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11 UNITED STATES BANKRUPTCY COURT  
12 FOR THE DISTRICT OF OREGON

13 In re )  
14 )  
15 Robert Joseph Battaglia, )  
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17 Debtor. )  
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Case No. 12-64096-tmr7  
Adv. Proc. No.

**COMPLAINT FOR VIOLATION OF  
THE AUTOMATIC STAY,  
CONTEMPT, AND UNLAWFUL DEBT  
COLLECTION**

**JURY TRIAL DEMANDED**

**11 U.S.C. § 362(k)  
ORS 646.639 et seq.**

1.

**INTRODUCTION**

Despite receiving various actual notices of the automatic stay, creditor continues to harass debtor with demands for payment.

Creditor refuses to respond to letters from debtor's counsel and now necessitates this action to remedy its contempt and recover fair and just compensation.

1  
2 Robert Battaglia (“debtor”), by and through his trial attorney, Michael Fuller, alleges:

3  
4 2.

5 **JURISDICTION AND THE PARTIES**

6 This is an adversary proceeding brought under 11 U.S.C. §§ 105 and 362(k), and the  
7 Oregon Unlawful Debt Collection Practices Act (“OUDCPA”), ORS 646.639 *et seq.*

8  
9 3.

10 This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1334, 157, and 1367  
11 because a federal question exists, diversity of parties exists and the amount in controversy is  
12 satisfied, and because debtor’s state law claim is so related to the automatic stay claim that they  
13 form part of the same case or controversy.

14  
15 4.

16 This adversary proceeding is one arising in and related to the above-captioned bankruptcy  
17 case, filed under Chapter 7 of Title 11 now open in this Court, case number 12-64096-tmr7. The  
18 action for violating the automatic stay and for contempt are core proceedings under 28 U.S.C. §  
19 157. Pursuant to § 157(e), debtor consents to a jury trial before the Bankruptcy Court.

20  
21 5.

22 This is an action for declaratory relief, actual damages, statutory damages, punitive  
23 damages, sanctions, and attorneys fees and costs brought by debtor against Target National Bank  
24 (“creditor”) resulting from willful ongoing violations of the automatic stay and laws governing  
25 debt collection.

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6.

Debtor resides in Central Point, Oregon and is a “person” and a “consumer” as defined by the OUDCPA at ORS 646.639(1)(h) and (a).

7.

Creditor is a foreign entity and a “person” as defined by the OUDCPA at ORS 646.639(1)(h).

8.

Creditor enforces consumer transactions with Oregonians and is a “commercial creditor” as defined by the OUDCPA at ORS 646.639(1)(c).

9.

Creditor directly, and indirectly through its debt collector and agent Northland Group Inc. (“debt collector”), attempts to enforce consumer loan obligations against Oregonians and is a “debt collector” as defined by the OUDCPA at ORS 646.639(1)(g).

10.

Creditor attempts to collect debtor’s alleged obligation to creditor constituting a “debt” as defined by the OUDCPA at ORS 646.639(1)(e).

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11.

**FACTUAL ALLEGATIONS**

Prior to filing for Chapter 7 bankruptcy protection, debtor owed a debt to creditor.

12.

Debtor filed for Chapter 7 bankruptcy protection in this Honorable Court on September 18, 2012.

13.

Debtor listed creditor on his schedule of unsecured creditors.

14.

Creditor received actual notice of the automatic stay in debtor's bankruptcy case, including a court-generated notice from the bankruptcy court.

15.

The court-generated notice warned creditor that attempting to collect debt from debtor in violation of the automatic stay may result in penalties.

16.

The court-generated notice informed creditor that debtor was represented by an attorney and provided contact information for debtor's attorney.

17.

The court-generated notice advised creditor to consult its lawyer to determine its rights in debtor's bankruptcy case.

18.

Creditor did not motion this Bankruptcy Court for relief from the automatic stay.

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19.

After receiving actual written notice of debtor's bankruptcy case and the automatic stay, creditor willfully harassed debtor in an attempt to collect on a claim arising before the commencement of his bankruptcy case.

20.

Specifically, creditor continues to demand payment from debtor.

21.

After receiving post-petition collection demands from creditor and its debt collector, debtor's counsel wrote to creditor and its debt collector, warning them about the harassment.

22.

The letters asked creditor and its debt collector to call debtor's counsel and provided contact information.

23.

The letters were attached to copies of court-generated notices of bankruptcy case.

24.

Upon information and belief, debt collector communicated the existence of the automatic stay to creditor upon receiving the letter from debtor's counsel.

25.

Despite having received numerous written notices of debtor's bankruptcy case, creditor continued its harassment and sent debtor a demand letter in November.

26.

The November demand letter stated debtor's payment was due by December 13, 2012.



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30.

**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**

(WILLFUL VIOLATION OF THE AUTOMATIC STAY)

(11 U.S.C. § 362(k))

Debtor incorporates the above by reference.

31.

Creditor continued collection efforts, despite receiving actual notices of the automatic stay, constituting ongoing willful violations of 11 U.S.C. § 362.

32.

Creditor's refusal to take immediate affirmative steps to remedy their contempt constitutes a willful ongoing violation of 11 U.S.C. § 362.

33.

Debtor is entitled to and so seeks punitive damages against creditor so it may become profitable for it to implement procedures to avoid this type of violation in the future.

34.

Debtor is injured as a result of creditor's willful violations, and so is entitled to actual damages, punitive damages, declaratory relief that creditor violated the automatic stay, and attorneys fees and costs to remedy the contempt pursuant to 11 U.S.C. § 362(k).

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35.

**SECOND CLAIM FOR RELIEF**

(COMPENSATORY CIVIL CONTEMPT)

(11 U.S.C. § 105)

Debtor incorporates the above by reference.

36.

Creditor's failure to implement systems to avoid post-petition collections put it in direct violation of this Court's Order and it should be mildly sanctioned and held in contempt pursuant to 11 U.S.C. § 105 and pursuant to this Court's inherent powers.

37.

**THIRD CLAIM FOR RELIEF**

(OUDCPA)

(ORS 646.641)

Debtor incorporates the above by reference.

38.

Creditor injured debtor through its willful unlawful collection practices as detailed above, violating the OUDCPA, specifically ORS 646.639(2)(k), (m), and (n).

39.

As a result of creditor's willful unlawful collection practices, debtor is entitled to the greater of actual damages or \$200, punitive damages, reasonable attorneys fees and costs, and declaratory relief pursuant to ORS 646.641.

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40.

Debtor is entitled to and so demands a jury trial on the OUDCPA claims.

**WHEREFORE**, debtor request judgment against creditor as follows:

- A. Declaratory judgment that creditor willfully violated the automatic stay;
- B. An Order holding creditor in contempt;
- C. An award of actual damages against creditor;
- D. An award of statutory damages against creditor;
- E. An award of punitive damages against creditor;
- F. An award of mild sanctions against creditor;
- G. An award of expenses, including reasonable attorneys fees and costs against creditor;
- H. For such other and further relief as this Court may deem just and proper.

Dated: November 29, 2012

/s/ Michael Fuller  
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