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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

**Sheilah Kathleen Sherman,**

Debtor.

Case No. 11-38681-rld13

**DEBTOR'S MOTION FOR ORDER OF  
CONTEMPT AND JUDGMENT  
AGAINST BANK OF AMERICA, N.A.**

**MOTION**

Pursuant to 11 U.S.C. §§ 105 and 506, and this Court's inherent power, debtor Sheilah Sherman moves for an order of contempt and judgment against Bank of America, N.A. based on its violation of the order avoiding her second mortgage lien entered on November 25, 2011.

Specifically, Bank of America, N.A. violated the order avoiding lien by intentionally transferring servicing to Nationstar Mortgage LLC in December 2013 without notifying Nationstar of the order.

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Bank of America, N.A.'s failure to notify Nationstar resulted in Nationstar's post-discharge harassment of debtor, including wrongful threats of foreclosure.

Debtor supports this motion with the attached memorandum. Debtor respectfully moves for an order and judgment as follows:

- A. IT IS ORDERED that Bank of America, N.A. is held in contempt of the order avoiding second mortgage lien [Doc. 15];
- B. IT IS ORDERED AND ADJUDGED that Bank of America, N.A. must reimburse debtor for the reasonable fees and costs she incurred proving liability, only if Bank of America, N.A. objects to debtor's entitlement to relief under section A;
- C. IT IS ORDERED AND ADJUDGED that Bank of America, N.A. must pay debtor compensatory sanctions of \$75,000;

Debtor also moves for any other equitable relief that this Court may determine is just.

DATED: March \_\_, 2015

**RESPECTFULLY FILED,**

/s/ Michael Fuller  
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**CERTIFICATE OF SERVICE**

I, Michael Fuller, certify that on the date below, I caused this document and all attachments to be mailed to the following persons by USPS first class regular and certified mail, postage pre-paid:

**Bank of America, N.A.  
c/o President Brian Moynihan  
100 North Tryon Street, Suite 170  
Charlotte, NC 28202**

DATED: March \_\_, 2015

/s/ Michael Fuller  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

**Sheilah Kathleen Sherman,**

Debtor.

Case No. 11-38681-rld13

**MEMORANDUM IN SUPPORT OF  
DEBTOR'S MOTION FOR ORDER OF  
CONTEMPT AND JUDGMENT  
AGAINST BANK OF AMERICA, N.A.**

**INTRODUCTION**

Courts across the country have uniformly held creditors in contempt for transferring discharged debts after bankruptcy without providing transferees notice of the discharge order.<sup>1</sup>

For the reasons below, this Court should similarly hold Bank of America in contempt of the order avoiding second mortgage lien because Bank of America transferred debtor's mortgage to Nationstar without notifying Nationstar of the order avoiding lien.

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<sup>1</sup> See, e.g., *In re Laboy*, 2010 Bankr. LEXIS 345 (Bankr. D.P.R. Feb. 2, 2010); *In re Nassoko*, 405 B.R. 515 (Bankr. S.D.N.Y. 2009); *In re Faust*, 270 B.R. 310 (Bankr. M.D. Ga. 1998); *In re Lafferty*, 229 B.R. 707 (Bankr. N.D. Ohio 1998), etc.

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## FACTUAL BACKGROUND

### **A. Order Avoiding Second Mortgage Lien**

On November 25, 2011, this Court issued an order avoiding debtor's second mortgage lien. [Doc. 15] Bank of America received actual notice of the order avoiding lien. [*Id.*]

In December 2013, Bank of America transferred servicing of the second mortgage to Nationstar. [Doc. 45, pg. 1]

### **B. Bank of America Failed to Inform Nationstar of the Order Avoiding Lien**

After Bank of America had actual notice of the order avoiding lien, Bank of America transferred debtor's second mortgage to Nationstar and failed to inform Nationstar of the order. [Doc. 45, pg. 4, “—the prior servicer did not provide a copy of that order when servicing was transferred. As a result Nationstar did not know that the discharge injunction was applicable to the lien,--”]

### **C. Bank of America's Failure to Notify Nationstar Caused Debtor Emotional Harm**

As a result of Bank of America's failure to notify Nationstar about the order avoiding lien, debtor was harassed with wrongful threats of foreclosure after bankruptcy. [Doc. 37, Sherman Decl. ¶ 6] Debtor intends to testify at evidentiary hearing as to the severe ongoing emotional harm Bank of America's failure caused her. Upon information and belief, Bank of America's failure to comply with the bankruptcy rules in this case is part of a larger nationwide pattern and practice. *See, e.g.,* Jessica Silver-Greenberg, *Debts Canceled by Bankruptcy Still Mar Consumer Credit Scores*, N.Y. Times, Nov. 12, 2014.

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## POINTS AND AUTHORITIES

### **A. Authority to Enforce Bankruptcy Provisions**

Section 105 of Title 11 empowers bankruptcy courts to issue orders and judgments as necessary to enforce section 506's lien avoidance provisions.

Bankruptcy courts also possess inherent powers to sanction wrongful practices, so long as the sanctions don't contravene express Code provisions. *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014); *In re Wallace*, BAP No. NV-13-1518-JuHIPa (9th Cir. BAP Sept. 18, 2014).

### **B. Conduct Prohibited by an Order Avoiding Lien**

Section 506 allows debtors to avoid wholly unsecured second mortgage liens through chapter 13 bankruptcy. *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1227 (9th Cir. 2002).

An order avoiding lien prohibits any subsequent threats or actions by a mortgage company to enforce lien rights against a debtor's property.

Creditors have an affirmative duty to provide subsequent collectors notice of pending bankruptcy court orders affecting collectability of transferred debts. *See, e.g., In re Laboy*, 2010 Bankr. LEXIS 345 (Bankr. D.P.R. Feb. 2, 2010); *In re Nassoko*, 405 B.R. 515 (Bankr. S.D.N.Y. 2009); *In re Faust*, 270 B.R. 310 (Bankr. M.D. Ga. 1998); *In re Lafferty*, 229 B.R. 707 (Bankr. N.D. Ohio 1998), etc.

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### **C. Enforcement of Orders Avoiding Liens**

In the Ninth Circuit, consumers must enforce bankruptcy court orders by filing motions for contempt. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506-07 (9th Cir. 2002); *Barrientos v. Wells Fargo Bank*, 633 F.3d 1186, 1191 (9th Cir. 2011); Fed. R. Bnkr. P. 9020.

### **D. Sanctions for Contempt**

Willful violations of court orders entitle aggrieved debtors to sanctions including compensatory damages, punitive damages, and reimbursed fees and costs. *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205, n.7 (9th Cir. 2008) (opinion by Chief Judge Kozinski, citing 2 *Collier Bankruptcy Manual* (3d rev. ed.) ¶ 524.02[2][c]).

#### ***1. Compensation for emotional harm***

A debtor is entitled to recover compensation for emotional harm resulting from a violation, even in the absence of any economic loss. *In re Feldmeier*, 335 B.R. 807, 813-814 (Bankr. D. Or. 2005) (awarding emotional harm damages without any economic loss); *In re Culpepper*, 481 B.R. at 655 (same).

#### ***2. Compensation for expenses***

Civil contempt compensation includes an award of reasonable attorney's fees incurred during the entirety of the contempt proceedings – even those incurred after the violation was remedied. *In re Segal*, BAP No. CC-14-1175-KuPaTa, pg. 19 (9th Cir. BAP Jan. 29, 2015); *In re Culpepper*, 2013 Bankr. LEXIS 541, 2013 WL 501662 (Bankr. D. Or. Feb. 11, 2013)

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(compensating debtor \$38,370.50 fees and costs through trial where mortgage servicer's refusal to admit liability necessitated a full evidentiary hearing).

### ARGUMENT

This Court should hold Bank of America in contempt of the order avoiding lien because clear and convincing evidence shows (1) Bank of America received actual notice of the order avoiding lien in 2011, (2) Bank of America failed to inform Nationstar of the order upon transfer of debtor's mortgage in 2013, and (3) Bank of America's failure directly caused Nationstar to violate the order, causing debtor severe ongoing emotional harm.

### CONCLUSION

For the reasons given above, debtor respectfully requests this Court enter an order of contempt and judgment against Bank of America.

DATED: March \_\_, 2015

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