

Michael Fuller, Oregon Bar No. 09357

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

Kelly Donovan Jones, Oregon Bar No. 074217

Kelly D. Jones, Attorney at Law
819 SE Morrison St Ste 255
Portland, Oregon 97214
kellydonovanjones@gmail.com
Phone 503-847-4329

Of Special Counsel for Plaintiff

(Additional counsel appear on signature page)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Rebecca Campos,

Debtor.

REBECCA CAMPOS, individually and on
behalf of all others similarly situated

Plaintiff,

v.

BLUESTEM BRANDS, INC. and
WEBBANK,

Defendants.

Case No. 14-33295-rld7

Adv. Proc. No.

**CLASS ACTION ALLEGATION
COMPLAINT**

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

1.

INTRODUCTION

Rebecca Campos (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Bluestem Brands, Inc. (“Bluestem”, including its brand known as “Fingerhut”) and Webbank (“Bluestem” and “Webbank” collectively referred to as “Defendants”). Fingerhut/Webbank is an identifier for the Fingerhut Program.

2.

Plaintiff and Class members owed a debt on a credit account to Defendants prior to filing bankruptcy.

3.

After Plaintiff filed bankruptcy on June 4, 2014, Defendants sent Plaintiff a collection letter dated August 5, 2014. The letter acknowledged that Plaintiff had filed bankruptcy and stated in bold, **“Please continue to pay your minimum monthly payments on your credit account for each billing cycle, unless we inform you that we have approved your benefit.”**

4.

Defendants sent Plaintiff a second collection letter dated September 15, 2014. The second letter stated in bold, **“Please continue to pay your monthly payments going forward, unless we inform you we have approved your benefit.”**

5.

On or around September 19, 2014, Defendants collected a payment from Plaintiff on the account.

///

6.

Defendants engaged in a pattern and practice of willfully violating the automatic stay by requesting payment from Plaintiff and Class members on debts Defendants knew were incurred prior to bankruptcy.

7.

Defendants engaged in a pattern and practice of coercively collecting payments on debts Defendants knew were incurred prior to bankruptcy.

8.

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.

9.

Plaintiff seeks monetary, injunctive and declaratory relief, punitive damages, and attorney fees and costs on behalf of herself and all Class members. Plaintiff does not seek mental anguish damages either individually or on a class basis.

10.

JURISDICTION

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1334 because this adversary proceeding arises under Title 11.

11.

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 the controversy arises in nationwide personal bankruptcy cases filed under Title 11 of the United States Code, including case number

CLASS ACTION ALLEGATION COMPLAINT - Page 3 of 15

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204

14-34494-rld7, filed under Chapter 7 in this Honorable United States Bankruptcy Court for the District of Oregon in Portland before the Honorable Judge Randall L. Dunn.

12.

NATURE OF CLAIM

Plaintiff's claim is a core proceeding because it concerns enforcement of the automatic stay. Plaintiff consents to a jury trial in bankruptcy court and entry of final orders and judgment by the bankruptcy judge.

13.

THE PARTIES

Plaintiff is an individual debtor in a personal bankruptcy filed under Title 11 and is a natural person.

14.

Defendants are familiar with the provisions of the automatic stay.

15.

For the purposes of the allegations in this Complaint, Defendants worked in concert with one another, in an ongoing illegal collection program with a shared economic interest to profit by violating the automatic stay, and so are liable for the conduct of one another in furtherance of their program.

16.

Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Plaintiff resides here, Defendants regularly carry on business here, and a substantial part of the acts, events, and/or omissions giving rise to this controversy took place in this District.

17.

BANKRUPTCY PROTECTION

On June 4, 2014, Plaintiff filed for bankruptcy protection in the United States Bankruptcy Court for the District of Oregon in Portland.

18.

Prior to filing bankruptcy, Plaintiff owed a debt to Webbank and/or Bluestem's brand Fingerhut.

19.

Plaintiff incurred no debt with Defendants after filing bankruptcy.

20.

Shortly after Plaintiff filed bankruptcy, Defendants received notice of the automatic stay.

21.

Defendants were aware that violating the automatic stay could result in penalties.

22.

Defendants never asked this Honorable Court for relief from the automatic stay.

23.

WILLFUL AUTOMATIC STAY VIOLATION

After Plaintiff filed bankruptcy, Defendants intentionally requested payment under false pretenses and coercively attempted to collect debt from Plaintiff through collection letters.

[Redacted Exhibits 1 and 2].

///

///

24.

Defendants' collection letter was coercive because it falsely implied that Plaintiff had requested benefits under a SafeLine® account.

25.

After filing bankruptcy, Plaintiff never requested benefits under a SafeLine® account, and Defendants' coercive attempts to collect violated the automatic stay.

26.

Defendants' violation of the automatic stay was willful because Defendants' own collection letter recognized Plaintiff's bankruptcy yet simultaneously requested payment.

27.

Defendants willfully violated the automatic stay by intentionally attempting to collect a debt from Plaintiff after receiving actual notice of Plaintiff's bankruptcy case.

28.

Under the terms and conditions of the SafeLine® account, Plaintiff had only to send notice to Defendants to preserve her possible benefits. Defendants were to cancel the balance after Defendants received proof of discharge. No contact was needed by Defendants to process any claims; instead, Defendants' letters were bare attempts to collect debt in violation of the automatic stay.

29.

Defendants willfully violated the automatic stay by actually collecting payment from Plaintiff after sending her collection letters.

///

30.

ACTUAL DAMAGES

As a direct result of Defendants' conduct, Plaintiff suffered actual injury, including loss of money, and reasonable expenses necessarily incurred to remedy Defendants' automatic stay violation.

31.

PUNITIVE DAMAGES

Defendants' willful disregard for the automatic stay stands to give them an unfair advantage over other creditors that choose to abide by the automatic stay.

32.

Defendants' conduct constitutes extraordinary transgressions of socially tolerable behavior because Defendants' conduct took place on a nationwide scale, was illegal, coercive, and in pursuit of profit.

33.

Plaintiff respectfully requests this Honorable Court award punitive damages.

34.

INJUNCTIVE RELIEF

Based upon all of the facts alleged in this Complaint, Plaintiff further requests equitable relief in the form of an order requiring Defendants to remedy their violation by informing all Class members that Defendants' prior requests for payment are withdrawn, and notifying all Class members that no payment is necessary to trigger benefits under the SafeLine® account.

///

35.

CLASS ACTION ALLEGATIONS

Plaintiff brings this action individually and on behalf of all others similarly situated, and asks this Honorable Court to certify this case as a class action pursuant to Fed. R. Bnkr. P. 7023, by reference to Fed. R. Civ. P. 23.

36.

This action satisfies the Fed. R. Civ. P. 23 requirements of numerosity, commonality, typicality, adequacy, predominance and superiority.

37.

Plaintiff asserts a claim for willful violation of the automatic stay under 11 U.S.C. § 362(k) on behalf of a proposed nationwide class (the “Class”) defined as:

- (a) All individual bankruptcy debtors who either Defendant requested payment from during the pendency of the automatic stay on non-reaffirmed debt that was incurred prior to bankruptcy, within the applicable statute of limitations.

38.

Plaintiff, on behalf of herself and all others similarly situated, will also seek to certify a “Payment Subclass” (the “Subclass”) that is defined as:

- (a) All individual bankruptcy debtors who either Defendant requested payment from during the pendency of the automatic stay and then collected payment from on non-reaffirmed debt that was incurred prior to bankruptcy, within the applicable statute of limitations.

///

39.

Excluded from the claims are any claims for mental anguish that may have been suffered by anyone who otherwise fits within the Class. Specifically excluded from the Class and Subclass are all federal judges and members of their families within the first degree of consanguinity, and the officers, directors and counsel of record of each Defendant.

40.

The proposed Plaintiff Class and Plaintiff Subclass meet the prerequisites of a class.

41.

The Class and Subclass are so numerous that joinder of all members is impracticable. Plaintiff is unable to state the exact number of the members of the Class without the discovery of information available to Defendant, but upon information and belief avers that there are likely thousands of Class members. In a Nasdaq IPO, Bluestem claimed that approximately one-third of the United States population does business with them. The Class and Subclass are comprised of numerous individual debtors who owed Bluestem and/or Webbank money upon filing bankruptcy, the joinder of which in one action would be impracticable.

42.

The disposition of the claims of the Class and Subclass members through this class action will benefit the Parties and this Honorable Court and the identities of the individual debtors, as well as whether a payment was made, are readily ascertainable through Defendants' account records.

///

///

43.

Plaintiff's claims are typical of the claims of the Class. The claims have the same essential characteristics as the claims of the members of the Class and Subclass as a whole and are based upon identical legal theories. It is the same course of conduct that serves as the gravamen of the claims against Defendants. The members of the Class have suffered the same type of injury and possess the same interests as Plaintiff. The single resolution of these claims would be preferable to a multiplicity of similar actions.

44.

Plaintiff will fairly and adequately protect the interests of the Class and Subclass. The counsel representing Plaintiff and the Class and Subclass are qualified, experienced, able, and have the resources necessary to successfully prosecute a nationwide consumer class action in bankruptcy court.

45.

Plaintiff and her counsel do not foresee any circumstances where the interests of Plaintiff would be adverse to those of the Class and Subclass.

46.

Common questions of law and fact exist as to all members of the Class and Subclass, which predominate over any questions affecting solely individual members of the Class and Subclass, including, without limitation:

- (a) Whether Defendants' collection letters were sent intentionally;
- (b) Whether Defendants' collection letters violated the automatic stay;
- (c) Whether Defendants' conduct willfully violated the automatic stay;

- (d) Whether Plaintiff and Class members suffered injury as a result of Defendants' willful automatic stay violation;
- (e) Whether the Class members are entitled to an injunction against Defendants; and
- (f) The proper measure of damages.

47.

This suit is maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because the questions of law or fact common to the members of the Class and Subclass predominate over any questions affecting only individual members. Specifically, all members suffered injury as a result of a "common wrong" on the part of Defendants and actual damages are easily ascertainable by reference to Defendants' records concerning the members of the Subclass.

48.

A class action is superior to other available methods for the fair and efficient adjudication of this controversy because it would be economically impractical for Plaintiff and members of the Class and Subclass to pursue individual actions against Defendants, as the costs of prosecution would likely surpass their individual damages. Further, given the large size of the Class, individual adjudication of the claims would require thousands of lawsuits. Moreover, intervention and joinder would require the intervention or joinder of thousands of parties. Individual adjudication, intervention, and joinder, therefore, are not reasonable options. Class and Subclass treatment is superior to all other methods of adjudicating the claims of the putative Class.

///

///

///

49.

This suit is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole. Defendants continue to engage in the malicious, illegal conduct subject to this Complaint and class treatment of this action will permit Plaintiff and the Class and Subclass members to vindicate their rights against Defendants and conserve the resources of this Honorable Court and the Parties.

50.

Class treatment of this action will also avoid the possibility of inconsistent outcomes that could result from a multitude of individual actions in varying jurisdictions nationwide. Further, the interests of members of the Class and Subclass in individually controlling the prosecution or defense of separate actions do not outweigh the benefits of class treatment. Members of the Subclass possess claims for economic damages that in most instances do not exceed a few hundred dollars. Thus, no individual Class member possesses an overriding interest in the right to retain counsel and litigate to conclusion an individual claim. In fact, individual adjudication of these claims remains wholly impractical. The Class and Subclass members would be compelled to spend substantially more money on attorney fees and costs to prosecute their individual claims than the amount of each individual claim. The interest of members of the Class and Subclass in individually controlling the prosecution or defense of separate actions, therefore, does not outweigh the benefits of class treatment.

///

///

51.

Other factors. On information and belief, there are few if any other cases pending by or against members of the Class raising the claims asserted herein. This Honorable Court is the desirable forum for this controversy because each Defendant transacts business in this state. No significant difficulties are likely to be encountered in the management of a class action. Plaintiff will be able to identify Class members through discovery of Defendants' extensive computer databases storing information regarding past and present debtors. Thus, no difficulties exist regarding the identification of Class members.

52.

CAUSE OF ACTION

CLAIM ONE

(WILLFUL VIOLATION OF THE AUTOMATIC STAY)

(11 U.S.C. § 362(k))

(on behalf of the nationwide Class and Subclass)

Plaintiff incorporates the above allegations by reference.

53.

Defendants' conduct as alleged above willfully violated the automatic stay provisions of 11 U.S.C. § 362(a)(6). Plaintiff and the Class members are injured as a result of the willful violation, and so are entitled to monetary, injunctive and declaratory relief, punitive damages, and attorney fees and costs.

///

///

WHEREFORE, after a stipulation or determination that Defendants' conduct willfully violated the automatic stay, Plaintiff, individually and on behalf of the proposed Class and Subclass, prays for relief as follows:

- A. That this action may proceed as a class action under Fed. R. Civ. P. 23, that Plaintiff be appointed as the representative for the proposed Class and Subclass, and that Plaintiff's counsel be appointed as counsel for the proposed Class and Subclass;
- B. That Plaintiff and the proposed Class and Subclass recover the damages determined to have been sustained by them, with appropriate punitive damages, and that judgment be entered against Defendants on behalf of Plaintiff and each member of the Class and Subclass;
- C. That Defendants be enjoined as requested in paragraph 34;
- D. That Plaintiff and the proposed Class and Subclass recover their costs of this suit, including attorney fees and costs, as provided by law; and
- E. For other equitable relief this Honorable Court may determine is fair and just.

DATED: October 8, 2014

/s/ Michael Fuller
Michael Fuller, Oregon Bar No. 09357
OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

(Additional counsel appear on next page)

Kelly Donovan Jones, Oregon Bar No. 074217

Kelly D. Jones, Attorney at Law
819 SE Morrison St Ste 255
Portland, Oregon 97214
kellydonovanjones@gmail.com
Phone 503-847-4329

Bonner Walsh, Oregon Bar No. 131716

Walsh LLC
21810 Pine Crest Dr.
Bly, Oregon 97622
bonner@walshpllc.com
Phone 541-359-2827

Of Special Counsel for Plaintiff

August 5, 2014

REBECCA CAMPOS

PORTLAND, OR 97225-5634

**RE: Your SafeLine® Account Protection Plus Benefit Activation
Application Request
Customer Number: 5576
Benefit Request Number: 7886**

Dear REBECCA CAMPOS:

We understand you are requesting a SafeLine® Account Protection Plus benefit activation application due to bankruptcy.

Please carefully review and complete each section on the enclosed form. You may also need to provide additional information, besides the form, in order to determine your eligibility. The information needed is explained on the application form. Please mail the completed form and documentation to us within 30 days.

We will work quickly to review your request upon our receipt of completed paperwork. You will receive a written response within two weeks from when we receive the completed benefit activation application form and supporting documentation.

Please continue to pay your minimum monthly payments on your credit account for each billing cycle, unless we inform you that we have approved your benefit.

If you have any questions regarding your benefit activation request, please contact us by:

- Phone at 855-582-2130 Monday –Friday between the hours of 8AM CT– 5PM CT
- Visiting <https://safeline.fingerhut.com> to access SafeLine information

Sincerely,

SafeLine® Customer Service



1 ACCOUNT INFORMATION Confirm or correct the information below.

Program Name:
SafeLine® Account Protection Plus

WebBank/Fingerhut
credit account number ending in: 5576

Accountholder's Information:
REBECCA CAMPOS

Corrections:

PORTLAND, OR 97225-5634

2 REQUESTED INFORMATION Attach a copy of the Bankruptcy Court Discharge of Debtor or Chapter 13 plan.

Yes, I have enclosed a copy of my Bankruptcy Court Discharge or Debtor or Chapter 13 plan documentation.

3 AUTHORIZATION TO OBTAIN INFORMATION Sign and date below.

I certify that the above information is true and correct and the bankruptcy file is for me personally. I authorize any government agency that has records concerning this benefit request to give the Plan Administrator, the creditor, its affiliates, subsidiaries, successors, assignees or any legal representative of these any such information. I also authorize the release of this information to any agency and/or employee of the creditor to collect and transmit information. This authorization is for the purpose of processing this benefit request and will remain valid for the duration of this request. I agree that a photocopy or facsimile copy will be valid as the original. Any third party costs associated with this benefit request are my responsibility.

Accountholder's Signature: _____ Date: ____/____/____

Before mailing, please verify the following:

- A copy of the Bankruptcy Court Discharge of Debtor or Chapter 13 plan is attached.
- You signed and dated Section 3.

You may return the form either of the following ways:

- Mail it to Fingerhut, P.O. BOX 740237, Atlanta, GA, 30374-0237
- Fax It to 888-633-0674

September 15, 2014

REBECCA CAMPOS

PORTLAND, OR 97225-5634

**RE: Your SafeLine® Account Protection Plus Benefit Activation
Application Request
Customer Number: 5576
Benefit Request Number: 7886**

Dear REBECCA CAMPOS:

On 08/04/2014, a SafeLine® Account Protection Plus benefit activation application was sent out in response to your request. We have not received a completed form and documentation from you. Enclosed is another benefit activation application form to be completed in the event the original was lost. If you have recently sent in the completed application form, please disregard this request.

Please carefully review and complete each section on the enclosed form as instructed. You may also need to provide additional information, besides the form, in order to determine your eligibility. The information needed is explained on the application form. Please mail the completed form and documentation to us within 30 days. We will work quickly to review your request upon our receipt of completed paperwork.

You will receive a written response from our review within two weeks from when we received your completed benefit activation application form and supporting documentation. **Please continue to pay your monthly payments going forward, unless we inform you we have approved the benefit.**

If you have any questions regarding your benefit activation request, please contact us by:

- Phone at 855-582-2130 Monday – Friday between the hours of 8AM CT– 5PM CT
- Visiting <https://safeline.fingerhut.com> to access SafeLine information

Sincerely,

SafeLine® Customer Service



1 ACCOUNT INFORMATION Confirm or correct the information below.

Program Name:
SafeLine® Account Protection Plus

WebBank/Fingerhut
credit account number ending in: 5576

Accountholder's Information:
REBECCA CAMPOS

Corrections:

PORTLAND, OR 97225-5634

2 REQUESTED INFORMATION Attach a copy of the Bankruptcy Court Discharge of Debtor or Chapter 13 plan.

Yes, I have enclosed a copy of my Bankruptcy Court Discharge or Debtor or Chapter 13 plan documentation.

3 AUTHORIZATION TO OBTAIN INFORMATION Sign and date below.

I certify that the above information is true and correct and the bankruptcy file is for me personally. I authorize any government agency that has records concerning this benefit request to give the Plan Administrator, the creditor, its affiliates, subsidiaries, successors, assignees or any legal representative of these any such information. I also authorize the release of this information to any agency and/or employee of the creditor to collect and transmit information. This authorization is for the purpose of processing this benefit request and will remain valid for the duration of this request. I agree that a photocopy or facsimile copy will be valid as the original. Any third party costs associated with this benefit request are my responsibility.

Accountholder's Signature: _____ Date: ____/____/____

Before mailing, please verify the following:

- A copy of the Bankruptcy Court Discharge of Debtor or Chapter 13 plan is attached.
- You signed and dated Section 3.

You may return the form either of the following ways:

- Mail it to Fingerhut, P.O. BOX 740237, Atlanta, GA, 30374-0237
- Fax it to 888-633-0674