UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **JOANE LISA BOUDREAU**, Debtor.	Case No. **04-62410-13**

MEMORANDUM OF DECISION

At Butte in said District this 20th day of January, 2006.

In this Chapter 13 case, hearing was held at Missoula after due notice on December 8, 2005, on Debtor's second Motion for Sanctions against Riverside County, California, Department of Child Support Services ("Riverside DCSS"), filed October 27, 2005, for additional willful violations of the automatic stay committed by Riverside DCSS and its representative Diana E. Inzer ("Inzer") in violation of 11 U.S.C. § 362(h)[1], by garnishment of Debtor's wages. The Debtor Joane Lisa Boudreau ("Lisa" or "Debtor") appeared and testified, represented by attorney Nikolaos G. Geranios ("Geranios"). Riverside DCSS and Inzer failed to appear at the hearing, despite being specifically ordered to appear by this Court in its "Order and Notice of Civil Contempt Proceeding" entered on November 14, 2005. Debtor's Exhibits

[1] This memorandum cites to 11 U.S.C. § 362(h) concerning the relief that is available to the Debtor for a violation of the stay by a creditor, even though the Bankruptcy Abuse Prevention and Consumer Protections Act of 2005, effective for most provisions on October 17, 2005, amended 11 U.S.C. § 362(h) and redesignated it as 11 U.S.C. § 362(k). This contested matter is governed by the prior Code provision.

("Ex.") A, B, C, D, E, F and G were admitted into evidence at the hearing[2], and at Debtor's request the Court took judicial notice that Riverside DCSS is listed on the Debtor's mailing matrix and was sanctioned in prior proceedings in this case, after notice and a hearing, for willful violation of the stay by Memorandum of Decision, Order and Judgment entered by the Court on July 29, 2005 (Docket Nos. 52, 53 and 54).

At the conclusion of the Debtor's case-in-chief the Court granted Debtor's counsel Geranios ten (10) days in which to file an affidavit of attorney's fees and costs incurred by the Debtor in relation to her second Motion for Sanctions. This Court, at hearing, granted Debtor's second Motion for Sanctions and awarded the Debtor judgment against Riverside DCSS for all lost wages and additional garnishments, hospital bills, and in addition awarded the Debtor her attorney's fees and costs as proven by affidavit, plus an award of $10,000.00 against Riverside DCSS for emotional distress caused by its willful violation of the stay, and lastly the Court disallowed Riverside DCSS's Proof of Claim No. 7 filed in this case on November 18, 2004, in its entirety and discharged the Debtor from all further liability to DCSS, except that the payments already made to Riverside DCSS would be honored. With respect to DCSS's representative Inzer, the Court awarded the Debtor Judgment against Inzer in the amount of $10,000.00 in punitive damages under § 362(h).

The Court directed the Debtor to advise it immediately of any further violation of the stay by Riverside DCSS, and ordered that copies of the Court's Memorandum of Decision, Judgments and Order be sent to Riverside DCSS, to Debtor's employer, and all her recent creditors stating

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[2]The Court granted the Debtor 5 days to submit her hospital bill and Ex. G, her bill for a psychiatric follow up exam. She filed Ex. G and H on December 15, 2005. Ex. H is admitted into evidence.

that any delinquencies in monthly payments by the Debtor were not the fault of the Debtor but rather were the fault of Riverside DCSS. The Court further directed that copies be sent to the three national credit reporting agencies and to local Missoula credit agencies with directions to place copies of the Memorandum of Decision, Order and Judgments in any file pertaining to the Debtor Joane Lisa Boudreau with a notation that any difficulty in payment by the Debtor during the period of garnishment was not the fault of the Debtor but rather the result of improper garnishment by Riverside DCSS in willful violation of the automatic stay in violation of 11 U.S.C. § 362(h).

Geranios filed his affidavit of fees and costs incurred in connection with Debtor's second motion for sanctions on December 16, 2005, together with an application for compensation and a notice to parties, including Riverside DCSS, granting ten (10) days to respond and request a hearing, the failure of which shall be deemed an admission that the relief requested should be granted. Geranios' application and affidavit set forth fees of $1,047.60 and costs in the sum of $16.75 in adequate detail as supported by billing statements. Upon review of Geranios' application and affidavit, and in the absence of any objection by Riverside DCSS after notice, the Court finds that the $1,047.60 in fees and $16.75 in costs requested are reasonable and necessary.

This Court has jurisdiction over this Chapter 13 case under 28 U.S.C. § 1334(a). Debtor's Second Motion for Sanctions is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision includes the Court's findings of fact and conclusions of law. These contempt proceedings are governed by F.R.B.P. 9020 and 9014.

FACTS

Lisa Boudreau is 40 years old, divorced, and lives in Bonner, Montana. At the time of the

hearing on December 8, 2005, Lisa testified that she was employed at the business listed on Ex. E, "TRI EAST, INC./DBA ROWDY'S/OLE'S #12/DIXIES DINER". Lisa testified that she paid child[3] support to Riverside DCSS for years, that the original amount of child support she owed Riverside DCSS was $1,100.00, an amount she paid, and that she kept up with her payments unless she was out of work. Riverside DCSS obtained a wage garnishment order on Lisa's regular paycheck when she worked at Albertsons in Missoula, which garnished her wages. She testified that she did not learn of the garnishment until another $1,000 in interest had accrued on her child support obligation, and that the claim of Riverside DCSS was the result of compounded interest.

Lisa filed a voluntary Chapter 13 petition, Schedules, Statements and Plan on August 4, 2004. Schedule E lists Dept of Riverside DCSS as a creditor holding a priority claim for child support arrears in the amount of $3,400. The address listed for that creditor on Schedule E is 2041 Iowa Ave, Riverside, CA 92507.

Geranios sent Riverside DCSS a letter advising of Lisa's bankruptcy and the automatic stay, and that her Chapter 13 Plan provides for payment of Lisa's back child support obligation. The official Notice of Commencement of the case was mailed to creditors, including Riverside DCSS[4], on August 7, 2004. The Notice advises creditors in bold print: "Creditors May Not Take Certain Actions", followed by the explanation: "The filing of the bankruptcy case

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[3]Schedule I lists one dependent, a son aged 19. Debtor testified at the hearing that her son is now 20.

[4]The Notice of Commencement was sent to Dept of Riverside DCSS at 2041 Iowa Ave, Riverside CA 92507-2414. Except for the "-2414", the address on the Notice of Commencement is the same as the address provided on Riverside DCSS's Proof of Claim No. 7 as where notices should be sent, and the same as on Schedule E.

automatically stays certain collection and other actions against the debtor and the debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized." Page 2 of the Notice provides further explanation:

> Prohibited collection actions against the debtor . . . are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

No contention exists in the record that Riverside DCSS did not receive notice of Lisa's bankruptcy filing[5].

Notwithstanding the notice and Geranios' letters, Riverside DCSS's garnishment of Debtor's earnings continued for a month and a half after she filed her bankruptcy petition, until October 4, 2004.

The hearing on confirmation of Debtor's Plan was set for November 4, 2004, by Order (Docket #9) entered September 20, 2004, which was served on the parties including Riverside DCSS on September 22, 2004. That Order advises the parties that if no objections to confirmation have been filed at least 10 days prior to the date of the hearing and the Trustee files a consent, the Court will confirm the Plan without a hearing.

The Debtor filed an amended Plan on September 28, 2004, which was served on the creditors including Riverside DCSS. The amended Plan provides for payments over 48 months,

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[5]The Declaration of Karen Renee Langehennig attached to Riverside DCSS's motion to continue (Docket # 40) states that Riverside DCSS received notice of Lisa's bankruptcy on August 10, 2004.

and at paragraph 2(d) states that allowed priority claims will be paid, as is required by 11 U.S.C. § 1322(a)(2), and further states: "Debtor specifically asserts that she has two priority claims: one for back Child Support in the amount of $3,400.00; and one for Federal taxes in the amount of $933.12." The Chapter 13 Trustee filed a consent to confirmation on September 30, 2004. Despite receiving notice of the hearing Riverside DCSS did not file an objection to confirmation, but sent Geranios a communication in which it stated the amount of its claim against Lisa as $4,517.17, including $989.44 in adjustments post-petition from 8/25/04 to 9/25/04. Based upon the Trustee's consent to confirmation, and with no other objections having been timely filed, the Court entered an Order confirming the Debtor's Plan on October 26, 2004.

Riverside DCSS filed Proof of Claim No. 7 on November 18, 2004, asserting a priority claim in the amount of $4,535.37 and listing its address where notices should be sent as 2041 Iowa Avenue, Riverside, CA 92507. On December 2, 2004, the Debtor filed an objection to Riverside DCSS's Proof of Claim No. 7 on the grounds it was overstated. Debtor's objection was served on Riverside DCSS at the address listed on Proof of Claim No. 7 and includes the notice required by Montana Local Bankruptcy Rule (Mont. LBR) 3007-2 which gave Riverside DCSS ten (10) days to respond and request a hearing, the failure of which "shall be deemed an admission that the relief requested should be granted." Debtor's objection requested that Riverside DCSS's priority claim in the amount of $4,535.27 be disallowed and allowed as a priority claim in the amount of $3,497.35. Debtor's objection further states: "Additionally, debtor intends to file an adversary proceeding against this creditor for repeated violations of the stay."

Riverside DCSS failed to respond to Debtor's objection to its Proof of Claim. After the

notice period expired the Court entered an Order (Docket #23) on December 16, 2004, sustaining Debtor's objection and allowing Riverside DCSS's Proof of Claim No. 7 as a priority claim in the amount of $3,497.35. That Order was not appealed by Riverside DCSS, nor did it seek reconsideration or other relief. Despite that Order Riverside DCSS never acknowledged the reduced allowed amount of its priority claim. On March 3, 2005, Geranios received from Riverside DCSS a statement, notwithstanding this Court's Order allowing its priority claim in the amount of $3,497.35 and the Orders confirming Debtor's Chapter 13 Plan, stating the amount of its support claim as of 2/18/05 as $4,676.17. By later communication received by Geranios April 4, 2005, Riverside DCSS asserted its claim in the amount of $4,707.97.

The Trustee filed a motion to vacate the confirmation Order on February 18, 2005, based on Riverside DCSS's priority claim. Debtor filed a second and then a third amended Plan, to the latter of which the Trustee consented and Debtor's Third Amended Plan was confirmed on April 6, 2005[6]. The confirmed Plan provides that allowed priority claims, which includes Riverside DCSS's priority claim as allowed by the Court, shall be paid by the Trustee.

Debtor filed her first motion for sanctions against Riverside DCSS on March 16, 2005, alleging contempt for violations of the automatic stay by said creditor garnishing her wages after the petition date and ignoring the Court's Order sustaining Debtor's objection to Riverside DCSS's claim. The attached certificate of service signed under penalty of perjury states that Debtor's motion was served on Riverside DCSS at its address of record and at an alternative post office box address. The motion includes a notice in conformity with Mont. LBR 9013-1(d)

[6]A subsequent modification of Debtor's Plan was filed June 13, 2005, and confirmed by Order entered June 27, 2005, with the Trustee's consent and with no objection by creditors, including Riverside DCSS, after notice.

granting Riverside DCSS 10 days to respond and request a hearing, the failure of which "shall be deemed an admission that the relief requested should be granted." As with Debtor's objection to its Proof of Claim, Riverside DCSS failed to respond and request a hearing on Debtor's motion for sanctions. The Court entered an "Order and Notice of Contempt Proceeding" on March 30, 2005 (Docket #32), advising Riverside DCSS of the conduct alleged by the Debtor for which she seeks sanctions, and setting a hearing on May 5, 2005, "at which hearing Riverside County Department of Child Support Services **SHALL APPEAR** and show cause why it should not be held in civil contempt and subject to sanctions for violation of the automatic stay and failure to comply with this Court's Order entered December 16, 2004." That Order was served on Riverside DCSS, but it failed to appear at the May 5, 2005, hearing in compliance with the Court's Order.

On May 3, 2005, Riverside DCSS filed a motion dated April 28, 2005, to continue the hearing and civil contempt proceeding[7]. The accompanying declaration states that Riverside DCSS ceased all enforcement actions, that it was not served with Debtor's motion for sanctions, and intends to respond. The Court denied Riverside DCSS's motion to continue by Order entered May 4, 2005, finding that Riverside DCSS failed to show good cause[8] to continue the hearing, which was held as scheduled on May 5, 2005. Riverside DCSS failed to appear as

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[7]The Court's Order of March 30, 2005, ordering Riverside DCSS to appear in bold print and capital letters, is attached to Riverside DCSS's motion to continue.

[8]Mont. LBR 5071-1, "Request for Continuance" governs continuances and requires the party requesting a continuance to file the motion at least 3 business days prior to the scheduled hearing, advise the Court of the affected party's response to the request or what attempts have been made to gain each party's consent. Riverside DCSS's motion for continuance was not filed 3 business days prior to the hearing, and failed to advise the Court of the Debtor's consent. Debtor filed an objection to Riverside DCSS's motion for continuance.

ordered by the Court.

By Memorandum of Decision and Order entered on July 29, 2005, the Court entered Judgment on July 29, 2005, against Riverside DCSS in the amount of $531.84 for actual damages caused by Riverside DCSS's garnishment in willful violation of the stay, plus damages for emotional distress in the amount of $2,000.00, attorney's fees of $1,508.40 and costs of $12.80 for a total award in the amount of $3,603.04. Docket Nos. 52, 53, 54. In addition the Court ordered Riverside DCSS to remit to the Clerk of the Bankruptcy Court the sum of $500.00 for its civil contempt of this Court's Orders sustaining the objection to Riverside DCSS's claim, confirming Debtor's modified Plan and ordering Riverside DCSS to appear at the hearing. The Court's Order was served on Riverside DCSS at the same address as the other notices and as listed on Riverside DCSS's Proof of Claim. No appeal was taken from the Court's first decision awarding sanctions against Riverside DCSS for willful violation of the stay, and that decision is final. On August 15, 2005, Riverside DCSS paid the Clerk of the Bankruptcy Court $500.00 for civil contempt as ordered by the Court, and the Court understands from statements made at the most recent hearing that Debtor has been paid the monetary sanctions imposed pursuant to this Court's July 29, 2005, Order.

After all the above, and notwithstanding the sanctions imposed upon it for willful violation of the stay, Riverside DCSS resumed garnishment of the Debtor's wages. Diana E. Inzer, child support representative of Riverside DCSS, submitted to Debtor's employer Ole's #12 Cabin Casino an "Order/Notice to Withhold Income for Child Support" dated 10-12-2005, directing Debtor's employer to garnish $250.00 per month from her wages. Ex. A. The Debtor testified that she went to her employer immediately upon learning of the garnishment to explain

about her bankruptcy and the automatic stay, but her employer told her that he could not resist Ex. A, and as a result Debtor lost wages due to the garnishment, as of the date of the hearing, in the amount of $303.74[9]. Ex. E.

With respect to Lisa's testimony of the continued garnishment and her damages, the Court, having observed Lisa's demeanor while testifying under oath, finds that Lisa is a credible witness. *In re Taylor*, 514 F.2d 1370, 1373-74 (9th Cir. 1975); *See also Casey v. Kasal*, 223 B.R. 879, 886 (E.D. Pa. 1998). Her testimony of the postpetition garnishments and other damages is corroborated by the exhibits admitted into evidence. In addition to wages lost to garnishment, the Debtor testified that she lost a half day of wages on the first date she learned of Riverside DCSS's resumed garnishment, a total of $38, because she was so distressed when she learned of the resumed garnishment that she could not continue to work. She testified she also missed a full 8 hour shift worth $76[10] as a result of the garnishment, for a doctor's visit, and missed another full 8 hour shift and lost $76.00 for the day she attended the hearing on her second Motion for Sanctions. Lost wages shown by the evidence admitted at trial total $493.74.

On October 25, 2005, the Debtor went to the emergency room at St. Patrick's Hospital and Health Sciences Center in Missoula, where she was diagnosed with post traumatic stress disorder and anxiety/depression. Ex. D. She testified that she was prescribed a form of Valium

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[9]Immediately after the hearing on December 8, 2005, the Court entered an Order, Docket No. 8, directing Debtor's employer to cease and desist from any further garnishment of Debtor's wages based upon any order or notice from Riverside DCSS. No subsequent evidence of additional lost wages was offered by the Debtor.

[10]The $76.00 consists of $56 in wages and $20 in lost tips for each shift, except on Wednesdays when Debtor testified she only earns $35 for a 5 or 6 hour shift because that shift is earlier in the day when less tips are given.

for severe depression and anxiety disorder, which cost her $140 for a one-month prescription. Lisa testified that she was billed approximately $500 for the emergency room visit[11]. In addition she was referred by Ex. D to Dr. Harrison for counseling on the following day, October 26, 2005, and he charged the Debtor $280.00 for a psychiatric/diagnostic exam. Ex. G.

The Debtor testified that even though she qualified for food stamps before the garnishment she had not applied, but that the resumed garnishment by Riverside DCSS caused her to fall behind on her monthly bills and she was compelled by such circumstances to apply for food stamp benefits on November 16, 2005. Her application was approved by the Montana Department of Public Health and Human Services. Ex. F. She testified that she is on partial unemployment, the amount of which depends on the amount of hours she works, and that as a result of her missed work because of the garnishment and attending the hearing her unemployment benefits were reduced by $200.

The Debtor testified that the resumed garnishment by Riverside DCSS "messed up my life" and set back her attempts to rebuild her credit. She testified that she is unable to repair her car and must find rides on her job searches, and that she has had to borrow money from friends. Debtor received a "Disconnect Notice" from Qwest for her phone service dated November 21, 2005, because she testified she could not pay her phone bill in the amount of $93.85 since her wages were reduced by garnishment. Ex. B. On November 29, 2005, Debtor was sent a utility bill by Missoula Electric Cooperative in the sum of $227.32 because she could not pay her

[11]The Debtor was granted five days to submit her hospital bill and submitted Ex. H, a bill from St. Patrick's Hospital, in the sum of $763.00 for the emergency room visit on 10/25/05. This Court finds that the amount of Debtor's emergency room bill from the hospital was $763.00.

previous balance of $164.66 since her wages had been garnished by Riverside DCSS[12].

Lisa requested that the Court order her employer to stop garnishing her wages, and to contact her creditors to explain that it is not her fault that her wages were garnished and caused her to fall behind on her payments.

On October 27, 2005, Debtor's second Motion for Sanctions against Riverside DCSS was filed, including a 10-day notice of the opportunity to respond and request a hearing, the failure of which shall be deemed an admission that the relief requested should be granted. Debtor's second Motion, like the first, was served on Riverside DCSS at its address of record, but also was served on Inzer at the address listed on Ex. A. No response was filed by Riverside DCSS or Inzer. Notwithstanding their failure to respond, the Court entered another "Order and Notice of Civil Contempt Proceeding" on November 14, 2005, Docket No. 65, setting Debtor's second Motion for Sanctions for hearing on December 8, 2005, explaining the conduct of Riverside DCSS and Inzer upon which Debtor's second Motion is based, and providing in bold print on page 3 directly above this Court's signature: "**Riverside County Department of Child Support Services and Diana E. Inzer SHALL APPEAR** and show cause why they each should not be held in civil contempt and subject to sanctions for violation of the automatic stay." The Court's Order was served on Riverside DCSS at its address of record and the address on Ex. A, and served on Inzer at the address listed on Ex. A which she issued. In addition, the case docket reflects that on November 15, 2005, an additional certificate of mailing of the Court's Order and Notice was sent to John Replogle, Director, and to Eileen J. Howell, Deputy Child Support

[12]Geranios admitted that the phone disconnect and utility deficit were not completely caused by Riverside DCSS's garnishment of her wages, but that it made her fall behind on her payments.

Attorney who signed Riverside DCSS's Proof of Claim and also signed Riverside DCSS's motion to continue the first hearing on sanctions, Docket No. 40.

Despite such notice and order to appear, Riverside DCSS and Inzer failed to appear at the hearing as ordered by the Court in Docket No. 65. No response was filed in opposition to Debtor's second Motion for Sanctions.

After the December 8, 2005, hearing, the Court issued an order to Debtor's employer stating: "**IT IS ORDERED** Debtor's employer Ole's #12 & Cabin Casino, or any d/b/a thereof, **SHALL IMMEDIATELY CEASE AND DESIST** from any further garnishment of the Debtor Joane Lisa Boudreau's wages based upon any order or notice received from Riverside County, California, Department of Child Support Services.

DISCUSSION

I. Automatic Stay – § 362(a).

The same law applies with respect to Debtor's second Motion for Sanctions as was applied in deciding Debtor's first Motion for Sanctions, as set forth in Docket No. 52 which Riverside DCSS did not appeal. The Debtor's filing of her Chapter 13 bankruptcy petition on August 4, 2004, gave rise to an "automatic stay". 11 U.S.C. § 362(a). The Ninth Circuit construed the automatic stay in *In re Gruntz*, 202 F.3d 1074, 1081-82 (9th Cir. 2000):

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

The Ninth Circuit Bankruptcy Appellate Panel ("BAP") explained the automatic stay in *Balyeat Law Offices, P.C. v. Campbell*, 14 Mont. B.R. 132, 136-37 (9th Cir. BAP 1995):

> "Congress' intent in enacting § 362(a) is clear--it wanted to stop collection efforts for all antecedent debts." *Gonzales v. Parks*, 830 F.2d 1033, 1035 (9th Cir. 1987) (*quoting In re M. Frenville Co., Inc*., 744 F.2d 332, 334 (3rd Cir. 1984). *cert. denied*, 469 U.S. 1160 (1985). "Section 362(a) automatically stays a wide array of collection and enforcement proceedings." *Pennsylvania Dept. of Public Welfare v. Davenport*, 49 5 U.S. 552, 560 (1990). See also *Delpit v. C.I.R.*, 18 F.3d 768, 770 n.1 (9th Cir. 1994). "Section 362 is extremely broad in scope and should apply to almost any type of formal or informal action." *Id.* at 771 (*quoting 2 COLLIER ON BANKRUPTCY*, § 362.04 at 362-34 (15th ed. 1993). It "prohibits acts that, but for the stay, would be lawful." *In re Zartun*, 30 B.R. 543, 545 (9th Cir. BAP 1983). The stay is created for the benefit of the debtor, the debtor's property and the debtor's estate. *In re Casqul of Nevada, Inc.*, 22 B.R. 65, 66 (9th Cir. BAP 1982).

The Ninth Circuit has repeatedly reiterated the broad scope of the automatic stay as "one of the most important protections in bankruptcy law." *See In re Risner*, 317 B.R. 830, 835 (Bankr. D. Idaho 2004), quoting *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214-15 (9th Cir. 2002); *Hillis Motors, Inc. v. Hawaii Auto Dealers' Assoc.*, 997 F.2d 581, 585 (9th Cir. 1993). Actions taken in violation of the automatic stay all are void, not merely voidable. *Gruntz*, 292 F.3d at 1082; *40235 Washington Street Corp. v. Lusardi*, 329 F.3d 1076, 1082 (9th Cir. 2003); *Schwartz v. United States*, 954 F.2d 569, 570-71, 575 (9th Cir.1992); *In re Deines*, 17 Mont. B.R. 114, 115 (Bankr. D. Mont. 1998); *Hillis Motors, Inc. v. Hawaii Auto Dealers' Assoc.*, 997 F.2d at 586.

At footnote 5 *Risner* quotes *Eskanos v. Adler* that: "Consistent with the plain and unambiguous meaning of the statute, and consonant with Congressional intent, we hold that § 362(a)(1) imposes an affirmative duty to discontinue post-petition collection actions." 317 F.3d at 835 n.5, quoting *Esklanos v. Adler*, 309 F.3d at 1215. A district court decision from Arizona explains:

> The Ninth Circuit's holding in *Eskanos* is consistent with established precedent in other jurisdictions. Based on the language of § 362(a)(1), many courts

> have emphasized the obligation of creditors to take affirmative action to terminate or undo any action that violates the automatic stay. *See, e.g., Patton v. Shade*, 263 B.R. 861 (C.D.Ill.2001); *Utah State Credit Union v. Skinner (In re Skinner)*, 90 B.R. 470, 480 (D.Utah 1988); *In re McCall-Pruitt*, 281 B.R. 910, 911-912 (Bankr.E.D.Mich.2002); *In re Briskey*, 258 B.R. 473, 476 (Bankr.M.D.Ala.2001); *Rainwater v. Alabama (In re Rainwater)*, 233 B.R. 126, 156 (Bankr.N.D.Ala.1999); *vacated on other grounds*, 254 B.R. 273 (N.D.Ala.2000); *Kirk v. Shawmut Bank (In re Kirk)*, 199 B.R. 70, 72 (Bankr.N.D.Ga.1996); *Connecticut Pizza, Inc. v. Bell Atlantic-Washington, D.C., Inc. (In re Connecticut Pizza, Inc.)*, 193 B.R. 217, 228 (Bankr.D.Md.1996); *James v. Draper (In re James)*, 112 B.R. 687, 700 (Bankr.E.D.Pa.1990), *aff'd in part, vacated in part on other grounds*, 120 B.R. 802 (E.D.Pa.1990), *judgment rev'd on other grounds*, 940 F.2d 46 (3d Cir.1991); *Clemmons v. United Student Aid Funds, Inc. (Matter of Clemmons)*, 107 B.R. 488, 490 (Bankr.D.Del.1989); *Adams v. Philadelphia Hous. Auth. (In re Adams)*, 94 B.R. 838, 851 (Bankr.E.D.Pa.1989).
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> The responsibility is placed on the creditor and not on the debtor because to place the burden on the debtor to undo the violation " 'would subject the debtor to the financial pressures the automatic stay was designed to temporarily abate.' " *Ledford v. Tiedge (In the Matter of Sams)*, 106 B.R. 485, 490 (Bankr.S.D.Ohio 1989) (quoting *In re Miller*, 22 B.R. 479, 481 (D.Md.1982)). "One of [the] purposes of [the automatic stay] is to protect the debtor from having to convince a state court judge that the state court matter should not proceed." *In re Sutton*, 250 B.R. at 774 (citing *In re Weisberg*, 218 B.R. 740, 752 (Bankr.E.D.Pa.1998)). Though "state court judges generally refrain from proceeding once they are made aware of a bankruptcy filing, the burden is on the creditor not to seek relief against a debtor in violation of the stay." *Id.* As the bankruptcy court in *Elder v. City of Thomasville (In re Elder)*, 12 B.R. 491 (Bankr.M.D.Ga.1981) pointed out: "The creditor sets in motion the process. The creditor is very much in the driver's seat and very much controls what is done thereafter if it chooses. If the continuation is to be stayed, it (the creditor) cannot choose to do nothing and pass the buck to the debtor."

In re Johnston, 321 B.R. 262, 283-84 (D. Ariz. 2005).

Under the above authority, Riverside DCSS had an affirmative duty to discontinue its garnishment of Lisa's wages initially with Albertsons and subsequently with her other employers, but failed to discontinue and even resumed garnishment after a Chapter 13 Plan was confirmed and even after sanctions were imposed on it by this Court. Riverside DCSS failed its duty to discontinue postpetition collection actions in violation of the automatic stay under *Eskanos v.*

Adler, for which it was previously sanctioned, but even more egregiously resumed postpetition garnishment after this Court had imposed sanctions upon it for that very act.

II. § 362(h) – Willful Violation of the Stay.

This Court construed § 362(a) & (h) in *In re Reece*, 15 Mont. B.R. 474, 477-78 (Bankr. D. Mont. 1996):

> As to the relevant Bankruptcy Code provisions, when a debtor files a bankruptcy petition, a stay is automatically imposed applicable against all creditor collection activity. 11 U.S.C. § 362(a). The stay is effective upon the date of the filing of the petition; and does not depend on formal service of process. *In re Smith*, 876 F.2d 524, 526 (6th Cir.1989). Furthermore, the Code requires the creditor, pursuant to § 362(d), to take affirmative action to obtain relief from stay from a bankruptcy court. In the absence of affirmative action on the part of the creditor to obtain relief from stay, § 362(a) prevents the creditor from attempting to enforce its rights against a debtor. See *In re Sharon*, 200 B.R. 181, 187 (Bankr. S.D.Oh. 1996).
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> Turning to the law governing violation of the automatic stay, 11 U.S.C. § 362(h), this Court has held:
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> > To be actionable, a violation of the automatic stay must be "willful." In *In re Bloom*, 875 F.2d 224, 227 (9th Cir.1989), the term "willful", as used in § 362(h) was addressed and defined: "This circuit has not defined 'willful' as it is used in subsection (h). A useful definition, which we now adopt, was provided by the bankruptcy court for the district of the District of Columbia: A 'willful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded. *Inslaw, Inc. v. United States* (*In re Inslaw, Inc.*,), 83 B.R. 89, 165 (Bankr.D.D.C.1988)."

In re Christopherson, 8 Mont. B.R. 213, 111 B.R. 920, 922 (Bankr. D. Mont. 1990).

The Court further explained:

> "[T]he relief provided for willful violation of the stay under 11 U.S.C. § 362(h) is mandatory" since § 362(h) supplements but does

> not replace the pre-existing remedy of civil contempt. *In re Lile*, 103 B.R. 830, 836 (Bankr.S.D.Tex.1989). Thus, when a party acts with knowledge of a pending bankruptcy, a violation of the stay is considered willful and damages must be assessed, *Id*. at 836, for "[T]he creditor takes the risk of being assessed for damages if he fails to obtain clarification from the bankruptcy court." *Id*. at 837, citing *In re Clark*, 49 B.R. 704, 707 (Bankr.D.Guam 1985); and *In re Pody*, 42 B.R. 570, 573-574 (Bankr.N.D.Ala.1984). *Lile*, supra, at 841 further states that where a Debtor is forced to resort to the courts to enforce his right, attorney's fees should be awarded to the Debtor under § 362(h). See also, *In re Price*, 103 B.R. 989 (Bankr.N.D.Ill.1989).

Id. at 923.

The above test for willful violation under § 362(h) – (1) that the creditor knew of the stay, and (2) the creditor's actions which violated the stay were intentional, was repeated in *In re Roman*, 283 B.R. 1, 8 (9th Cir. BAP 2002), which also noted the above standard that lack of specific intent to violate the stay is not a required element to find a willful violation, and that "it is clear that once a creditor or actor learns or is put on notice of a bankruptcy filing, any actions intentionally taken thereafter are 'willful' within the contemplation of § 362(h)." *Risner*, 317 B.R. at 835; *Eskanos & Adler*, 398 F.3d at 1214-15. In *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003), the Ninth Circuit noted that § 362(h) provides for damages for willful violation of the stay upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were willful. *See Havelock v. Taxel (In re Pace)*, 67 F.3d 187, 191 (9th Cir. 1995) (cited in *Roman*, 283 B.R. at 12-13). Further, a party with knowledge of bankruptcy proceedings is charged with knowledge of the automatic stay. *Dyer*, 322 F.3d at 1191, *citing Pinckstaff v. United States*, 974 F.2d 113, 115 (9th Cir. 1992).

No dispute exists in the instant record that Riverside DCSS knew of the automatic stay, or that the garnishment of Lisa's wages was intentional, and therefore the Court concludes that

the continued garnishment of the Debtor's wages from Ole's #12 Cabin Casino by Riverside DCSS as shown by Ex. A issued by Inzer was willful.

Riverside DCSS's earlier unsuccessful attempts to stop the garnishment were found by the Court to be no excuse for its incompetent handling of the Debtor's bankruptcy, and the Court did not allow Riverside DCSS to escape the consequences of its willful violations of the stay simply by claiming mistake in its earlier decision granting Debtor's first motion for sanctions.

In rejecting an argument that notice was sent to an improper corporate address, one court aptly noted:

> [W]hile an octopus may have eight legs, it is still the same octopus. As a result, bankruptcy law not only requires, but demands, that companies, whether large or small, have in place procedures to ensure that formal bankruptcy notices sent to an internally improper, but otherwise valid corporate address are forwarded in a prompt and timely manner to the correct person/department. As a consequence, Ocwen's defense that its collection efforts against the Debtors were merely the result of a flaw in its internal organizational structure--the argument that the right hand does not know what the left hand is doing--falls on deaf ears.
>
> This rule has been universally followed by other bankruptcy courts, and is really just an extension of the principle that corporations are expected to have in place procedures to ensure that they comply with all areas of the law.

In re Perviz, 302 B.R. 357, 367 (Bankr. N.D. Ohio 2003). Such reasoning is analogous to a government entity.

The notices, letters, motions and plans in this case were sent to Riverside DCSS at the address it listed on its Proof of Claim No 7 as where notices should be sent, and the Court's Order and Notice of Civil Contempt Proceeding was sent in addition to Riverside DCSS's director, staff attorney, and Inzer. Like corporations, government entities are required to have in place procedures to ensure that bankruptcy notices are forwarded to the correct person, and that they comply with all areas of the law. *See id.* In the instant case Riverside DCSS's procedures resulted

in Inzer sending its garnishment order, Ex. A, to Debtor's employer after it earlier was sanctioned by this Court by judgment in the total amount of $3,603.04 and an additional $500.00 for civil contempt for that very type of conduct. Riverside DCSS did not appeal, and paid the $500.00 civil contempt and the sanctioned damages to Debtor, yet less than 2 months later Inzer sent Ex. A, another garnishment order, to Debtor's employer. Such conduct in plain defiance of the automatic stay and the orders of a federal bankruptcy court reflects either inadequate procedures, improper training or inadequate supervision, none of which excuse Riverside DCSS and Inzer from liability for their willful violations of the stay.

Simply put, the evidence is uncontroverted that Riverside DCSS received notice that Lisa had filed a Chapter 13 petition, but its garnishment of her wages continued even after Riverside DCSS was sanctioned for such conduct. An innocent stay violation can become willful if the creditor fails to remedy the violation after receiving notice of the stay. *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996); *Abrams v. Southwest Leasing and Rental Inc. (In re Abrams)*, 127 B.R. 239, 241-44 (9th Cir. BAP 1991). Riverside DCSS's continued garnishment of the Debtor's wages was intentional and with knowledge of the bankruptcy stay, and as such constitutes willful violation of the stay. *Eskanos & Adler*, 398 F.3d at 1214-15; *In re Dyer*, 322 F.3d at 1191; *Roman*, 283 B.R. at 8; *Risner*, 317 B.R. at 835; *Reece*,15 Mont. B.R. at 477-78.

In re Forty-Five Fifty-Five, Inc., 111 B.R. 920, 923 (Bankr. D. Mont. 1990) explains that "when a party acts with knowledge of a pending bankruptcy, a violation of the stay is considered willful and damages must be assessed. *In re Lile*, 103 B.R. at 836." A party's violation of the stay may be willful even if a creditor believed itself justified in taking an action found to be violative of the automatic stay. *In re Cinematronics, Inc.,* 111 B.R. 892, 900 (Bankr. S.D. Cal. 1990), the court wrote:

> The creditor takes a calculated risk where it undertakes to make its own determination of what the stay means. *In re Gray*, 97 B.R. 930, 936 (Bankr. N.D. Ill. 1989). To disagree with Theodore Roosevelt, at least when the automatic stay is concerned, it is far better to be a "timid soul" who seeks a court determination of the limits of the stay, rather than to fail "while daring greatly".
>
> The BAP explained in *Campbell*, 14 Mont. B.R. at 149-50:
>
> > Section 362(h) provides:
> >
> > > An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
> >
> > "Whether the party believes in good faith that it had the right to property is not relevant to whether the act was willful or whether compensation must be awarded." [*In re Abrams*, 127 B.R. 239, 243 (9th Cir. BAP 1991)]. A willful violation of the stay occurs where the party accused of such violation acts intentionally with the knowledge that the automatic stay is in place. Specific intent to violate the stay is not required. *Bloom*, 875 F.2d at 226.

In re McMillan, 18 Mont. B.R. 21, 29 (Bankr. D. Mont. 1999).

Under the above authority, § 362(h) permits a person injured by any willful violation to recover actual and punitive damages. *Eskanos & Adler*, 309 F.3d at 1215. In the instant case, however, the Bankruptcy Code's provision governing sovereign immunity and its waiver, 11 U.S.C. § 106, provides at § 106(a)(3) that: "The court may issue against a governmental unit an order process, or judgment under such sections or the Federal rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, *but not including an award of punitive damages*." (Emphasis added). By filing Proof of Claim No. 7, Riverside DCSS waived its state sovereign immunity. *See Gardner v. New Jersey*, 329 U.S. 565, 573, 67 S.Ct. 467, 472 91 L.Ed. 504 (1947) ("It is traditional bankruptcy law that he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that

procedure."); *In re Jackson*, 184 F.3d 1049, 1050 (9th Cir. 2002).

Thus, § 106(a)(3) prohibits an award of punitive damages against Riverside DCSS as an arm of the state, but does not prohibit an award of compensatory damages against Riverside DCSS under § 362(h). Neither does § 106(a)(e) protect Diana E. Inzer, Riverside DCSS's representative, who willfully violated the stay by sending Ex. A to the Debtor's employer after sanctions had been imposed once, and who also violated this Court's Order to appear at the hearing on December 8, 2005. Inzer's individual actions in issuing the most recent garnishment clearly violated the automatic stay after the prior Orders imposed sanctions for such acts and the Court awarded $10,000.00 in punitive damages against Inzer, individually, at the hearing[13] for her willful violation of the stay under § 362(h) and for her egregious acts of again issuing the garnishment after Debtor had previously been awarded damages against Riverside DCSS for its violation of the automatic stay. No provisions in the Debtor's confirmed plan could suggest to Inzer that Debtor's postconfirmation earnings were not property of Debtor's estate and not subject to the automatic stay.

Debtor's confirmed plan specifically provides in paragraph 5(c), page 3: "Property of the estate, including the Debtor's current and future income, shall revest in the Debtor(s) at the time a discharge is issued, and the Debtor(s) shall have sole right to use and possession of property of the estate during the pendency of this case." In paragraph 1, Debtor states: "The future earnings and other income of the Debtor are submitted to the supervision and control of the Chapter 13

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[13]While punitive damages may not be imposed against Riverside DCSS, its employees and agents can expect escalating punitive damages to be imposed upon them personally, as well as additional sanction proceedings, if such employees commit any further violations of the automatic stay on behalf of Riverside DCSS in this case.

Standing Trustee as necessary for the execution of this Plan, ..." Clearly, the plan overrides any argument that Debtor's earnings have revested in the Debtor on the date of confirmation, which might prompt Riverside DCSS to conclude that some how the earnings were no longer property of the estate allowing it to assert an 11 U.S.C. § 362(b)(2)(B) defense to the automatic stay that the garnishment and the recovery thereunder was against non-estate property. Further, the plan clearly indicates that the child support arrearages are to be paid as a priority pursuant to 11 U.S.C. §§ 1322(a)(2) and 507(a)(7)[14] Debtor's plan provides in paragraph 2(d): "After payments provided for above, the Trustee shall pay allowed claims entitled to priority in such order as specified in 11 U .S.C. § 507." The above plan provisions distinguish this case from the facts in *In re Pacana*, 125 B.R. 19 (9th Cir. BAP 1991). The holding in *Pacana* was further affected, if not superseded, by the 1994 amendments to the Bankruptcy Code that imposed priority status for child support payments. *See In re Camacho*, 211 B.R. 744 (Bankr. D. Nev. 1997).

The BAP has noted that a debtor's attorney fees and costs are "actual damages" under § 362(h). *Roman*, 283 B.R. at 10. An award of attorney's fees and costs in addition to actual damages is mandatory upon finding a willful violation of the stay under § 362(h). *Roman*, 283 B.R. at 9, 15; *In re Walsh*, 219 B.R. 873, 876 (9th Cir. BAP 1998). The Court having found willful violations of the stay by Riverside DCSS in its postpetition garnishment, the Debtor is entitled to an award of her actual damages for lost wages shown by the uncontroverted testimony in the total amount of $493.74, plus $200.00 for lost unemployment benefits, $280.00 for doctor visits and a

[14] After the effective date of BAPCPA, the seventh priority became the first priority under 11 U.S.C. § 507.

psychiatric evaluation, $763.00 for an emergency room visit, $140.00 for medication, which total $1,876.74, plus her attorney's fees and costs of $1,064.35. Debtor is further entitled to recover punitive damages against Inzer, individually, in the amount of $10,000.00, as punitive damages for her egregious violation of the automatic stay arising after Riverside DCSS was previously sanctioned by this Court.

III. Emotional Distress.

In *Dawson v. Wash. Mutual Bank*, 390 F.3d 1139, 1148-49 (9th Cir.2004), the Ninth Circuit held that under § 362(h), emotional distress damages are cognizable if a party provides clear evidence to establish that significant harm occurred as a result of the violation. Fleeting or trivial anxiety or distress does not suffice, instead an individual must suffer significant emotional harm. *Id.*, at 1149.

Debtor seeks damages for emotional distress. To support an award for emotional distress it must be clear that an individual suffered significant emotional harm caused by the violation of the stay. *Dawson*, 390 F.3d at1149. An individual may establish emotional distress in several different ways, including: Corroborating medical evidence, testimony of family members, friends or coworkers as to manifestations of mental anguish which clearly establishes that significant emotional harm occurred; or, in cases where the violator engaged in egregious conduct, without corroborative evidence where the individual suffers significant emotional distress and the circumstances surrounding the violation make it obvious that a reasonable person would suffer significant emotional harm. *Dawson*, 390 F.3d at 1149-51.

Evidence establishing significant emotional distress may include testimony that a debtor suffered headaches, loss of sleep, or doctor visits such as noted in *Dawson*, 390 F.3d at 1149-50, *citing Varela v. Ocasio (In re Ocasio)*, 272 B.R. 815, 821-22 (1st Cir. BAP 2002) (per curiam).

Lisa offered at hearing testimony that she was unable to continue work on the day she learned of the resumed garnishment, that it "messed up my life". She testified she went to the emergency room where she was diagnosed with severe anxiety and depression. Her testimony is corroborated by Ex. D, an "Emergency Department Aftercare Instruction Sheet" which states that she was diagnosed by Dr. Harrison with post traumatic stress disorder and mixed anxiety and depression. Such evidence is more compelling that the evidence the Debtor offered in support of her first motion for sanctions, which is not surprising considering the shock of Riverside DCSS's continued garnishment after prior proceedings.

The general rule in Montana is that a defendant must take the plaintiff as he finds her and accept liability for all consequences flowing from the injury. *Lutz v. U.S.,* 685 F.2d 1178, 1186-87 (D. Mont. 1982), citing W. Prosser, The Law of Torts, § 43 at 260-63 (4th ed. 1971). In discussing emotional damage awards this Court noted in *Miller v. Snavely*, 19 Mont. B.R. 300, 354-55, quoting Ninth Circuit cases:

> While objective evidence requirements may exist in other circuits, such a requirement is not imposed by case law in either Washington, the Ninth Circuit, or the Supreme Court. *See* [*Herring v. Dept. of Social and Health Services*, 81 Wash.App.1, 914 P.2d 67, 77-83 (Wash. Ct. App. 1996)] (upholding damage award in excess of $1,000,000, including $550,000 for emotional damages, in disability discrimination and retaliation case based on testimonial evidence of emotional harm); *Chalmers v. City of Los Angeles*, 762 F.2d 753, 761 (9th Cir.1985) (upholding emotional damages based solely on testimony); *Johnson v. Hale*, 13 F.3d 1351, 1352 (9th Cir.1994) (noting that emotional damages may be awarded based on testimony alone or appropriate inference from circumstances); *Carey v. Piphus*, 435 U.S. 247, 264 n. 20, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978) (noting that emotional distress damages are "essentially subjective" and may be proven by reference to injured party's conduct and observations by others). See also *Merriweather v. Family Dollar Stores*, 103 F.3d 576, 580 (7th Cir.1996) (noting that plaintiff's testimony can be enough to support emotional damages).

Passantino v. Johnson & Johnson Consumer Products, Inc., 212 F.3d 493, 513 (9th Cir. 2000).

In *Johnson v. Hale,* a housing discrimination case out of Billings, Montana, the Ninth Circuit wrote:

> [C]ompensatory damages may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances, whether or not plaintiffs submit evidence of economic loss or mental or physical symptoms. *Id.* at 1193 (citing *Phiffer v. Proud Parrot Motor Hotel*, 648 F.2d 1353548, 552-53 (9th Cir.1980); *Seaton v. Sky Realty Co.*, 491 F.2d 634, 636 (7th Cir.1974)). We also emphasized that "both plaintiffs provided detailed and substantial testimony to support their claims that they suffered emotional distress as a result of the Hales' discriminatory acts" and that "[t]he Hales offered no evidence to rebut this testimony."

Johnson v. Hale, 13 F.3d 1352–53.

In the instant case Lisa provided specific and credible testimony, corroborated by her exhibits showing medical care and diagnosis of post traumatic stress disorder, anxiety and depression, sufficient to establish by a heavy preponderance of the evidence that she suffered significant emotional distress as a result of Riverside DCSS's willful violations of the stay, The Court finds Riverside DCSS liable for Lisa's emotional distress based upon her testimony, exhibits, and inference from the circumstances surrounding the violations which make it obvious that a reasonable person would suffer significant emotional harm from repeated postpetition willful violations of the stay in defiance of court orders as shown by the evidence in the instant case. *See Dawson*, 390 F.3d at 1150-51; *Miller v. Snavely*, 19 Mont. B.R. at 354-55; *Passantino v. Johnson & Johnson Consumer Products, Inc.*, 212 F.3d at 513; *Johnson v. Hale*, 13 F.3d 1352–53.

In *Dawson*, the Ninth Circuit noted that significant emotional harm may be readily apparent even without corroborative evidence in circumstances which make it obvious that a

reasonable person would suffer significant emotional harm. *Dawson*, 390 F.3d at 1150-51, *citing United States v. Flynn*, 185 B.R. 89, 93 (S.D. Ga. 1995) (affirming $5,000 award of emotional distress damages without corroborating testimony because "it is clear that appellee suffered emotional harm" when she was forced to cancel her son's birthday party because her checking account had been frozen, even though the stay violation was brief and not egregious). In the instant case the stay violations and effects on the Debtor were not brief, and Riverside DCSS exacerbated its stay violations by resuming garnishment after sanctions were imposed against it, depriving the Debtor of the benefits of the Bankruptcy Code and leaving her wondering why the Court and the Code could not protect her. Considering such facts in light of *Dawson* and the facts of *United States v. Flynn*, this Court awarded the Debtor at hearing the sum of $10,000.00 in emotional damages for the significant emotional harm Lisa suffered which she clearly established by her testimony, corroborating exhibits, and the circumstances as caused by Riverside DCSS's willful violations of the stay.

IV. Contempt.

Debtor requests sanctions against Riverside DCSS and Inzer for contempt, based upon violations of this Court's Orders and the stay, and requests that Riverside DCSS's entire claim be subject to forfeiture. As noted in this Court's prior decision in this case awarding sanctions, the record shows that Riverside DCSS ignored not only this Court's Order (Docket # 23) which sustained the Debtor's objection to Proof of Claim No. 7, to which no objection was filed by Riverside DCSS nor any appeal taken and which allowed Riverside DCSS's priority claim in the amount of $3,497.35; but it also ignored this Court's Order confirming Debtor's Chapter 13 Plan and its treatment of Riverside DCSS's priority claim which as allowed was to be paid in full. Both

such Orders had res judicata effect on Riverside DCSS's claim. Riverside DCSS did not respond or object, but ignored this Court's Orders sustaining Debtor's objection and allowing its priority claim in the amount of $3,497.35, and the Order confirming Debtor's Plan.

It is well established that principles of res judicata and finality, as partly codified in 11 U.S.C. § 1327, can make even "illegal" provisions of a Chapter 13 plan binding. *In re Brawders*, 325 B.R. 405, 410 (9th Cir. BAP 2005); *Multnomah County v. Ivory (In re Ivory)*, 70 F.3d 73 (9th Cir.1995) (res judicata precluded collateral attack on confirmation order, despite possible jurisdictional error). Riverside DCSS was bound by this Court's Orders allowing its claim in a reduced amount and confirming its treatment in Debtor's Plan, but Riverside DCSS ignored the res judicata effect when it ignored the Court's Orders and sent Debtor's employer Ex. A, after having been sanctioned by the Court when it granted Debtor's first motion for sanctions, a decision Riverside DCSS did not appeal. This conduct by Riverside DCSS constituted contempt of court before, and continues to constitute contempt of court. Riverside DCSS demonstrated further contempt of this Court when it failed to comply with the Court's Order (Docket # 65) that it and Inzer appear at the hearing on Debtor's motion for sanctions.

This Court addressed a motion for sanctions based upon violation of the discharge injunction in *In re Gomez*, 17 Mont. B.R. 166, 171-72 (Bankr. D. Mont. 1998), quoting *In re Killorn*, 16 Mont. B.R. 364, 366-68 (Bankr. D. Mont. 1998)):

> Contempt proceedings are governed by F.R.B.P. 9020. Prior to Congress reform of Rule 9020 in 1987, bankruptcy courts did not have the inherent power of contempt in the Ninth Circuit. *In re Sequoia Auto Brokers, Ltd. (Plastiras v. Idell)*, 827 F.2d 1281, 1284 (9th Cir. 1987). Subsequent to *Sequoia*, the United States Supreme Court held that courts created by Congress have inherent powers, unless Congress intentionally restricts those powers. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47, 111 S.Ct. 2123, 2134, 115 L.Ed.2d 27 (1991). The Ninth Circuit later held that with Congress enacting Rule 9020 and § 105(a), *Chambers*

supersedes *Sequoia* and bankruptcy courts have the inherent power to sanction for contempt. *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284-5 (9th Cir. 1996).

Rule 9020(b) provides that contempt "committed in a case or proceeding pending before a bankruptcy judge . . . may be determined only after a hearing on notice"

* * * *

Both the Discharge and § 524(a)(2) provide that the Discharge operates as an injunction, enjoining all creditors from commencing, instituting, or continuing any action or engaging in any act to collect discharged debts. *See, In re Raiman*, 172 B.R. 933, 936 (9th Cir. BAP 1994). Willful violation of the § 524(a)(2) injunction warrants the finding of contempt. *In re Andrus*, 184 B.R. 311, 315-16 (Bankr. N.D. Ill. 1995). To find a creditor in civil contempt the court must find that the offending party knowingly violated a definite and specific court order. *Id.*; *In re Johnson*, 148 B.R. 532, 538 (N.D. Ill. 1992). The burden under § 524(a)(2) is on the Debtors to prove the violation by clear and convincing evidence." *Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982); *In re Keane*, 110 B.R. 477, 483 (S.D. Cal. 1990); *In re Andrus*, 184 B.R. at 315; *In re Ryan,* 100 B.R. 411, 417 (N.D. Ill. 1989). This Court can impose upon a creditor who violates the § 524(a)(2) injunction sanctions for civil contempt, which may consist of remedial and compensatory, but not punitive, sanctions. *Andrus*, 184 B.R. at 315; *In re Torres*, 117 B.R. 379, 382 (N.D. Ill. 1990); *In re Rainbow Magazine, Inc.*, 77 F.3d at 285.

Gomez continues:

> Other courts have long held that where a creditor has failed to comply with an order of discharge, civil contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance. *In re Whitaker*, 16 B.R. 917, 923 (M.D. Tenn. 1982) (*citing McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191, 69 S.Ct. 497, 499, 98 L.Ed. 599 (1948)). Civil contempt is therefore an appropriate sanction for a creditor's noncompliance with or violation of the Court's order of discharge. *Whitaker*, 16 B.R. at 923, *Matter of Holland*, 21 B.R. 681, 689 (N.D. Ind. 1982); *see, Matter of Batla*, 12 B.R. 397, 400-401 (Bankr. N.D. Ga.1981).
>
> Knowledge of the discharge order and knowingly violating it are necessary requirements for contempt. *Holland*, 21 B.R. at 689. A party's negligence or absence of intent to violate the discharge order is not a defense against a motion for contempt. *In re Atkins*, 176 B.R. 998, 1009-1010 (Bankr. D. Minn. 1994) (citations omitted).

17 Mont. B.R. at 172. *See also Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1189-92 (9th Cir. 2003) (Case distinguishes § 362(h) compensatory damages and punitive damages from civil contempt sanctions and inherent authority sanctions).

The above reasoning applies to Riverside DCSS's knowing violations of definite and specific court orders allowing its claim, confirming its treatment in Debtor's Chapter 13 Plan, and ordering it to appear at the hearing on December 8, 2005. Riverside DCSS chose simply to ignore this Court's Orders. The Court concluded at hearing that an appropriate sanction should be imposed against Riverside DCSS for civil contempt in the form of disallowance and discharge of its remaining claim in its entirety, in order to enforce compliance with this Court's Orders.

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CONCLUSIONS OF LAW

1. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334 and 157.

2. The pending Debtor's second Motion for Sanctions is a core proceeding under 28 U.S.C. § 157(b).

3. The Debtor satisfied her burden of proof by a preponderance of the evidence to show that Riverside DCSS and Diana E. Inzer willfully violated the stay by resuming postpetition garnishment of Debtor's wages, and that actual damages and attorney's fees and costs are appropriate as sanctions under 11 U.S.C. § 362(h), including punitive damages against Inzer in the amount of $10,000.00, but an award of punitive damages against Riverside DCSS will not be awarded.

4. Debtor satisfied her burden of proof by clear evidence which established that she suffered significant emotional distress, harm, and damages caused by and as a result of Riverside DCSS's willful violations of the automatic stay, which are cognizable under § 362(h). *Dawson v.*

Wash. Mutual Bank, 390 F.3d 1139, 1146-50 (9th Cir. 2004).

5. Debtor satisfied her burden of proof by clear and convincing evidence that Riverside DCSS committed civil contempt of this Court by resuming garnishment of Debtor's wages in defiance of the stay and this Court's specific Orders confirming Debtor's Plans, and by failing to comply with this Court's Order (Docket #65) to appear at the hearing on December 8, 2005, for which the Court deemed an appropriate sanction to be disallowance and discharge of the entire amount of Riverside DCSS's remaining priority claim.

IT IS ORDERED separate Judgments shall be entered for the Debtor Joane Lisa Boudreau: (1) against Riverside County, California, Department of Child Support Services ("Riverside DCSS") in the amount of $1,876.74 in actual damages plus $10,000.00 for emotional distress for Riverside DCSS's willful violation of the automatic stay in violation of 11 U.S.C. § 362(h), plus attorneys fees in the amount of $1,047.60 and costs in the amount of $16.75 for a total judgment amount of $12,941.09; and (2) against Diana E. Inzer, child support representative for Riverside DCSS, in the amount of $10,000.00 in punitive damages for Inzer's willful violation of the stay.

IT IS FURTHER ORDERED a separate Order shall be entered granting Debtor's second Motion for Sanctions against Riverside DCSS for contempt of court, and providing that Riverside DCSS's remaining unpaid priority claim is disallowed and discharged in its entirety; and in addition providing that the Debtor's attorney shall send copies of this Memorandum of Decision, Judgments and Order to Riverside DCSS, to Debtor's current employer and to all Debtor's recent creditors stating that any delinquencies in monthly payments by the Debtor were not the fault of the Debtor but rather were the fault of Riverside DCSS; and further that copies

shall be sent to the three national credit reporting agencies and to local Missoula credit agencies, each of which **SHALL** place copies of this Memorandum of Decision, Order and Judgments in any file pertaining to the Debtor Joane Lisa Boudreau with a notation that any difficulty in payment by said Debtor during the period of garnishment was not the fault of the Debtor but rather the result of improper garnishment by Riverside DCSS in willful violation of the automatic stay in violation of 11 U.S.C. § 362(h).

BY THE COURT

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana