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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

Angela Dianne Tucker,  
  
Debtor.

**ANGELA TUCKER,**

Plaintiff,

v.

**MATTHEW E AUSTIN and VANCOUVER  
AUCTION OUTLET, INC.,**

Defendants.

Case No. 16-30361-rld7

Adv. Proc. No.

**COMPLAINT**

11 U.S.C. § 362(k)

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1.

**INTRODUCTION**

In her initial answer filed March 11, 2016, debtor Angela Tucker (Tucker) reserved her right to substitute and add parties as she learned the true identity and corporate status of Austins Affordable through investigation and discovery.

2.

Tucker's initial answer alleged that Austins Affordable was "not an active legal entity registered in Oregon or Washington and may be doing business as Matthew Austin or Vancouver Auction Outlet, Inc."

3.

After conducting an investigation about the true identity of Austins Affordable, Tucker now files this complaint against individual Matthew E Austin and Washington corporation Vancouver Auction Outlet, Inc.

4.

Austins Affordable is not an active legal entity or registered business name in Oregon or Washington.

5.

Austins Affordable Autos is the business name registered to individual Matthew E Austin as a sole proprietorship in Washington.

6.

Austins Affordable Autos Inc is the registered business name for Washington corporation Vancouver Auction Outlet, Inc.

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7.

Vancouver Auction Outlet, Inc. is governed by individual Matthew E Austin according to the Washington State Business Licensing Service.

8.

Austin's Affordable Autos Inc is an inactive Oregon corporation that was administratively dissolved on October 10, 2014.

9.

Austin's Affordable Autos Inc's president was listed as individual Matthew E Austin according to the Oregon Secretary of State Corporate Division.

10.

The phone number for the lot that sold Tucker her vehicle has answered its phone under the names Austin's Affordable Autos and Vancouver Auto Auction interchangeably.

11.

The sign outside the lot that sold Tucker her vehicle read Vancouver Auto Auction.

12.

Austins Affordable, Matthew E Austin, and Vancouver Auction Outlet, Inc. have co-mingled assets and used their names interchangeably, in part to avoid liability from ongoing claims against them, failed to conduct transactions and court filings in their true legal names, and worked in concert with one another, including as principal and agent, to willfully violate the automatic stay in Tucker's bankruptcy case.

13.

Austins Affordable, Matthew E Austin, and Vancouver Auction Outlet, Inc. are collectively referred to as “defendants” in this complaint.

14.

Defendants have failed to observe corporate formalities, failed to ensure the business names they operated under were actively licensed, and knowingly operated under fictional, closed, and otherwise inactive business names, including Austins Affordable, which maintained no assets.

15.

Defendants are legally liable for the acts of each other as alleged in this complaint because allowing them to limit liability to the fictional name listed on their small claim and notice of small claim would allow them to willfully violate the automatic stay without consequence and frustrate the Congressional objectives of the Bankruptcy Code.

16.

### **JURISDICTION**

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

17.

The United States Bankruptcy Court for the District of Oregon has jurisdiction of this action under 28 U.S.C. § 157 and LR 2100-1 because Tucker’s claim arises in her bankruptcy case number 16-30361-rld7, filed *pro se* under Chapter 7 of Title 11 in this United States Bankruptcy Court for the District of Oregon.

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18.

**NATURE OF CLAIM**

This action is a core proceeding under 28 U.S.C. § 157(b)(2) because it concerns the automatic stay (*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 Tucker consents to entry of final orders and judgments by the bankruptcy judge in this adversary proceeding.

19.

Venue is proper in this district because Tucker resides here, defendants conduct their collection activities here, and a substantial part of the acts, events, and omissions giving rise to this controversy took place here.

20.

This complaint's allegations are based on personal knowledge as to Tucker's own conduct and are made on information and belief as to the acts of others.

21.

**FACTUAL ALLEGATIONS**

On February 2, 2016, Tucker filed for bankruptcy protection *pro se* under Chapter 7 of Title 11 in case number 16-30361-rld7 and listed defendants in her schedule of creditors.

22.

On February 4, 2016, Tucker called defendants and provided them notice of her bankruptcy case, including her case number and the contact information for her trustee.

23.

On February 4, 2016, defendants filed a complaint in case number 16SC04974 against Tucker attempting to collect debt incurred prior to the commencement of her bankruptcy case.

24.

On February 5, 2016, defendants delivered their complaint to the Multnomah County Sheriff's Office with instructions to serve the complaint on Tucker at her residence.

25.

On February 15, 2016, after being served with defendants' complaint at her residence, Tucker again spoke with defendants and Tucker again provided defendants notice of her bankruptcy case, including her case number and the contact information for her trustee.

26.

Prior to the filing of her initial answer, Tucker spoke with defendants a third time and during the call defendants confirmed that they were previously well aware of Tucker's bankruptcy case.

27.

On March 3, 2016, defendants continued to prosecute their complaint against Tucker by filing a certificate of service of process in case number 16SC04974.

28.

Defendants' choice to continue prosecuting their complaint against Tucker after receiving multiple notices of the automatic stay and defendants' refusal to take affirmative action to cause dismissal of their complaint against Tucker willfully violated the automatic stay.

29.

As a direct and proximate result of defendants' willful automatic stay violation as described above, Tucker suffered severe ongoing emotional harm consistent with unfair debt collection and has incurred attorney fees and costs.

30.

**CLAIM ONE**

(Willful Violation of the Automatic Stay – Damages)

Tucker incorporates the above allegations by reference.

31.

Defendants' conduct as alleged in this complaint willfully violated the automatic stay in Tucker's bankruptcy case, including and not limited to 11 U.S.C. § 362(a)(1) and (6), because defendants knew of the automatic stay, and their intentional acts and omissions as alleged above violated the automatic stay.

32.

Defendants' violation of the automatic stay as alleged above was "willful" as that term is defined in the Ninth Circuit because defendants' conduct was intentional, defendants had prior actual knowledge of the automatic stay, defendants' acts, omissions, and delays were unreasonable, and any alleged mistake of law was not a defense.

33.

Tucker was injured as a result of defendants' willful violation, and so is entitled to compensation for actual damages, under 11 U.S.C. § 362(k).

34.

**CLAIM TWO**

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

Tucker incorporates the above allegations by reference.

35.

As a direct result of defendants' 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, under 11 U.S.C. § 362(k).

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

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

DATED August 25, 2016

/s/ Michael Fuller  
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