



**SO ORDERED,**

A handwritten signature in blue ink that reads "Katharine M. Samson".

**Judge Katharine M. Samson  
United States Bankruptcy Judge  
Date Signed: January 15, 2025**

**The Order of the Court is set forth below. The docket reflects the date entered.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE: JOHNNIE LEE PEARSON, III**

**CASE NO. 23-50314-KMS**

**DEBTOR**

**CHAPTER 13**

**JOHNNIE LEE PEARSON, III**

**PLAINTIFF**

**V.**

**ADV. PROC. NO. 23-06037-KMS**

**CFG MERCHANT'S SOLUTIONS**

**DEFENDANT**

**FINAL JUDGMENT AND ORDER AWARDING ATTORNEY'S FEES  
AND PUNITIVE DAMAGES AND CANCELLING DEBT**

On June 13, 2024, the Court granted Plaintiff Johnnie Lee Pearson's Motion for Summary Judgment determining that Pearson was entitled to judgment as a matter of law against CFG Merchant's Solutions for violation of the automatic stay. Adv. ECF No. 16. A hearing to determine damages was conducted on September 5, 2024. Adv. ECF Nos. 23, 26. The Court determines that attorney fees of \$6,826.34 and punitive damages of \$8,000 resulting in cancellation of the CFG debt should be awarded to Pearson.

The Court has jurisdiction over the parties to and the subject matter of this proceeding under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (G), (O).

In the Order Granting Motion for Summary Judgment, the Court determined that:

[t]he undisputed facts establish that months after Pearson's bankruptcy was filed and CFG ha[d] been notified of the bankruptcy, a collections text message was sent to Pearson and seven others to collect a prepetition debt. After debtor's counsel filed an adversary proceeding for violation of the stay, CFG again contacted Pearson by email to attempt collection. These acts were willful and violated the automatic stay.

Adv. ECF No. 16 at 7 (citation omitted). A debtor injured by a willful violation of a stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1). Pearson requested actual and punitive damages in amounts to be determined by the Court, as well as reasonable legal fees and expenses. *See* Adv. ECF No. 1 at 3, Adv. ECF No. 8 at 3.

At the hearing, Pearson testified that a CFG representative contacted him by email, text or phone calls after being informed of his bankruptcy. Adv. ECF No. 26 at 6. He testified to numerous phone calls from a CFG representative who told Pearson he wanted to get his attention and said that he would take him to court and garnish his wages. Adv. ECF No. 26 at 5-9. Pearson produced phone records pointing to over a dozen calls from May to November of 2023. Trial Ex. 1, Adv. ECF No. 22. He said that the calls were made while he was still working and on the road. Adv. ECF No. 26 at 7. He said the CFG representative finally stopped calling around Christmas after Pearson's attorney spoke to him. Adv. ECF No. 26 at 9.

In addition to the phone calls, the undisputed facts, as noted in the Court's Order Granting Motion for Summary Judgment, establish that months after Pearson's bankruptcy was filed and CFG was notified of the bankruptcy, CFG sent a collections text message to Pearson and seven others. Adv. ECF No. 16 at 4-7. After counsel filed an adversary proceeding for violation of the stay, CFG again emailed Pearson to attempt collection. *Id.* at 7.

At the hearing, Debtor's counsel requested punitive damages in the amount of \$8,000 and attorney fees of \$6,826.24.<sup>1</sup> Adv. ECF No. 26 at 3. Section 362(k) provides for recovery of costs and attorneys' fees for "an individual injured by any willful violation of a stay." 11 U.S.C. § 362(k)(1); *see also Young v. Repine (In re Repine)*, 536 F.3d 512, 522 (5th Cir. 2008). "When a federal statute provides for attorney's fees, the Fifth Circuit uses the 'lodestar' method to determine whether such fees are reasonable." *Garza v. CMM Enters., LLC (In re Garza)*, No. 16-70444, Adv. No. 17-7001, 2020 WL 718444, at \*2 (Bankr. S.D. Tex. Feb. 12, 2020) (citing *In re Cahill*, 428 F.3d 536, 539-40 (5th Cir. 2005)). The lodestar is computed "by multiplying the number of hours an attorney would reasonably spend for the same type of work by the prevailing hourly rate in the community." *In re Cahill*, 428 F.3d at 540 (citing *Shipes v. Trinity Indus.*, 987 F.2d 311, 319 (5th Cir. 1993)). "[T]here is a 'strong presumption' that the lodestar figure is reasonable...." *Perdue v. Kenny A. ex. rel. Winn*, 559 U.S. 542, 554 (2010). The Court "may then adjust the rate up or down pursuant to § 330 and in light of the *Johnson* factors." *In re Reed*, 616 B.R. 77, 83 (Bankr. N.D. Miss. 2020) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989)).

The *Johnson* factors are: (1) "the time and labor required"; (2) "the novelty and difficulty of the questions"; (3) "the skill requisite to perform the legal service properly"; (4) "the preclusion of other employment by the attorney due to acceptance of the case"; (5) "the customary fee"; (6) "whether the fee is fixed or contingent"; (7) "time limitations imposed by the client or the circumstances"; (8) "the amount involved and the results obtained"; (9) "the experience, reputation, and ability of the attorneys"; (10) "the 'undesirability' of the case"; (11) "the nature and length of the professional relationship with the client"; and (12) "awards in similar cases."

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<sup>1</sup> In his schedules, Pearson listed CFG with an unsecured claim for \$8,000. ECF No. 4 at 16. The Chapter 13 plan, proposing a 100% payment on unsecured claims, was confirmed on June 5, 2023. *See* ECF No. 20 at 5. CFG did not file a proof of claim. *See* Cls. Register.

*Cruz v. Maverick Cnty.*, 957 F.3d 563, 574 n.3 (5th Cir. 2020) (quoting *Johnson*, 488 F.2d at 717-19).

Debtor's counsel submitted a fee statement itemizing 31.27 hours of service at a rate of \$200.00 per hour for a total of \$6,253.33, plus expenses of \$572.91. Trial Ex. 2, Adv. ECF No. 22 at 13-14. Services included drafting a good faith letter, drafting the adversary proceeding and motion for summary judgment, research and trial preparation. *Id.* at 13. These fees are reasonable in both time and amount.

“The court may award punitive damages for willful violation of an automatic stay ‘in appropriate circumstances,’ 11 U.S.C. § 362(k)(1), which we have held requires ‘egregious conduct.’” *Monge v. Rojas (In re Monge)*, 826 F.3d 250, 256 (5th Cir. 2016) (quoting *In re Repine*, 536 F.3d at 521). “Whether conduct is egregious . . . requires the Court to look at the factual circumstances surrounding the violations.” *Ali v. Merchant (In re Ali)*, No. 13-50724, Adv. No. 13-05083-CAG, 2015 WL 4611343, at \*66 (Bankr. W.D. Tex. July 23, 2015). “Egregious conduct is found when a creditor’s actions are reckless and in arrogant defiance of the bankruptcy stay. Punitive damages are a proper deterrent to entities who willfully violate the automatic stay, even if the actual damages are minimal.” *In re Garza*, 605 B.R. at 830-31. The Court finds under the facts of this case that punitive damages in the amount of \$8,000 should be awarded to Pearson which damages shall be offset against the debt owed to CFG resulting in cancellation of the debt. *See Davis v. JL Auto Sales (In re Davis)*, 651 B.R. 192, 195 (Bankr. D.S.C. 2023) (violation of stay warranted cancellation of debt); *Hamby v. Fouts (In re Hamby)*, 646 B.R. 865, 876 (Bankr. N.D. Ga. 2022) (cancelling debt for willful violation of automatic stay); *In re Adams*, 516 B.R. 361, 376 (Bankr. S.D. Miss. 2014) (cancelling lien as offset for punitive damages); *Credit Nation Lending Servs., LLC v. Nettles*, 489 B.R. 239, 251 (N.D. Ala. 2013) (affirming punitive damages

that equaled and therefore cancelled security interest in repossessed vehicle); *In re Andrus*, No. 04-00061, 2004 WL 2216493, at \*15-16 (Bankr. D. Idaho Sept. 23, 2004) (awarding punitive damages in amount that resulted in release of creditor's lien); *In re Meeks*, 260 B.R. 46, 48 (Bankr. M.D. Fla. 2000) (awarding punitive damages and cancelling debt); *Brown v. Town & Country Sales & Serv., Inc. (In re Brown)*, 237 B.R. 316, 322 (Bankr. E.D. Va. 1999) (cancelling creditor's security interest in repossessed vehicle for willful violation of automatic stay); *In re Cepero*, 226 B.R. 595, 601 (Bankr. S.D. Ohio 1998) (prohibiting creditor from asserting any claim against debtor relating to repossessed vehicle when creditor willfully violated automatic stay).

**IT IS THEREFORE ORDERED AND ADJUDGED** that Pearson is awarded damages from CFG Merchant's Solutions for attorney's fees of \$6,826.34 and punitive damages of \$8,000 to be offset against the debt owed by Pearson to CFG Merchant's Solutions.

**IT IS FURTHER ORDERED AND ADJUDGED** that the debt owed by Pearson to CFG Merchant's Solutions is cancelled and CFG, its successor, assign or agent, is prohibited from collecting the debt from Pearson.

*##END OF ORDER##*