

FILED
WASCO COUNTY

2012 FEB 27 P 2:07

TRIAL COURT ADMIN

BY _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR WASCO COUNTY

TIMOTHY and SHERRI PULLEN,

Plaintiffs,

v.

21ST MORTGAGE CORPORATION,

Defendant.

Case No. *CC 12-63*

**COMPLAINT FOR INTENTIONAL
INFLECTION OF SEVERE EMOTIONAL
DISTRESS AND UNLAWFUL DEBT
COLLECTION PRACTICES**

JURY TRIAL DEMANDED

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**

1.

INTRODUCTION

Timothy and Sherri Pullen file this lawsuit demanding fair and just compensation, including damages, an injunction, declaratory relief, and reimbursement for attorneys fees and costs, based on Defendant 21st Mortgage Corporation's willful and malicious use of various unlawful collection tactics, including repeatedly calling the Pullens at work and using abusive language attacking the Pullens' family values with intent to harass the Pullens into paying a debt.

COMPLAINT - Page 1

OlsenDaines, PC
PO Box 12829
Salem, OR 97309
Telephone (503)362-9393
Facsimile (503) 362-1375

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2 2.

3 **FACTUAL ALLEGATIONS**

4 Defendant 21st Mortgage Corporation is a “debt collector” and a “person” as defined
5 under ORS 646.639(1)(g) and (h).
6

7 3.

8 Plaintiffs Timothy and Sherri Pullen live in Dufur, Oregon and are “consumers” and
9 “persons” as defined under ORS 646.639(1)(a) and (h). Plaintiff Sherri Pullen worked as a
10 supervisor at a nursing home in The Dallas, Oregon when Defendant was calling her while at
11 work. Plaintiff Timothy Pullen worked as a Fed Ex driver when Defendant was calling him while
12 at work.
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14 4.

15 Plaintiffs were allegedly obligated to pay money to Defendant on a consumer home loan,
16 constituting a “debt” as defined under ORS 646.639(1)(e), which Defendant was collecting from
17 Plaintiffs.
18

19 5.

20 On or around January 2012 Defendant began calling and harassing Plaintiffs at home, on
21 their cell phones, and while at work, in an attempt to collect a debt.
22

23 6.

24 Plaintiffs verbally asked Defendant to stop calling them on various occasions and
25 expressed to Defendant that continuing to receive collection calls was inconvenient. Plaintiffs
26 told Defendant on various occasions that Plaintiffs were not allowed to receive calls while at
27 work.
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2 7.

3 Defendant willfully and maliciously told Plaintiffs, *“If you raise your kids any way like*
4 *you pay your debts, I feel sorry for them!”* and otherwise criticized Plaintiffs’ parenting skills
5 and family values in an attempt to collect a debt. Defendant willfully, maliciously, repeatedly
6 used abusive language in an attempt to collect a debt from Plaintiffs.
7

8 8.

9 Defendant then willfully, maliciously, repeatedly called Plaintiffs nearly every day to
10 harass and annoy them in an attempt to collect a debt. Defendant called Plaintiffs at home, on
11 their cell phones, and while at work in an attempt to collect a debt.
12

13 9.

14 Defendant willfully, maliciously, repeatedly called Plaintiff Sherri Pullen while at work
15 at times Defendant knew were inconvenient to harass and annoy Plaintiff Sherri Pullen.
16

17 10.

18 Defendant willfully, maliciously, repeatedly called Plaintiff Sherri Pullen more than once
19 each week while at work in an attempt to collect a debt. Defendant called Plaintiff Sherri Pullen
20 at work several times in one day despite being told she could not receive calls at work and
21 despite her requests that Defendant stop calling her while at work.
22

23 11.

24 Upon information and belief, Defendant spoke with a cook at the nursing home where
25 Plaintiff Sherri Pullen worked and harassed the cook. Upon information and belief, Defendant
26 repeatedly called the cook a liar, and caused her to shake and cry, in an attempt to collect a debt
27 from the Plaintiffs.
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12.

Defendant willfully, maliciously, repeatedly called Plaintiff Timothy Pullen on this cell phone while he was working as a Fed Ex driver at times Defendant knew were inconvenient to harass and annoy Plaintiff Timothy Pullen, in an attempt to collect a debt. Defendant willfully, maliciously, repeatedly distracted Plaintiff Timothy Pullen while driving in an attempt to collect a debt.

13.

Defendant willfully, maliciously, repeatedly called Plaintiff Timothy Pullen more than once each week while at work in an attempt to collect a debt. Defendant called Plaintiff Timothy Pullen at work several times in one day despite being told he could not answer his phone at work while driving and despite his requests that Defendant stop calling him while at work.

14.

In an attempt to create a false sense of urgency, Defendant threatened to stop calling Plaintiffs on January 31, 2011 and to foreclosure on their home. Defendant's threat was false and Defendant did not stop calling or foreclose on Plaintiffs' home.

15.

As a direct and proximate result of Defendant's willful malicious illegal actions, Plaintiffs have suffered damages in the form of time spent, attorneys fees and costs, and suffered and continue to suffer severe emotional distress including anger, frustration, anxiety, humiliation, and other negative emotions to be proven at trial.

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2 16.

3 Plaintiffs emotional distress is severe and substantial. Their anger and frustration grew
4 for over a month in duration as they continued to receive illegal collection calls.

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6 17.

7 Plaintiffs are entitled to and so demand a trial by jury.

8 18.

9 Plaintiffs reserve the right, and intend to amend their pleadings to allege specific facts
10 sufficient to support a \$1,000,000 claim of punitive damages pursuant to ORS 31.725.

11
12 19.

13 **FIRST CLAIM FOR RELIEF**
14 (UNLAWFUL COLLECTION PRACTICES)

15 (ORS 646.639 et seq.)

16 Plaintiffs incorporate and re-allege the above by reference.

17
18 20.

19 Defendant injured Plaintiffs through its willful and malicious use of unlawful collection
20 practices, including and not limited to:

- 21 a) Using abusive language in violation of ORS 646.639(2)(d);
22
23 b) Calling Plaintiffs repeatedly to harass and annoy them in violation of ORS
24 646.639(2)(e);
25 c) Calling Plaintiffs at times known to be inconvenient to them to harass and annoy
26 them in violation of ORS 646.639(2)(e);
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2 d) Calling Plaintiffs while at work without permission and despite Plaintiffs' requests to
3 stop in violation of ORS 646.639(2)(g);

4 e) Calling and threatening to cease communications with the Plaintiffs and foreclose on
5 their home to create a false sense of urgency when no such action was taken in
6 violation of ORS 646.639(2)(k).
7

8 21.

9 As a result of Defendant's willful and malicious use of unlawful collection practices,
10 Plaintiffs are entitled to actual non-economic damages of \$50,000 or statutory damages of \$200
11 each, which ever is greater, punitive damages, and reasonable attorneys fees and costs pursuant
12 to ORS 646.641.
13

14 22.

15 **SECOND CLAIM FOR RELIEF**

16 (Intentional Infliction of Severe Emotional Distress)

17 Plaintiffs incorporate and re-allege the above by reference.
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19 23.

20 Defendant maliciously intended to inflict severe emotional distress upon Plaintiffs and
21 hoped this severe emotional distress would help in collecting a debt from Plaintiffs.
22

23 24.

24 Defendant knew that severe emotional distress was substantially certain to result from
25 their unlawful collection practices.
26

27 25.

28 Defendant's unlawful collection practices caused Plaintiffs severe emotional distress.

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3 26.

4 Defendant's malicious unlawful collection practices, specifically their use of abusive
5 language criticizing Plaintiffs' parenting skills and family values, has no place in American
6 society and gives Defendant an unfair advantage over companies that choose to responsibly
7 collect debt and follow the rules. Defendant's conduct constituted an extraordinary transgression
8 of socially tolerable behavior based on the social standards of hardworking decent Oregonians.
9

10 WHEREFORE, Plaintiffs pray for judgment in their favor against Defendant as follows:

- 11 A. An Order enjoining further unlawful collection practices by Defendant against Plaintiffs;
12 B. Actual damages of \$50,000, or statutory damages of \$200 each, which ever is greater;
13 C. Punitive damages in an amount of \$1,000,000 to be asserted in an amended Complaint;
14 D. An award of reasonable attorneys fees and costs;
15 E. For other such relief as this Honorable Court deems just and proper.
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19 DATED: February 14, 2012

20 _____
21 Michael R. Fuller, OSB# 09357
22 Trial Attorney for Plaintiffs
23 OlsenDaines, PC
24 9415 SE Stark St., Suite 207
25 Portland, Oregon 97216
26 Email: mfuller@olsendaines.com
27 Office: (503) 274-4252
28 Fax: (503) 362-1375
Cell: (503) 201-4570