

Michael Fuller, OSB No. 09357
Special Counsel for Plaintiff
Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

Cynthia D Atkins,
Debtor.

Cynthia D Atkins,
Plaintiff,

v.

Rodale Inc.,
Defendant.

Case No. 16-31931-pcm13

Adv. Proc. No.

COMPLAINT

11 U.S.C. § 362(k)

1.

INTRODUCTION

Prior to filing this lawsuit, plaintiff has repeatedly asked defendant to stop dunning her with collection demands.

2.

Despite receiving electronic BNC notice of the automatic stay and repeated warnings from plaintiff, defendant continues to demand plaintiff pay its pre-petition debt.

3.

Defendant's continued, willful violation of the automatic stay is causing plaintiff significant stress and frustration.

4.

JURISDICTION

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

5.

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

6.

Defendant Rodale Inc. is a Pennsylvania corporation registered to receive electronic notices of bankruptcy filings from the bankruptcy noticing center.

7.

Venue is proper because defendant attempted to collect from plaintiff while she was under the protection of the Oregon Bankruptcy Court's automatic stay.

8.

NATURE OF CLAIM

Plaintiff's 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 plaintiff consents to entry of final orders and judgments by the Oregon Bankruptcy Court in this adversary proceeding.

9.

FACTUAL ALLEGATIONS

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

10.

Defendant received actual notice of the automatic stay in plaintiff's case electronically from the bankruptcy noticing center and from plaintiff multiple times in writing.

11.

After receiving actual notice of the automatic stay, defendant intentionally harassed plaintiff with demands to pay its pre-petition debt.

12.

Defendant's conduct as alleged above caused plaintiff stress and frustration, and triggered head ache and upset stomach, and other significant emotional harm distinct from the inherent stress of the normal bankruptcy process.

13.

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

14.

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

15.

CAUSE OF ACTION

(11 U.S.C. § 362(k))

Plaintiff incorporates the allegations above by reference.

16.

Defendant's violation of 11 U.S.C. § 362(a)(6) 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.

17.

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

18.

PRAYER FOR RELIEF

After a stipulation or determination that defendant willfully violated the automatic stay, plaintiff seeks relief as follows:

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

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

October 23, 2016

RESPECTFULLY FILED,

/s/ Michael Fuller

Michael Fuller, OSB No. 09357

Special Counsel for Plaintiff

Olsen Daines PC

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