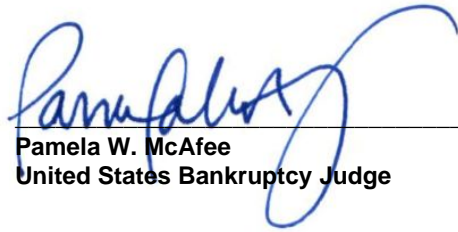




SO ORDERED

SIGNED this 13 day of May, 2024.


Pamela W. McAfee
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**TINA LYNN CASTANEDA,

DEBTOR**

**CASE NO.
23-003422-5-PWM
CHAPTER 13**

SECOND ORDER TO SHOW CAUSE

The matter before the court is the failure of New Bro's Motors Inc. (New Bro's) to perform as required by this court's Order Imposing Sanctions entered on April 9, 2024, D.E. 36 (Sanction Order), as supplemented by the court's Order Correcting Order Regarding Motion for Sanctions entered on April 10, 2024, D.E. 37 (Supplemental Sanction Order), together with the court's more recent Order Imposing Additional Sanctions issued on May 2, 2024, D.E. 52, which was entered after New Bro's failed to appear at a Show Cause hearing as directed in the Order to Show Cause issued on April 29, 2024, D.E. 45 (First Show Cause Order).

The Sanction Order outlined in detail the actions of New Bro's that led to the sanctions imposed in that order. Those sanctions included the following:

1. New Bro's was directed to pay interim actual compensatory damages of \$798.00 for the benefit of Ms. Castaneda at the address of her attorney on or before April 24, 2024, with those funds to be immediately turned over by counsel to Ms. Castaneda; and
2. New Bro's was directed to pay interim punitive damages of \$15,000 for the benefit of Ms. Castaneda at the address of her attorney, also to be immediately turned over by counsel to Ms. Castaneda; and
3. New Bro's was directed to pay attorney fees of \$2,500 to counsel for Ms. Castaneda on or before April 24, 2024. That amount was subject to increase depending on counsel's presentation of records supporting a higher amount, and on the extent to which additional legal services may be necessitated by New Bro's' future conduct.

At the hearing, counsel for Ms. Castaneda indicated that the Suburban had been returned on April 5, 2024, in good condition. However, title has not been reissued in Ms. Castaneda's name and she cannot insure the vehicle. Further, the personal property that was in the Suburban at the time of repossession has not been returned.

No one appeared on behalf of New Bro's at the May 2, 2024 hearing. In the Order Imposing Additional Sanctions, the court found that New Bro's was properly served with the Sanctions Order and Supplemental Sanctions Order, that it was aware of the directives in those orders, that New Bro's failed to comply with those orders, and that there was and is no basis for New Bro's to believe that its actions in ignoring the Sanctions Order and Supplemental Sanctions Order were lawful. The court issued further sanctions as follows:

1. The original Sanction Order was amended to require the sanction of \$15,000 to be paid not to counsel for Ms. Castaneda but instead to the Clerk, United States Bankruptcy Court, EDNC, either by mail at P.O. Box 791, Raleigh, North Carolina 27602 or by hand delivery to 300 Fayetteville Street, Fourth Floor, Raleigh, North Carolina 27602. Payment to the Clerk will satisfy that portion of the Sanction Order directing the \$15,000 to be paid to counsel for Ms. Castaneda.¹
2. A daily fine in the amount of \$100 (the Daily Fine) was imposed beginning on Friday, May 3, 2024, until the sanctions contained in the Sanction Order (including the \$15,000 referenced above, as well as the actual damages and the attorney's fees in the Sanction Order that are to be paid to Ms. Castaneda's counsel) are paid. The Daily Fine is to be paid to the Clerk, United States Bankruptcy Court, EDNC, either by mail at P.O. Box 791, Raleigh, North Carolina 27602 or by hand delivery to 300 Fayetteville Street, Fourth Floor, Raleigh, North Carolina 27602.
3. New Bro's was directed to return the personal property that was in the Suburban on the date of repossession on or before May 10, 2024. The court cautioned that to the extent that property is not returned, the court will consider evidence of its value and award further actual damages for its loss.
4. New Bro's was directed to have the North Carolina Division of Motor Vehicles issue a title to Ms. Castaneda with its lien deemed satisfied.² Proof of initiation of that process was to be provided to counsel for Ms. Castaneda on or before May 10, 2024. Ms. Castaneda was directed to cease any further payment to New Bro's.
5. Finally, because Ms. Castaneda is unable to insure the Suburban until it is titled in her name, the court required New Bro's to indemnify Ms. Castaneda for any damage or loss

¹ The court will enter a further order directing distribution of those funds after they are received from New Bro's.

² See *Credit Nation Lending Services, LLC v. Nettles*, 489 B.R. 239 (N.D. Ala. 2013) (requiring return of vehicle and discharge of debt for repossession in violation of the automatic stay); see also *In re Davis*, 651 B.R. 192 (Bankr. D.S.C. 2023).

incurred related to that vehicle (that would otherwise be covered by a policy owned by Ms. Castaneda) from the time the Suburban was returned to her on April 5, 2024, until title is reissued in her name.

In sum, and to be clear for the benefit of New Bro's: New Bro's is currently liable to Ms. Castaneda for damages, Daily Fines (\$100/day for 11 days as of the date of this order), and attorney's fees in the combined amount of \$19,398.00 plus turnover of title to the vehicle with the lien canceled and turnover of the personal property that was in the vehicle as of the date of repossession.

Significantly, the Order Imposing Additional Sanctions provided, in bold print, that "Failure to comply with any portion of this Order by May 10, 2024, will result in the issuance of an additional Order to Show Cause that will be addressed not only to New Bro's, but also to its principal, David Sanchez Miranda."

The Bankruptcy Noticing Center filed Certificates of Service indicating that the Sanction Order, Supplemental Sanction Order, Show Cause Order, and Order Imposing Additional Sanctions were served by U.S. Mail on New Bro's as follows:

New Bro's Motors, Inc., Attn: David Sanchez Miranda
8296 US Highway 301 North, Kenly, NC 27542-5010

D.E. 38, 39, 50, 54. In addition, counsel for Ms. Castaneda served the orders by U.S. Mail and, with respect to the Sanction Order and Supplemental Sanction Order, by certified mail.

New Bro's has not remitted the required sums to the Clerk of Court and there is no indication that it has remitted sums to counsel for Ms. Castaneda or provided evidence of application to the North Carolina DMV to issue title to Ms. Castaneda. Accordingly, New Bro's remains in contempt of the Sanction Order and is in violation of the Order Imposing Additional Sanctions.

Notwithstanding the escalating sanctions and Daily Fine, New Bro's has continued to ignore valid orders of this court and has failed to answer for its conduct, seeking to avoid responsibility for actions taken in clear violation of the United States Code and unabashed disobedience to the orders of the United States Bankruptcy Court. The court will not sit idly by while a creditor, especially one involved in direct commerce with the public in the context of auto sales, flagrantly flouts the law and the authority of the court in such obviously detrimental ways. In light of the apparent unwillingness of New Bro's to send an officer or agent before the court, David Sanchez Miranda, as the principal of New Bro's, shall be personally required to attend the next hearing on this matter.

Accordingly, New Bro's and its principal, David Sanchez Miranda, are **DIRECTED to appear and show cause** why they should not be held in further contempt and additional sanctions imposed for failure to comply with the Sanction Order, Supplemental Sanction Order, and Order Imposing Additional Sanctions at a hearing to be held at **10:00 a.m. on Monday, May 20, 2024, at the United States Post Office and Courthouse, Second Floor Courtroom, 300 Fayetteville Street, Raleigh, North Carolina 27602.**

If Mr. Miranda fails to appear at the hearing on May 20, 2024, the court will direct the United States Marshals Service to take him into custody and bring him before this court.

Counsel for Ms. Castaneda is directed to serve a copy of this Order by trackable overnight delivery and to file a certificate of service indicating same.

END OF DOCUMENT