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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re Starla Dawn Finch, Debtor.	Case No. 17-60227-tmr7 Adv. Proc. No. COMPLAINT
<hr/> Starla Dawn Finch, Plaintiff, v. U.S. Bank National Association, Defendant.	

1.

JURISDICTION

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

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2.

Plaintiff Starla Finch filed for bankruptcy protection under Chapter 7 of Title 11 in case number 17-60227-tmr7 in the District of Oregon on January 30, 2017.

3.

Defendant U.S. Bank National Association is a national bank. Defendant has a pattern and practice of violating the bankruptcy rules in this district. See, e.g., AP Case No. 17-03039, Case No. 13-62766-tmr7, Doc. #34. See also https://youtu.be/IL_3vpDxMaA.

4.

Venue is proper because defendant harassed plaintiff with various collection activities against her will while she was under the protection of the Oregon Bankruptcy Court's automatic stay.

5.

NATURE OF CLAIM

Plaintiff's automatic stay claim is a core proceeding under 28 U.S.C. § 157(b)(2) and plaintiff consents to entry of final orders and judgments by the Oregon Bankruptcy Court in this adversary proceeding.

6.

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.

7.

Defendant received actual notice of the automatic stay in plaintiff's bankruptcy case from the bankruptcy noticing center electronically on February 1, 2017, and later from plaintiff on multiple occasions in person at its Santiam Branch in Albany, Oregon.

8.

Despite receiving notice on multiple occasions that plaintiff had filed bankruptcy, and that the automatic stay in plaintiff's case applied to plaintiff's account with defendant, and that the automatic stay prohibited defendant from continuing to collect pre-petition debt from plaintiff, and that plaintiff was represented by an attorney, defendant intentionally harassed plaintiff by taking money from her checking account without her permission to pay its alleged pre-petition debt.

9.

During the automatic stay, defendant also harassed plaintiff by repeatedly demanding that plaintiff pay pre-petition debt through collection letters to her home and collection calls to her cell phone.

10.

During the automatic stay, defendant repeatedly threatened that if plaintiff did not pay its alleged pre-petition debt, defendant would negatively report the debt on plaintiff's credit.

11.

During the automatic stay, defendant repeatedly threatened that if plaintiff did not pay its alleged pre-petition debt, plaintiff may not be able to bank at other financial institutions.

12.

During the automatic stay, defendant repeatedly threatened that if plaintiff did not pay its alleged pre-petition debt, plaintiff would be turned over to collections.

13.

Defendant's conduct as alleged above caused plaintiff severe ongoing anxiety, worry, body tension, upset stomach, trouble sleeping, and other emotional harm separate from the average stress of the normal bankruptcy process.

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.

11 U.S.C. § 362(a) imposed an affirmative duty on defendant to promptly terminate all collection activity against plaintiff after learning plaintiff filed bankruptcy. 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 acts and omissions were intentional, it had prior actual knowledge of the automatic stay, 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 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.

May 13, 2017

RESPECTFULLY FILED,

/s/ Michael Fuller

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