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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

**Francis Anthony Todor
Deborah Raneé Todor,**

Debtors.

**CREDIT BUREAU OF JOSEPHINE
COUNTY,**

Plaintiff,

v.

DEBORAH R. TODOR,

Defendant / Third Party Plaintiff,

v.

**EAR, NOSE AND THROAT
ASSOCIATES OF GRANTS PASS, PC,**

Third Party Defendant.

Case No. 11-64859-fra13

Adv. Proc. No. 14-06195-fra

**DEFENDANT DEBORAH R. TODOR'S
ANSWER TO PLAINTIFF'S
COMPLAINT, COUNTERCLAIM, AND
THIRD PARTY COMPLAINT**

**DEFENDANT DEBORAH R. TODOR'S ANSWER TO PLAINTIFF'S COMPLAINT,
COUNTERCLAIM, AND THIRD PARTY COMPLAINT** - Page 1

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1.

INTRODUCTION

Prior to removal, Ms. Todor (“Debtor”) called Credit Bureau of Josephine County (“Credit Bureau”) but was unable to resolve this dispute.

2.

ANSWER

Except as expressly admitted in this Answer, Debtor denies each and every allegation in Credit Bureau’s Small Claim and Notice of Small Claim (“Complaint”).

3.

Debtor denies she currently “owes” the debt subject to Credit Bureau’s Complaint because of the automatic stay entered in her bankruptcy case.

4.

FIRST AFFIRMATIVE DEFENSE

Credit Bureau has failed to state a claim upon which relief can be granted.

5.

SECOND AFFIRMATIVE DEFENSE

Credit Bureau’s claim is prohibited by the automatic stay entered in Debtor’s bankruptcy case.

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6.

RESERVATION OF RIGHTS

Debtor reserves her right to amend her Answer, Affirmative Defenses, Counterclaim, and Third Party Complaint as additional information is learned through investigation and discovery.

7.

The following allegations are based on personal knowledge as to Debtor's conduct and are made on information and belief as to the acts of others.

8.

JURISDICTION OF COUNTERCLAIM

The United States District Court for the District of Oregon has jurisdiction of Debtor's Counterclaim against Credit Bureau pursuant to 28 U.S.C. § 1331 because the claim arises under the federal Fair Debt Collection Practices Act (FDCPA).

9.

Debtor's FDCPA claim arises independent of the automatic stay and does not require any bankruptcy-laden determinations.

10.

JURISDICTION OF THIRD PARTY COMPLAINT

The United States District Court for the District of Oregon has jurisdiction of Debtor's Third Party Complaint against Ear, Nose and Throat Associates of Grants Pass, PC, aka Ear Nose & Throat, aka Ear Nose & Throat Associates ("ENT") pursuant to 28 U.S.C. § 1334 because the claim arises under section 362(k) of Title 11.

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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 Debtor's claims arises in, and relate to her bankruptcy case, number 11-64859-fra13, filed under Chapter 13 of Title 11 in this Honorable United States Bankruptcy Court for the District of Oregon before the Honorable Chief Judge Frank R. Alley.

12.

NATURE OF COUNTERCLAIM

Debtor's FDCPA counterclaim is not a core proceeding and Debtor consents to entry of final orders and judgment in this proceeding by the bankruptcy court.

13.

NATURE OF THIRD PARTY COMPLAINT

Debtor's Third Party Complaint under § 362(k) is a core proceeding because it concerns administration of the estate.

14.

THE PARTIES

Debtor is a natural person living in Grants Pass, Oregon, and is a "consumer" as defined by the FDCPA at 15 U.S.C. § 1692a(3) because she is a natural person allegedly obligated to pay a consumer medical "debt" as defined by the FDCPA at 15 U.S.C. § 1692a(5).

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15.

Credit Bureau is a “debt collector” as defined by the FDCPA at 15 U.S.C. § 1692a(6) as it regularly represents to consumers that it is attempting to collect debt on behalf of another, its principal purpose is providing debt collection services to creditors, and it regularly communicates with consumers regarding defaulted debt, which communications include use of the United States mail system.

16.

ENT is a creditor in Debtor’s bankruptcy.

17.

After Debtor filed bankruptcy, ENT instructed Credit Bureau to collect ENT’s claim incurred by Debtor prior to the commencement of her bankruptcy case.

18.

THIRD PARTY COMPLAINT ALLEGATIONS

On September 30, 2011, Debtor filed for Chapter 13 bankruptcy protection in the United States Bankruptcy Court for the District of Oregon.

19.

Prior to filing bankruptcy, Debtor owed a debt to ENT.

20.

Shortly after Debtor’s bankruptcy case was filed, ENT received actual Court-generated notice of the automatic stay.

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21.

The notice informed ENT that violating the automatic stay could result in penalties.

22.

As of the date of this Complaint, the Bankruptcy Court has never granted ENT or Credit Bureau relief from the automatic stay.

23.

After Debtor filed bankruptcy, ENT instructed Credit Bureau to collect ENT's claim incurred by Debtor prior to the commencement of her bankruptcy case.

24.

WILLFUL AUTOMATIC STAY VIOLATION

ENT willfully violated the automatic stay by intentionally assigning Credit Bureau to commence a judicial proceeding against Debtor in an attempt to collect debt after receiving actual notice of Debtor's bankruptcy case.

25.

COUNTERCLAIM ALLEGATIONS

Credit Bureau's use of its business name on its written communications with Debtor simulated authorization and or affiliation with a state agency.

26.

Credit Bureau's use of its business name on its written communications with Debtor created the false impression as to its source.

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27.

FDCPA VIOLATION

Credit Bureau's use of the name "Credit Bureau of Josephine County" violated 15 U.S.C. § 1692e(9) because it was likely to materially mislead a hypothetical "least sophisticated debtor" by implying false affiliation with Josephine County, Oregon.

28.

DAMAGES

As a direct result of Credit Bureau's FDCPA violation, Debtor is entitled \$1,000 statutory damages, costs, and a reasonable attorney fee.

29.

As a direct result of ENT's conduct, Debtor suffered actual injury in the form of reasonable expenses necessarily incurred to remedy ENT's automatic stay violation, and suffered severe ongoing surprise and upset.

30.

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

31.

ENT's conduct constitutes extraordinary transgressions of socially tolerable behavior based on the standards in Debtor's community because ENT's conduct was illegal and its attempt to collect from Debtor was in pursuit of profit.

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32.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(VIOLATION OF THE AUTOMATIC STAY)

(11 U.S.C. § 362(k))

Debtor incorporates the above allegations by reference.

33.

ENT's conduct as alleged above willfully violated the automatic stay provisions of 11 U.S.C. § 362(a)(1) and (6). Debtor is injured as a result of the willful violation, and so is entitled to reimbursement of the reasonable attorney fees and costs incurred by Debtor to remedy ENT's violation, other actual damages, and punitive damages.

34.

SECOND CLAIM FOR RELIEF

(VIOLATION OF THE FDCPA)

(15 U.S.C. § 1692k)

Debtor incorporates the above allegations by reference.

35.

Credit Bureau's deceptive conduct as alleged above failed to comply with § 1692e(9) and Debtor is entitled to recover statutory damages of \$1,000, costs, and a reasonable attorney fee.

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WHEREFORE, after a stipulation or determination that Credit Bureau violated the FDCPA and ENT willfully violated the automatic stay, Debtor requests entry of judgment in her favor and against Credit Bureau and ENT as follows:

- A. an award of actual damages and punitive damages against ENT only;
- B. an award of the expenses, including reasonable attorney fees and costs, incurred by Debtor to remedy ENT's violation, against ENT only;
- C. an award of statutory damages against Credit Bureau only;
- D. an award of costs and a reasonable attorney fee incurred prosecuting Credit Bureau under the FDCPA, against Credit Bureau only; and
- E. for other equitable relief this Honorable Court may determine is fair and just.

DATED: October 16, 2014

/s/ Michael Fuller
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