

Michael Fuller, Oregon Bar No. 09357  
Special Counsel for Debtor  
OlsenDaines, P.C.  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204  
[michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)  
Direct 503-201-4570

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

Christopher Gregory Cordova,  
  
Debtor.

Case No. 10-63048-fra13

**DEBTOR'S MOTION FOR ORDER OF  
CONTEMPT AND JUDGMENT  
AGAINST OCWEN LOAN SERVICING,  
LLC**

**MOTION**

Pursuant to 11 U.S.C. §§ 105, 506, 524, and this Court's inherent power, debtor Christopher Cordova moves for an order of contempt and judgment against Ocwen Loan Servicing, LLC because it refuses to remedy its willful ongoing discharge injunction violation and contempt.

Specifically, Ocwen Loan Servicing, LLC violates the discharge order and order avoiding lien by continuing to harass debtor after bankruptcy with collection attempts and threats to enforce lien rights against debtor's home.

**DEBTOR'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST  
OCWEN LOAN SERVICING, LLC - Page 1**

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Debtor has tried to resolve this matter directly with creditor on numerous occasions and has been unable to do so. Debtor has informed creditor of the discharge order and order avoiding its mortgage lien repeatedly over the phone and in writing but the harassment continues.

[Cordova Decl. ¶¶ 5; 9-10]

Debtor supports this motion with the attached memorandum and declaration.

Debtor respectfully moves for an order and judgment as follows:

- A. IT IS ORDERED that Ocwen Loan Servicing, LLC is held in contempt of the discharge injunction [Doc. 66] and the order avoiding mortgage lien [Doc. 26];
- B. IT IS ORDERED AND ADJUDGED that Ocwen Loan Servicing, LLC must reimburse debtor for the reasonable attorney fees and costs he incurred remedying its discharge violation and contempt;
- C. IT IS ORDERED AND ADJUDGED that Ocwen Loan Servicing, LLC must reimburse debtor for the reasonable attorney fees and costs he incurred proving liability, only if Ocwen Loan Servicing, LLC objects to debtor's entitlement to relief under sections A and B; and
- D. IT IS ORDERED AND ADJUDGED that Ocwen Loan Servicing, LLC must pay debtor compensatory sanctions of not more than \$250,000.

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Debtor also moves for any other equitable relief that this Court may determine is fair and just.

DATED: January 22, 2015

**RESPECTFULLY FILED,**

/s/ Michael Fuller  
Michael Fuller, Oregon Bar No. 09357  
Special Counsel for Debtor  
OlsenDaines, P.C.  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204  
[michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)  
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**DEBTOR'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST  
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**CERTIFICATE OF SERVICE**

I, Michael Fuller, certify that on January 22, 2015, I caused this document and all attachments to be mailed to the following persons by USPS first class regular and certified mail, postage pre-paid:

**Ocwen Loan Servicing, LLC  
c/o R.A. Corporation Service Company  
285 Liberty St. NE  
Salem, Oregon 97301**

DATED: January 22, 2015

/s/ Michael Fuller  
Michael Fuller, Oregon Bar No. 09357  
Special Counsel for Debtor  
OlsenDaines, P.C.  
US Bancorp Tower  
111 SW 5th Ave., 31st Fl.  
Portland, Oregon 97204  
[michael@underdoglawyer.com](mailto:michael@underdoglawyer.com)  
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**DEBTOR'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST  
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Michael Fuller, Oregon Bar No. 09357  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

Christopher Gregory Cordova,  
  
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Case No. 10-63048-fra13

**MEMORANDUM IN SUPPORT OF  
DEBTOR'S MOTION FOR ORDER OF  
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AGAINST OCWEN LOAN SERVICING,  
LLC**

**INTRODUCTION**

Before filing this motion, debtor repeatedly tried to resolve this dispute with creditor over the phone and in writing. Rather than listen, creditor continues to harass debtor with repeated collection calls on his work phone and cell phone.

Creditor's conduct in this case is part of a larger pattern and practice of collecting so-called "zombie mortgage debts" by ignoring lien avoidance and discharge orders.

Debtor now moves to re-open his bankruptcy case (1) to finally stop creditor's ongoing harassment, and (2) to seek imposition of compensatory sanctions that will make it profitable for creditor to listen in the future.

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**FACTUAL BACKGROUND**

**A. Order Avoiding Creditor's Mortgage Lien**

Creditor was a participant in debtor's bankruptcy case. [Doc. 42] On August 20, 2010, this Court issued an order avoiding creditor's mortgage lien. [Doc. 26]

**B. Order Discharging Creditor's Mortgage Debt**

On April 2, 2014, this Court issued an order discharging debtor's personal liability on creditor's mortgage debt. [Doc. 66] Creditor received notice of the discharge order from the Bankruptcy Noticing Center. [*Id.*]

**C. Additional Notice of Lien Avoidance and Discharge Order**

Debtor has repeatedly asked creditor to leave him alone and provided creditor with actual notice of this Court's order avoiding lien and discharge order, both in writing and over the phone. [Cordova Decl. ¶¶ 9-10]

**D. Ongoing Willful Discharge Violation and Contempt**

Despite receiving actual notice of the order avoiding lien and discharge order, creditor continues to harass debtor with collection calls demanding payment and threatening foreclosure. [Cordova Decl. ¶ 4] Specifically, creditor repeatedly calls debtor at work and on his cell phone. [Cordova Decl. ¶ 3] Creditor makes clear that it is calling to collect on the mortgage that was avoided in bankruptcy. [*Id.*] Debtor intends to testify at evidentiary hearing that creditor's willful violation of the order avoiding lien and discharge order caused him severe ongoing emotional harm. [Cordova Decl. ¶ 12]

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**POINTS AND AUTHORITIES**

**A. Authority to Enforce Bankruptcy Provisions**

Section 105 of Title 11 empowers bankruptcy courts to issue orders and judgments as necessary to enforce section 524's discharge provisions and section 506's lien avoidance provisions.

Bankruptcy courts also possess inherent powers to sanction abusive practices, so long as the sanctions don't contravene express Code provisions. *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014); *In re Wallace*, B.A.P. No. NV-13-1518-JuHIPa (B.A.P. 9th Cir. Sept. 18, 2014).

**B. Conduct Prohibited by a Discharge Order**

Section 524 provides for a broad injunction to ensure debtors receive a fresh start. Alan N. Resnick & Henry J. Sommer, 4 Collier on Bankruptcy ¶524.02[2] (16th ed. 2012).

The injunction specifically prohibits unwanted communications that serve no legitimate purpose. *In re Culpepper*, 481 B.R. 650 (Bankr. D. Or. 2012) (*aff'd*, Mosman, J.) (holding that Wells Fargo's unwanted calls about debtor's surrendered home violated the discharge injunction, even though the home was still titled in Debtor's name).

However, mortgage companies with valid lien rights may still generally collect voluntary payments and discuss loan modifications with debtors. *In re Garske*, 287 B.R. 537 (B.A.P. 9th Cir. 2002).

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### **C. Conduct Prohibited by an Order Avoiding Lien**

Section 506 allows debtors to avoid wholly unsecured second mortgage liens through chapter 13 bankruptcy. *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1227 (9th Cir. 2002). An order avoiding lien prohibits any subsequent threats or actions by a mortgage company to enforce lien rights against a debtor's property.

### **D. Enforcement of Bankruptcy Court Orders**

In the Ninth Circuit, consumers must enforce bankruptcy court orders by filing motions for contempt. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506-07 (9th Cir. 2002); *Barrientos v. Wells Fargo Bank*, 633 F.3d 1186, 1191 (9th Cir. 2011); Fed. R. Bnkr. P. 9020.

### **E. Elements of Contempt**

Contempt requires proof a collector (1) had knowledge of a bankruptcy court order and (2) intended conduct that violated the order. *ZiLOG, Inc. v. Corning*, 450 F.3d 996, 1007 (9th Cir. 2006).

### **F. Legal Standard for Contempt**

To recover compensatory sanctions against a collector, a violation must be proved with clear and convincing evidence. *Renwick v. Bennett, (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002).

Collectors are generally entitled to an evidentiary hearing as to whether they received actual notice of a court order. *Yen v. Pedroche (In re Pedroche)*, B.A.P. No. NC-13-1618-JuKuPa (B.A.P. 9th Cir. Nov. 10, 2014).

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## **G. Sanctions for Contempt**

Willful violations of court orders entitle aggrieved debtors to compensatory sanctions including actual damages, punitive damages, and reimbursed fees and costs. *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205, n.7 (9th Cir. 2008) (opinion by Chief Judge Kozinski, citing 2 *Collier Bankruptcy Manual* (3d rev. ed.) ¶ 524.02[2][c]).

### **1. Compensation for emotional harm**

A debtor is entitled to recover compensation for emotional harm resulting from a violation, even in the absence of any economic loss. *In re Feldmeier*, 335 B.R. 807, 813-814 (Bankr. D. Or. 2005) (awarding emotional harm damages under section 524 without any economic loss); *In re Culpepper*, 481 B.R. at 655 (same).

### **2. Compensation for expenses**

A contemnor must generally reimburse a debtor's fees and costs incurred up until the time liability is determined and contempt is remedied. *See, e.g., America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 765 F.3d 1096 (9th Cir. 2014) (pending re-hearing en banc).

If a creditor refuses to admit liability, it must reimburse a prevailing debtor's fees and costs incurred through trial and on prove up. *In re Culpepper*, 2013 Bankr. LEXIS 541, 2013 WL 501662 (Bankr. D. Or. Feb. 11, 2013) (compensating debtor \$38,370.50 fees and costs through trial where creditor's delays and ultimate refusal to admit liability necessitated a full evidentiary hearing).

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**3. Remedial sanctions and punitive damages**

Bankruptcy courts maintain inherent authority to deter future violations through remedial sanctions. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1197 (9th Cir. 2003).

**ARGUMENT**

This Court should hold Ocwen in contempt of the discharge order, and order avoiding lien, because clear and convincing evidence shows (1) Ocwen received actual notice of the court orders (a) based on its participation in this case, (b) from the Bankruptcy Noticing Center, and (c) from debtor over the phone and in writing, (2) the orders are unambiguous and should be familiar to Ocwen, and (3) Ocwen's refusal to cease its illegitimate continued communications and threats constitutes a willful violation of this Court's discharge order and order avoiding lien.

**CONCLUSION**

For the reasons given above, debtor respectfully requests this Court enter an order of contempt and judgment against Ocwen.

DATED: January 22, 2015

/s/ Michael Fuller  
Michael Fuller, Oregon Bar No. 09357  
Special Counsel for Debtor  
OlsenDaines, P.C.  
US Bancorp Tower  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  
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Case No. 10-63048-fra13

**DECLARATION OF CHRISTOPHER  
CORDOVA**

**IN SUPPORT OF DEBTOR'S MOTION  
FOR ORDER OF CONTEMPT AND  
JUDGMENT AGAINST OCWEN LOAN  
SERVICING, LLC**

**DECLARATION**

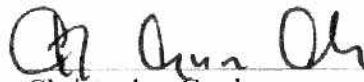
I, Christopher Cordova, declare the following under penalty of perjury:

1. I am over the age of 18 and have personal knowledge of the facts I am testifying about in this declaration.
2. I am the debtor in this bankruptcy case.
3. Beginning in 2014 after my bankruptcy case closed, Ocwen started harassing me with repeated calls to my work phone and cell phone. Ocwen makes clear that it is calling to collect on the mortgage that was avoided in bankruptcy
4. During its calls, Ocwen demanded payment from me on its mortgage debt and threatened to enforce lien rights against my home.
5. I've repeatedly tried to resolve this matter directly with Ocwen on numerous occasions but it won't stop harassing me.
6. On at least one occasion, Ocwen verbally admitted its mortgage was discharged and avoided, and promised to investigate the issue and call me back. Ocwen broke its promise and never followed up, except to further harass me with collection attempts.
7. I've repeatedly asked Ocwen to leave me alone.

8. On at least one occasion after I asked Ocwen to stop calling, Ocwen called my cell phone using an automatic telephone dialing system.
9. I repeatedly provided Ocwen verbal notice of my discharge order and order avoiding lien over the phone when it called.
10. I repeatedly provided Ocwen written copies of the discharge order and order avoiding lien entered in my bankruptcy case.
11. Ocwen's continued harassment has caused me severe ongoing stress of losing my home, anxiety that its harassment will not stop, frustration as its calls to my work phone harmed my job performance, and confusion about the status of its mortgage. I've now had to hire special counsel just to enforce my bankruptcy protections.
12. I intend to testify about Ocwen's harassment in court under oath to my Bankruptcy Judge. My wife has witnessed my emotional harm first-hand and also intends to testify.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 21, 2015

  
Christopher Cordova