

1 **Document 2: EXPEDITED JUDICIAL PROCESS - Harassment**

2 **Recommended Language for**

3 **Expedited Judicial Processing**

4 **EXPEDITED REVIEW AND DETERMINATION OF THE AUTHORIZATION OF**
5 **FINANCING STATEMENT RECORDS FILED UNDER THE UNIFORM**
6 **COMMERCIAL CODE**

7 **[Statute Number Reference] Expedited process to review and determine authorization of**
8 **filing of financing statement records.**

9 (a) (1) Any individual who asserts that the filing of a financing statement record that
10 provides that individual's name as a debtor is not an authorized filing may file, at any
11 time without any time limitation, a motion for a judicial declaration that the financing
12 statement record is not an authorized filing under Uniform Commercial Code section 9-
13 509 and thus is not effective with respect to such individual under Uniform Commercial
14 Code section 9-510. Such motion shall be filed with the {insert court type} court of the
15 county in which the financing statement record has been filed, or of the county of
16 principal residence of the movant. Such motion shall be supported by the affidavit [or
17 declaration] of the movant setting forth a concise statement of the facts upon which the
18 claim for relief is based. Such motion shall be in substantially the following form [the
19 form that follows and all other forms should be conformed to civil procedure
20 requirements of the particular state]:

21 **MISC. DOCKET No.** _____

22 In Re: A Purported
23 Financing Statement In the _____ [court type]

24
25
26 Against In and For _____

27
28 (Name of Movant) County, [state name]

29 **Motion for Judicial Review of the Authorization of a Financing Statement Record Filed**
30 **Under the Uniform Commercial Code-Secured Transactions**

31
32 Now Comes _____
33 (name)

34 ("Movant") and files this motion requesting a judicial determination of whether the financing
35 statement record filed in the office of the _____ (filing
36 office and location thereof), a copy of which is attached hereto, is not an authorized filing with
37 respect to Movant under Uniform Commercial Code section 9-509 or 9-708 and in support of the
38 motion would show the court as follows:

39

I.

40 _____ (Name), movant, herein is an individual whose name
41 was provided as an individual debtor in a financing statement record filed under the Uniform
42 Commercial Code, a copy of which is attached hereto.

43

II.

44 On _____ (date), in the exercise of the filing officer's official duties as
45 _____, the filing officer received and indexed the financing statement providing
46 the Movant's name as an individual debtor and assigned the following file number, _____,
47 to the record, bearing the following date of filing, _____.

48

III.

49 Movant alleges that the financing statement record is not an authorized filing with respect to
50 movant and that this court should declare the financing statement record ineffective with respect
51 to movant for that reason.

52

IV.

53 Movant attests that assertions herein are true and correct.

54

V.

55 Movant does not request the court to make a finding as to any underlying claim of any person
56 and asserts that this motion does not seek review of an effective financing statement record.
57 Movant acknowledges that movant may be subject to sanctions if this motion is determined to be
58 frivolous or intentionally wrongful.

59

PRAYER

61 Movant requests the court to review the attached documentation and enter an order finding that
62 said financing statement record was filed by a person not authorized to do so with respect to
63 Movant and is for that reason not an authorized filing with respect to Movant and, therefore, has
64 no effect with respect to Movant, together with such other findings as the court deems
65 appropriate.

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_____ Respectfully submitted,
(Signature and typed name and address)

69 (a) (2) The completed form for ordinary certificate of [acknowledgment] must be as follows:

70 **AFFIDAVIT**

71 THE STATE OF) [state name]

72)

73 COUNTY OF)

74

75 BEFORE ME, the undersigned authority, personally appeared _____, who, being by
76 me duly sworn, deposed as follows:

77

78 "My name is _____. I am over 18 years of age, of sound mind, with personal
79 knowledge of the following facts, and fully competent to testify.

80

81 I further attest that the assertions contained in the accompanying motion are true and correct."

82

83 Further affiant sayeth not.

84

85 SUBSCRIBED and SWORN TO before me, this ____ day of _____.

86 NOTARY PUBLIC, State of [state name]

87 Notary's printed name: _____

88 Notary's signature: _____

89 My commission expires: _____

90 (a) (3) [The clerk of the [insert court type] court shall not collect a filing fee for filing a motion
91 as provided in this section.]

92 (b) The court's finding may be made solely on a review of the documentation attached to the
93 motion, the responses, if any, of the person named as a secured party in the financing statement
94 record, and without hearing any oral testimony if none is offered by the secured party. The
95 [court type] court's review may be made only upon not less than [twenty] days notice to each
96 person named as a secured party in the financing statement record. Notice shall be given to each
97 secured party. Notice may be given to each secured party at the address given in the financing
98 statement record as an address of that secured party by mail or personal service as provided in
99 [refer to notice provisions of civil procedure law]. Each party will respond to discovery requests
100 timely. Each person named as a secured party in the financing statement record may respond to
101 the motion based on pleadings, depositions, admissions, and affidavits. The court's review of the
102 pleadings, depositions, admissions, and affidavits shall be made on an expedited basis.

103 (c) The court shall enter judgment in favor of the movant only if the pleadings, depositions,
104 admissions, and affidavits on file show that there is no genuine issue as to any material fact and
105 that the moving party is entitled to a judgment as a matter of law.

106 (d) After review, the [court type] court shall enter an appropriate finding of fact and conclusion
107 of law in a form as provided in subsection (e) regarding the financing statement record, an
108 attested copy of which shall be filed and indexed under the movant's name in the same filing
109 office in which the original financing statement record was filed. The filing officer shall not
110 collect a filing fee for filing a [court type] court's finding of fact and conclusion of law as
111 provided in this section. A copy of the finding of fact and conclusion of law shall be sent by the
112 court to the movant, to each person named as a secured party in the financing statement record at
113 the address of each person set forth in the financing statement, and to the filing office. The copy
114 shall be sent within seven days following the date that the finding of fact and conclusion of law
115 are issued by the [court type] court. The secured party may appeal the finding of fact and
116 conclusion of law as provided in [refer to appropriate civil procedure statute]. In addition to the
117 notice requirements of said statute, the secured party shall give notice of the appeal to the filing
118 office.

119 (e) The finding of fact and conclusion of law shall be in substantially the following form:

120 **MISC. DOCKET No.** _____
121 In Re: A Purported
122 Financing Statement In the _____ [court type]
123
124
125 Against In and For _____
126
127 (Name of Movant) County, [state name]

128 **Judicial Finding of Fact and Conclusion of Law Regarding the Authorization of a**
129 **Financing Statement Record Filed Under the Uniform Commercial Code**

130 On the (number) day of (month), (year), in the above entitled and numbered cause, this court
131 reviewed a motion, verified by affidavit [declaration], of (name), the documentation attached
132 thereto, and the pleadings, depositions, admissions, and affidavits submitted by the secured
133 party, if any. Notice was given to each person named as a secured party in the financing
134 statement record as provided by law to the secured party's address as provided in [insert
135 reference to this statute]. No oral testimony was taken from any party, the court having made the
136 determination that a decision could be made solely on review of the documentation as provided
137 in [insert reference to this statute].

138 The court finds as follows (only an item checked and initialed is a valid court ruling):

139 The financing statement record providing Movant's name as an individual debtor
140 attached to the motion IS an authorized filing as to Movant under [Uniform Commercial
141 Code] sections 9-509 or 9-708.

142 The financing statement record providing Movant's name as an individual debtor
143 attached to the motion IS NOT an authorized filing as to Movant under [Uniform
144 Commercial Code] sections 9-509 or 9-708 and, therefore, is not effective with respect to
145 Movant.

146 This court makes no finding as to any underlying claims of the parties involved and
147 expressly limits its finding of fact and conclusion of law to the review of whether
148 authorization for the filing exists. Insofar as it affects Movant, the filing officer shall
149 remove the subject financing statement record from the index so that the record is not
150 reflected in or obtained as a result of any search, standard or otherwise, conducted of the
151 records of the filing office under the Movant's name upon the occurrence of both of the
152 following (i) receipt of a finding of fact and conclusion of law that the documentation
153 attached to the motion IS NOT an authorized financing statement naming Movant as an
154 individual debtor under [Uniform Commercial Code] sections 9-509 or 9-708 and,
155 therefore, is not effective with respect to Movant, and (ii) the earlier of (a) the lapse of
156 any period for appeal without an appeal having been taken or (b) the decision becoming
157 final following any appeal. The filing officer shall retain the subject financing statement
158 record and this finding of fact and conclusion of law in the filing office for the duration
159 of the period for which they would have otherwise been retained. This finding of fact
160 and conclusion of law, but not the financing statement record, shall be indexed under the
161 Movant's name.
162

163 SIGNED ON THIS THE _____ DAY OF _____

164 _____ [court type] Judge
165 _____ [court type]
166 _____ County, [state name]

167
168
169 (f) As used in this section, "financing statement record" means (i) an initial financing statement,
170 (ii) an amendment that adds collateral covered by a financing statement, and (iii) an amendment
171 that adds a debtor to a financing statement as such terms are used in [Article 9] of the [Uniform
172 Commercial Code].

173
174 (g) As used in this section, "debtor" means a natural person whose name was provided in a
175 financing statement record as (i) an individual debtor or (ii) one of the types of persons listed in
176 [Uniform Commercial Code] section 9-505(a)..

177
178 (h) As used in this section, "authorized" when used with reference to a financing statement
179 record means that the financing statement record was filed by a person authorized to do so as
180 provided in [Uniform Commercial Code] sections 9-509 and 9-708.

181
182 (i) As used in this section, "filing office" or "filing officer" refers to the appropriate office or
183 officer where a financing statement record is to be filed as provided by Uniform Commercial
184 Code section 9-501, including the register of deeds (or county recorder, etc.), the secretary of
185 state (or other name for that office), and other designated filing officers.

186
187 **Other remedies**

188
189 (a) This law is cumulative of other law under which a person may obtain judicial relief with
190 respect to any filed or recorded document.

191 **Document 3: CRIMINAL PENALTY – Harassment and Strawman**

192 **Definitions**

193

194 In this chapter:

195

196 (1) As used in this chapter, “financing statement record” means (i) an initial financing
197 statement, (ii) an amendment that adds collateral covered by a financing statement, and
198 (iii) an amendment that adds a debtor to a financing statement as such terms are used in
199 [Article 9] of the [Uniform Commercial Code].

200 (2) As used in this chapter, “debtor” means a natural person whose name was provided in a
201 financing statement record as (i) an individual debtor or (ii) one of the types of persons
202 listed in [Uniform Commercial Code] section 9-505(a)..

203 (3) As used in this chapter, “authorized” when used with reference to a financing statement
204 record means that the financing statement record was filed by a person authorized to do
205 so as provided in [Uniform Commercial Code] sections 9-509 and 9-708.

206 (4) As used in this chapter, “filing office” or “filing officer” refers to the appropriate office
207 or officer where a financing statement record is to be filed as provided by Uniform
208 Commercial Code section 9-501, including the register of deeds (or county recorder,
209 etc.), the secretary of state (or other name for that office), and other designated filing
210 officers.

211

212 1) A person commits an offense if the person knowingly causes to be presented for filing in a
213 filing office, or promotes the filing in a filing office, of a financing statement record that the
214 person knows:

215

216 a) not to have been authorized under Uniform Commercial Code section 9-509 or 9-708
217 by the natural person whose name was provided as an individual debtor in the
218 financing statement; and

219 b) was filed or presented for filing with the intent that the financing statement record be
220 used to harass or hinder the natural person whose name was provided as an individual
221 debtor in the financing statement record without that person’s authorization.

222

223 2) An offense under this section is a [insert felony penalty here], unless it is alleged and shown at
224 the trial of the offense that the person had previously been convicted under this provision on two
225 or more occasions, in which event the offense is a [insert enhanced felony penalty here].

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Document 4: CIVIL PENALTY AND INJUNCTION – Harassment

Definitions

In this chapter:

- (1) As used in this chapter, “financing statement record” means (i) an initial financing statement, (ii) an amendment that adds collateral covered by a financing statement, and (iii) an amendment that adds a debtor to a financing statement as such terms are used in [Article 9] of the [Uniform Commercial Code].
- (2) As used in this chapter, “debtor” means a natural person whose name was provided in a financing statement record as (i) an individual debtor or (ii) one of the types of persons listed in [Uniform Commercial Code] section 9-505(a).
- (3) As used in this chapter, “authorized” when used with reference to a financing statement record means that the financing statement record was filed by a person authorized to do so as provided in [Uniform Commercial Code] sections 9-509 and 9-708.
- (4) As used in this chapter, “filing office” or “filing officer” refers to the appropriate office or officer where a financing statement record is to be filed as provided by Uniform Commercial Code section 9-501, including the register of deeds (or county recorder, etc.), the secretary of state (or other name for that office), and other designated filing officers.
- (5) “Exemplary damages” has the meaning assigned by [citation].

Liability

- (a) A person shall not knowingly cause to be presented for filing in a filing office or promote the filing of a financing statement record in a filing office that the person knows:
 - (1) not to be authorized under Uniform Commercial Code section 9-509 or 9-708 by the natural person whose name was provided as an individual debtor in the financing statement record; and
 - (2) was filed or presented for filing with the intent that the financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person’s authorization.
- (b) A person who violates subsection (a) is liable to each such debtor for:
 - (1) The greater of:
 - (A) [\$10,000]; or
 - (B) the actual damages caused by the violation;
 - (2) court costs;
 - (3) reasonable attorney’s fees;
 - (4) related expenses of bringing the action, including investigative expenses; and
 - (5) exemplary damages in the amount determined by the court.

Cause of Action

- (a) The following persons may bring an action to enjoin violation of this chapter or to recover damages under this chapter:

- 275 (1) the natural person whose name was provided as an individual debtor in the financing
276 statement record filed without that person's authorization under Uniform Commercial
277 Code section 9-509 or 9-708, or any guardian, conservator, executor, administrator or
278 other legal representative of that person, any person who owns an interest in the collateral
279 described or indicated in the financing statement record, or any person directly harmed by
280 the filing of the financing statement record;
- 281 (2) the attorney general;
282 (3) a district attorney;
283 (4) a criminal district attorney;
284 (5) a county attorney;
285 (6) a county attorney with felony responsibilities; and
286 (7) a municipal attorney.

287 (b) A filing officer may refer a matter to the attorney general or other appropriate person for
288 filing the legal actions under this chapter.

289

290 **Venue**

291

292 An action under this chapter may be brought in any district court in the county in which the
293 financing statement record is presented for filing or in a county where any of the persons named
294 in [Cause of Action (a)(1)] resides.

295

296 **Filing Fee**

297

298 (a) The fee for filing an action under this chapter is \$[x]. The plaintiff must pay the fee to
299 the clerk of the court in which the action is filed. Except as provided by subsection (b),
300 the plaintiff may not be assessed any other fee, cost, charge, or expense by the clerk of
301 the court or other public official in connection with the action.

302 (b) The fee for service of notice of an action under this section charged to the plaintiff may
303 not exceed:

304 (1) \$[X] if the notice is delivered in person; or

305 (2) the cost of postage if the service is by registered or certified mail.

306 (c) A plaintiff who is unable to pay the filing fee and fee for service of notice may file with
307 the court an affidavit of inability to pay under the [jurisdiction] Rules of Civil Procedure.

308 (d) If the fee imposed under subsection (a) is less than the filing fee the court imposes for
309 filing other similar actions and the plaintiff prevails in the action, the court may order a
310 defendant to pay to the court the differences between the fee paid under subsection (a)
311 and the filing fee the court imposes for filing other similar actions.

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313 **Other remedies**

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315 (a) This law is cumulative of other law under which a person may obtain judicial relief with
316 respect to any filed or recorded document.

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Document 5: CIVIL PENALTY – Strawman

Definitions

In this chapter:

- (1) As used in this chapter, “financing statement record” means (i) an initial financing statement, (ii) an amendment that adds collateral covered by a financing statement, and (iii) an amendment that adds a debtor to a financing statement as such terms are used in [Article 9] of the [Uniform Commercial Code].
- (2) As used in this chapter, “debtor” means a natural person whose name was provided as an individual debtor in a financing statement record.
- (3) As used in this chapter, “authorized” when used with reference to a financing statement record means that the financing statement record was filed by a person authorized to do so as provided in [Uniform Commercial Code] sections 9-509 and 9-708.
- (4) As used in this chapter, “filing office” or “filing officer” refers to the appropriate office or officer where a financing statement record is to be filed as provided by Uniform Commercial Code section 9-501, including the register of deeds (or county recorder, etc.), the secretary of state (or other name for that office), and other designated filing officers.
- (5) “Exemplary damages” has the meaning assigned by [citation].

Liability

- (a) A person shall not knowingly cause to be presented for filing in a filing office or promote the filing of a financing statement record in a filing office that the person knows:
 - (1) not to be authorized under Uniform Commercial Code section 9-509 or 9-708 by the natural person whose name was provided as an individual debtor in the financing statement record; and
 - (2) was filed or presented for filing with the intent that the financing statement record be used to defraud any person.
- (b) A person who violates subsection (a) is liable to each injured person for:
 - (1) The greater of:
 - (A) [\$10,000]; or
 - (B) the actual damages caused by the violation;
 - (2) court costs;
 - (3) reasonable attorney’s fees;
 - (4) related expenses of bringing the action, including investigative expenses; and
 - (5) exemplary damages in the amount determined by the court.

Cause of Action

- (a) The following persons may bring an action to enjoin violation of this chapter or to recover damages under this chapter:
 - (1) the natural person whose name was provided as an individual debtor in the financing statement record filed without that person’s authorization under Uniform

- 367 Commercial Code section 9-509 or 9-708, or any guardian, conservator, executor,
368 administrator or other legal representative of that person, any person who owns an
369 interest in the collateral described or indicated in the financing statement record, or
370 any person directly harmed by the filing of the financing statement record;
371 (2) the attorney general;
372 (3) a district attorney;
373 (4) a criminal district attorney;
374 (5) a county attorney;
375 (6) a county attorney with felony responsibilities;
376 (7) a municipal attorney; and
377 (8) a person who has been damaged as a result of an action taken in reliance on the
378 filed financing statement record.
- 379 (b) A filing officer may refer a matter to the attorney general or other appropriate person for
380 filing the legal actions under this chapter.
381

382 **Venue**

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384 An action under this chapter may be brought in any district court in the county in which the
385 financing statement record is presented for filing or in a county where any of the persons named
386 in [Cause of Action (a)(1)] resides.
387

388 **Filing Fee**

- 389
390 (a) The fee for filing an action under this chapter is \$[x]. The plaintiff must pay the
391 fee to the clerk of the court in which the action is filed. Except as provided by
392 subsection (b), the plaintiff may not be assessed any other fee, cost, charge, or
393 expense by the clerk of the court or other public official in connection with the
394 action.
395 (b) The fee for service of notice of an action under this section charged to the plaintiff
396 may not exceed:
397 (1) \$[X] if the notice is delivered in person; or
398 (2) the cost of postage if the service is by registered or certified mail.
399 (c) A plaintiff who is unable to pay the filing fee and fee for service of notice may
400 file with the court an affidavit of inability to pay under the [jurisdiction] Rules of
401 Civil Procedure.
402 (d) If the fee imposed under subsection (a) is less than the filing fee the court imposes
403 for filing other similar actions and the plaintiff prevails in the action, the court
404 may order a defendant to pay to the court the differences between the fee paid
405 under subsection (a) and the filing fee the court imposes for filing other similar
406 actions.
407

408 **Other remedies**

- 409
410 (a) This law is cumulative of other law under which a person may obtain judicial relief
411 with respect to any filed or recorded document.