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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

William Thomas Knieriemen
Linda Sue Knieriemen,

Debtors.

LINDA SUE KNIERIEMEN,

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
dba **DISCOVER STUDENT LOANS,**

Defendant.

Case No. 15-62990-fra13

Adv. Proc. No.

COMPLAINT

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

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1.

INTRODUCTION

Prior to filing this action, plaintiff's special counsel sent defendant several cease and desist letters requesting to be put in touch with defendant's attorneys. As of the date of this complaint, defendant continues to harass plaintiff with unwanted collection letters and refuses to communicate through counsel.

2.

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 automatic stay claim arises under Title 11.

3.

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 claim arises in her bankruptcy case number 15-62990-fra13, filed under Chapter 13 of Title 11 in this United States Bankruptcy Court for the District of Oregon.

4.

NATURE OF CLAIMS

Plaintiff's automatic stay claim is a core proceeding 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 Env'tl 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.

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5.

THE PARTIES

Plaintiff Mrs. Linda Sue Knieriemen (“plaintiff”) is an individual living in Independence, Oregon who filed for bankruptcy protection under Chapter 13 of Title 11 on September 1, 2015.

6.

Defendant Discover Financial Services (“defendant”) was listed as an unsecured creditor in plaintiff’s bankruptcy schedules.

7.

Defendant subsequently participated in plaintiff’s case by filing claims under the name Discover Student Loans.

8.

Defendant is regularly listed in consumer cases under Title 11 and is familiar with the rules governing bankruptcy.

9.

As of the date of this complaint, defendant and its related parent companies and subsidiaries have a net worth of nearly \$20 billion.

10.

Venue is proper in this district because plaintiff resides here, defendant regularly attempts to collect debts from borrowers living here, and a substantial part of the acts, events, and/or omissions giving rise to this controversy took place in this district.

11.

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.

12.

FACTUAL ALLEGATIONS

On September 1, 2015, plaintiff filed for bankruptcy protection under Chapter 13 of Title 11 in case number 15-62990-fra13.

13.

Prior to the commencement of plaintiff's bankruptcy case, she owed an unsecured student loan debt to defendant.

14.

On or around September 2, 2015, defendant received notice of the automatic stay in plaintiff's case from the bankruptcy noticing center.

15.

Defendant also received verbal notice of the automatic stay.

16.

After receiving actual notice of the automatic stay, defendant intentionally harassed plaintiff for no legitimate reason in an attempt to collect its pre-petition debt from her.

17.

Defendant has ignored various cease and desist letters and refused requests to communicate through counsel.

18.

Defendant's conduct as alleged above violated the automatic stay, including and not limited to 11 U.S.C. § 362(a)(6).

19.

As a direct and proximate result of defendant's conduct as alleged above, plaintiff suffered severe ongoing emotional harm and stress consistent with collector harassment.

20.

PUNITIVE DAMAGES

After receiving electronic notices that its borrowers have filed bankruptcy, defendant does not maintain (or chooses not to follow) procedures to stop demanding payment on pre-petition debt.

21.

Defendant's harassment of plaintiff as alleged in this complaint constituted a malicious, wanton, and oppressive violation of plaintiff's right to be free from unwanted creditor communications during the pendency of the automatic stay in her chapter 13 bankruptcy case.

22.

Defendant's willful systematic ongoing violation of the automatic stay and disregard for the bankruptcy rules as alleged in this complaint stood to give defendant an unfair advantage over other unsecured creditors that chose to follow the law.

23.

Defendant's blatant disregard for the bankruptcy rules is shocking and outrageous. Defendant's conduct as alleged in this complaint constituted extraordinary transgressions of

socially tolerable behavior based on the social standards in plaintiff's community because defendant's conduct constituted a deliberate and arrogant defiance of the fundamental rules governing bankruptcy.

24.

Defendant should pay punitive damages in accordance to the harm it caused plaintiff, in an amount that will make it profitable for defendant to finally implement and/or follow procedures to avoid violating the bankruptcy rules in the future.

25.

CAUSE OF ACTION

CLAIM ONE

(Willful Violation of the Automatic Stay – Damages)

Plaintiff incorporates the above allegations by reference.

26.

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.

27.

Defendant's violation of the automatic stay as alleged above was "willful" as that term is defined in the Ninth Circuit because defendant's conduct was intentional, defendant had prior actual knowledge of the automatic stay, defendant's repeated refusal to leave plaintiff alone was unreasonable, defendant knew plaintiff was represented by an attorney, defendant knew plaintiff

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had no interest in reaffirmation or voluntary payments, and any alleged mistake of law was not a defense.

28.

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

29.

CLAIM TWO

(Willful Violation of the Automatic Stay – Attorney Fees and Costs)

Plaintiff incorporates the above allegations by reference.

30.

As a direct result of defendant's willful automatic stay violation, the law firm of Olsen Daines PC is entitled to an award reimbursing it for its reasonable attorney fees and costs, pursuant to 11 U.S.C. § 362(k).

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

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

DATED: December 21, 2015

RESPECTFULLY FILED,

/s/ Michael Fuller

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