Case 13-03036-elp Doc 1 Filed 01/27/13 1 2 Michael Fuller, Oregon Bar No. 09357 Trial Attorney for Plaintiff 3 OlsenDaines, PC 9415 SE Stark St., Suite 207 4 Portland, Oregon 97216 Email: mfuller@olsendaines.com Office: (503) 274-4252 Fax: (503) 362-1375 5 6 Cell: (503) 201-4570 7 UNITED STATES BANKRUPTCY COURT 8 FOR THE DISTRICT OF OREGON 9 10 Case No. 12-38328-elp7 In re 11 Adv. Proc. No. Jose Loreto Echeagaray Rivera, 12 Debtor. COMPLAINT FOR VIOLATION OF 13 THE AUTOMATIC STAY AND UNLAWFUL DEBT COLLECTION 14 JOSE LORETO ECHEAGARAY RIVERA, **JURY TRIAL DEMANDED** 15 11 U.S.C. § 362(k) 11 U.S.C. § 1692 et seq. Plaintiff, 16 ORS 646.639 et seq. 17 v. 18 AMERICAN EXPRESS COMPANY, a New York business corporation, and GC SERVICES) 19 **LIMITED PARTNERSHIP**, a Delaware 20 limited partnership. 21 Defendants. 22 23 1. 24 Jose Loreto Echeagaray Rivera ("plaintiff"), by and through his trial attorney, Michael 25 Fuller, alleges: 26 /// 27 /// 28 **COMPLAINT** - Page 1 OlsenDaines, PC 9415 Stark St., Ste. 207 Portland, Oregon 97216

Telephone (503)274-4252 Facsimile (503) 362-1375 1

2

3

4

5 6

7

8

9

10 11

12

13

14

15

16 17

18

19

20

21

22

23

24 25

26

27

28

JURISDICTION AND THE PARTIES

2.

This is an adversary proceeding brought under 11 U.S.C. § 362(k), the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., and the Oregon Unlawful Debt Collection Practices Act ("OUDCPA"), ORS 646.639 et seq.

3.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1334, 157, and 1367 because the Bankruptcy Code and FDCPA are federal law, diversity of parties exists and the amount in controversy is satisfied, and because plaintiff's state law claims are so related to the automatic stay and FDCPA claims that they form part of the same case or controversy.

4.

This adversary proceeding is one arising in and related to the above-captioned bankruptcy case, filed under Chapter 7 of Title 11 now open in this Court, case number 12-38328-elp7. The action for violating the automatic stay is a core proceeding under 28 U.S.C. § 157. Plaintiff consents a jury trial on his FDCPA and OUDCPA claims in bankruptcy court. Plaintiff consents to final adjudication of his entire case in bankruptcy court.

5.

This is an action for declaratory relief, actual damages, statutory damages, punitive damages, and attorneys fees and costs brought by plaintiff against American Express Company ("creditor") and its debt collector GC Services Limited Partnership ("debt collector") resulting from willful violation of the automatic stay and strict liability laws governing debt collection. ///

COMPLAINT - Page 2

1				
2	6.			
3				
4	Plaintiff resides in Portland, Oregon and is a "consumer" as defined by the FDCPA at 15			
5	U.S.C. § 1692a(3).			
6	7.			
7	Plaintiff is also a "person" and a "consumer" as defined by the OUDCPA at ORS			
8	646.639(1)(h) and (a).			
9				
10	8.			
11	Creditor regularly engages in consumer credit transactions with Oregonians.			
12	9.			
13	Creditor is a foreign entity and a "person" as defined by the OUDCPA at ORS			
14	646.639(1)(h).			
15				
16	10.			
17	Creditor enforces its consumer transactions with Oregonians and is a "commercial			
18	creditor" as defined by the OUDCPA at ORS 646.639(1)(c).			
19	11.			
20				
21	Creditor directly, and indirectly through its debt collector, attempts to enforce consumer			
22	loan obligations against Oregonians and is a "debt collector" as defined by the OUDCPA at ORS			
23	646.639(1)(g).			
24	12.			
25	Debt collector operates its debt collection business in Oregon and regularly collects			
26				
27	creditor's consumer loan obligations against Oregonians.			
28				
	COMPLAINT - Page 3			

1		
2	13.	
3	Debt collector is a foreign entity and a "person" as defined by the OUDCPA at ORS	
4		
5	646.639(1)(h).	
6	14.	
7	Debt collector regularly collects creditor's consumer loan debts and is a "debt collector"	
8	as defined by the OUDCPA at ORS 646.639(1)(g) and the FDCPA at 15 U.S.C. § 1692a(6).	
9		
10	15.	
11	Debt collector attempts to collect plaintiff's alleged obligation to creditor constituting a	
12	"debt" as defined by the OUDCPA at ORS 646.639(1)(e).	
13	16.	
14	FACTUAL ALLEGATIONS	
15		
16	Prior to filing for Chapter 7 bankruptcy protection, plaintiff owed a debt to creditor.	
17	17.	
18	Plaintiff filed for Chapter 7 bankruptcy protection in this Honorable Court on November	
19	2, 2012.	
20	18.	
21		
22	Plaintiff listed creditor on his schedule of unsecured creditors.	
23	19.	
24	Creditor received actual notice of the automatic stay in plaintiff's bankruptcy case,	
25	including a court-generated notice from the bankruptcy court.	
26		
27		
28		
	COMPLAINT - Page 4	

	Case 13-03036-elp Doc 1 Filed 01/27/13			
1				
2	20.			
3	The court-generated notice warned creditor that attempting to collect debt from plaintiff			
4	in violation of the automatic stay may result in penalties.			
5	21.			
7				
8	The court-generated notice informed creditor that plaintiff was represented by an attorney			
9	and provided contact information for plaintiff's attorney.			
10	22.			
11	The court-generated notice advised creditor to consult its lawyer to determine its rights in			
12	plaintiff's bankruptcy case.			
13	23.			
14	Creditor did not motion this Bankruptcy Court for relief from the automatic stay.			
15	24.			
16 17	After receiving actual written notice of plaintiff's bankruptcy case and the automatic stay.			
18				
19	creditor, through its agent and debt collector, willfully harassed plaintiff in an attempt to collect			
20	on a claim arising before the commencement of his bankruptcy case.			
21	25.			
22	Creditor's failure to take affirmative steps to ensure compliance with the automatic stay			
23	resulted in a willful act to collect.			
24	26.			
25	Creditor knew and should have known further collections were illegal because notice of			
26	plaintiff's bankruptcy case was mailed to it November 7, 2012.			
27				
28				
	COMPLAINE			

Case 13-03036-elp Doc 1 Filed 01/27/13
27.
Creditor knew and should have known further collections were inconvenient and
annoying to plaintiff because it knew he was represented by an attorney regarding his debt.
28.
Debt collector misrepresented the legal status of plaintiff's alleged debt and illegally
harassed plaintiff in an attempt to collect from him.
29.
As a direct and proximate result of creditor and debt collector's choices, plaintiff suffers
actual damages, including severe ongoing worry, anxiety and other negative emotions to be
proven at trial.
30.
As a direct and proximate result of creditor and debt collector's choices, plaintiff suffers
actual damages in the form of time spent and expenses including fees and costs to remedy
creditor and debt collector's contempt.

///

COMPLAINT - Page 6

Case 13-03036-elp Doc 1 Filed 01/27/13
31.
CAUSES OF ACTION
FIRST CLAIM FOR RELIEF
(WILLFUL VIOLATION OF THE AUTOMATIC STAY)
(11 U.S.C. § 362(k))
Plaintiff incorporates the above by reference.
32.
Creditor failed to take affirmative steps to stop collections from plaintiff despite receiving
actual notice of the automatic stay, constituting a willful violation of 11 U.S.C. § 362.
33.
Creditor has not remedied or acknowledged its contempt, constituting a willful ongoing
violation of 11 U.S.C. § 362.
34.
Plaintiff is entitled to and so seeks punitive damages against creditor under 11 U.S.C. §
362(k) so it may become profitable for it to implement procedures to avoid this type of violation
in the future.
35.
Plaintiff is injured as a result of creditor's willful violations, and so is entitled to actual
damages and punitive damages pursuant to 11 U.S.C. § 362(k).

COMPLAINT - Page 7

1		
2	36.	
3	SECOND CLAIM FOR RELIEF	
4		
5	(OUDCPA)	
6	(ORS 646.641)	
7	Plaintiff incorporates the above by reference.	
8	37.	
9	(COUNT ONE)	
10	Based on a determination that the automatic stay prohibited collection of creditor's claim	
12	from plaintiff, creditor and debt collector violated the OUDCPA, specifically ORS	
13		
14	646.639(2)(k).	
15	38.	
16	(COUNT TWO)	
17	Regardless of whether the automatic stay prohibited collection of creditor's claim from	
18	plaintiff, creditor and debt collector violated the OUDCPA, specifically ORS 646.639(2)(e) and	
19	(k).	
20	39.	
21		
22	As a result of creditor and debt collector's willful unlawful collection practices, plaintiff	
23	is entitled to the greater of actual damages or \$200, punitive damages, reasonable attorneys fees	
24	and costs, and declaratory relief pursuant to ORS 646.641.	
25	///	
26		
27		
28		
	COMPLAINT - Page 8	

1		
2	40.	
3	THIRD CLAIM FOR RELIEF	
4	(FDCPA)	
5		
6	(15 C.B.C. § 1072k)	
Plaintiff incorporates the above by reference.		
9	41.	
10	Based on a determination that the automatic stay prohibited collection of creditor's claim	
11	from plaintiff, debt collector violated the FDCPA, specifically 15 U.S.C. § 1692e and f.	
12	42.	
13	As a result of debt collector's willful unlawful collection practices, plaintiff is entitled to	
14	the greater of actual damages or \$1,000 and reasonable attorneys fees and costs pursuant to	
15	U.S.C. § 1692k.	
16	43.	
17		
19	Plaintiff is entitled to and so demands a jury trial on the OUDCPA and FDCPA claims.	
20		
21		
22		
23		
24		
25		
26		
27		
28		
	COMPLAINT - Page 9 OlsenDaines, PC	

1			
2	WHEREFORE, plaintiff request judgment against creditor and debt collector as follows:		
3	A.	Declaratory judgment holding creditor and debt collector in violation of laws	
5		governing debt collection;	
6	R	An award of actual damages, statutory damages, punitive damages, and reasonable	
7	D .		
8		attorneys fees and costs;	
9	C.	For such other and further relief as this Court may deem just and proper.	
10			
11	Dated: Jan	uary 27, 2013	
12		/s/ Michael Fuller Michael Fuller Oregon Per No. 00257	
13		Michael Fuller, Oregon Bar No. 09357 Trial Attorney for Plaintiff OlsenDaines, PC	
14		9415 SE Stark St., Suite 207 Portland, Oregon 97216	
15 16		Email: <u>mfuller@olsendaines.com</u> Office: (503) 274-4252	
17		Fax: (503) 362-1375 Cell: (503) 201-4570	
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
20			
	COMPLA	AINT - Page 10	