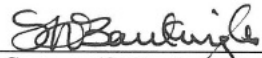




**SO ORDERED.**  
**SIGNED this 22nd day of June, 2018**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.**  
**PLEASE SEE DOCKET FOR ENTRY DATE.**

  
Suzanne H. Bauknicht  
UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

JULIE ANNETTE SCOTT

Debtor

Case No. 3:17-bk-33582-SHB  
Chapter 13

**MEMORANDUM AND ORDER**

Debtor commenced this Chapter 13 case on November 30, 2017, and notice was mailed to her creditors, including Wells Fargo Dealer Services (“Wells Fargo”). Pursuant to the Order Confirming Chapter 13 Plan (“Confirmation Order”) entered on February 21, 2018, Debtor valued the 2016 Nissan Versa securing Wells Fargo’s claim at \$17,000.00, with Wells Fargo to receive monthly payments of \$343.00 plus 6% interest. [Doc. 38.]

Notwithstanding the pendency of this case and the terms of the Confirmation Order, Wells Fargo repossessed Debtor’s 2016 Nissan Versa (the “Versa”) on more than five months after the petition date and more than two months after plan confirmation, on May 2, 2018, necessitating Debtor’s filing of a Motion for Contempt and Turnover (“Motion for Contempt”), seeking damages and turnover of the Versa. [Doc. 43.] On May 9, 2018, the Court held a

hearing on the Motion for Contempt at which no representative of Wells Fargo appeared<sup>1</sup> and found Wells Fargo in contempt for repossessing and failing to return the Versa after demand by Debtor's counsel. The Court scheduled an evidentiary hearing on damages, with copies of the order memorializing the Court's findings served on Wells Fargo. [See Docs. 51, 56.]

On May 23, 2018, the Court held an evidentiary hearing on damages, and Debtor presented testimony pertaining not only to the repossession of her vehicle, but also to the serial communications from Wells Fargo, including a number of telephone calls from Wells Fargo attempting to collect the debt secured by the Versa. Even after she informed Wells Fargo's representatives that she had initiated a Chapter 13 bankruptcy case and they were not supposed to continue contacting her, the calls continued, with the Wells Fargo representatives insisting to Debtor that she could not file for bankruptcy or include the vehicle in her bankruptcy. Debtor also testified as to the actual damages that she incurred from Wells Fargo's repeated communications and repossession of the Versa and its subsequent return, including attorneys' fees and expenses.

### **I. LEGAL AUTHORITY**

Pursuant to 11 U.S.C. § 362(a)(3) and (a)(6), the filing of a bankruptcy petition “operates as a stay, applicable to all entities, of . . . any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[] and/or any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.” In the event a willful violation of the stay occurs – i.e., when “the creditor knew of the stay and violated the stay by an intentional act,” *TranSouth Fin. Corp. v. Sharon (In*

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<sup>1</sup> Wells Fargo was served with the petition and subsequent Court notices, as well as the Motion for Contempt, by either “Electronic Data Interchange (EDI)” or mail at the addresses registered by Wells Fargo with the Bankruptcy Noticing Center. [See Doc. 16, 40, 43.]

*re Sharon*), 234 B.R. 676, 688 (B.A.P. 6th Cir. 1999) – the injured party “shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances, may additionally recover punitive damages.” 11 U.S.C. § 362(k)(1). “A postpetition repossession is unquestionably a violation of the automatic stay,” *Nissan Motor Acceptance Corp. v. Baker (In re Baker)*, 239 B.R. 484, 488 (N.D. Tex. 1999), and under Sixth Circuit authority, “a creditor’s post-petition retention of repossessed property of the debtor may constitute a willful violation of the stay.” *Hartleben v. Carsmart EZ Loan, LLC (In re Hartleben)*, Adv. No. 05-3392, 2006 WL 2089140, at \*2 (Bankr. E.D. Tenn. July 13, 2006) (citing *In re Sharon*, 234 B.R. at 682, 688).

## II. ACTUAL DAMAGES

Wells Fargo’s serial communications with Debtor amounted to numerous violations of the automatic stay. As a result, pursuant to §362(k)(1), Debtor is entitled to actual damages, including costs and attorneys’ fees. Debtor testified that as a result of Wells Fargo’s post-petition repossession of the Versa, she lost ten hours from her employment at Maxim Healthcare at \$17.41 per hour (a total of \$174.10). She also was required to spend \$25.00 for alternate transportation to get to and from work while Wells Fargo wrongly possessed her vehicle. Debtor also incurred mileage costs totaling \$38.15<sup>2</sup> for driving to and from her attorneys’ office twice (a twenty-mile round-trip) and to and from court once (a thirty-mile round-trip), and she paid \$10.00 to park on the day of the damages hearing. Finally, Debtor incurred a total of \$1,396.19 in attorneys’ fees and expenses for filing and prosecuting the Motion for Contempt, as reflected in the Affidavit of John P. Newton, Mayer & Newton. [Doc. 60.]

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<sup>2</sup> The total mileage expense is computed by multiplying seventy miles by the standard mileage rate of 54.5 cents per mile.

### III. PUNITIVE DAMAGES

As authorized by § 362(k)(1), in an appropriate case, the Court may award punitive damages for willful stay violations. In the case of *In re Henderson*, a sister court considered six factors in determining an appropriate punitive damages award including, but not limited to: (1) the nature of the creditor's conduct; (2) the nature and extent of harm to the debtor; (3) the creditor's ability to pay damages; (4) the level of sophistication of the creditor; (5) the creditor's motives; and (6) any provocation by the debtor. *See Henderson v. Auto Barn Atlanta, Inc. (In re Henderson)*, Adv. No. 09-5114, 2011 WL 1838777, at \*9 (Bankr. E.D. Ky. May 13, 2011). A court must also "consider 'the degree of reprehensibility' of the conduct [as well as] 'the disparity between the harm or potential harm suffered . . . and [the] punitive damages award.'" *In re Johnson*, 580 B.R. 766, 801 (Bankr. S.D. Ohio 2018) (quoting *Bavelis v. Doukas (In re Bavelis)*, 571 B.R. 278, 326 (Bankr. S.D. Ohio 2017) (second alteration in original) (citation omitted)). "The Court may also award punitive damages for a willful violation of the automatic stay for the purpose of causing 'a change in the creditor's behavior.'" *In re Carlton*, No. 10-00079-8-RDD, 2013 WL 2297082, at \*5 (Bankr. E.D.N.C. May 24, 2013) (quoting *In re Sands*, No. 10-12205C-13G, 2011 WL 3962491, at \*3 (Bankr. M.D.N.C. Apr. 1, 2011) (quoting *In re Shade*, 261 B.R. 213, 216 (Bankr.C.D.Ill.2001))).

Wells Fargo's multiple violations of the stay were committed in total disregard of the protections afforded to Debtor by the stay and, therefore, were willful and egregious. There was no mere single minor violation of the stay; instead, Wells Fargo, a sophisticated creditor that regularly interacts with the bankruptcy system, repeatedly and willfully violated the stay despite actual notice of the pending bankruptcy. Additionally, through the number of telephone calls, the "advice" to Debtor that she could not include the Versa or Wells Fargo's debt in her

bankruptcy case, and the repossession of the Versa *a full five months* post-petition, Wells Fargo exhibited a blatant disregard for the Bankruptcy Code and the bankruptcy system. Such conduct is akin to the conduct of the creditor in *In re Perviz*, 302 B.R. 357, 373-74 (Bankr. N.D. Ohio 2003), in which the bankruptcy court concluded:

Thus, based upon these facts, this is not simply a case of a creditor who chose to ignore the discharge injunction. Rather, [the creditor]'s actions are demonstrative of a creditor who consciously decided that it, unlike other creditors, was not subject to the discharge injunction. Moreover, this is not the case of a small unsophisticated creditor whose knowledge of the bankruptcy process is limited; instead, [the creditor] has available at its disposal the means to fully know the law, and the ability to ensure compliance therewith. Under such circumstances, the imposition of punitive damages is necessary to preserve the integrity of the bankruptcy system. As observed in *In re Latanowich*, when addressing an award of punitive damages for a violation of § 524:

consequential damages do little more than dispossess the contemnor of its ill-gotten gains, which leaves it in no worse a position than if it had not violated the law at all. This gives [the creditor] no incentive to discontinue its unlawful practice. In the form of punitive damages, the Court will supply this incentive by making it significantly more costly for [the creditor] to do business by illegal methods than by legal ones.

207 B.R. 326, 338 (Bankr. D. Mass. 1997).

In determining the appropriate punitive damages award, this Court has considered a number of factors, including the Supreme Court's admonition that punitive damages may not be imposed with impunity. *Id.* at 374 (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996)). Unquestionably, the nature of Wells Fargo's conduct was egregious. At the May 23 hearing, Debtor testified that on numerous occasions, Wells Fargo called her in attempts to collect the debt owed on her vehicle. On one occasion, Wells Fargo told her that they were coming to take her car to sell it at an auction and that she would be responsible for any remaining balance owed on the vehicle. Debtor also testified that Wells Fargo threatened that she must pay over \$1,000.00 in fees to avoid repossession of her vehicle. After Debtor told Wells Fargo

several times that she had filed a Chapter 13 case, Wells Fargo responded that she could not file for bankruptcy to include the vehicle and Wells Fargo's debt. When Wells Fargo followed through with its threats and repossessed the Versa on May 2, Debtor was terrified that someone had stolen her vehicle because her attorney had assured her that Wells Fargo was lawfully forbidden from repossessing her vehicle given the pending bankruptcy. Additionally, Debtor was harmed by Wells Fargo's egregious behavior because she was forced to miss time from her employment, she was required to spend money on alternate transportation, she incurred parking and mileage expenses for trips to her attorneys' office and court, and she incurred attorneys' fees and expenses because it was necessary for her to file and prosecute the Motion for Contempt.<sup>3</sup>

Wells Fargo is a highly sophisticated creditor, yet its representatives undertook their actions in reckless disregard of the law. Wells Fargo was noticed when Debtor filed her case in November 2017, and Wells Fargo did not object to Debtor's proposed Chapter 13 plan, which in any event, provided fair treatment to Wells Fargo. As a sophisticated creditor, Wells Fargo should have recognized that pursuant to 11 U.S.C. § 1327, it was bound by the confirmed plan and should have recognized the need to seek stay relief if it determined that it was not adequately protected. Debtor even provided Wells Fargo with her attorneys' contact information, but Wells Fargo continued to contact Debtor directly. It appears to the Court that the purpose of Wells Fargo's serial communications with Debtor was to instill fear and to harass her in hopes to collect the debt owed notwithstanding the confirmed Chapter 13 plan. Further, the record reflects that Debtor did not provoke Wells Fargo whatsoever; nor was there any equitable

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<sup>3</sup> Additionally, Wells Fargo is more than capable of paying a punitive damages award. This Court takes judicial notice of the fact that Wells Fargo is a multi-billion-dollar corporation and, therefore, is more than capable of paying Debtor a punitive damages award.

justification for Wells Fargo to act as it did. In fact, at the May 23 hearing, Debtor testified that she was current on her plan payments at the time that Wells Fargo repossessed the vehicle.

Taking into consideration all of these circumstances, the Court is of the opinion that Debtor is entitled to an award of \$11,000.00 in punitive damages. The Court determines that this amount “sufficiently punishes, but is not out of line with awards made by other courts.” *In re Perviz*, 302 B.R. at 373 & n.5.<sup>4</sup>

For the foregoing reasons, the Court directs the following:

1. As a result of Wells Fargo’s repeated willful violations of the automatic stay, Debtor is entitled to actual damages in the amount of \$1,643.44.
2. As a result of Wells Fargo’s egregious and unacceptable willful violations of the automatic stay, Debtor is entitled to punitive damages in the amount of \$11,000.00.
3. No later than August 1, 2018, Wells Fargo shall pay to Debtor’s attorneys the sum of \$9,893.44, representing the actual damages incurred by Debtor and 75% of the punitive damages awarded, and shall pay to the Chapter 13 Trustee, Gwendolyn M. Kerney, the sum of \$2,750.00, representing 25% of the punitive damages awarded, to be administered in accordance with Debtor’s confirmed Chapter 13 plan. A certification under penalty of perjury reflecting both payments have been made shall be filed no later than August 3, 2018.

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<sup>4</sup> The Court determined the amount of punitive damages by computing the May 2018 value of the November 2003 punitive damages award of \$8,000.00 in *In re Perviz* by using the CPI inflation calculator of the United States Department of Labor Bureau of Labor Statistics ([https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)). The result totaled \$10,908.96, which the Court rounded up to \$11,000.00.