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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF OREGON

**Froylan Cortes**  
**Heather Charlene Lacombe-**  
**Cortes,**  
  
Debtors.

**Heather Charlene Lacombe-**  
**Cortes,**  
  
Plaintiff,

v.

**Specialized Loan Servicing**  
**LLC,**  
  
Defendant.

Case No. 16-62655-tmr13

Adv. Proc. No.

**COMPLAINT**

11 U.S.C. § 362(k)

1.

**INTRODUCTION**

Prior to filing this lawsuit, plaintiff repeatedly gave defendant notice of her bankruptcy and asked defendant to stop harassing her with unwanted collection calls and threats of foreclosure.

**COMPLAINT** – Page 1 of 8

2.

Plaintiff has a right to be free from collection attempts and threats of foreclosure during her bankruptcy.

Phone logs for

2:51pm 10/4  
 11:12AM 10/4  
 10:24AM 10/4  
 5:56pm 10/3  
 1:07 pm 10/2

PLCN PAC  
 12:38pm 9/30 → Tracer #<sup>s</sup>  
 7:15pm 9/27 → Verbally told of Bankrupt.  
 1:11 pm 9/27

PLCN PAC  
 4:55 pm 9/23 → Tracer #<sup>s</sup>  
 11:23 AM 9/23  
 7:48 pm 9/20  
 12:12 pm 9/20

~~10/11~~  
~~10/11~~  
~~10/11~~

4:49pm 10/11  
 10:24 AM 10/11  
 12:26 pm 10/7  
 5:52pm 10/5

2:51pm 10/4  
 Verifacts 1-815-380-9683

PLEASE RECYCLE ♻️

PAPERS PRODUCED UNDER A SUSTAINABLE FOREST MANAGEMENT PROGRAM

2nd mort.

Phone Logs for Specialized Loan Ser.

3.

Defendant's willful violation of the automatic stay caused plaintiff tension headaches, upset stomach, and other significant emotional harm distinct from the inherent stress of the normal bankruptcy process.

4.

### **JURISDICTION**

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

5.

Plaintiff Heather Charlene Lacombe-Cortes filed Chapter 13 bankruptcy in case number 16-62655-tmr13 in the District of Oregon on September 9, 2016.

6.

Defendant Specialized Loan Servicing LLC is a Delaware limited liability company with its principal place of business registered with the State of Oregon as 8742 Lucent Blvd Ste 300, Highlands Ranch, CO 80129.

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 multiple times by mail from the bankruptcy noticing center and from plaintiff and over the phone.

11.

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

After receiving actual notice of the automatic stay, defendant also intentionally harassed plaintiff with coercive collection letters to pay its pre-petition debt under threat of foreclosure.



+ 0678489 000011773 09SFC2 0068406

HEATHER LACOMBE  
4548 WILLIAMS HWY  
GRANTS PASS OR 97527-7700



October 18, 2016

Re: SLS Loan Number:  
Property Address: 4548 Williams Hwy  
Grants Pass, OR 97527

**Notice of Default and Notice of Intent to Foreclose**

Dear Heather Lacombe,

The Note on the above-referenced loan is now in default as a result of your failure to pay the 09/01/16 payment and the payments due each month thereafter, as provided for in said Note. You are hereby notified that to cure such default you are required to pay to this office all past due payments plus late charges and any payments that may become due between the date of this notice and the date the default is cured. The amount required to cure the arrears as of 10/18/16 is \$737.74. You have thirty-three (33) days from the date of this letter to cure the default. We urge you to immediately, upon receipt of this letter, contact our Customer Assistance Department at the number provided below to obtain the updated amount required to reinstate your loan.

**This notice does not affect your ability to apply for or be evaluated for a foreclosure prevention option or any pending loss mitigation option that may have been extended.**

Failure to pay the total amount due under the terms and conditions of your Deed of Trust/Mortgage by 11/20/16 may result in acceleration of the entire balance outstanding under the Note including, but not limited to, the principal, interest and all other outstanding charges and costs, and commencement of foreclosure of the Trust Deed/Mortgage which is security for your Note. Please be advised that any extension of time or forbearance in the exercising of any right or remedy as provided for in the Deed of Trust/Mortgage shall not constitute a waiver of or preclude the exercising of any right or remedy.

You have the right to reinstate the Note after acceleration as provided by law and you have the right to bring court action to assert the nonexistence of default or any other defense you have to acceleration and sale.

If your loan is not brought current, inspections of your property will be made and you will be assessed fees for that purpose as permitted under state law. Additionally, if your property is found to be vacant and unsecured, the mortgage holder will have it secured and will charge you for the cost of securing. You may also be liable for reasonable attorney fees and costs incurred in connection with any proceedings on the Note and Trust Deed and such other costs as may be allowed by law. In addition, you may be liable for any deficiency that may be established as a result of the foreclosure action unless precluded by a bankruptcy discharge.

13.

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

14.

Plaintiff operated an adult foster care business out of her home.

15.

Defendant's conduct as alleged above caused plaintiff to worry that her patients would get the false impression that her home was at risk of foreclosure or that her finances were not under control.

16.

Defendant's conduct as alleged above caused plaintiff to cringe and panic whenever her phone would ring out of fear that someone else may answer one of defendant's unwanted collection calls.

17.

Defendant's conduct as alleged above caused plaintiff to worry that her name would appear in the paper under foreclosure notices, causing her to lose her license to operate her adult foster care business.

18.

The bankruptcy notice provided to defendant contained contact information for plaintiff's attorney and warned that violating the automatic stay could subject it to penalties.

19.

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.

20.

**CAUSE OF ACTION**

**(11 U.S.C. § 362(k))**

Plaintiff incorporates the allegations above by reference.

21.

Defendant's violation of 11 U.S.C. § 362(a)(4) and (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.

22.

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.

**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 incurred prosecuting this adversary proceeding.

Plaintiff also seeks any equitable relief this Court may determine is fair. Plaintiff may intend to amend this complaint to include additional claims as new information is learned through discovery.

November 3, 2016

**RESPECTFULLY FILED,**

/s/ Michael Fuller

**Michael Fuller, OSB No. 09357**

Special Counsel for Plaintiff

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