

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re: DUMACE LEONARD LEGRAND,) Case No. 19-21198-C-7
Debtor.) Dkt. Control No. SJT-1
_____)

OPINION

Before: Christopher M. Klein, Bankruptcy Judge

Susan J. Turner, River City Law, Sacramento, CA, for Debtor
Laura McCarthy Hoalst, Winn Law Group, Fullerton, CA, for
Respondents Cavalry Portfolio Services, Cavalry SPV-1, LLC, &
Winn Law Group

CHRISTOPHER M. KLEIN, Bankruptcy Judge:

"No fair ground of doubt as to whether the [bankruptcy discharge] order barred the creditor's conduct" warrants civil contempt says the Supreme Court. Taggart v. Lorenzen, 139 S.Ct. 1795 (2019). This is such a case.

Although civil contempt for discharge violations is warranted, the automatic stay remedy under 11 U.S.C. § 362(k)(1) applies because the series of offending wage garnishments began before discharge at the behest of debt collectors who had no sense of urgency about obeying the law. Civil contempt's milder remedies do not eclipse the stronger medicine of § 362(k)(1).

There would have been no violations if the respondents had terminated their earnings withholding order before "closing" their files and sticking their heads in the sand. Debt collectors have an affirmative duty upon learning of bankruptcy to terminate garnishments they have launched.

1 The stay-violating conduct having been "willful" within the
2 meaning of § 362(k)(1) and there also being "no fair ground of
3 doubt as to whether" the automatic stay and the discharge
4 injunction barred the garnishments, § 362(k)(1) stay violation
5 remedies, including punitive damages, are appropriate.

6
7 Facts

8 Cavalry SPV I, LLC, as assignee of Citibank, N.A.
9 ("Cavalry"), obtained a \$20,791.07 money judgment against Dumace
10 LeGrand in a California state court.

11 A Writ of Execution directed to the Sheriff of Los Angeles
12 County was issued January 8, 2019.

13 An Application for Earnings Withholding Order and an
14 Earnings Withholding Order ("EWO") were prepared January 30,
15 2019, on official California forms on behalf of Cavalry by its
16 attorney, Winn Law Group ("Winn"), filed February 4, 2019, and
17 served on LeGrand's employer on February 5, 2019.

18 Winn advertises its expertise in debt collection matters as
19 the "premier creditor's rights firm in California."¹

20 The Employer's Return form on the EWO reported gross
21 earnings of \$1,008.00 during the last weekly pay period. It
22 further reported in Item 5 that "employer has received another
23 order affecting the employee's earnings and earnings are being
24 withheld for this other order because this order does not have
25 higher priority." The other order was described as "CA Child
26

27 ¹Website: "Winn Law Group is the premier creditor rights
28 law firm in California." <http://www.winnlawgroup.com/about>
(viewed January 21, 2020).

1 Support, Case 15FL00805MOD4, currently \$216.48 weekly."

2 The Employer's Return did not check the box: "This order is
3 not effective for the reason shown in Item 5. It is returned to
4 the levying officer with this return." Thus, the Employer's
5 Return made clear that it was retaining the order, which is the
6 result contemplated by California Code of Civil Procedure
7 § 706.030(c)(3) when there is extant withholding for support.

8 Cavalry and Winn received the Employer's Return dated
9 February 14, 2019, noting the existing withholding for support.

10 LeGrand filed chapter 7 case No. 2019-21198 on February 28,
11 2019. His chapter 7 discharge was entered June 17, 2019. The
12 chapter 7 case was closed June 24, 2019.

13 Cavalry and Winn were listed as creditors and admit that
14 they had notice of the case and of the discharge.

15 Upon learning of the filing of the chapter 7 case, Cavalry
16 and Winn "closed" their files, but they did not terminate
17 Cavalry's EWO even though they admit that they had an affirmative
18 duty to do so. Nor is it controverted that they knew from the
19 Employer's Return that their EWO had been retained by LeGrand's
20 employer and, thus, remained potentially effective.

21 LeGrand's employer did not have notice of the existence of
22 his bankruptcy case until June 28, 2019, eleven days after his
23 discharge was entered.

24 The employer honored Cavalry's EWO for payrolls of May 22,
25 June 19, June 26, July 3, July 10, July 17, and August 7, 2019,
26 for a total of \$883.35.

27 On July 10, 2019, LeGrand's counsel sent to Winn a letter by
28 fax transmission (which was received) demanding immediate

1 termination of the garnishment, return of collected funds,
2 \$500.00 in damages, and \$500.00 in attorney's fees. Her letter
3 stated an intent to pursue formal action if there was no
4 resolution by July 15, 2019. She followed her letter with
5 repeated futile attempts to talk with Winn by way of voicemail
6 messages requesting that her calls be returned.

7 Winn did not respond to the July 10 letter from LeGrand's
8 counsel, did not respond to counsel's voicemail messages, and did
9 not otherwise attempt to communicate with her before she filed
10 and served the motion for sanctions and fees on July 26, 2019.

11 On July 29, 2019, Winn executed, for Cavalry, a Notice of
12 Termination of EWO and sent a copy to LeGrand's counsel. This
13 was Winn's first communication to LeGrand's counsel.

14 The Notice of Termination was directed to the Los Angeles
15 County Sheriff, who supposedly terminated the EWO on August 2,
16 2019, but not in time to prevent another garnishment on August 7.

17 This court issued an Order to Show Cause why Cavalry and
18 Winn should not be held in civil contempt or otherwise sanctioned
19 for violating the automatic stay and the discharge injunction.
20

21 Analysis

22 Assessing the questions of automatic stay violation, civil
23 contempt, and their consequences requires an excursion through
24 the California wage garnishment statute.
25

26 I

27 California wage garnishment procedure is prescribed by
28 Chapter 5 of the California Code of Civil Procedure. CAL. CODE

1 CIV. PRO. §§ 706.010 - 706.154.

3 A

4 The dramatis personae include "judgment creditor," "judgment
5 debtor" (aka "employee"²), "employer,"³ and the "levying
6 officer" (Sheriff or authorized public officer).

8 B

9 The key concepts relevant here are "earnings,"⁴ "disposable
10 earnings,"⁵ "writ of execution," "earnings withholding order,"⁶

13 ²"Employee" includes "any individual who performs services
14 subject to the right of the employer to control both what shall
15 be done and how it shall be done." CAL. CODE CIV. PRO.
§ 706.011(e).

16 ³"'Employer' means a person for whom an employee performs
17 services as an employee." CAL. CODE CIV. PRO. § 707.011(f). And,
18 "'Person' includes an individual, a corporation, a partnership or
other unincorporated association, a limited liability company,
and a public entity." CAL. CODE CIV. PRO. § 706.011(i).

19 ⁴"'Earnings' means compensation payable by an employer to an
20 employee for personal services performed by such employee,
21 whether denominated as wages, salary, commission, bonus, or
otherwise." CAL. CODE CIV. PRO. § 706.011(b).

22 ⁵"'Disposable earnings' means the portion of an individual's
23 earnings that remains after deducting all amounts required to be
withheld by law." CAL. CODE CIV. PRO. § 706.011(a).

24 ⁶A writ of execution is prerequisite to obtaining an
25 earnings withholding order: "If a writ of execution has been
26 issued in the county where the judgment debtor's employer is
27 required to be served and the time specified in subdivision (b)
of Section 699.530 for levy on property under the writ has not
expired, a judgment creditor may apply for the issuance of an
28 earnings withholding order by filing an application with a
levying officer in such county who shall promptly issue an
earnings withholding order." CAL. CODE CIV. PRO. § 706.102(a).

1 "employer's return," "levy of execution,"⁷ "lien created by
2 service of earnings withholding order,"⁸ "withholding period,"⁹
3 "priority of earnings withholding order,"¹⁰ "withholding order
4 for support,"¹¹ "ineffective earnings withholding order,"¹²

5 _____
6 ⁷"[A] levy of execution upon the earnings of an employee
7 shall be made by service of an earnings withholding order upon
8 the employer." CAL. CODE CIV. PRO. § 706.021.

8 ⁸"Service of an earnings withholding order creates a lien
9 upon the earnings of the judgment debtor that are required to be
10 withheld pursuant to the order and upon all property of the
11 employer subject to the enforcement of a money judgment in the
12 amount required to be withheld pursuant to such order. The lien
13 continues for a period of one year from the date the earnings of
14 the judgment debtor become payable unless the amount required to
15 be withheld pursuant to the order is paid as required by law."
16 CAL. CODE CIV. PRO. § 706.029.

13 ⁹"'[W]ithholding period' means the period which commences on
14 the 10th day after service of an earnings withholding order upon
15 the employer and which continues until the earliest of the
16 following dates:

16 (1) The date the employer has withheld the full amount
17 required to satisfy the order.

17 (2) The date of termination specified in a court order
18 served on the employer.

18 (3) The date of termination specified in a notice of
19 termination served on the employer by the levying officer.

19 (4) The date of termination of a dormant or suspended
20 earnings withholding order as determined pursuant to Section
21 706.032." CAL. CODE CIV. PRO. § 706.022(a).

21 ¹⁰The rule is first in time, first in right: "An employer
22 shall comply with the first earnings withholding order served
23 upon the employer." CAL. CODE CIV. PRO. § 706.023(a).

23 ¹¹"A 'withholding order for support' is an earnings
24 withholding order issued on a writ of execution to collect
25 delinquent amounts payable under a judgment for the support of a
26 child, or spouse or former spouse, of the judgment debtor." CAL.
27 CODE CIV. PRO. § 706.030(a).

26 ¹²An "ineffective" earnings withholding order results "[i]f
27 the employer is served while an employer is required to comply
28 with another earnings withholding order with respect to the
earnings of the same employee, in which event the subsequent
order that is "ineffective" until the prior order is terminated.

1 "dormant EWO," and "suspended EWO."

2 A cousin not governed by the Wage Garnishment Law is the
3 "earnings assignment order for support," which, as an assignment,
4 has superpriority over all EWOs.¹³

6 C

7 The lien created by service of an EWO puts the employer at
8 risk of liability for so long as the EWO remains in the hands of
9 the employer. In addition to being a lien on the employee's
10 wages, it constitutes a lien on employer's property in the amount
11 required to be withheld. CAL. CODE CIV. PRO. § 706.029.

13 D

14 Situations involving multiple EWOs receive three alternative
15 treatments under the California Wage Garnishment Law.

17 1

18 First, the usual rule is that EWOs of equal priority are
19 honored seriatum - first come, first served. If one such EWO is
20 in force when the employer receives a second EWO of equal or
21 lesser priority, the second EWO is "ineffective" and is returned

22 _____
23 CAL. CODE CIV. PRO. § 706.23(c).

24 ¹³ "Earnings assignment order for support" means an order,
25 made pursuant to Chapter 8 (commencing with Section 5200) of Part
26 5 of Division 9 of the Family Code or Section 3088 of the Probate
27 Code, which requires an employer to withhold earnings for
28 support." CAL. CODE CIV. PRO. § 706.011(d). They are not governed
by the Wage Garnishment Law, are not "earnings withholding
orders," and have priority over any EWO. ALAN M. AHART, CALIFORNIA
PRACTICE GUIDE: ENFORCING JUDGMENTS AND DEBTS § 6:1219 (Rutter Group
2005) (AHART, ENFORCING JUDGMENTS).

1 to the levying officer to await a subsequent levy after the first
2 EWO is paid in full. CAL. CODE CIV. PRO. § 706.023(c).¹⁴

3 Or, second, if the second-arriving EWO is senior in
4 priority, then an EWO already in effect becomes "suspended" while
5 the priority order is paid but remains in the hands of the
6 employer to be resumed when the priority EWO is paid in full.
7 CAL. CODE CIV. PRO. §§ 706.022(a)(4) & § 706.032(a)(2).¹⁵

8 Or, third, when support is involved, an employer withholds
9 earnings simultaneously pursuant to an EWO for support (or
10 earnings assignment order for support) and another EWO. CAL. CODE
11 CIV. PRO. § 706.030(c)(3).¹⁶

12 Why the simultaneous treatment? Simple. There is a
13

14 ¹⁴"If an earnings withholding order is served while an
15 employer is required to comply with another earnings withholding
16 order with respect to the earnings of the same employee, the
17 subsequent order is ineffective and the employer shall not
18 withhold earnings pursuant to the subsequent order ..." CAL. CODE
19 CIV. PRO. § 706.023(c).

20 ¹⁵"'Withholding period' means the period which commences on
21 the 10th day after service of an earnings withholding order upon
22 the employer and which continues until the earliest of the
23 following dates: ... (4) The date of termination of a dormant or
24 suspended withholding order as determined pursuant to Section
25 706.032." CAL. CODE CIV. PRO. § 706.022(a).

26 "(a) Except as otherwise provided by statute: ... (2) If
27 withholding under an earnings withholding order ceases because
28 the judgment debtor's earnings are subject to an order or
assignment with higher priority, the earnings withholding order
terminates at the conclusion of a continuous two-year period
during which no amounts are withheld under the order." CAL. CODE
CIV. PRO. § 706.032(a)(2).

29 ¹⁶"(c) Notwithstanding any other provision of this chapter:
... (3) Subject to paragraph (2) and to Article 3 [Restrictions
on Earnings Withholding] (commencing with Section 706.050), an
employer shall withhold earnings pursuant to both a withholding
order for support and another earnings withholding order
simultaneously." CAL. CODE CIV. PRO. § 706.030(c)(3).

1 statutory limit to the amount that may be withheld per pay
2 period, typically 25 percent of disposable income. CAL. CODE CIV.
3 PRO. §§ 706.050 - 706.052.

4 Consider, as an example, a \$300.00 withholding limit due to
5 disposable income of \$1,200.00. If there is a priority support
6 order (earnings assignment order or EWO for support) for \$250.00,
7 then the remaining \$50.00 is available for the non-support EWO.

8 But if earnings for a particular pay period do not permit
9 withholding more than the support amount, then there is nothing
10 for the EWO to capture and, hence, that EWO is said to be
11 "dormant." CAL. CODE CIV. PRO. § 706.022(a)(4). The "dormant" EWO
12 lays to the side ready to pounce whenever there is an amount that
13 can be withheld in excess of the support amount.

14 In other words, when an EWO for support and an EWO are
15 simultaneously in effect, the amount required to be withheld for
16 support is deducted first and the amount, if any, for the non-
17 support EWO is determined by subtracting the support amount from
18 the total amount that could otherwise be withheld under a non-
19 support order. AHART, ENFORCING JUDGMENTS §§ 6:1224-25.

20 In scenarios two ("suspended" EWO) and three ("dormant"
21 EWO), the employer retains an EWO until it terminates.

22
23 2

24 The facts of this case suggest that the third scenario
25 applied, which permits simultaneous withholding. The employer,
26 in light of exposure to the attendant lien, likely would have
27 returned Cavalry's EWO as ineffective if it could have done so.

It appears that what happened is that initially LeGrand's income was less than or equal to the support order, and that Cavalry's EWO lay "dormant." When LeGrand began to work overtime in May 2019, the increase in income had the effect of raising the limit on what could be garnished above the sum needed to honor the support order, at which point Cavalry's "dormant" EWO pounced on the surplus available to withhold.

Therein lies the answer to the question, "Why no withholding before May 22 on Cavalry's EWO?" Answer: no increased income until the May 22 payroll. LeGrand's overtime averaged 23.35 hours per week for the seven weeks in question.¹⁷

E

Cavalry and Winn suggest in defense that an objectively reasonable basis for their inaction ensues from "irregular" procedure because their EWO was not immediately returned by the employer as ineffective. As there was no irregularity, that defense is unavailing, especially among expert debt collectors.

Several inescapable facts belie any irregularity supporting an objectively reasonable explanation. Cavalry and Winn knew that their EWO was retained by the employer. They also knew that § 706.030(c)(3) requires simultaneous withholding where withholding for support is involved. They also knew that the prior order involved family support. They also knew that their

¹⁷The pay advices for the payment dates May 22, June 19, June 26, July 3, July 10, July 17, and August 7 reflect overtime at an average of 23.35 hours for those seven weeks. The support for those weeks was \$241.84/week, instead of the \$216.48/week reported in the Employer's Return the previous February 14.

1 EWO would remain effective for up to two years. They also knew
2 that the debtor had filed a bankruptcy case triggering the
3 automatic stay and then had received a discharge triggering the
4 discharge injunction. They also knew they had an affirmative
5 duty to ensure that their "dormant" EWO would not cause any
6 garnishment violating the automatic stay or discharge injunction.

7 Finally, after learning on July 10, 2019, that their
8 "dormant" EWO was triggering garnishments, and with knowledge of
9 the automatic stay violation beginning with the May 22
10 garnishment and with knowledge of the discharge injunction, they
11 waited nineteen days to terminate their EWO on July 29, 2019,
12 three days after debtor's counsel filed the instant motion.

13 Conspicuously absent from the response by Cavalry and Winn
14 is any attempt to explain, extenuate, or excuse their nineteen-
15 day delay in terminating their EWO.

16 In short, there is no objectively reasonable basis for
17 concluding that the conduct of Cavalry and Winn might be lawful.
18 Enforcement of their "dormant" EWO in the face of the automatic
19 stay before discharge exposes them to § 362(k)(1).

21 II

22 Automatic stay violation remedies are prescribed by
23 § 362(k)(1) for victims who are individuals.¹⁸ Congress provided
24 that the court may award actual damages, including costs and
25 attorneys' fees, and, in appropriate circumstances, punitive
26

27 ¹⁸Civil contempt also applies to § 362 stay violations,
28 regardless of whether the victim is an individual. Knupfer v.
Lindblade (In re Dyer), 322 F.3d 1178, 1189-90 (9th Cir. 2003).

1 damages. 11 U.S.C. § 362(k)(1).

3 A

4 Stay violation liability under § 362(k)(1) continues until
5 full restitution is actually made or, if after expiration of the
6 stay, until the court orders full restitution. Snowden v. Check
7 Into Cash of Wash., Inc. (In re Snowden), 769 F.3d 651, 659 & 662
8 (9th Cir. 2014); Sundquist v. Bank of America, N.A. (In re
9 Sundquist), 566 B.R. 563, 586 (Bankr. E.D. Cal. 2017).

11 B

12 The willfulness of the stay violation is a question of fact.
13 Eskanos & Adler, P.C. v. Leetien (In re Leetien), 309 F.3d 1210,
14 1213 (9th Cir. 1992). This instance entails multi-step analysis.

15 When the automatic stay came into effect as a consequence of
16 the filing of LeGrand's voluntary chapter 7 filing, Cavalry's EWO
17 was in the hands of the employer in a "dormant" status. The EWO
18 was effective and potent to the extent that whenever LeGrand's
19 disposable income within garnishment limits exceeded his family
20 support obligation then the Cavalry EWO would be honored.

21 Cavalry's EWO, like what the military has variously known as
22 booby trap, surprise firing device, IED, or land mine awaited
23 automatic detonation by the stimulus of surplus income.

24 Cavalry and Winn knew of the bankruptcy filing and of the
25 automatic stay, knew that their EWO remained effective to trigger
26 a withholding upon the occurrence of increased income, and knew
27 that the correct way to disarm the EWO was to terminate it.

1 One might debate whether Cavalry and Winn willfully violated
2 the automatic stay when they did not immediately terminate their
3 EWO upon learning of the bankruptcy filing and the automatic
4 stay, or, instead, when the EWO actually captured some surplus
5 wages. In either event, it counts as "willful."

6 A creditor who knows of the automatic stay and has the power
7 to revoke some contingent action that would violate the stay but
8 declines to do so acts "willfully" for purposes of § 362(k)(1).

9 It follows that Cavalry and Winn were "willful" in their
10 violations of the automatic stay.

11
12 III

13 What of the fact that some of Cavalry's garnishments
14 occurred after the discharge was entered?

15 As the Supreme Court has made explicit, bankruptcy courts
16 have civil contempt authority for discharge violations derived
17 from the conjunction of § 524(a)(2) and § 105(a). 11 U.S.C.
18 §§ 105(a) & 524(a)(2); Taggart, 139 S.Ct. at 1801.

19
20 A

21 The usual remedy for discharge injunction infractions are
22 limited to civil contempt. The appropriate parameters of civil
23 contempt in any given situation are fact intensive.

24 Civil contempt sanctions are designed to coerce compliance
25 and to compensate for losses, including costs and attorneys'
26 fees, stemming from noncompliance with the injunction. Taggart,
27 139 S.Ct at 1801; United States v. Utd. Mine Workers of Am., 330
28 U.S. 258, 303-04 (1947); Dyer, 322 F.3d at 1192; In re Dickerson,

1 510 B.R. 289, 297-98 (Bankr. D. Id. 2014).

2 Taggart clarifies that the standard to find civil contempt
3 is objective, but subjective good or bad faith may affect the
4 size of the range of losses attributable to noncompliance with
5 the injunction. Bad faith may widen the range of what is
6 compensatory. Chambers v. NASCO, Inc., 501 U.S. 32, 50 (1991)
7 (\$996,644.65). Good faith may narrow the range. Young v. United
8 States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 801 (1987).

9 In addition to coercion and compensation, civil contempt
10 may, if necessary, include "relatively mild" non-compensatory
11 fines tailored to rule enforcement. Dyer, 322 F.3d at 1193;
12 Dickerson, 510 B.R. at 298.

13 In sum, the degree of sanctions other than compensation is
14 limited to the least possible exercise of power adequate to the
15 end of preventing repetition. Taggart, 139 S.Ct. at 1802.

16
17 B

18 When, as here, a violation of the discharge injunction is
19 merely continuation of pre-discharge conduct that violated the
20 automatic stay, § 362(k)(1) continues to provide stronger, more
21 explicit, and more definite statutory remedies that are more
22 adequate to the task than the least-possible-exercise-of-power
23 restriction on civil contempt.

24 An automatic stay violation that continues post-discharge
25 remains eligible for § 362(k)(1) remedies, including actual
26 damages, costs and attorneys' fees, and, punitive damages, until
27 the stay violation is purged by actual restitution. Snowden, 769
28 F.3d at 659 & 662; Sundquist, 566 B.R. at 586.

1 It would be an odd system that strips an individual debtor
2 of the potent § 362(k)(1) statutory punitive damages remedy
3 against a creditor violating the automatic stay in bad faith but
4 then holds that, because the stay violation persisted past entry
5 of discharge, the § 524 discharge injunction insulates that same
6 bad actor with civil contempt's milder least-possible-exercise-
7 of-power approach of civil contempt.

8
9 IV

10 Under either the § 362(k)(1) regime for automatic stay
11 violations or the civil contempt regime for discharge injunction
12 violations, the relative good or bad faith of the defendant is
13 relevant to fashioning the award. And, in the case of
14 § 362(k)(1), such analysis is vital to the question of whether
15 circumstances are "appropriate" for punitive damages.

16
17 A

18 We begin by positing the baseline for what would have been a
19 good faith response to notice the automatic stay was being
20 violated.

21 The good faith response to the July 10 letter faxed to
22 Cavalry's counsel by LeGrand's counsel would have been an
23 immediate message or telephone call to the effect: "There must
24 have been a mistake. We apologize. We are immediately
25 investigating to correct the situation by making sure our EWO is
26 terminated and promise to make the debtor whole."

27 If that good faith response had been made, then the
28 attorneys' fee component of damages would have been low and

1 punitive damages would be less likely to be awarded.

2
3
4 B

5 That good faith response was not what happened. The facts
6 are more indicative of lack of good faith.

7
8 1

9 Cavalry and Winn did nothing for nineteen days after
10 receiving formal notice from debtor's counsel - no call to
11 debtor's counsel, no email to debtor's counsel, no letter to
12 debtor's counsel, no effort towards terminating the EWO. No
13 effort to act like reasonable adults. Meanwhile, at least two
14 more withholdings occurred.

15 Nor can Cavalry and Winn hide behind honest mistake. They
16 knew the law regarding "dormant" EWOs linked to support
17 obligations ("premier creditor's rights firm in California").
18 They knew as of the Employer's Return of February 14 that they
19 had a "dormant" EWO lodged with the employer that would remain
20 effective for two years. They admitted in open court that they
21 knew they had an affirmative duty to terminate that EWO. When
22 they received notice of entry of discharge, they knew that no
23 theory of law would validate that "dormant" EWO.¹⁹

24
25 ¹⁹They may have been betting that the chapter 7 case would
26 be dismissed before entry of discharge so that the "dormant"
27 order would retain vitality and betting that there would be no
28 surplus income available to garnish while the automatic stay was
in effect. As it turned out, they lost both bets. The case was
not dismissed and there were garnishments while the automatic
stay was in effect. Now it is time to pay up under § 362(k)(1).

1 Despite all that knowledge, it was not until after receipt
2 by Cavalry and Winn of the debtor's sanctions motion filed and
3 served by mail on day sixteen after the July 10 notice that
4 Cavalry and Winn acted to terminate their EWO.

5 This smacks of a passive-aggressive mindset of doing nothing
6 on the chance that debtor's counsel may not figure out how to
7 initiate a legal action or may back off out of concern for
8 expense. Perhaps that is a useful collection strategy elsewhere.
9 But in the face of the bankruptcy automatic stay and the
10 discharge injunction, it amounts to playing with fire.

11 Bottom line: no inference of good faith on those facts.
12

13 2

14 The papers presented by Winn materially misstate key facts
15 so as to hide its nineteen-day delay.

16 The fact is that Winn received the faxed letter from the
17 debtor's counsel on July 10 and did nothing by way of response
18 and ignored all telephone calls until July 19 when, after Winn
19 had received mail service of the debtor's motion for sanctions,
20 Winn issued a termination of the earnings withholding order.

21 That chronology adds up to a nineteen-day stonewall by Winn
22 with knowledge of on-going violation of the discharge injunction,
23 which led to at least two additional garnishments. Winn has
24 explaining to do, but curiously makes no attempt to do so.

25 Winn dodges mention of its nineteen-day stonewall nine times
26 with statements implying it acted promptly. For example: "Winn
27 terminated the levy upon review of the letter from debtor's
28

1 counsel, prior to receipt of any funds."²⁰

2 All in all, those statements are designed to cover up Winn's
3 nineteen-day delay and are indicative of less than good faith.

4
5 3

6 Respondent's papers materially misstate the law by way of
7 selective citations that focus on a general rule and omit mention
8 of the applicable exception. There is no mention of the section

9
10 ²⁰Declaration of Laura McCarthy Hoalst, ¶ 13. The other
11 eight statements are:

12 "Upon notice of the employer's enforcement of the earnings
13 withholding order, Winn terminated the levy and instructed the
14 sheriff to release any funds to the debtor." Response to Order
15 to Show Cause, p.2, 11.18-19.

16 "The file remained closed until debtor's counsel, Sharon
17 [Susan] Turner, contacted this office regarding the execution.
18 As of that date, no funds had been received from the sheriff, and
19 a termination of the execution was sent to the sheriff on July
20 29, 2019." Memorandum of Authorities, p.2, 11.12-14.

21 "Upon learning of the belated enforcement of the wage levy,
22 Winn issued a termination of the execution on July 29, 2019,
23 instructing any funds to be returned to the debtor." Memorandum
24 of Authorities, p.3, 11.13-15.

25 "Upon being made aware, Winn terminated the levy."
26 Memorandum of Authorities, p.5, 11.7-8.

27 "Any delay in issuing the termination was without intent and
28 knowledge that the employer enforced the executed [sic]
approximately three months after service." Memorandum of
Authorities, p.5, 11.12-14.

"As soon as the respondents learned of the garnishment, they
terminated." Hearing Transcript, p.7, 11.11-12 (Atty Hoalst to
court).

"As soon as Winn Law Group became aware of the situation,
they terminated." Id., p.9, 11.7-8 (Atty Hoalst to court).

"As soon as we learned about it, we terminated it." Id.,
p.21, 11.7-8.

1 that provides for simultaneous enforcement of withholding for
2 support and an EWO. CAL. CODE CIV. PRO. § 706.030(c)(3).

3 Instead of citing and addressing the implications of
4 § 706.030(c)(3), notice of the applicability of which was
5 implicit in the Employer's Return that reported that the EWO was
6 not being returned as "ineffective," Winn hides from
7 § 706.030(c)(3) and perpetrates an exercise in misdirection
8 designed to create the misimpression that the subject
9 garnishments were the result of improper procedure.

10 Winn's brief cites only to § 706.023 rendering garden-
11 variety EWOs as "ineffective" in situations not involving a prior
12 support order and to § 706.104 governing the Employer's Return,
13 requiring return to the levying officer of an "ineffective" EWO.
14 Then the brief quotes the description of § 706.023 and § 706.104
15 in a prominent California treatise, AHART, ENFORCING JUDGMENTS
16 §§ 6:1215-16. Memorandum of Authorities, pp.3-4.

17 As explained above, § 706.030(c)(3) simultaneous withholding
18 constitutes an exception to the general rule of priority in
19 § 706.023. The same Ahart treatise, on which Winn relies, agrees
20 and accurately describes the exception regarding simultaneous
21 withholding. AHART, ENFORCING JUDGMENTS §§ 6:1224-25.

22 Yet Winn blames something abnormal about the simultaneous
23 withholding prescribed by § 706.030(c)(3).²¹ All was correct.

24
25 ²¹"No further action was taken to enforce the judgment after
26 receipt of the notice [of bankruptcy]. This was because of the
27 employer's return indicating that there was already a support
28 order received prior to the Cavalry writ. Under normal
procedure, the writ would not have been enforced." Declaration
of Laura McCarthy Hoalst, ¶ 7 (emphasis supplied). In fact, the
procedure was correct and normal.

1 This court seriously doubts that "the premier creditor
2 rights law firm in California" innocently forgot to mention
3 § 706.030(c)(3) and innocently forgot to read and cite to the
4 court the next page of the Ahart treatise.

5 In fact, the Employer's Return in this instance noted that
6 there was a prior order for support and that Cavalry's EWO was
7 not being returned as "ineffective."

8
9 V

10 Next comes the question of remedies.

11
12 A

13 This court is persuaded by clear and convincing evidence
14 that Cavalry and Winn "willfully" violated the automatic stay by
15 not preventing the Cavalry EWO from being enforced on seven
16 occasions following the filing of the debtor's chapter 7 case, a
17 consequence which is that actual damages, including costs and
18

19 "In this case, it appears that the employer starting [sic]
20 enforcing the writ May 22, 2019, enforcing it after the prior
21 order expired or was satisfied. This was not proper procedure as
22 set forth in the Ahart, California Practice Guide." Memorandum
23 of Authorities, p.4, 11.13-15 (emphasis supplied). In fact, it
24 was precisely the proper procedure as described on the next page
25 of the Ahart treatise.

26 "Winn ... relied on the employer's return that it was
27 ineffective due to an existing levy." Id., p.5, 11.11-12. The
28 Employer's Return, quite properly, did not say the writ was
ineffective and did say the writ was not being returned.

"The employer's return indicated that a previously served
levy was pending. Procedurally, the writ should have been
returned to the sheriff and would have expired." Response of
Winn Law Group, p.2, 11.9-11 (emphasis supplied). Wrong again.

1 attorneys' fees are in order pursuant to § 362(k)(1).

2 This court is also persuaded that this situation presents
3 § 362(k)(1) "appropriate circumstances" for punitive damages.

4 Winn and Cavalry have conducted themselves in reckless or
5 callous disregard for the rights of the debtor and not in good
6 faith. Goichman v. Bloom (In re Bloom), 875 F.2d 224, 228 (9th
7 Cir. 1989).

8 Upon being notified of the offending garnishments, they did
9 nothing that could be construed as a good faith response. They
10 stonewalled debtor's counsel for nineteen days without excuse -
11 no response to her written notice, no response to her numerous
12 phone calls, no voluntary termination of the EWO. It was only
13 under the compulsion resulting from mail service of the debtor's
14 sanctions motion, which had been filed on day sixteen, that they
15 terminated the EWO. This delay caused two additional
16 garnishments to occur. Callous disregard of the law and the
17 rights of the debtor is an understatement.

18 In this court, Winn and Cavalry have conspicuously failed to
19 address, explain, extenuate, or excuse their nineteen-day delay
20 in terminating the EWO. They have misrepresented facts in their
21 papers. They have misrepresented the law in their papers.

22 Notice of the possibility of punitive damages was given in
23 this court's Order to Show Cause. Winn and Cavalry have
24 addressed the question in their responses and at the hearing.

25
26 B

27 Attorneys' fees and costs are claimed by debtor's counsel to
28 have been \$4,500.00 as of August 20, 2019. Winn has conceded

1 that it will pay reasonable attorneys' fees and costs and raised
2 no opposition to that sum. The time reasonably necessary to
3 prepare for and appear at the hearing in court warrants an
4 additional \$1,000.00. Hence, the damages component attributable
5 to attorneys' fees and costs is \$5,500.00.

6 There is no dispute that the amount actually garnished was
7 \$883.35. Winn has documented \$165.37 in refunds to the debtor.

8 Actual damages include emotional distress. Dawson v. Wash.
9 Mutual Bank (In re Dawson), 390 F.3d 1139, 1146 (9th Cir. 2004).

10 The declaration by Mr. LeGrand, prepared on July 18, 2019,
11 in the midst of the garnishments describes how they were posing a
12 hardship. He and his family, including three young children at
13 home, were living on a tight budget that was being thrown into
14 deficit by the garnishments. He was worried about being able to
15 pay rent and buy food. The loss of those funds was proving
16 "extremely stressful." He expected a fresh start from bankruptcy
17 but the unexpected garnishment forced him to spend a lot of time
18 working with his attorney; the whole situation was "stressful"
19 and "terrible." Declaration of Debtor, Dkt. 23 (7/18/19).

20 The length of the period of the garnishments from May 22 and
21 through August 7 necessarily imposed some emotional distress on
22 an individual wage earner trying to support a family on a tight
23 budget while working an average of twenty-three hours of overtime
24 per week. That continuing emotional distress must have been
25 aggravated by the nineteen-day stonewall by Cavalry and Winn.

26 Some confirmation of stress and disruption inflicted on the
27 debtor comes from the observation in a filing of August 20, 2019,
28 by his counsel, who is essentially a solo practitioner, that "a

1 significant amount of time" had been consumed communicating with
2 her client "far more than initially anticipated." Motion of
3 Sanctions for Violations of Automatic Stay, p.3, 11.2-3. It is a
4 fact of law practice that representing individuals in matters
5 such as bankruptcy entails a considerable amount of time spent
6 helping to calm the fears of clients.

7 This court is persuaded by a preponderance of evidence and
8 based on its assessment of the credibility of Mr. LeGrand, and
9 notwithstanding the absence of expert opinion evidence, that
10 there has been emotional distress deserving of compensation in
11 the amount of \$3,500.00.

12 Accordingly, actual damages total \$9,883.35.²²

13
14 C

15 Punitive damages are authorized by § 362(k)(1) in
16 "appropriate cases." As this court has previously explained,
17 this is a statutory form of punitive damages as to which Congress
18 has provided little guidance. Sundquist, 566 B.R. at 609-14.

19 Case law regarding § 362(k)(1) establishes that there should
20 be some showing of reckless or callous disregard for the law or
21 for rights of others. Bloom, 875 F.2d at 228.

22 That reckless-or-callous-disregard standard can be
23 established by conduct that is malicious, wanton, or oppressive.
24 Snowden, 769 F.3d at 657.

25 The Supreme Court in dealing with common law punitive
26 damages has installed three guideposts: (1) degree of

27 _____
28 ²²A credit of \$165.37 will be allowed against the judgment
for funds returned by Winn.

reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded and civil penalties authorized or imposed in comparable cases. State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 418 (2003); BMW of N. Am. Inc. v. Gore, 517 U.S. 559, 575 (1996).

The nineteen-day stonewall tips the scales of reprehensibility in this case. Sophisticated debt collectors plainly know the law regarding the bankruptcy automatic stay. There is no explanation other than reckless or callous disregard for the law for not immediately having terminated the EWO upon learning of the stay violations. Although Cavalry and Winn were given full and fair opportunity to explain why they refused promptly to respond to debtor's counsel and did nothing until after the debtor filed and served the motion for sanctions, they say nothing about that period and implicitly equate nineteen days and two additional garnishments with "immediate" action.

An award of approximately two and one half times the actual damages will be proportional and within traditional bounds.

Comparable cases in matters such as the Fair Debt Collection Act, in which the majority are attorneys' fee awards, regularly exceed that which is being awarded here as punitive damages.

Hence, punitive damages are awarded under § 362(k)(1) in the amount of \$25,000.00.

VI

Finally, Winn contends that Cavalry should not be held

1 liable for any award because Winn, as Cavalry's counsel, is the
2 party that did not terminate the EWO when it should have done so
3 upon learning of the bankruptcy filing.

4 It is, however, long settled law that clients are held
5 accountable for the acts and omissions of their attorneys.
6 Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507
7 U.S. 380, 396-97 (1993); Link v. Wabash R. Co., 370 U.S. 626,
8 633-34 (1962); Smith v. Ayer, 101 U.S. 320, 325-26 (1879).

9 Cavalry and Winn are sophisticated debt collectors who know
10 and are expected to comply with bankruptcy law. The acts and
11 omissions of Winn in this case were on behalf of Cavalry, the
12 party that reviewed the notice of bankruptcy and directed that
13 the file be closed. There is nothing unfair about holding both
14 Cavalry and Winn accountable. To the extent they disagree, they
15 remain free to allocate the consequences among themselves.

16
17 ***

18 Cavalry and Winn willfully violated the automatic stay and
19 pursuant to 11 U.S.C. § 362(k)(1) are jointly and severally
20 liable for \$34,883.35, consisting of actual damages of \$9,883.35
21 and punitive damages of \$25,000.00.

22
23 **Dated:** February 06, 2020

24
25
26 
27 United States Bankruptcy Judge
28