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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  Julie A. Farrell,  Debtor.	Case No. 16-30918-tmb7  Adv. Proc. No.  <b>COMPLAINT</b>  Automatic Stay Violation 11 U.S.C. § 362(k)  Utility Service Violation 11 U.S.C. § 366(a)
<b>Julie A. Farrell,</b>  Plaintiff,  v.  <b>Northwest Natural Gas Company,</b>  Defendant.	

1.

**JURISDICTION**

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1334 because plaintiff's claims arise under Title 11.

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2.

The United States Bankruptcy Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 157 and LR 2100-1 because plaintiff's claims arise in her bankruptcy case number 16-30918-tmb7, filed under Chapter 7 of Title 11 in this United States Bankruptcy Court for the District of Oregon.

3.

### **NATURE OF CLAIMS**

Plaintiff's Title 11 claims are core proceedings under 28 U.S.C. § 157(b)(2) (*see Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081 (9th Cir. 2000); *Johnston Envtl Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 617 (9th Cir. 1993)) and plaintiff consents to entry of final orders and judgments by the bankruptcy judge in this adversary proceeding.

4.

### **THE PARTIES**

Julie A. Farrell ("plaintiff") is an individual living in Damascus, Oregon who filed for bankruptcy protection under Chapter 7 of Title 11 on March 14, 2016.

5.

Northwest Natural Gas Company dba NW Natural ("defendant") was listed in plaintiff's schedule of creditors and is familiar with the rules governing utility companies in bankruptcy.

6.

Venue is proper in this district because plaintiff resides here, defendant conducts its business here, and a substantial part of the acts, events, and/or omissions giving rise to this controversy took place here.

7.

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

8.

**FACTUAL ALLEGATIONS**

On March 14, 2016, plaintiff filed for bankruptcy protection under Chapter 7 of Title 11 in case number 16-30918-tmb7.

9.

Defendant received various notices of the automatic stay in plaintiff's bankruptcy case, including written notice from the bankruptcy noticing center shortly after it was mailed on or around March 16, 2016, and verbal notice from plaintiff over the phone on or around March 24, 2016.

10.

The written notice of automatic stay received by defendant warned defendant that violating the automatic stay may result in penalties.

11.

On or around March 24, 2016, plaintiff spoke with defendant over the phone and attempted to make arrangements for continued gas utility service. Defendant told plaintiff to wait for the bankruptcy to be processed. Defendant did not request plaintiff furnish a deposit or provide any other assurance of payment for post-petition gas utility services.

12.

After receiving actual notice of the automatic stay, on or around March 31, 2016 over the phone, defendant rudely threatened to discontinue plaintiff's gas utility service unless and until plaintiff paid defendant's pre-petition debt. Defendant's conduct on or around March 31, 2016 constituted a coercive attempt to collect its pre-petition debt from plaintiff. Defendant explained that because plaintiff's non-filing spouse was on the account, plaintiff's personal liability to pay its pre-petition debt could not be included in bankruptcy. Defendant told plaintiff she had one week to discuss the issue with her attorney.

13.

On April 5, 2016, defendant did in fact discontinue plaintiff's gas utility service solely because plaintiff did not pay defendant's pre-petition debt. Defendant's conduct on April 5, 2016 constituted a coercive attempt to collect its pre-petition debt from plaintiff.

14.

When defendant discontinued plaintiff's gas utility service plaintiff had a 12-month old baby and had to borrow money to pay defendant's pre-petition debt in order to restore her gas utility service.

15.

As a direct and proximate result of defendant's willful automatic stay violation as described above, plaintiff suffered severe ongoing emotional harm and economic losses to be proved at trial.

16.

**CAUSE OF ACTION**

**CLAIM ONE**

(11 U.S.C. § 362(k))

Plaintiff incorporates the above allegations by reference.

17.

Defendant's conduct as alleged in this complaint willfully violated the automatic stay in plaintiff's bankruptcy case, including and not limited to 11 U.S.C. § 362(a)(6), because defendant knew of the automatic stay, and its intentional conduct as alleged above violated the automatic stay.

18.

Defendant's violation of the automatic stay as alleged above was "willful" because defendant's conduct was intentional, defendant had prior actual knowledge of the automatic stay, defendant's conduct was unreasonable, and any alleged mistake of law was not a defense. *See, e.g., In re Parks*, No. 07-18341, 2008 Bankr. LEXIS 1436 (U.S. Bankr. N.D. Ohio May 6, 2008) (gas company's demand for payment of pre-petition debt as a condition to continuing gas utility service to a Chapter 7 debtor's home violated 11 U.S.C. § 362(a)(6) and § 366, entitling debtor to damages under 11 U.S.C. § 362(k).)

19.

Plaintiff was injured as a result of defendant's willful violation, and so is entitled to compensation for her actual damages, attorney fees and costs, pursuant to 11 U.S.C. § 362(k).

20.

## **CLAIM TWO**

(11 U.S.C. § 366)

Plaintiff incorporates the above allegations by reference.

21.

Defendant's conduct as alleged in this complaint willfully violated 11 U.S.C. § 366 because defendant knew of plaintiff's bankruptcy, ignored her attempt to make arrangements for continued gas utility service, and misled plaintiff about her options to continue gas utility service in a coercive attempt to collect its pre-petition debt from plaintiff.

22.

11 U.S.C. § 366 provides no express private right of action but courts that have considered the issue have determined debtors may nonetheless recover compensatory damages resulting from a violation of its provisions. *See, e.g., One Stop Realtour Place, Inc. v. Allegiance Telecom, Inc. (In re One Stop Realtour Place, Inc.)*, 268 B.R. 430 (Bankr. E.D. Pa. 2001); *In re Whittaker*, 92 B.R. 110, 115-16 (E.D. Pa. 1988). *See also Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014) (bankruptcy courts possess inherent powers to order compensatory sanctions so long as the sanctions don't contravene express Code provisions).

23.

Plaintiff was injured as a result of defendant's willful violation of 11 U.S.C. § 366, and so is entitled to compensation for her actual damages, attorney fees and costs.

**WHEREFORE**, after a stipulation or determination that defendant's conduct as alleged in this complaint willfully violated the Bankruptcy Code, plaintiff prays for relief as follows:

- A. An award of compensation for actual damages in favor of plaintiff against defendant;
- B. An award of reasonable attorney fees and costs directly to Olsen Daines PC against defendant; and
- C. For other equitable relief this Court may determine is fair and just.

DATED: May 9, 2016

**RESPECTFULLY FILED,**

/s/ Michael Fuller

**Michael Fuller, Oregon Bar No. 09357**

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