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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

Cynthia D Atkins, Debtor.	Case No. 16-31931-pcm13 Adv. Proc. No. COMPLAINT 11 U.S.C. § 362(k)
Cynthia D Atkins, Plaintiff, v. The Kroger Co., Defendant.	

1.

INTRODUCTION

Despite Atkins' multiple attempts to resolve this matter outside of Court, The Kroger Co. continues to harass her with unwanted collection calls and letters during bankruptcy.

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2.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1334 because the automatic stay arises under Title 11.

3.

Plaintiff Cynthia D Atkins filed Chapter 13 bankruptcy in case number 16-31931-pcm13 in the District of Oregon on May 16, 2016.

4.

Defendant The Kroger Co. is an Ohio corporation.

5.

Venue is proper because The Kroger Co. attempted to collect from Atkins while she was under the protection of the Oregon Bankruptcy Court's automatic stay.

6.

NATURE OF CLAIM

Atkins' automatic stay claim is a core proceeding under 28 U.S.C. § 157(b)(2) (see *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000); *In re Goodman*, 991 F.2d 613, 617 (9th Cir. 1993)) and Atkins consents to entry of final orders and judgments by the Oregon Bankruptcy Court in this adversary proceeding.

7.

FACTUAL ALLEGATIONS

This complaint's allegations are based on personal knowledge as to Atkins' conduct and made on information and belief as to the acts of others.

8.

The Kroger Co. received actual notice of the automatic stay in Atkins' case from the bankruptcy noticing center and from Atkins verbally over the phone and by fax.

9.

After receiving actual notice of the automatic stay, The Kroger Co. intentionally harassed Atkins with written and verbal collection attempts and demands for payment.

10.

The Kroger Co.'s conduct as alleged above caused Atkins significant stress and frustration and caused Atkins to incur fees and costs.

11.

The bankruptcy notice provided to The Kroger Co. warned that violating the automatic stay could subject it to penalties.

12.

The Kroger Co.'s conduct as alleged above was in pursuit of profit, and constituted a malicious, wanton, outrageous and oppressive violation of Atkins' right to be free from collection activities during bankruptcy.

13.

CAUSE OF ACTION

(11 U.S.C. § 362(k))

Atkins incorporates the allegations above by reference.

14.

The Kroger Co.'s violation of the automatic stay as alleged above was "willful" as that term is defined in the Ninth Circuit because its conduct was intentional, it had prior actual knowledge of the automatic stay from multiple sources, its conduct was unreasonable, and any alleged mistake of law was not a defense.

15.

Under 11 U.S.C. § 362(k), Atkins is entitled to compensation for actual damages, punitive damages, and reasonable fees and costs from The Kroger Co. in amounts to be decided by the Court.

16.

PRAYER FOR RELIEF

After a stipulation or determination that The Kroger Co. willfully violated the automatic stay, Atkins seeks relief as follows:

- A. Money Judgment** in favor of Atkins against The Kroger Co. for actual damages and punitive damages, and
- B. Money Judgment** in favor of the law firm of Olsen Daines PC against The Kroger Co. for reasonable fees and costs.

Atkins also seeks any equitable relief this Court may determine is fair.

July 2, 2016

RESPECTFULLY FILED,

s/ Michael Fuller

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