUPPLEMENTAL ARREST DATA-  
STATUS- LEVEL-MISDEMEANOR, 1ST DEG

PROSC DATA- RESISTING OFFICER-  
M RESIST ARREST W O VIOLENCE  
STATUTE/ORDINANCE-FL843.02 LEVEL-MISDEMEANOR, 1ST DEG  
STATUTE DESCRIPTN-OBSTRUCT WO VIOLENCE  
DISP DATE-11/08/2004 DISP-N/A

COURT DATA-RESISTING OFFICER-  
M RESIST ARREST W O VIOLENCE  
STATUTE/ORDINANCE-FL843.02 LEVEL-MISDEMEANOR, 1ST DEG  
STATUTE DESCRIPTN-OBSTRUCT WO VIOLENCE  
DISP DATE-05/20/2005 DISP-GUILTY/CONVICTED  
COUNSEL-OTHER TRIAL-NONE PLEA-GUILTY  
SENT DATE-05/20/2005  
FINE- COURT COST- \$225

SPECIAL SENTENCE PROVISIONS-NOT APPLICABLE

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THIS RECORD CONTAINS FLORIDA INFORMATION ONLY. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT CONTRIBUTED THE RECORD INFORMATION. IF YOU DID NOT SUBMIT FINGERPRINTS, THIS RECORD IS PROVIDED AS A RESULT OF A NAME INQUIRY ONLY. POSITIVE IDENTIFICATION CAN ONLY BE VERIFIED BY SUBMISSION OF A FINGERPRINT CARD AND COMPARISON BY FDLE. THIS

=== DLE2N ===



SID NBR: 4214790 PURPOSE CODE:P

PAGE NBR: 4


RECORD WAS REQUESTED PURSUANT TO 943.053(3), F.S.  
UNKNOWN AS TO NATIONAL RECORD STATUS.

AS MANDATED BY FLORIDA STATUTE 119.071(5), FULL SOCIAL SECURITY NUMBERS ARE NOW EXEMPT FROM PUBLIC DISCLOSURE AND MAY BE DISCLOSED ONLY TO GOVERNMENTAL ENTITIES AND CERTAIN COMMERCIAL ENTITIES (UPON A SHOWING OF BUSINESS NECESSITY AS DEFINED BY THE LAW). FDLE WILL, HOWEVER, RELEASE THE LAST FOUR DIGITS OF THE SOCIAL SECURITY NUMBER. EXAMPLE: XXX XX 1234.

END OF RECORD

=== DLE2N ===

*Janice Hochstein*  
 Administrator, User Services Bureau  
 Florida Dept. of Law Enforcement  
 Sworn and Subscribed before me this  
 9<sup>th</sup> day of *May*, 20 *07*  
 by *Janice Hochstein* who is  
 personally known to me.



*Sharon Weber*



Sharon Weber  
MY COMMISSION # DD487012 EXPIRES  
October 31, 2009  
BONDED THRU TROY FAIN INSURANCE