

1 John W. Stone  
18025 N. 88<sup>th</sup> Drive  
2 Peoria, AZ 85382  
3 Debtor/Pro se  
623-330-1506

4 UNITED STATES BANKRUPTCY COURT  
5 FOR THE DISTRICT OF ARIZONA

6 In Re: ) CHAPTER 13 ADVERSARY PROCEEDING  
7 )  
8 John W. Stone, ) CASE NO. 2:08-16103 JMM  
9 Debtor ) MOTION FOR SANCTIONS AND DAMAGES  
10 ) FOR AUTOMATIC STAY VIOLATION  
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**JURISDICTION**

1. This Court has jurisdiction over this proceeding pursuant to *28 U.S.C. §§ 157 and 1334, 1334(a) and 1334(b)*. Subject-Matter Jurisdiction is also conferred by the “arising under,” “arising in” and or related to Bankruptcy Jurisdiction.

2. This matter is a “core” proceeding pursuant to *Rule 7008, Federal Rules of Bankruptcy Procedure and 28 U.S.C. §§ 157, 157(b)(2)*.

3. The relief requested in this matter is authorized under the Bankruptcy Code, automatic Stay Provision *11 U.S.C.A. §§ 362, 362(h)*.

4. Debtor reserves the right to seek relief for other causes of action as a result of the violations of the automatic stay.

The Debtor/Plaintiff moves the court for an award of damages against creditors of the estate, State Farm Insurance Agents Gunther Perdomo Llana, Greg Acedo, and noncreditor third parties

1 Phoenix Police Detective Donna Kelsey and Maricopa County Probation Officer Cynthia Romero, and  
2 unknown John and Jane Doe(s), for violations of the automatic stay.

3 The debtor’s filing of his chapter 13 bankruptcy petition on November 12, 2008, gave rise to an  
4 “automatic stay”. **11 U.S.C. § 362(a)**. The Ninth Circuit construed the automatic stay in *In re Gruntz*,  
5 *202 F.3d 1074, 1081-82 (9<sup>th</sup> Cir. 2000)*.

6 Debtor contends that defendants and noncreditors as set-forth herein used and acted in their  
7 governmental positions to violate the stay and their acts are continuing acts and have encouraged  
8 others to also disregard the automatic stay and other federal and state statutes, laws, rules and  
9 procedures.

10 The automatic stay is self-executing, effective upon the filing of the bankruptcy petition. See  
11 *11 U.S.C. § 362(a)*; *The Minoco Group of Companies v. First State Underwriters Agency of New*  
12 *England Reinsurance Corp. (In re The Minoco Group of Companies)*, *799 F.2d 517, 520 (9<sup>th</sup> Cir.*  
13 *1986)*. The automatic stay sweeps broadly, enjoining the commencement or continuation of any  
14 judicial, administrative, or other proceedings against the debtor, enforcement of prior judgments,  
15 perfection of liens, and “any act to collect, assess or recover a claim against the debtor that arose  
16 before the commencement of the case.” *11 U.S.C. § 362(a)(6)*.

17 The Ninth Circuit Bankruptcy Appellate Panel (“BAP”) explained the automatic stay in  
18 *Balyeat Law Offices, P.C. v Campbell*, *14 Mont. B.R. 132, 136-37 (9<sup>th</sup> Cir. BAP 1995)*: “Congress’  
19 intent in enacting § 362(a) is clear—it wanted to stop collection efforts for all antecedent debts.”  
20 *Gonzales v. Parks*, *830 F.2d 1033, 1035 (9<sup>th</sup> Cir. 1987)*.

21 The gravamen of this motion is that the defendants willfully violated the automatic stay. They  
22 acknowledge by phone record recordings, fax and email transmissions, that they knew that the debtor  
23 was in bankruptcy and that they knew, or should have known, that the automatic stay was in force.  
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1           **In order for bankruptcy judge to exercise jurisdiction over proceeding involving**  
2 **noncreditor third party, there must be substantial relationship between matter in controversy**  
3 **and bankruptcy case. *In re Ennis, 50 B.R. 119.***

4           The defendants forced the debtor to find funds one way or another to pay prepetition debts to  
5 creditors Llana and Acedo or defendants Kelsey and Romero would use their official positions to  
6 charge the debtor with a crime, revoke his probation, and arrest him.

7           Clearly acting under color of state law, Romero's promised threat to revoke the debtor's  
8 probation if he did not immediately pay the prepetition debt is a violation of the automatic stay, and a  
9 violation of other criminal and civil laws, as set forth in *Hucke v. State of Oregon, 992 F.2d 950 (9<sup>th</sup>*  
10 *Cir. 1993).*

11           **An exception to the automatic stay provisions provides that the stay does not apply to**  
12 **“the commencement or continuation of a criminal action or proceeding against the debtor.” 11**  
13 **U.S.C. § 362(b)(1). However, if the probation hearing had as its aim the collection of the fine,**  
14 **then it would run afoul of § 362(a)(6), which stays acts intended to “collect, assess or recover a**  
15 **claim” against the debtor. In sum, if the present state revocation proceeding constituted**  
16 **collection efforts, then it would violate the automatic stay and would be void. *Hucke v. State of***  
17 ***Oregon, 992 F.2d 950 (9<sup>th</sup> Cir. 1993).***

18           Defendant Kelsey acting under color of state law used her position to violate the debtor's due  
19 process as well as willfully violating the automatic stay. Kelsey phoned the debtor and told him that  
20 she had contacted his probation officer Romero. She went on to tell the debtor that if he did not pay  
21 \$2350.00 to creditor Llana then she would see to it that Romero revoked his probation and that she  
22 would charge him with a crime and have him arrested and incarcerated.

23           Kelsey went on to tell the debtor that she did not care about the bankruptcy or automatic stay.

24           **One who extorts money from another by the threat to accuse the other of a crime is guilty**  
25 **of extortion regardless of the other's guilt. *Lee v. State, 145 P. 244, 16 Ariz. 291.***

**It makes no difference who receives money as to whether or not it is extortion, or that**  
**there was a moral duty to pay it, or that a like amount had been loaned to the son of the person**  
**practiced upon. *Bush v. State, 168 P. 508, 19 Ariz. 195.***

1            “[T]he relief provided for willful violation of the stay under *11 U.S.C. § 362(h)* is mandatory”  
2 since § 362(h) supplements but does not replace the pre-existing remedy of civil contempt. *In re Lile,*  
3 *103 B.R. 830, 836 (Bankr.S.D.Tex.1989)*. Thus, when a party acts with knowledge of the pending  
4 bankruptcy, a violation of the stay is considered willful and damages must be assessed, *Id at 836*, for  
5 “[T]he creditor takes the risk of being assessed the damages if he fails to obtain clarification from the  
6 bankruptcy court.” *Id at 837*.

7            On November 26, 2008 creditor Acedo sent an email transmission to the debtor threatening to  
8 contact the Phoenix police just as Llana had done unless the debtor refunded him immediately.

9            On December 1, 2008, the debtor performed on his contract with Acedo by printing his ad and  
10 placing it at Lam’s Supermarket at 67<sup>th</sup> Avenue and Indian School.

11            The manager of Lam’s aided the debtor in placing the sign at the front door, and the debtor had  
12 the manager pose for pictures while standing next to the sign. The debtor called Acedo and told him  
13 that his ad had been placed as per their agreement.

14            On December 2, 2008, the debtor sent Acedo an email confirming the facts that he was in  
15 bankruptcy and that he had performed on the contract between them.

16            On December 2, 2008, without any authority whatsoever, Acedo removed and carried the sign  
17 away from Lam’s. Acedo sent the debtor an email claiming that the manager told him that he did not  
18 know the debtor or how the sign got there and requested that Acedo remove the sign and carry it away.

19            Acedo stated in his December 2, 2008 email that if the debtor did not meet his demand to pay  
20 him \$1425.00 that he would contact Police Commander Tim Hampton.

21            On December 3, 2008, the debtor phoned the manager at Lam’s and recorded the conversation.  
22 The manager stated that he thought the sign was still posted, and that he had not talked to Acedo, and  
23 that he did not give Acedo permission to remove the sign.  
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1 On December 4, 2008, the debtor phoned Acedo and recorded the conversation. Acedo,  
2 among other things, demanded \$1425.00 immediately or he would not only contact commander  
3 Hampton, but he would also contact YMCA board members. Acedo told the debtor that he would  
4 keep quite about the payoff and not inform the bankruptcy court, trustee, or creditors of the estate.

5 On December 10, 2008, Acedo left the debtor a voice-mail stating that the debtor's time was up  
6 and that he would see to it that Commander Hampton arrested the debtor just like Kelsey had planned  
7 to do for Llana.

### 8 FACTS

9 On November 12, 2008, the debtor filed a chapter 13 bankruptcy petition.

10 On November 17, 2008, the debtor included both creditors State Farm Insurance agents Llana  
11 and Acedo on his master mailing list.

12 On September 11, 2008, and September 9, 2008, the debtor contracted with creditor Llana to  
13 perform advertising for Llana's State Farm Insurance Agency. Llana paid the debtor a total of  
14 \$2350.00 for his services.

15 On July 17, 2008, and August 21, 2008, the debtor contracted with creditor Acedo to perform  
16 advertising for Acedo's State Farm Insurance Agency. Acedo paid the debtor a total of \$1425.00 for  
17 his services.

18 On November 19, 2008, the debtor was contacted defendant noncreditor Kelsey and told her  
19 that her continued threats were causing him and his family extreme emotional distress and that he had  
20 included creditors Llana and Acedo in his chapter 13 and had every intention of compensating them for  
21 their advertising by either producing the advertising or refunding them.

22 Kelsey told the debtor that she had received all of the faxes the debtor had sent her regarding  
23 the chapter 13 filing and the automatic stay provisions.  
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1 Kelsey told the debtor that she and creditor Llana were quite aware of the chapter 13 and that  
2 regardless of the automatic stay they still demanded payment in full or else the debtor would be  
3 arrested and incarcerated, and that they had the debtor's probation officer's blessing to arrest him.

4 Kelsey told the debtor that she and creditor Llana would give him until Monday, November 24,  
5 2008, to come up with the money or she would throw him in jail.

6 On November 20, 2008, defendant noncreditor Romero called the debtor berating him and told  
7 him that if he did not want Kelsey to keep threatening and harassing him, and that if he did not want  
8 her to revoke his probation, then he would have to give in to the demands of Llana and Kelsey and  
9 whoever else that demands their money back.

10 On November 24, 2008, the debtor under severe duress, came up with the demand of \$2350.00  
11 and dropped it off at creditor Llana's State Farm Insurance office.

12 On November 24, 2008, the debtor phoned both defendants Kelsey and Romero and told them  
13 that he had met their demands.

14 On November 24, 2008, Kelsey, among other things, left a message on the debtor's cell-phone  
15 acknowledging the payment to Llana.

16 On November 26, 2008, creditor Acedo sent an email to the debtor stating, "I will be filing the  
17 same complaint that Gunther Perdomo Llana filed with the Phoenix Police Department".

18 On December 1, 2008, the debtor performed on his contract with Acedo by printing his ad and  
19 placing it at Lam's Supermarket at 67<sup>th</sup> Avenue and Indian School.

20 The manager of Lam's aided the debtor in placing the sign at the front door, and the debtor had  
21 the manager pose for pictures while standing next to the sign. The debtor called Acedo and told him  
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17 and that he would see to it that Commander Hampton arrested the debtor just like Kelsey had planned  
18 to do for Llana.

19 **THE STATE, CITY OF PHOENIX, AND MARICOPA COUNTY ARE**  
20 **WITHOUT SOVEREIGN IMMUNITY**

21 The State surrendered its sovereign immunity in Bankruptcy proceedings when it ratified the  
22 U.S. Constitution. Furthermore, noncreditor defendants Kelsey and Romero were acting without  
23 jurisdiction and authority of law by harassing the debtor and using threats to collect prepetition debts.

24 *Bankr.Code, 11 U.S.C.A. § 362(a). See In re Smith 301 B.R. 96, 97, 100.*



1 **Subsection 362(h) describes the penalties that can be assessed for violations of the**  
2 **Automatic Stay. It reads as follows:(h) An individual injured by any willful violation of a stay**  
3 **provided by this section shall recover actual damages, including costs and attorneys' fees, and, in**  
4 **appropriate circumstances, may recover punitive damages. It is also important to recognize that**  
5 **subsection 362(h) is considered as an additional right for debtors and not foreclosing other**  
6 **remedies that might be available to debtors. 130 Cong. Record 6504 (House March 26, 1984).**

7 **The subsection 362(h) has been interpreted to have a restriction built into the remedies**  
8 **available: the violation must be "willful" in order for damages and attorney fees to be awarded.**  
9 **An example of how "willful" has been defined some courts is contained in Atkins v. Martinez, 176**  
10 **B.R. 1008 (Bankr. D. Minn. 1994): "The element of deliberation that is contemplated here, of**  
11 **course, is the specific intent to proceed with an act, knowing that it is proscribed by a court**  
12 **order".**

13 **WHEREFORE, the debtor requests actual damages, including costs and attorney fees, punitive**  
14 **damages, and whatever further damages this Court deems just, equitable and appropriate. The debtor**  
15 **also reserves the right for other remedies and causes of action that might be available.**

16 **Respectively submitted this 11<sup>th</sup> day of December 2008.**

17 **By: \_\_\_\_\_**  
18 **John W. Stone**  
19 **Debtor/Pro se**

20 **Willful Automatic Stay Violators**

21 **State Farm Agent**  
22 **Gunther Perdomo Llama**  
23 **2040 E. Bell Road, #110**  
24 **Phoenix, AZ 85022**  
25 **Creditor**

**Donna Kelsey**  
**Phoenix Police Department**  
**302 E. Union Hills Drive**  
**Phoenix, AZ 85024**  
**Phoenix Police Detective**

**Greg Acedo**  
**1820 N. 75<sup>th</sup> Avenue, #106**  
**Phoenix, AZ 85035**  
**Creditor**

**Cynthia Romero**  
**Maricopa County Probation Department**  
**3101 E. Shea Blvd., Unit 109**  
**Phoenix, AZ 85028**  
**Maricopa County Probation Officer**