

Michael Fuller, Oregon Bar No. 09357
Attorney for Mr. Cara
OlsenDaines, PC
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, OR 97204
Michael@UnderdogLawyer.com
Direct 503-201-4570
Fax 503-362-1375

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Jorge Guillermo Cara,

Debtor.

Case No. 13-62766-tmr7

**MR. CARA'S MOTION FOR ORDER OF
CONTEMPT AND JUDGMENT
AGAINST U.S. BANK NATIONAL
ASSOCIATION**

MOTION

Pursuant to 11 USC §§ 105 and 524, Mr. Cara moves for an order of contempt and judgment against U.S. Bank National Association based on its post-discharge collection of pre-petition debt from Mr. Cara.

Mr. Cara supports this motion with the attached legal memorandum and exhibits.

Mr. Cara respectfully moves for an order and judgment as follows:

- A. IT IS ORDERED** U.S. Bank National Association is held in contempt of the discharge order filed October 30, 2013;

**MR. CARA'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST
U.S. BANK NATIONAL ASSOCIATION** - Page 1

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B. IT IS ORDERED AND ADJUDGED U.S. Bank National Association must reimburse

Mr. Cara for the reasonable attorney fees and costs he incurred remedying U.S. Bank National Association's contempt;

C. IT IS ORDERED AND ADJUDGED U.S. Bank National Association must reimburse

Mr. Cara for the reasonable attorney fees and costs he incurred proving liability, only if U.S. Bank National Association objects to Mr. Cara's entitlement to relief under sections A and B above;

D. IT IS ORDERED AND ADJUDGED U.S. Bank National Association must pay Mr.

Cara mild sanctions and or punitive damages not to exceed \$100,000;

E. IT IS ORDERED AND ADJUDGED U.S. Bank National Association must pay Mr.

Cara compensatory damages not to exceed \$10,000.

Mr. Cara also moves for any other equitable relief that this Honorable Court may determine fair and just.

DATED: March 24, 2014

/s/ Michael Fuller
Michael Fuller, Oregon Bar No. 09357
Attorney for Mr. Cara
OlsenDaines, PC
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, OR 97204
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**MR. CARA'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST
U.S. BANK NATIONAL ASSOCIATION** - Page 2

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Fax 503-362-1375

CERTIFICATE OF SERVICE

I certify that on March 24, 2014, I caused the attached document to be delivered by certified mail to:

U.S. Bank National Association
c/o President Jan Estep
425 Walnut Street
Cincinnati, OH 45202

DATED: March 24, 2014

/s/ Michael Fuller
Michael Fuller, Oregon Bar No. 09357
Attorney for Mr. Cara
OlsenDaines, PC
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, OR 97204
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**MR. CARA'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST
U.S. BANK NATIONAL ASSOCIATION** - Page 3

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Jorge Guillermo Cara,

Debtor.

Case No. 13-62766-tmr7

**MR. CARA'S MEMORANDUM IN
SUPPORT OF MOTION FOR ORDER OF
CONTEMPT AND JUDGMENT
AGAINST U.S. BANK NATIONAL
ASSOCIATION**

INTRODUCTION

It's unfortunate that U.S. Bank National Association refuses to respond to Mr. Cara or his attorney to resolve this relatively straightforward dispute over \$249.39.

If Mr. Cara were able to, he would prefer to simply take the bank to small claims court.

Instead, he must bear the expense of hiring a commercial litigation attorney to now prosecute the bank as follows:

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**MR. CARA'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER OF
CONTEMPT AND JUDGMENT AGAINST U.S. BANK NATIONAL ASSOCIATION -**

Page 1

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FACTUAL HISTORY

A. Discharge Order Entered

On October 30, 2013, this Honorable Court entered a discharge order in Mr. Cara's "no asset" bankruptcy case. [Docket No. 17]

The bank received multiple notices of the discharge order. [*Id.*]

B. Bank Collects Pre-Petition Debt

In February 2014, the bank collected pre-petition debt from Mr. Cara by seizing his bank funds. [Cara Decl. ¶¶ 3-5; Exhibit 1]

C. Bank Refuses to Remedy Discharge Violation

The bank refuses to return the funds it seized from Mr. Cara. [Cara Decl. ¶ 6]

The bank refuses to respond to correspondence from Mr. Cara's attorney. [Fuller Decl. ¶ 5; Exhibits 2 & 3]

The bank has not contacted Mr. Cara or otherwise appeared before this Honorable Court after receiving the motion to reopen. [Cara Decl. ¶ 6]

D. Relief Requested

1. Declaratory Relief

Mr. Cara respectfully requests this Honorable Court hold the bank in contempt.

2. Mild Sanctions and or Punitive Damages

Mr. Cara requests judgment awarding him mild sanctions and or punitive damages in order to discourage the bank from "playing the odds" in the future.

MR. CARA'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST U.S. BANK NATIONAL ASSOCIATION -

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3. Actual Damages

Mr. Cara also requests actual damages.

As a direct result of the bank's discharge violation, Mr. Cara suffers loss of use of his bank funds. [Cara Decl. ¶¶ 3-5]

As a direct result of the bank's refusal to remedy its discharge violation, Mr. Cara incurs expenses, including ongoing attorney fees and costs. [Cara Decl. ¶ 7]

As a direct result of the bank's refusal to remedy its discharge violation, Mr. Cara suffers severe ongoing frustration, anxiety, loss of confidence in the bankruptcy system, and other emotional harm to be proved at evidentiary hearing. [Cara Decl. ¶ 8]

LEGAL POINTS AND AUTHORITIES

A. Authority under Section 105

Section 105 of Title 11 empowers this Honorable Court to issue orders and judgments as necessary to enforce the Bankruptcy Code's discharge injunction.

B. Discharge Injunction

A creditor wishing to exercise a right of setoff immediately after a bankruptcy is filed must promptly seek permission from the bankruptcy court while a temporary administrative hold is pending. *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16 (1995). (Bank filed "Motion for Relief from Automatic Stay and for Setoff" within five days of initiating a temporary hold on debtor's bank funds).

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MR. CARA'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST U.S. BANK NATIONAL ASSOCIATION -

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After the discharge order is entered, attempts to setoff or collect pre-petition debt from a debtor violates section 524's broad injunction. Alan N. Resnick & Henry J. Sommer, 4 Collier on Bankruptcy ¶524.02[2] (16th ed. 2012).

C. Clear and Convincing Standard

To obtain an order of contempt for violation of the discharge order, a debtor must prove that a party had knowledge of the order and intended the conduct that violated the order. *See, e.g., ZiLOG, Inc. v. Corning*, 450 F.3d 996, 1007 (9th Cir. 2006).

Whether or not a party actually intended to violate a Title 11 provision is not determinative so long as it had prior notice of the bankruptcy case. *In re Campion*, 294 B.R. 313, 317 (9th Cir. BAP 2003).

Upon learning of a bankruptcy violation, a creditor has an affirmative duty under the Code to remedy its contempt. *Eskanos & Adler v. Leetin*, 309 F.3d 1210, 1215 (9th Cir. 2002).

The contents of the discharge order are unambiguous and fixed by statute. *See, e.g., In re Moncur*, 328 B.R. 183, 191 (9th Cir. BAP 2005).

To recover sanctions against a party for contempt, a debtor must establish a discharge violation with clear and convincing evidence. *Renwick v. Bennett, (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002).

A contempt proceeding in bankruptcy court is properly brought by motion. *Barrientos v. Wells Fargo Bank*, 633 F.3d 1186, 1191 (9th Cir. 2011); Fed. R. Bnkr. P. 9020.

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MR. CARA'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST U.S. BANK NATIONAL ASSOCIATION -

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D. Remedies under Section 105

Willful discharge violations entitle aggrieved debtors to actual damages, mild sanctions and or punitive damages, and attorney fees. *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. Emotional harm.

Even in the absence of economic loss, debtors are entitled to recover damages for emotional harm resulting from a stay or discharge violation. *In re Feldmeier*, 335 B.R. 807, 813-814 (Bankr. Or. 2005) (citing H.R. Rep. No. 595, 95th Cong, 1st Sess 365-366 (1977); S. Rep no. 989, 95th Cong.2d Sess 80 (1978), U.S.Code Cong. & Admin.News 1978, pp. 5963, 6321, 5787, 5866.)

Emotional harm may be proved based on a debtor's testimony, with or without additional expert testimony. *Id.* (awarding \$10,000 in emotional harm damages based on telephone testimony of debtor); *In re Culpepper*, 481 B.R. 650, 655 (Bankr. Or. 2012) (*aff'd*, Mosman, J.) (awarding \$4,000 in emotional harm damages based on live testimony of debtor and the expert opinion of an OHSU professor of psychiatry.)

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MR. CARA'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST U.S. BANK NATIONAL ASSOCIATION -

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ARGUMENT

This Court should hold the bank in contempt of the discharge order because clear and convincing evidence shows (1) the bank had actual notice of the discharge order, (2) the discharge provisions are unambiguous and familiar to the bank, and (3) the bank refuses to return funds it seized from Mr. Cara in violation of the discharge order.

CONCLUSION

For the reasons stated above, this Honorable Court should grant Mr. Cara's motion and enter an order and judgment against U.S. Bank National Association.

DATED: March 24, 2014

/s/ Michael Fuller
Michael Fuller, Oregon Bar No. 09357
Attorney for Mr. Cara
OlsenDaines, PC
US Bancorp Tower
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Portland, OR 97204
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**MR. CARA'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER OF
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P.O. Box 6227
CN-OH-W15
Cincinnati OH 45202-6227

00080

February 14, 2014



000001511 1 SP 0.480 106481467010791 P

JORGE G CARA
PO BOX 624
SALEM OR 97308-0624

M/CHA

U.S. Bank Account Number: DDA153663170121

Current Balance: \$798.62

Dear JORGE G CARA:

Due to your default on the above-referenced U.S. Bank account, we have exercised our right of offset by charging your account number ending in 55968 in the amount of \$249.39 on 02/13/2014. Please adjust your records accordingly.

This offset was made pursuant to the terms and conditions of the account agreement governing your account. If you have questions, please contact us immediately at the number listed below.

U.S. Bank will not be responsible for any overdrafts that might occur due to this offset.

Sincerely,

Loss Prevention Team
U.S. Bank Retail Collections
877-457-3544

This letter is an attempt to collect a debt and any information obtained will be used for that purpose, unless you dispute the validity of this debt, or any portion thereof, within thirty (30) days after receipt of this notice, the debt will be assumed to be valid. If you notify this office in writing within that 30-day period that the debt, or any portion thereof, is disputed, verification of the debt will be obtained and a copy of such verification will be mailed to you. Also, if the name of the original creditor is different from the creditor identified above, upon your written request made within that 30-day period, you will be provided with the name and address of the original creditor.



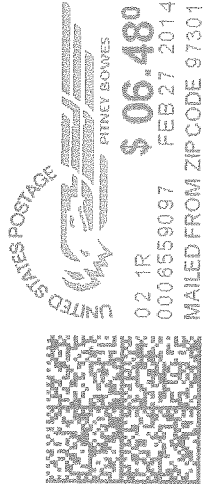
OlsenDaines
Attorneys at Law
PO Box 12829 • Salem OR 97309

From the desk of Yaneli Silva

CERTIFIED MAIL[™]



7012 3460 0002 9333 0535



U.S. Bank National Association
c/o President Jan Estep
425 Walnut Street
Cincinnati, OH 45202

www.olsendaines.com

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

U.S. Bank
National Association
425 Walnut St.
Cincinnati, OH 45202
Attn: President
Dan Estep

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type ☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

7012 3460 0002 9333 0535

PS Form 3811, July 2013

Domestic Return Receipt



OlsenDaines
Attorneys at Law

Michael Fuller, Chair
Consumer Protection Group

Attorneys

Eric W. Olsen *~^~^~
Dwayne R. Murray *
Lars H. Olsen *
Rex K. Daines *~
Kevin D. Swartz *~
D. Neal Peton *
Matthew A Casper *
Michael R. Fuller *
Michael Sperry ~
Kris Sperry ^
David Johnson *
* Licensed in OR
~ Licensed in WA
^ Licensed in ID
~ Licensed in UT
^ Licensed in TX
^ Licensed in AZ

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Seattle 425-373-1199
Salt Lake City 801-225-6900
Boise 208-319-3504

Facsimile

800-258-3518

Website

www.UnderdogLawyer.com

*"Proudly protecting the rights of
consumers for over 30 years"*

*** Expedited letter - dictated but not read*

DELIVERED VIA CERTIFIED MAIL

February 27, 2014

U.S. Bank National Association
c/o President Jan Estep
425 Walnut Street
Cincinnati, OH 45202

RE: Notice of Contempt – Action Required!
Jorge Guillermo Cara

Ladies and Gentlemen,

I've been hired by Mr. Cara to investigate and remedy allegations of contempt. Specifically, my client reports being harassed to pay debts discharged in bankruptcy.

Please see the attached discharge order and professional services agreement.

These matters can usually be resolved with a simple phone call. Please immediately have your attorney contact me directly.

Thank you.

Sincerely,

/s/ Michael Fuller **

Michael Fuller
Trial Lawyer

Enclosure: (1) [Doc. 17] Discharge Order, Case No. 13-62766-tmr7

cc: Office of The United States Trustee
620 SW Main Street, Suite 213
Portland, OR 97205

U.S. Bank National Association
c/o attorney Eric Marshack
13555 SE 36th St., Suite 300
Bellevue, WA 98006

United States Bankruptcy Court
District of Oregon

In re:
Jorge Guillermo Cara
Debtor

Case No. 13-62766-tmr
Chapter 7

CERTIFICATE OF NOTICE

District/off: 0979-6

User: admin
Form ID: DC7

Page 1 of 2
Total Noticed: 40

Date Rcvd: Oct 31, 2013

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Nov 02, 2013.

db +Jorge Guillermo Cara, PO Box 624, Salem, OR 97308-0624
smg +Dept of Justice, Division of Child Support, Attn: Bankruptcy Unit, POB 14670,
Salem, OR 97309-5013
smg +US Attorney, US Attorney, 1000 SW 3rd Ave #600, Portland, OR 97204-2936
smg +US Attorney General, Department of Justice, 10th & Constitution NW,
Washington, DC 20530-0001
100331766 +American Coradius International LLC, 2420 Sweet Home Rd Ste 150, Buffalo, NY 14228-2244
100331769 +Chase, Attn: Bankruptcy Dept, PO Box 24696, Columbus, OH 43224-0696
100331772 First Tech Federal Credit Union, PO Box 2100, Beaverton, OR 97005
100331776 JPMorgan Chase Bank NA, PO Box 659754, San Antonio, TX 78265-9754
100331778 +Marion County Tax Assessor, W.A. Shawn Beaton, Chief Deputy Assessor, PO Box 14500,
Salem, OR 97309-5036
100331779 Marion County Tax Collector, PO BOX 2511, Salem, OR 97308-2511
100331780 +Merchants Credit Bureau, PO Box 227, Salem, OR 97308-0227
100331782 Nationwide Credit Inc., 2002 Summit Blvd. Suite 600, Atlanta, GA 30319-1559
100331787 +RCO, 511 SW 10th Avenue Ste 400, Portland, OR 97205-2705
100331788 +Salem Cardio Vascular Associates PC, 885 Mission St. SE, Salem, OR 97302-6222
100331789 Salem Emergency Physicians Services PC, File 3114, PO BOX 60000,
San Francisco, CA 94160-0001
100331791 +Salem Emergency Physicians Services,PA, 8 Oak Park Dr, Bedford, MA 01730-1414
100331790 Salem Emergency Physicians Services,PA, PO Box 742547, Los Angeles, CA 90074-2547
100331792 +Salem Gastroenterology Consultants PC, 875 Oak St Bldg C #3010, Salem, OR 97301-3975
100331793 +Select Portfolio Servicing Inc, 3815 S West Temple Ste 2000, Salt Lake City, UT 84115-4412
100331794 #+Transworld System Inc, Collection Agency, 5440 SW Westgate Dr #120, Portland, OR 97221-2413
100331797 +US Bank National Association ND, PO Box 7876, Madison, WI 53707-7876
100331795 +United Collection Bureau Inc., 5620 Southwyck Blvd. Suite # 206, Toledo, OH 43614-1501
100331799 +Vital Recovery Services Inc, PO Box 923748, Norcross, GA 30010-3748

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

tr +EDI: QRRSTICKA.COM Nov 01 2013 01:28:00 Ronald R Sticka, POB 10990, Eugene, OR 97440-2990
smg +EDI: ORREV.COM Nov 01 2013 01:28:00 ODR Bkcy, 955 Center NE #353, Salem, OR 97301-2555
100331767 +EDI: CAPITALONE.COM Nov 01 2013 01:28:00 Capital One Bank, PO Box 30281,
Salt Lake City, UT 84130-0281
100331768 +E-mail/Text: bankruptcy@cavps.com Nov 01 2013 01:39:51 Cavalry Portfolio Service LLC,
PO Box 27288, Tempe, AZ 85285-7288
100331770 +EDI: CHASE.COM Nov 01 2013 01:28:00 Chase Bank USA, PO Box 15298,
Wilmington, DE 19850-5298
100331771 +EDI: DIRECTV.COM Nov 01 2013 01:28:00 DirecTV, P.O. Box 78626, Phoenix, AZ 86062
100331773 +EDI: HFC.COM Nov 01 2013 01:28:00 HSBC, PO Box 60167, City of Industry, CA 91716-0167
100331775 +EDI: IRS.COM Nov 01 2013 01:28:00 IRS, Legal Notices, PO Box 7346,
Philadelphia, PA 19101-7346
100331774 +EDI: PINNACLE.COM Nov 01 2013 01:28:00 Integrity Solution Services Inc, PO BOX 7230,
Overland Park, KS 66207-0230
100331777 +E-mail/Text: bankruptcy@ojd.state.or.us Nov 01 2013 01:39:29 Marion County Circuit Court,
CASE #:13CL6869, 100 High St NE, Salem, OR 97301-3640
100331781 +EDI: MID8.COM Nov 01 2013 01:28:00 Midland Credit Management, 8875 Aero Dr Ste 200,
San Diego, CA 92123-2255
100331783 +E-mail/Text: bankruptcydepartment@ncogroup.com Nov 01 2013 01:39:44 NCO Financial Group,
507 Prudential Rd., Horsham, PA 19044-2368
100331784 +EDI: HFC.COM Nov 01 2013 01:28:00 Orchard Bank, HSBC Card Services, PO Box 60102,
City Of Industry, CA 91716-0102
100331785 +EDI: ORREV.COM Nov 01 2013 01:28:00 Oregon Department of Revenue, 955 Center St NE,
Salem, OR 97301-2555
100331786 +EDI: PRA.COM Nov 01 2013 01:28:00 Portfolio Recovery Associates LLC, PO Box 12914,
Norfolk, VA 23541
100331796 +EDI: USBANKARS.COM Nov 01 2013 01:28:00 Us Bank NA ND, PO BOX 108, Saint Louis, MO 63166
100331798 +EDI: AFINIVZWIRE.COM Nov 01 2013 01:28:00 Verizon Wireless, PO Box 26055,
Minneapolis, MN 55426-0055

TOTAL: 17

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Addresses marked '#' were identified by the USPS National Change of Address system as requiring an update.
While the notice was still deliverable, the notice recipient was advised to update its address with the court immediately.

District/off: 0979-6

User: admin
Form ID: DC7

Page 2 of 2
Total Noticed: 40

Date Rcvd: Oct 31, 2013

***** BYPASSED RECIPIENTS (continued) *****

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Nov 02, 2013

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on October 30, 2013 at the address(es) listed below:
NONE.

TOTAL: 0

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

FILED

October 30, 2013

Clerk, U.S. Bankruptcy Court

Below is an order of the Court.


U.S. Bankruptcy Judge

DC7 (3/5/09)

**UNITED STATES BANKRUPTCY COURT
District of Oregon**

In re
Jorge Guillermo Cara, xxx-xx-2459
Other names used by debtor: Jorge Cara
Debtor(s)

) Case No. **13-62766-tmr7**
)
) CHAPTER 7 ORDER RE: DISCHARGE;
) AND ORDER DISCHARGING TRUSTEE
) AND CLOSING CH. 7 "NO ASSET" CASE
)
)

It appearing that on 7/19/13 a bankruptcy petition was filed by the debtor(s); timely complaints filed pursuant to 11 USC §523(a) could be pending and the court could still order that any affected debt is nondischargeable, however no complaint objecting to the debtor's discharge pursuant to 11 USC §727 was timely filed (or such complaint was filed, and after due notice and hearing, was not sustained); each timely filed written reaffirmation agreement was either rescinded or not approved by the court; the trustee has filed a report of no assets and performed all other administrative duties as required; and therefore,

IT IS ORDERED that:

1. The debtor(s) shall be granted a discharge under §727 of Title 11, United States Code (the Bankruptcy Code).
2. The trustee is discharged as trustee of the debtor's estate; this case is closed; and the court shall retain jurisdiction over any adversary proceeding pending at the time of closure.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person(s) named as a debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited. The discharge prohibits any attempt to collect from a debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. (If applicable there are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.) A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts that are Discharged. The Chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to Chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged. Some of the common types of debts which are not discharged in a Chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are for domestic support obligations, or debts to a spouse or former spouse for property settlement;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts the bankruptcy court specifically has decided or will decide in this case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

*** CONFIDENTIAL ***



OlsenDaines
Attorneys at Law

Professional Services Agreement

A. Scope of Representation

1. The firm agrees to represent client to remedy contempt of the discharge injunction. This professional services agreement does not include legal services for any aspect of any bankruptcy case except those in this specific proceeding related to remedying contempt of the discharge injunction.
2. The firm will investigate the case and reserves the right to terminate representation and withdraw if, in its opinion, after further investigation, the case lacks factual or legal merit.
3. Client understands it may review this agreement with another independent attorney and may cancel this agreement within 72 hours after signing and owe no obligation to the firm.

B. Legal Advice

1. Never talk about your case to anyone, including family, friends, or the media, without first consulting your attorney. Never write about your case, including text messaging or on the Internet.
2. Always immediately provide all documents related to your case to your attorney. Never destroy a document related to your case.
3. Never record a conversation or phone call without the permission of all the parties involved.

C. General Provisions

1. Client agrees to cooperate fully in the investigation of the case. Client agrees to attend a settlement conference if permitted by the Judge. Client agrees to tell their story at deposition and trial if necessary. Client agrees to keep the firm advised at all times of their current mailing address, phone number, and email address.
2. Client grants the firm power of attorney and authorizes the firm to negotiate checks, deposit moneys into trust, represent client in legal matters, provide case information to the public and the media through email, blog, twitter, in person, at press conference, and over the phone, and perform other related functions as necessary to assist client. Signing this agreement grants the firm authority to endorse checks by placing client's name as endorser and guaranteeing endorsement of a check. Client agrees to hire an independent tax professional to review any tax-related issues resulting from settlement or trial in this case.
3. The firm agrees to never charge client for time spent explaining any provision of this agreement.

(Page 1 of 2)

*** CONFIDENTIAL ***

D. Attorney Fees and Costs

1. Client agrees to pay the firm fees, costs, and all necessary expenses directly related to litigating the case. Client reserves the right to later seek reimbursement for expenses, including attorney fees, as damages or sanctions, from the offending creditor.
2. Client is liable to the firm for attorney, paralegal and law clerk time. Time is billed in increments of a tenth of an hour.
3. Client is not liable and will not be billed for staff time or general overhead expenses. Client's ledger of fees and costs is calculated based on contemporaneously recorded computer-constructed time records and in limited circumstances, reconstructed records developed by reference to litigation files and related documents.
4. Client agrees to pay the following rates for work performed by the firm on the case: partners at \$345 per hour, associates at \$300 per hour, paralegals and law clerks at \$100 per hour.
5. Client understands that in some circumstances, if the case is not successful, they could owe a defendant's fees and costs, especially if the court determines the case was filed in bad faith or to harass a defendant. In the firm's discretion, it may grant courtesy discounts, including reductions of time billed, rates, or billing increments.
6. Client agrees to pay retainer of \$ zero dollars.
7. Compensation under this agreement has not been agreed to be shared with any other person unless they are members and associates of the firm.

By signing below, client agrees to be bound by the terms of this agreement.

Jorge G. Cara
Name

Spouse Name (if representing a married couple)


Signature

Signature

(Page 2 of 2)

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X Brian L. Onkst CTA <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: U.S. Bank National Association 425 Walnut St. Cincinnati, OH 45202 Attn: President Jan Ertel		B. Received by (Printed Name)	C. Date of Delivery
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No MAR 04 2014	
		3. Service Type <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7012 3460 0002 9333 0535	
PS Form 3811, July 2013		Domestic Return Receipt	

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OlsenDaines
3995 Hagers Grove Rd. SE
P. O. Box 12829
Salem, OR 97309-0829

RE: CARA WMS

Michael Fuller

From: Eric Marshack <emarshack@rcolegal.com>
Sent: Wednesday, March 12, 2014 4:39 PM
To: Michael Fuller
Subject: RE: Cara/ 13-62766-tmr7

Hi Mike,

Thanks for the copy of the letter. I reviewed with my client and this is a separate entity from who we represented in the MFR. We filed the MFR for US Bank as trustee through its servicing agent Select Portfolio. My client has indicated they have no connection to the bank account and they have not initiated any setoff nor would they have the ability to request that. We won't be assisting in this matter any longer as there is nothing we can do but I do hope your client is able to get this straightened out. Thank you for the courtesy copy of your original letter to US Bank.

Please let me know if you have any questions.

Thank you,

Eric A. Marshack
Associate Attorney
Licensed to Practice Law in Oregon and Washington

Direct: 503.459.0114
Fax: 425.247.7746
emarshack@rcolegal.com
RCO Legal, P.S.



From: Michael Fuller [<mailto:mfuller@olsendaines.com>]
Sent: Wednesday, March 12, 2014 9:20 AM
To: Eric Marshack
Cc: 'vanesapancicmeier@comcast.net'; Eric Olsen; Rex Daines
Subject: RE: Cara/ 13-62766-tmr7

Hey Eric,

Thanks for speaking with me this morning.

As promised, please see the attached collection letter. Mr. Cara is hopeful the bank will immediately remedy its contempt. He'd like to settle as soon as possible without involving the Court.

Talk to you soon,

[Michael Fuller](#)
[The Underdog Lawyer](#)
[US Bancorp Tower](#)
[503-201-4570](#)



From: Eric Marshack [<mailto:emarshack@rcolegal.com>]
Sent: Thursday, March 06, 2014 11:16 AM
To: Michael Fuller
Subject: Cara/ 13-62766-tmr7

Hi Mike,

I received your letter regarding allegations of contempt by Mr. Cara for the bankruptcy case above. Let me know when you have time to discuss Mr. Cara's concerns or if it's easier you can respond to this email.

Thank you,

Eric A. Marshack
Associate Attorney
Licensed to Practice Law in Oregon and Washington

Direct: 503.459.0114
Fax: 425.247.7746
emarshack@rcolegal.com



RCO Legal, P.S., 511 SW 10th Ave., Ste. 400, Portland, OR 97205
Main: 503.977.7840 **Main Fax:** 503.977.7963 **Web:** www.rcolegal.com

Alaska | Arizona | California | Hawaii | Idaho | Montana | Nevada | Oregon | Washington

We promote a culture of excellence. If we have achieved this with you, please let us know at compliments@rcolegal.com. If we have not, please let us know at complaints@rcolegal.com.

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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. **PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692E(11), PLEASE BE ADVISED THAT WE ARE A DEBT COLLECTOR AND THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Jorge Guillermo Cara,

Debtor.

Case No. 13-62766-tmr7

DECLARATION OF MICHAEL FULLER

IN SUPPORT OF MOTION TO REOPEN
CASE

DECLARATION

I, Michael Fuller, 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 to in this declaration. I am the trial attorney for Mr. Cara in the above-captioned case.
2. The document attached as Exhibit 1 is a true and correct copy of a letter my client provided me.
3. The document attached as Exhibit 2 is a true and correct copy of correspondence with U.S. Bank National Association.
4. The document attached as Exhibit 3 is a true and correct copy of email correspondence with the attorney who previously represented U.S. Bank National Association. See Docket Doc. 7.

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DECLARATION OF MICHAEL FULLER - Page 1

OlsenDaines, PC
PO Box 2316
Portland, Oregon 97208
Direct 503-201-4570
Fax 503-362-1375

5. As of the date of this declaration, U.S. Bank National Association has not responded to my letter correspondence and refuses to return the bank funds it seized from my client.

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

DATED: March 14, 2014

/s/ Michael Fuller
Michael Fuller, Oregon Bar No. 09357
Attorney for Mr. Cara
OlsenDaines, PC
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, OR 97204
Michael@UnderdogLawyer.com
Direct 503-201-4570
Fax 503-362-1375

DECLARATION OF MICHAEL FULLER - Page 2

OlsenDaines, PC
PO Box 2316
Portland, Oregon 97208
Direct 503-201-4570
Fax 503-362-1375

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Jorge Guillermo Cara,

Debtor.

Case No. 13-62766-tmr7

DECLARATION OF JORGE CARA

**IN SUPPORT OF MOTION FOR ORDER
OF CONTEMPT AND JUDGMENT
AGAINST U.S. BANK NATIONAL
ASSOCIATION**

DECLARATION

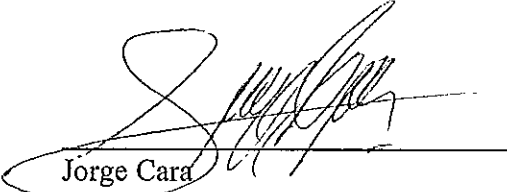
I, Jorge Cara, declare the following under penalty of perjury:

1. I am over the age of 18 and have personal knowledge of the facts I am testifying to in this declaration. I am the debtor in the above-captioned case.
2. The document attached as Exhibit 1 is a true and correct copy of a letter I received from U.S. Bank National Association (the bank).
3. On or around February 12, 2014, I deposited \$300 in account ending 5968.
4. On or around February 13, 2014, without my prior consent or notice, the bank collected a \$249.39 debt from me.
5. The bank collected debt that was discharged in my bankruptcy. The bank's collection resulted in overdraft charges.
6. I attempted to resolve this matter myself by directly contacting the bank. As of the date of this declaration, the bank refuses to return the funds it collected from me. The bank has not contacted me or my attorney after I filed the motion to reopen.
7. The bank's collections have forced me to hire a special attorney to make things right. The bank deserves punishment for its intentional violation of the bankruptcy rules.

8. I hope I can testify to the Judge about the severe ongoing frustration and anxiety the bank's choices have caused me and my family. My prior bankruptcy attorney and even the bank's bankruptcy department said this is not right.

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

DATED: March 24, 2014


Jorge Cara