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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re Michael Rolf Gustafson, Debtor.
MICHAEL GUSTAFSON, Plaintiff, v. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, Defendant.

Case No. 10-40380-tmb13

Adv. Proc. No.

COMPLAINT

Willful Automatic Stay Violation
(11 U.S.C. § 362(k))

Request for Advisory Jury

1.

INTRODUCTION

Despite its knowledge that debtor is represented by an attorney and protected by the automatic stay, Chase harasses debtor with misleading collection communications and furnishes false credit information about him, in a coercive attempt to collect debt he doesn't owe.

COMPLAINT - Page 1 of 22

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2.

In June 2015, debtor tried to resolve this matter multiple times over the phone with Chase but Chase gave him the run around. Debtor's counsel tried to resolve this matter without the need for Court involvement but Chase refused his request to communicate through counsel.

3.

Having no other choice, debtor prosecutes this action to remedy Chase's willful automatic stay violation and recover fair compensation and punitive damages.

4.

JURISDICTION

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1334 because debtor's automatic stay claim arises under Title 11.

5.

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 debtor's claim arises in his bankruptcy case, number 10-40380-tmb13, filed under Chapter 13 of Title 11 in this United States Bankruptcy Court for the District of Oregon in Portland before the Honorable Judge Trish Brown.

6.

NATURE OF CLAIMS

The automatic stay claim is a core proceeding under 28 U.S.C. § 157 and debtor consents to entry of final orders and judgment by the bankruptcy judge in this adversary proceeding.

7.

Chase has consented to entry of final orders and judgment by the bankruptcy judge in this adversary proceeding based on Chase's filing of its proof of claim for the account at issue on November 26, 2010, and Chase's subsequent active participation in debtor's bankruptcy case.

8.

This complaint's allegations are based on personal knowledge as to debtor's own conduct and are made on information and belief as to the acts of others. Specifically, the allegations concerning the creation of documents used by Chase in debtor's bankruptcy case are made on information and belief, based on Chase's representations contained in the documents, which may or may not prove accurate.

9.

THE PARTIES

Debtor Michael Gustafson ("debtor") is an individual living in Portland, Oregon who filed for bankruptcy protection under Chapter 13 of Title 11 on October 29, 2010.

10.

Defendant JPMorgan Chase Bank, National Association ("Chase") is a national association bank and a creditor in debtor's bankruptcy case.

11.

Venue is proper in this District because debtor resides here, Chase regularly carries on business here, and a substantial part of the acts, events, and/or omissions giving rise to this controversy took place in this District.

12.

FACTUAL ALLEGATIONS

On October 29, 2010, debtor filed for bankruptcy protection under Chapter 13 of Title 11 and listed Chase as a creditor in his case.

13.

On November 2, 2010, Chase received electronic notice of the automatic stay in debtor's case from the Bankruptcy Noticing Center.

14.

On November 3, 2010, Chase was sent written notice of the automatic stay in debtor's case by U.S. Mail from the Bankruptcy Noticing Center.

15.

On November 26, 2010, Chase filed a proof of claim [claim 3-1] for mortgage account number ending 4640, in the amount of \$4,290.02 in debtor's bankruptcy case.

16.

As early as November 26, 2010, Chase's agent, Joseph Smith, had actual notice of the automatic stay in debtor's case.

17.

Joseph Smith had personal knowledge of the information contained in the proof of claim filed in debtor's bankruptcy case on November 26, 2010.

18.

Joseph Smith personally hand-signed, in ink, an original version of the proof of claim filed in debtor's bankruptcy case on November 26, 2010.

COMPLAINT - Page 4 of 22

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19.

Joseph Smith personally filed Chase's proof of claim in debtor's bankruptcy case on November 26, 2010.

20.

As early as June 3, 2011, Chase's agent, Lori Harp, had actual notice of the automatic stay in debtor's case.

21.

Lori Harp had personal knowledge of the information contained in the notice filed in debtor's bankruptcy case on June 3, 2011.

22.

Lori Harp personally hand-signed, in ink, a version of the notice filed in debtor's bankruptcy case on June 3, 2011.

23.

Lori Harp personally completed the notice filed in debtor's bankruptcy case on June 3, 2011.

24.

As early as June 3, 2011, Chase's agent, Bill Taylor, had actual notice of the automatic stay in debtor's case.

25.

Bill Taylor had personal knowledge of the information contained in the certificate of service filed in debtor's bankruptcy case on June 3, 2011.

26.

Bill Taylor personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on June 3, 2011.

27.

On June 3, 2011, Bill Taylor served copies by U.S. Mail of the notice filed June 3, 2011 on Matthew Casper and Wayne Godare.

28.

Lori Harp had personal knowledge of the information contained in the notice filed in debtor's bankruptcy case on July 1, 2011.

29.

Lori Harp personally hand-signed, in ink, a version of the notice filed in debtor's bankruptcy case on July 1, 2011.

30.

Lori Harp personally completed the notice filed in debtor's bankruptcy case on July 1, 2011.

31.

Bill Taylor had personal knowledge of the information contained in the certificate of service filed in debtor's bankruptcy case on July 1, 2011.

32.

Bill Taylor personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on July 1, 2011.

33.

On July 1, 2011, Bill Taylor served copies by U.S. Mail of the notice filed July 1, 2011 on Matthew Casper and Wayne Godare.

34.

Lori Harp had personal knowledge of the information contained in the notice filed in debtor's bankruptcy case on August 2, 2011.

35.

Lori Harp personally hand-signed, in ink, a version of the notice filed in debtor's bankruptcy case on August 2, 2011.

36.

Lori Harp personally completed the notice filed in debtor's bankruptcy case on August 2, 2011.

37.

Bill Taylor had personal knowledge of the information contained in the certificate of service filed in debtor's bankruptcy case on August 2, 2011.

38.

Bill Taylor personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on August 2, 2011.

39.

On August 2, 2011, Bill Taylor served copies by U.S. Mail of the notice filed August 2, 2011 on Matthew Casper and Wayne Godare.

40.

In or around August 2011, Chase provided debtor a final payoff amount for his debt and subsequently collected payment in the payoff amount from debtor, under the premise that the payment would satisfy debtor's account debt in full.

41.

Lori Harp had personal knowledge of the information contained in the notice filed in debtor's bankruptcy case on August 31, 2011.

42.

Lori Harp personally hand-signed, in ink, a version of the notice filed in debtor's bankruptcy case on August 31, 2011.

43.

Lori Harp personally completed the notice filed in debtor's bankruptcy case on August 31, 2011.

44.

Bill Taylor had personal knowledge of the information contained in the certificate of service filed in debtor's bankruptcy case on August 31, 2011.

45.

Bill Taylor personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on August 31, 2011.

46.

On August 31, 2011, Bill Taylor served copies by U.S. Mail of the notice filed August 31, 2011 on Matthew Casper and Wayne Godare.

COMPLAINT - Page 8 of 22

OlsenDaines, P.C.
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47.

As early as October 6, 2011, Chase's agent, Diana Duarte, had actual notice of the automatic stay in debtor's case.

48.

Diana Duarte had personal knowledge of the information contained in the notice filed in debtor's bankruptcy case on October 5, 2011.

49.

Diana Duarte personally hand-signed, in ink, a version of the notice filed in debtor's bankruptcy case on October 6, 2011.

50.

Diana Duarte personally completed the notice filed in debtor's bankruptcy case on October 5, 2011.

51.

The notice Chase filed on October 5, 2011 in debtor's bankruptcy case misrepresented the terms and payment status of debtor's home equity loan.

52.

Bill Taylor had personal knowledge of the information contained in the certificate of service filed in debtor's bankruptcy case on October 5, 2011.

53.

Bill Taylor personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on October 6, 2011.

54.

On October 6, 2011, Bill Taylor served copies by U.S. Mail of the notice filed October 5, 2011 on Matthew Casper and Wayne Godare.

55.

As early as December 12, 2014, Chase's agent, LynAlise K Tannery, had actual notice of the automatic stay in debtor's case.

56.

LynAlise K Tannery had personal knowledge of the information contained in the notice of satisfaction dated December 12, 2014, allegedly served by U.S. Mail on December 12, 2014 on debtor, Matthew Casper, and Wayne Godare.

57.

LynAlise K Tannery personally hand-signed, in ink, a version of the notice of satisfaction dated December 12, 2014, allegedly served by U.S. Mail on December 12, 2014 on debtor, Matthew Casper, and Wayne Godare.

58.

LynAlise K Tannery personally completed the notice of satisfaction dated December 12, 2014.

59.

On December 12, 2014, LynAlise K Tannery served copies by U.S. Mail of the notice of satisfaction dated December 12, 2014 on debtor, Matthew Casper, and Wayne Godare.

60.

As early as April 2, 2015, Chase's agent and attorney, Jesse Baker, had actual notice of the automatic stay in debtor's case.

61.

Jesse Baker had personal knowledge of the information contained in the notice of satisfaction filed in debtor's bankruptcy case on April 3, 2015.

62.

Jesse Baker personally hand-signed, in ink, a version of the notice of satisfaction filed in debtor's bankruptcy case on April 3, 2015.

63.

Jesse Baker had personal knowledge of the information contained in the notice of satisfaction filed in debtor's bankruptcy case on April 3, 2015.

64.

Pam Underwood personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on April 3, 2015.

65.

On April 3, 2015, Pam Underwood served copies by U.S. Mail of the notice of satisfaction filed in debtor's bankruptcy case on April 3, 2015 on debtor, Matthew Casper, and Wayne Godare.

66.

As early as April 30, 2015, Chase's agent and Vice President, Trista Hines, had actual notice of the automatic stay in debtor's case.

COMPLAINT - Page 11 of 22

OlsenDaines, P.C.
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67.

Trista Hines had personal knowledge of the information contained in the notice filed in debtor's bankruptcy case on April 30, 2015.

68.

Trista Hines personally hand-signed, in ink, a version of the notice filed in debtor's bankruptcy case on April 30, 2015.

69.

Trista Hines personally completed the notice filed in debtor's bankruptcy case on April 30, 2015.

70.

The notice Chase filed on April 30, 2015 in debtor's bankruptcy case misrepresented the terms and payment status of debtor's home equity loan.

71.

Trista Hines personally hand-signed, in ink, a version of the certificate of service filed in debtor's bankruptcy case on April 30, 2015.

72.

On April 30, 2015, Trista Hines served copies by U.S. Mail of the notice filed in debtor's bankruptcy case on April 30, 2015 on debtor, Matthew Casper, and Wayne Godare.

73.

The notice of automatic stay received by Chase explained that Chase could be subject to penalties if Chase violated the automatic stay in debtor's bankruptcy case.

74.

The notice of automatic stay received by Chase explained that debtor was represented by an attorney with respect to his debt with Chase.

75.

In May 2015, Chase sent a confusing collection letter dated May 22, 2015 to debtor's home regarding alleged debt associated with account ending in 4640.

76.

Chase's letter dated May 22, 2015 indicated that debtor's debt with Chase had an outstanding balanced owed.

77.

Chase's letter dated May 22, 2015 asked debtor to call Chase to discuss debt repayment options.

78.

In June 2015, debtor called Chase on multiple occasions as requested in Chase's letter dated May 22, 2015.

79.

During debtor's phone calls to Chase in June 2015, debtor provided Chase verbal notice of the automatic stay and verbal notice he was represented by an attorney.

80.

During debtor's phone calls to Chase in June 2015, Chase gave debtor the run around, first representing to debtor that his loan had a balance of \$474.47, then representing to debtor

that his loan had a zero balance, then finally confirming with debtor that his loan balance was in fact \$474.47.

81.

On June 8, 2015, debtor's counsel sent Chase a letter dated June 8, 2015.

82.

Debtor's counsel's letter dated June 8, 2015 provided Chase notice of the automatic stay in debtor's bankruptcy case.

83.

Debtor's counsel's letter dated June 8, 2015 requested that Chase put debtor's counsel in touch with Chase's counsel as soon as possible.

84.

Debtor's counsel's letter dated June 8, 2015 was addressed to Chase at Mail Code OH4-7302, 3415 Vision Drive, Columbus, OH 43219-6009.

85.

Chase regularly receives mail at Mail Code OH4-7302, 3415 Vision Drive, Columbus, OH 43219-6009.

86.

In 2015, Chase sent debtor direct communications that indicated Chase received mail at Mail Code OH4-7302, 3415 Vision Drive, Columbus, OH 43219-6009.

87.

Debtor's counsel's letter dated June 8, 2015 was also cc'd to Chase at Chase Records Center, Attn: Correspondence Mail, Mail Code LA4-5555, 700 Kansas Lane, Monroe, LA 71203.

88.

Chase regularly receives mail at Chase Records Center, Attn: Correspondence Mail, Mail Code LA4-5555, 700 Kansas Lane, Monroe, LA 71203.

89.

As of the date of this complaint, Chase's most recent docket filing on April 30, 2015, indicated Chase's correspondence address was Chase Records Center, Attn: Correspondence Mail, Mail Code LA4-5555, 700 Kansas Lane, Monroe, LA 71203.

90.

As recently as May 31, 2015, Chase furnished adverse information to credit reporting agency TransUnion about debtor and his account.

91.

Specifically, Chase caused TransUnion to report debtor's account as past due.

92.

As recently as May 31, 2015, Chase failed to inform TransUnion that debtor's account was included in bankruptcy.

93.

As recently as June 2015, Chase furnished adverse information to credit reporting agency Experian about debtor and his account.

COMPLAINT - Page 15 of 22

OlsenDaines, P.C.
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94.

Specifically, Chase caused Experian to report debtor's account as 180 days past due as of November 2011 to May 2015.

95.

As recently as June 2015, Chase failed to inform Experian that debtor's account was included in bankruptcy.

96.

As recently as May 31, 2015, Chase furnished adverse information to credit reporting agency Equifax about debtor and his account.

97.

Specifically, Chase caused Equifax to report debtor's account as over 120 days past due in the amount of \$474.

98.

As recently as May 31, 2015, Chase failed to inform Equifax that debtor's account was included in bankruptcy.

99.

As of the date of this complaint, Chase has not obtained relief from the automatic stay in debtor's bankruptcy case or received permission to send debtor collection communications directly to his home.

100.

As of the date of this complaint, Chase has not put its counsel in touch with debtor's counsel.

COMPLAINT - Page 16 of 22

OlsenDaines, P.C.
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101.

As of the date of this complaint, Chase has not corrected or retracted the information contained in its letter to debtor dated May 22, 2015.

102.

As of the date of this complaint, Chase has not corrected or retracted the information it provided to debtor over the phone in June 2015.

103.

As of the date of this complaint, Chase has taken no efforts to correct the credit information it furnished during the automatic stay about debtor to TransUnion, Experian, or Equifax.

104.

Chase's direct communications with debtor in May and June of 2015 violated the automatic stay because Chase coercively attempted to collect alleged debt incurred prior to the commencement of debtor's bankruptcy case.

105.

Specifically, Chase's communications violated the automatic stay because they served no legitimate purpose, falsely indicated that debtor's alleged debt with Chase had an outstanding balance owed, and were made directly to debtor, without the knowledge of the chapter 13 trustee, the Court, or debtor's counsel, despite Chase's knowledge that debtor was protected by the automatic stay and represented by counsel with respect to his Chase account.

106.

Chase's decision to furnish adverse credit information about debtor in 2015 violated the automatic stay because Chase's reporting was false, derogatory, served no legitimate purpose, failed to state that debtor's account was included in bankruptcy, and coercively attempted to collect debt incurred prior to the commencement of debtor's bankruptcy case.

107.

To the extent this Court determines debtor does in fact owe a balance on his account ending 4640 with Chase, Chase violated the automatic stay in or around August 2011 by collecting debt from debtor under the false pretense that his payment would satisfy his account debt in full, causing debtor to pay an amount in excess of what he would have otherwise paid, and to subsequently incur additional fees he otherwise would not have incurred.

108.

To the extent this Court determines debtor's account ending 4640 was paid in full as early as May 2011, Chase violated the automatic stay in or around August 2011 by collecting debt from debtor in excess of the amount he actually owed, under the false pretense that his account had a remaining balance owed.

109.

Chase's violation of the automatic stay as alleged above was "willful" as that term is defined in the Ninth Circuit because Chase's alleged conduct was voluntary and intentional, and because Chase had prior actual knowledge of the automatic stay in debtor's bankruptcy case.

110.

As a direct and proximate cause of Chase's willful automatic stay violation as alleged above, debtor suffered severe ongoing invasion of privacy, damage to reputation, and emotional harm, including and not limited to confusion, frustration, anxiety, fear, stress, uncertainty, loss of confidence in the bankruptcy system, and other negative emotions associated with unfair debt collection and false credit reporting, and suffered economic loss, including and not limited to damage to credit, lower credit scores, and lost opportunities to receive credit.

111.

In 2015, debtor was forced to retain special bankruptcy litigation counsel to remedy Chase's willful automatic stay violation.

112.

Chase is one of the largest banks in the United States, and its parent company has over \$2 trillion in assets.

113.

Chase frequently disregards the laws governing bankruptcy in the District of Oregon, including the bankruptcy rules in debtor's case.

114.

Upon information and belief, Chase violated the bankruptcy rules and committed perjury in debtor's bankruptcy case by filing improperly signed documents containing unverified information, causing debtor added confusion and needless attorney fees.

115.

In or around March 2015, Chase settled similar bankruptcy rule violations and perjury allegations for \$50 million with the U.S. Trustee Program.

116.

Chase's settlement with the U.S. Trustee Program acknowledged Chase's wrongdoing and expressly did not affect the rights of debtors to seek independent claims for relief against Chase.

117.

Chase's conduct as alleged in this complaint constituted extraordinary transgressions of socially tolerable behavior based on the social standards in debtor's community because Chase's conduct was illegal and in pursuit of profit.

118.

Chase should pay punitive damages in accordance to the harm it caused debtor, in an amount that will make it profitable for Chase to implement procedures to avoid violating the bankruptcy rules in the future.

119.

CAUSE OF ACTION

CLAIM ONE

(Willful Violation of the Automatic Stay)

Debtor incorporates the above allegations by reference.

120.

Chase's conduct as alleged above willfully violated the automatic stay, 11 U.S.C. § 362(a)(6), because Chase knew of the automatic stay, and its 2015 collection communications and false credit reporting served no legitimate purpose and coercively attempted to collect a claim against debtor that arose before the commencement of his bankruptcy case.

121.

Debtor was injured as a result of Chase's willful violation, and so is entitled to actual damages, punitive damages, and attorney fees and costs incurred to remedy Chase's violation, pursuant to § 362(k).

122.

WHEREFORE, after a stipulation or determination that Chase's conduct willfully violated the automatic stay, debtor prays for relief as follows:

- A. An award of actual damages;
 - B. An award of punitive damages;
 - C. An award of reasonable attorney fees and costs incurred remedying Chase's violation;
- and
- D. For other equitable relief this Court may determine is fair and just.

COMPLAINT - Page 21 of 22

OlsenDaines, P.C.
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Pursuant to Fed. R. Bnkr. P. 9015, by reference to Fed R. Civ. P. 39(c), debtor requests to try the issue of damages with an advisory jury.

Debtor intends to avoid duplicative compensation by withdrawing his requests for damages to the extent he recovers the same relief in any related contested matter, including any motion filed pursuant to Fed. R. Bnkr. P. 3002.1.

Debtor intends to amend his complaint as he learns new information in discovery concerning the veracity of the representations contained in the notices filed by Chase in the bankruptcy main case.

DATED: July 7, 2015

RESPECTFULLY FILED,

/s/ Michael Fuller

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COMPLAINT - Page 22 of 22

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