

Dated: July 17, 2013
The following is SO ORDERED:




David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re

Monica Lynn Tipton,

Case No. 12-23685 - DSK

Debtor.

Chapter 13

SSN: xxx – xx – 3163

Monica Lynn Tipton,

Plaintiff/Debtor,

v.

Adv. Proc. No. 12-00700

Evans Auto Sales,

Defendant/Creditor.

Memorandum, Order, and Judgment Regarding "Sua Sponte Order For The Defendant, Evans Auto Sales, To Appear And Show Cause Why Additional Compensatory And Punitive Damages And Sanctions Should Not Be Imposed" And Notice Of The Entry Thereof

Introduction

The following constitutes the court's findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052. The instant proceeding under 28 U.S.C. § 157(b)(2), (A), (E), (G), and (O) arises out of adversary proceeding no. 12-00700 because the defendant, Evans Auto Sales ("Defendant"), has failed to comply with prior orders of this court and also has failed to appear in any of the earlier scheduled proceedings before this court to resolve what initially was a 11 U.S.C § 542 turnover complaint regarding a postpetition repossessed 1999 Ford Mustang ("Vehicle") but has morphed into contempt proceedings against the defendant and into a proceeding to determine whether the defendant has committed a 11 U.S.C. § 362(k) "willful violation" of the § 362(a) automatic stay. Aware that this matter has escalated from a routine bankruptcy proceeding to the imposition of actual damages, punitive damages, and related sanctions against the defendant, the court has been careful to give ample notice and opportunity for hearing to the defendant while at the same time balancing the need for the court to uphold its own integrity.

The court to date has already ordered the defendant to turnover the vehicle, found the defendant in contempt of court, sanctioned the defendant by ordering it to pay the plaintiff's attorney fees of \$1,200.00, and prospectively sanctioned the defendant for any "future willful" violations under §362(k). Remaining before the court are the issues of 1) whether a § 362(k) willful and injurious violation of the automatic stay has occurred in the instant case and 2) if so, what damages and sanctions, if any, should be imposed, actual and/or punitive.

The United States district court has exclusive jurisdiction over property of the estate, wherever located and by whomever held, when a case under title 11 is commenced. See 28 U.S.C. § 1334(e)(1). In the Western District of Tennessee, and the other 93 federal judicial districts, this exclusive jurisdiction has been referred to the bankruptcy judges for the District along with all actions, matters, or proceedings arising under title 11 or arising in or related to a case under title 11. 28 U.S.C. §§ 1334 and 157(a); Miscell. Order No. 84-30 (W. D. Tenn. 1984). As noted, these are core proceedings under 28 U.S.C. § 157(b)(2)(A), (E), (G), and (O), as this matter concerns property of the estate (*i.e.*, the vehicle), violations

of the § 362(a) automatic stay arising under title 11, and orders under § 542(a) regarding turnover of the vehicle. Accordingly, the bankruptcy court can hear and determine these core proceedings that arise under the Bankruptcy Code and in this chapter 13 case. 28 U.S.C. § 157(b)(1); *see also In re Skinner*, 917 F.2d 444 (10th Cir. 1990) (§§ 362[(k)]¹ and 105(a) working together provide bankruptcy courts with the statutory authority to hear and determine violations of the automatic stay as core proceedings, and Congress' delegation of this power is constitutional); *see, for example, In re Walters*, 868 F.2d 665 (4th Cir. 1989).

Procedural History

Now, the court recounts the procedural history of this chapter 13 case and adversary proceeding to date:

1. The above-named debtor/plaintiff, Monica Lynn Tipton (“Plaintiff,” “Debtor,” or “Ms. Tipton”), filed the instant chapter 13 petition and plan on April 6, 2012.
2. On April 11, 2012, a “Notice of Commencement of Case under Chapter 13 of the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates” was mailed by first class mail to “Evans Auto Sales” at 5424 Elvis Presley Blvd., Memphis, TN 38116 (“Elvis Presley Address”), as well as other creditors listed in the debtor’s creditor matrix.
3. On July 20, 2012, the court confirmed the debtor’s chapter 13 plan, which provided, in relevant part, that the defendant, Evans Auto Sales would receive a monthly payment of \$120.00 on its allowed secured claim of \$6,384.00. Defendant, Evans Auto Sales, has not filed a proof of claim in this case.
4. On December 4, 2012, the plaintiff filed a turnover complaint under § 542(a) against the defendant, Evans Auto Sales.
5. On December 7, 2012, the plaintiff filed an “Amended/Corrected Complaint.”

¹ The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BACPA), Pub. L. 109-8, 119 Stat. 23, § 305(1)(B), redesignated former subsection (h) as subsection (k).

6. On December 11, 2012, the Bankruptcy Court Clerk issued a “Notice of Expedited Hearing,” setting a hearing on December 20, 2012. This notice was mailed on December 13, 2012, by first class mail, to “Evans Auto Sales” at the Elvis Presley address.
7. On December 20, 2012, the court held a hearing on the plaintiff’s turnover complaint. Plaintiff was represented by counsel; however, no one appeared on behalf of the defendant. The court determined “Evans Auto Sales” repossessed the vehicle after the bankruptcy commenced and granted the turnover complaint.
8. On January 4, 2013, the court issued an order styled “Order Granting Complaint for Turnover of the Estate and Notice of Entry of Judgment.” On January 6, 2013, the Bankruptcy Court Clerk caused this order and notice to be sent by first class mail to “Evans Auto Sales” at the Elvis Presley address and 6424 Elvis Presley Blvd., Memphis, TN 38116.²
9. On January 17, 2013, the plaintiff filed a “Motion for Contempt” against the defendant “Evans Auto Sales” for its failure to turnover the debtor’s vehicle. Specifically, the plaintiff sought damages against the defendant including the return of the vehicle or being provided with a vehicle of similar value.
10. On January 22, 2013, the Bankruptcy Court Clerk issued a “Notice of Hearing,” setting a hearing on February 12, 2013, and this notice was mailed on January 24, 2013, by first class mail to “Evans Auto Sales” at the Elvis Presley address.
11. The February 12, 2013 hearing was continued three times, while the plaintiff’s counsel attempted to contact the defendant. Defendant did not appear at any of the four scheduled hearings and plaintiff’s counsel also appears to have been unsuccessful at contacting the defendant in any meaningful way.
12. On April 1, 2013, the plaintiff amended the motion for contempt and sought sanctions against the defendant. Specifically, the plaintiff also sought reasonable attorney fees to be assessed against

² The record does not indicate why an additional notice was sent to 6424 Elvis Presley Blvd, Memphis, TN, 38116. This notice appears to be a clerical mistake. Notice also was sent to the correct Elvis Presley address.

and paid by the defendant and that the outstanding balance of the debt owed on the vehicle be discharged.

13. On April 2, 2013, the Bankruptcy Court Clerk issued a “Notice of Hearing,” setting a hearing on April 9, 2013, and this notice was mailed on April 4, 2013, by first class mail to “Evans Auto Sales” at the Elvis Presley address.
14. The April 9, 2013 hearing was continued two times. Defendant did not appear at any of the three scheduled hearings.
15. On May 7, 2013, the Court declined to continue the proceeding any further. The court bifurcated the plaintiff’s motion for contempt separating the finding of contempt and the sanctions, if any, to be imposed. Plaintiff’s counsel appeared and provided statements to the court. Defendant, again, did not appear.
16. On May 8, 2013, the court issued an “Interim Order Granting Amended Motion for Contempt.” The court found the defendant in contempt of its prior turnover order and set a hearing for May 7, 2013, for the court to determine sanctions, if any, to be imposed including, but not limited to, monetary damages, cancellation of liens or debts, substitution of collateral, if no longer in the defendant’s possession, and reasonable attorney’s fees.
17. On May 10, 2013, the order and notice were mailed by first class mail to the defendant at the Elvis Presley address and 6424 Elvis Presley Blvd., Memphis, TN 38116.
18. On May 15, 2013, the plaintiff filed a “Motion for Allowance of Compensation of Expenses to Plaintiff’s Attorney from Defendant” seeking to have \$1,200 set as the attorney’s fees to be paid by the Defendant pursuant to the May 8 order.
19. On May 16, 2013, the Bankruptcy Court Clerk issued a “Notice of Hearing,” setting a hearing on May 21, 2013, and this notice was mailed on May 18, 2013, by first class mail to “Evans Auto Sales” at the Elvis Presley address.

20. On May 21, 2013, the court held a hearing on the plaintiff's motion for allowance of compensation and expenses. Plaintiff's counsel offered statements. Defendant did not appear. The court granted the plaintiff's motion and imposed attorney's fee in the amount of \$1,200.00.
21. On May 22, 2013, the court, on its own initiative, issued a "Sua Sponte Order for the Defendant, Evans Auto Sales, to Appear and Show Cause Why Additional Compensatory and Punitive Damages and Sanctions Should Not Be Imposed Combined with Related Orders and Notice of the Entry Thereof." The show cause hearing was set for June 18, 2013. This show cause order initiated the instant proceeding before the court and raised the § 362(k) violation issue and additional civil contempt and sanction issues resulting from the turnover complaint. Due to the nature of the issues raised in this case, the show cause order was entered both in the chapter 13 case and the adversary proceeding.
22. On May 24, 2013, the order and notice were mailed twice by first class mail to "Evans Auto Sales" at the Elvis Presley address. One mailing was associated with the chapter 13 case and a second mailing was associated with the adversary proceeding.
23. On May 31, 2013, the order granting the motion for allowance of compensation and expenses was entered. On June 2, 2013, this order and notice were mailed by first class mail to "Evans Auto Sales" at the Elvis Presley address.
24. On June 3, 2013, the Bankruptcy Court Clerk issued a "Notice of Hearing," setting a hearing for the remaining portion of the bifurcated motion for contempt and sanctions on June 18, 2013, to coincide with the show cause hearing; and this notice was mailed on June 5, 2013, by first class mail to "Evans Auto Sales" at the Elvis Presley address.
25. On June 18, 2013, the court held the show cause hearing and the hearing on the remaining portion of the bifurcated motion for contempt and sanctions. Plaintiff's counsel offered statements; the defendant did not appear.
26. On June 24, 2013, the court issued an Order arising out of the June 18, 2013 hearings. The court ordered as a sanction, "that in the event Evans is prospectively found to be in 'willful violation of

the stay' under 11 U.S.C. § 362(k) in any title 11 case filed in this judicial district, a Twenty Five Thousand (\$25,000) sanction shall be immediately imposed against Evans without further notice and a hearing, and an order. Such funds shall be payable and delivered to the Standing Chapter 13 Trustee to be held pending further direction and order of this court regarding the distribution and allocation of the funds.” In addition, the court scheduled a second show cause hearing for July 8, 2013, and directed Plaintiff’s counsel to reach out to Defendant and attempt to consensually resolve the litigation and to file a report with the court.

27. Also, on June 24, 2013, the court issued a “Sua Sponte Informational Notice to the Defendant, Evans Auto Sales, Combined with Related Orders and Notices.” On June 26, 2013, the order, notice, and informational notice were mailed by first class mail to “Evans Auto Sales” at the Elvis Presley address.
28. On July 2, 2013, the court issued a “Sua Sponte Order Directing the Parties to File a Special Report Combined with Related Orders and Notice of the Entry Thereof.” On July 4, 2013, this order and notice were mailed by first class mail to “Evans Auto Sales” at the Elvis Presley address.
29. Due to the defendant’s failure to appear, on July 8, 2013, the court continued the scheduled hearing to July 15, 2013.
30. On July 9, 2013, the court provided additional notice to “Evans Auto Sales” at 6386 Winchester Road, Memphis, TN 38115 (“Winchester address”). All prior orders on related matters were attached to this additional notice.
31. On July 12, 2013, the plaintiff filed a “Notice of Special Report Regarding Private Conference.” Plaintiff’s counsel detailed his interaction with the defendant and indicated that he now believed “Evans Auto Sales” was no longer operating at the Elvis Presley address or the Winchester address. Further, counsel mailed a copy of the July 9, 2013 notice to “Evans Auto Sales, LLC,” at a third address at 8830 Hwy 51 North, Southaven, MS 38671. Plaintiff’s counsel also explained his failed attempts to discuss the matters with the defendant by phone and fax.

32. On July 15, 2013, the court held the final hearing on all of these matters. Defendant failed to appear. At the hearing the debtor, Ms. Tipton, provided sworn testimony. Specifically, she testified, among other things, that 1) the sales price of the vehicle was approximately \$6,900.00; 2) she paid \$2,000.00 as a down payment in approximately January 2012; 3) her payment for the vehicle was approximately \$425.00 per month; 4) she was behind on her scheduled payments at the time the chapter 13 petition was filed; 5) she retained postpetition possession of the vehicle until November 2012; 6) Evans Auto attempted some type of ploy in August 2012 to get her to voluntarily return the vehicle; 7) she contacted her attorney about this ploy and had her attorney notify Evans Auto that she was in bankruptcy; 8) nonetheless, the defendant Evans Auto, repossessed the vehicle in November 2012; 9) the vehicle at the time of repossession contained personal property estimated in value at \$250.00, which includes cash, clothes, basketball hats, and eyeglasses; 10) she estimates the value of the vehicle at the time of the hearing to be approximately \$4,000.00; and 11) she needs the vehicle or a replacement vehicle for her personal use. The court took these matters under submission for further consideration and now addresses the issues before the court in this memorandum and order.

Findings of Fact and Conclusions of Law

The filing of a chapter 13 petition under the Bankruptcy Code causes the automatic stay to come into existence by operation of law by virtue of 11 U.S.C. § 362(a). Specifically, this automatic stay operates to stay “any act to obtain possession of property of the estate . . . or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Property of the estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a).

Here, according to the debtor’s testimony at the July 15, 2013 hearing and in agreement with the her Schedules B-25 and D along with the Statement of Financial Affairs,³ the vehicle was in Ms. Tipton’s

³ Debtor listed the vehicle in her Schedule B-25 with a value of \$6,384.00. In addition, the debtor listed :Evans Auto Sales” as a secured creditor in Schedule D with a claim of \$6,384.00 associated with an “Installment Agreement” regarding the vehicle. Finally, in the Statement of Financial Affairs, debtor did not list any repossession as having occurred as of the petition date.

possession at the time the chapter 13 petition was filed; therefore, the filing of the chapter 13 case caused the vehicle to become § 541(a) property of the estate. Furthermore, the automatic stay was in operation upon the filing of the chapter 13 petition and operated as a stay against any act to obtain possession (i.e., repossession) of the vehicle.

Having established that the vehicle is property of the estate, the court, now, finds that the defendant violated the automatic stay at least three times, first, when it contacted the Debtor attempting to get the debtor to voluntarily turnover the Vehicle in August 2012, second, when it repossessed the vehicle in November 2012, and, third, by exercising control over the vehicle for the nine months beginning with repossession and running to date. Debtor testified that the defendant contacted her by phone in August 2012 and that the defendant represented itself as “the sheriff” in a ploy to coerce her to voluntarily turnover the vehicle to the defendant. This ploy, in addition to likely being fraudulent and unlawful under Tennessee and Mississippi laws and violating federal Fair Debt Collection Practices, was an act to obtain possession of property of the estate and directly violated the automatic stay under § 362(a)(3). Furthermore, the debtor testified that the defendant repossessed the vehicle in November 2012, and deprived both the estate of possession of its property and also deprived the debtor of the vehicle’s use. This repossession directly violated the automatic stay and the continued possession of the vehicle (or a potential resale after repossession) also violates the automatic stay under § 362(a)(3). The natures of these violations under a totality of the particular facts and circumstances are egregious as the defendant retained possession of the vehicle after it was ordered to return it in the turnover adversary proceeding. Even a creditor who innocently violates the automatic stay has an affirmative duty to restore the status quo without the debtor having to invoke the aid of the court. The creditor’s failure to do so constitutes a willful violation of the stay. *In re Dungey*, 99 B.R. 814 (Bankr. S.D. Ohio 1989).

As three violations of stay have occurred, the question now turns to the remedy. Section 362(k)(1) provides that where an individual is injured by a willful violation of the stay, the debtor shall recover actual damages, including costs and attorneys’ fees, and in appropriate circumstances, may recover punitive damages. Actions taken in violation of the automatic stay imposed under § 362(a) are

invalid and voidable and shall be voided absent limited equitable circumstances. *Easley v. Pettibone Michigan Corp.*, 990 F.2d 905 (6th Cir. 1993); *see also In re Smith*, 876 F.2d 524 (6th Cir. 1989). As noted, an innocent creditor who has initiated collection action without knowledge of the filing of a bankruptcy petition has an affirmative duty to restore the status quo without the debtor having to seek relief from the bankruptcy court. *See, among others, In re Dungey*, 99 B.R. 814 (Bankr. S. D. Ohio 1989). The refusal to return the property upon learning of the bankruptcy filing is itself a “willful violation” of the automatic stay provisions and may be contemptible. That is, the innocent creditor has an affirmative duty to return the property and restore the status quo once it learns its actions violated the stay. *See In re Miller*, 10 B.R. 778 (Bankr. D. Md. 1981), *aff’d* 22 B.R. 479 (D. Md. 1982); *Matter of Clark*, 60 B.R. 13 (Bankr. N.D. Ohio 1986). Actually, the creditor should undo its postpetition collection activities without the debtor having to seek affirmative relief from the bankruptcy court. *Id.* To place the onus on the debtor to take affirmative legal steps to recover property repossessed in violation of the stay would subject the debtor to the financial pressures the automatic stay was designed to temporarily abate, and render the breathing spell from creditors illusory. *Id.*

Where the bankruptcy court is authorized to act under title 28 and the Bankruptcy Code, as is the case here under § 362(k), the bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105; *see also In re Skinner*, 917 F.2d 444 (10th Cir. 1990); *In re Walters*, 868 F.2d 665 (4th Cir. 1989). Bankruptcy court enforcement against § 362(k) violations is akin to civil contempt motions. *Id.* The injured debtor is entitled to recover actual damages resulting from the stay violation. 11 U.S.C. § 362(k). “If the bankruptcy court believes that the amount of such actual damages is insufficient to deter . . . deliberate and repeated violations of the automatic stay . . . , the bankruptcy court is free to impose an appropriate amount of punitive damages.” *Archer v. Macomb County Bank*, 853 F.2d 497 (6th Cir. 1988).

As to the instant case, the defendant’s actions appear to be a clear, willful violation of the automatic stay because the defendant has been on notice of the bankruptcy filing and all subsequent actions taking place within both the chapter 13 case and the related adversary proceeding. Debtor listed

the defendant in the chapter 13 schedules and matrix. Notice of the filing of the case and every subsequent notice were sent to the defendant at the Elvis Presley address.⁴ All three violations of the automatic stay occurred while the defendant was on notice; therefore, the failure to remedy the violation and the failure to appear and offer a good faith defense to the violation under § 362(k)(2) demonstrates the continued willful violation of the automatic stay. The court issued a show cause order in both the chapter 13 case and the turnover adversary proceeding. Defendant did not appear and was held in contempt.

As recounted by the court in the procedural history set forth above, the court has continued hearings related to the defendant's actions on numerous occasions in an attempt to assure that the defendant was given ample time and opportunity to appear and defend itself. The court has made concerted efforts to encourage plaintiff's counsel to reach out to defendant; and plaintiff's counsel, as demonstrated by the plaintiff's "Special Report Regarding Private Conference," has attempted to reach the defendant by mail, phone, and fax. Furthermore, the court sent additional notice to a second address in an attempt to be overly cautious before imposing sanctions for contempt and/or damages for violation of the automatic stay.⁵ Similarly, the plaintiff became aware of a potential third address for the defendant and provided notice of the show cause hearing to this third address in addition to attempting to make contact with the defendant at this new address. None of the efforts by both the Court and the plaintiff have caused defendant to respond and remedy the automatic stay violations. To date, the court has scheduled fourteen hearings regarding the defendant's actions of repossessing the vehicle. Notice was provided to the defendant's Elvis Presley address each time and in some instances notice was provided to the two additional addresses. These hearings took place from December 2012 until the instant hearing

⁴ The court takes judicial notice of the Tennessee Secretary of State's website that provides business entity information regarding registered Tennessee entities at <https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx>. Per the Secretary of State's business entity search, Evans Auto LLC is an active Limited Liability Company in Tennessee with both a Principal Office and Mailing Address at 5424 Elvis Presley Blvd, Memphis, TN 38116. In addition, per the same website, the registered agent for Evans Auto LLC is also listed at this address.

⁵ The court was aware of Evans Auto LLC filing a proof of claim in unrelated case and noted that a different address was listed. The court provided additional notice to this alternate address.

that occurred on July 15, 2013. If eight months, 14 scheduled hearings, and enough notices to comprise a lengthy, though dull, book do not get the defendant's attention, then it appears no action by the court or plaintiff can be reasonably calculated to get defendant to respond and remedy the violations of stay. Thus, this court has no other choice but to find the defendant in willful violation of the automatic stay in accordance with § 362(k)(1) and also in civil contempt of court for its willful disregard of the court's prior turnover order and show cause hearings.

The court has already sanctioned, in part, the defendant by ordering the defendant to pay the plaintiff's attorney fees of \$1,200.00 and has also prospectively sanctioned the defendant by causing any future willful violation of the automatic stay in any case to result in \$25,000.00 having to be paid to the chapter 13 trustee (discussed above). These already imposed sanctions do not fully remedy the situation. Debtor has been without her vehicle for nine months and has been forced into this litigation due to the defendant's egregious and willful conduct and disrespect of this court's orders. Both actual damages and punitive damages in addition to the award of attorney fees are appropriate under the circumstances of this chapter 13 case and adversary proceeding.

The court awards a judgment for actual damages of \$8,350.00 against the defendant in favor of the plaintiff. These actual damages consist of \$6,900.00 for the deprivation of the vehicle and \$250.00 for the taking of plaintiff's personal property other than the vehicle and also incorporates the prior sanctions awarded for attorney fees in the amount of \$1,200.00. Debtor, Ms. Tipton, testified that the sales price for the vehicle in January 2012 was approximately \$6,900.00 and that she valued the vehicle in the approximate amount of \$4,000.00 as of the hearing on July 15, 2013. As the first violation of the automatic stay occurred in August 2012, the court finds that the value at the January 2012 sales date to be the better valuation of the vehicle as compared to the July 15, 2013 valuation by the plaintiff. In addition, the court finds under the circumstances that a used case dealer, the defendant, and its sales price valuation to be more reasonable than the plaintiff's testimony valuation, which occurred eight months since the last time she saw the vehicle and without any expertise in valuing automobiles. In addition to the \$6,900.00 related to the vehicle, the debtor, Ms. Tipton, testified that personal property valued at \$250.00 was

located inside the vehicle when it was repossessed by the defendant. The court finds this additional \$250.00 to be actual damages, as well. Finally, the court previously awarded attorney fees of \$1,200.00 for the defendant's contempt of court, and the court now incorporates those sanctions into this judgment and damage award. Therefore, the court determines actual damages in the amount of \$8,350.00.⁶

In order to deter defendant from acting in this egregious and willfully injurious manner in the future and to uphold the integrity of this court, the court also awards punitive damages and sanctions under § 362(k)(1) by equitably voiding any lien the defendant has regarding either property of the estate or property of the debtor.⁷ *See Hubbard v. Fleet Morg. Co.*, 810 F.2d 778 (8th Cir. 1987) (finding no abuse of discretion where a bankruptcy court released a deed of trust lien as a punitive sanction for a willful violation of the automatic stay); *see also In re Nettles*, 489 B.R. 239 (N.D. Ala. 2013) (affirming the bankruptcy court's determination that a debt and lien should be discharged as a sanction for willfully violating the automatic stay).

In addition, the court incorporates the punitive sanction already imposed for the defendant's contempt of court. In the event the defendant Evans is prospectively found to be in "willful violation of the stay" under § 362(k) in any title 11 case filed in this judicial district, a Twenty Five Thousand (\$25,000.00) sanction shall be immediately imposed against the defendant Evans Auto without further notice and a hearing, and an order. Such funds shall be payable and delivered to the Standing Chapter 13 Trustee to be held pending further direction and order of this court regarding the distribution and allocation of the funds. Plaintiff is authorized to execute any documents or the recording of this order as

⁶ The court continues to strongly encourage the defendant and the plaintiff's counsel to seek to consensually remedy this willful automatic stay violation. Though money damages have been awarded and a private right enforceable under state law is created, nothing in this order prohibits the defendant from offering a vehicle of comparable value to the money damages and the plaintiff from accepting such offer in lieu of enforcing her money judgment through future actions.

⁷ By equitably voiding the defendant's liens, any remaining debts against the plaintiff will be unsecured and subject to the chapter 13 discharge if the plan is completed. The equitable voiding of the lien, here, is not to be confused with the strip-down or strip-off procedures that routinely occur under §§ 506(a), 506(d), 522(f), or § 1322(b)(2). In addition, any lien, having been equitably voided here, is not to spring back if the debtor's chapter 13 case is dismissed. *See* 11 U.S.C. § 1325(a)(5)(B)(II). The equitable voiding of any of the defendant's liens is a final judgment and is not subject to any contingencies.

necessary under Tennessee and/or any other state law (*e.g.*, Mississippi) in order to reflect this court's extinguishment of the defendant's lien.

Based on the foregoing and the entire case record as a whole, IT IS ORDERED⁸ AND NOTICE IS HEREBY GIVEN that:

1. The defendant, Evans Auto Sales, has willfully and injuriously violated the automatic stay as contemplated under §362(k) in three instances: first, its August 2012 ploy to have the debtor voluntarily turnover the vehicle; second, its November 2012 repossession of the vehicle; and, third, its continued possession of the vehicle in defiance of both the automatic stay and the court's order granting turnover;
2. Actual damages in the amount of \$8,350.00 are awarded as a judgment against the defendant and in favor of the plaintiff;
3. The defendant's willful violations of stay are so egregious as to justify additional punitive damages and sanctions that include equitably voiding the defendant's lien against either property of the debtor or property of the estate;
4. As a prospective punitive sanction incorporated from a prior order of this court, in the event the defendant Evans is prospectively found to be in "willful violation of the stay" under § 362(k) in any title 11 case filed in this judicial district, a Twenty Five Thousand (\$25,000.00) sanction shall be immediately imposed against Evans without further notice, hearing, and order. Such funds shall be payable and delivered to the Standing Chapter 13 Trustee to be held pending further direction and order of this court regarding the distribution and allocation of the funds.

The Bankruptcy Court Clerk is directed to cause a copy of this Memorandum, Order, Judgment and Notice to be sent to the following entities:

⁸ This order/judgment is capable of being recorded in other districts to facilitate its collection and enforcement.

Evans Auto Sales
5424 Elvis Presley Blvd.
Memphis, TN 38116

Evans Auto Sales
6386 Winchester Road
Memphis, TN 38115

Evans Auto Sales
8830 Hwy 51 North
Southaven, MS 38671

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