



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
February 12, 2015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 14-15648-MKN
)	Chapter 7
KRISTIN MICHELLE TRUEMAN,)	
)	
Debtor.)	Date: February 2, 2015
)	Time: 9:30 a.m.

**MEMORANDUM DECISION ON EMERGENCY MOTION TO SET ASIDE
ORDER UNDER FRCP 60(B)(3) AND FOR ORDER DIRECTING RANDY LE
TO APPEAR AND SHOW JUST CAUSE WHY THEY SHOULD NOT BE HELD
IN CONTEMPT OF COURT¹**

On February 2, 2015, an evidentiary hearing was conducted on the Emergency Motion to Set Aside Order Under FRCP 60(B)(3) and for Order Directing Randy Le to Appear and Show Just Cause Why They Should Not Be Held in Contempt of Court (“Contempt Motion”) in the above-captioned bankruptcy case. At the conclusion of the Evidentiary Hearing, the matter was taken under submission.

BACKGROUND

On August 20, 2014, Kristin Michelle Trueman (“Debtor”) filed a voluntary Chapter 7 petition. (ECF No. 1). On her petition, Debtor listed her street address as 8716 Castle Ridge, Las Vegas, Nevada (“Castle Ridge Property”). Attached to the petition was a mailing list of

¹ In this memorandum decision, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101–1532. All references to “FRCP” are to the Federal Rules of Civil Procedure.

creditors that includes Homewood Asset Management (“Homewood”) at an address of 8935 S. Pecos, Suite 21C, Henderson, NV 89074. A notice of bankruptcy filing was entered the same day. (ECF No. 6). That notice was mailed to all creditors appearing on the mailing list, including Homewood, on August 23, 2014. (ECF No. 13).

On August 21, 2014, Debtor filed her schedules of assets and liabilities (“Schedules”), as well as her Statement of Financial Affairs (“SOFA”) and Statement of Intention (“SOI”). (ECF No. 10). On her real property Schedule “A,” Debtor stated that she does not own any real property. On her personal property Schedule “B,” Debtor listed numerous items including home furnishings, electronics, and wearing apparel. On her Schedule “C,” Debtor claimed as exempt all of the personal property. On her creditor Schedule “D,” Debtor listed RC Willey Home Furnishings (“RC Willey”) as having a claim secured by property having zero value. On her executory contract and unexpired lease Schedule “G,” Debtor listed that she was a party to two separate residential lease agreements: one for the Castle Ridge Property and the other for 10520 Angel Dreams, Las Vegas, Nevada (“Angel Dreams Property”).² With respect to the Angel Dreams Property, Homewood was shown on Schedule “G” as the other party to the lease agreement. On her SOI, Debtor indicated her intention to retain the personal property she purchased from RC Willey.

On August 25, 2014, the owner of the Castle Ridge Property filed a motion seeking relief from stay to complete an eviction of the Debtor based on nonpayment of rent. (ECF No. 16). The motion alleged that an order of summary eviction had been entered on August 19, 2014, prior to the filing of the bankruptcy case. That motion was heard on September 10, 2014. Debtor’s counsel appeared along with counsel for the moving party. No opposition was filed or presented and the motion was granted. On September 22, 2014, a written order was entered

² If a Chapter 7 trustee does not assume or reject an unexpired lease of residential real property within 60 days after the bankruptcy is commenced, the lease is deemed rejected. 11 U.S.C. § 365(d)(1). As the Debtor filed her Chapter 7 petition on August 20, 2014, the sixty day deadline expired on October 19, 2014.

1 granting the motion.³

2 On October 28, 2014, a stipulation for relief from stay (“RAS Stipulation”) between
 3 Randy Le (“Le”) and the Debtor was filed with the court bearing the electronic signatures of
 4 attorney Randal R. Leonard (“Leonard”) on behalf of Le and attorney Ryan Alexander
 5 (“Alexander”) on behalf of Debtor. (ECF No. 29). That stipulation provides for immediate
 6 relief from stay to be granted in favor of Le “to allow Landlord to immediately seek entry of a
 7 stipulated order between the parties hereto in the Justice Court, Township of Las Vegas,
 8 Clark County, Nevada allowing eviction.” (Emphasis added.) On October 31, 2014, an order
 9 was entered in the bankruptcy case approving the RAS Stipulation (“RAS Order”). (ECF No.
 10 30).

11 On November 4, 2014, Debtor filed the instant Contempt Motion (ECF No. 31), which
 12 includes a declaration signed under penalty of perjury from attorney Alexander (“Alexander
 13 Declaration”), and to which is attached a variety of exhibits. The Contempt Motion represents
 14 that attorney Leonard had agreed on behalf of Le that in exchange for the RAS Stipulation, the
 15 Debtor would have until November 15, 2014, to vacate the Angel Dreams Property. The
 16 Contempt Motion further alleges that in violation of that agreement, Le caused the Debtor and
 17 her family members to be evicted on November 4, 2014, and that the Debtor continues to be
 18 denied access to the premises to retrieve her belongings, as well as the belongings of her children
 19 and other family members. The prayer of the motion seeks to hold Le⁴ in contempt for violation

21 ³ When she filed the bankruptcy petition, Debtor listed the Castle Ridge Property as her
 22 residence. Some time during or shortly after the eviction process was initiated or completed with
 23 respect to the Castle Ridge Property, however, Debtor apparently relocated to the Angel Dreams
 24 Property. A copy of the lease of the Castle Ridge Property was not filed when its landlord
 25 sought relief from stay and there is no evidence whether the Debtor as well as her fiancé
 simultaneously were obligated on that lease in addition to the lease on the Angel Dreams
 Property.

26 ⁴ The introductory paragraph to the Contempt Motion seeks to order “RANDY LE,
 27 ‘doing business as HOMEWOOD ASSET MANAGEMENT’ (‘LE’) to appear and show cause
 28 why they should not be held in contempt of court for willingly defrauding the Debtor,” see
 Contempt Motion at 1:18-21, but the prayer of the Contempt Motion seeks sanctions only
 against “RANDY LE.” Id. at 6:12-20. Homewood is not separately named as a respondent to
 the Contempt Motion, nor does the prayer of the Contempt Motion separately seek sanctions

1 of “Section 362 of the United States Bankruptcy Code.”⁵ Attorney Leonard consented to an
 2 expedited hearing (ECF No. 33) and on November 7, 2014, an order was entered scheduling a
 3 hearing to take place on November 13, 2014. (ECF No. 34). Notice of the hearing was served
 4 upon attorney Leonard electronically as well as by first class mail. (ECF No. 35).

5 On November 13, 2014, an initial hearing on the Contempt Motion was held. No written
 6 objection to the motion was filed, no affidavits or declarations in response to the allegations were
 7 submitted, and no opposition was presented at the hearing. The court granted Debtor’s request
 8 that the RAS Order be set aside and directed that an order also be entered directing Le to show
 9 cause why he should not be held in contempt. On November 13, 2014, a written order was
 10 entered vacating the RAS Order and directing Le to show cause why he should not be held in
 11 contempt (“OSC”). (ECF No. 37).⁶ On the same date, notice of the hearing on the OSC was
 12 served by attorney Alexander on attorney Leonard electronically and by first class mail, and also
 13 was served on Homewood by first class mail. (ECF No. 38). The OSC scheduled the hearing
 14 for December 3, 2014.

15 On November 28, 2014, attorney Leonard filed a declaration (“Leonard Declaration”) in
 16 response to the OSC. (ECF No. 39). As counsel for Le, he attests that he negotiated a
 17 stipulation with Debtor’s counsel in the latter part of October 2014, for a date certain for the
 18 Debtor to vacate the Angel Dreams Property, and that he sent a copy of a proposed stipulation
 19 and order to Le. See Leonard Declaration at ¶¶ 14, 15 and 18. Additionally, Leonard attests that

20
 21
 22 against Homewood.

23 ⁵ Although some bankruptcy courts previously treated automatic stay violations as
 24 contempt of court, see, e.g., In re Eisenberg, 7 B.R. 683, 687 (Bankr. E.D.N.Y. 1980), the
 25 statutory remedy for a stay violation is governed by Section 362(k). Bankruptcy courts have
 26 express statutory authority to fully remedy stay violations, but more limited authority to impose
 contempt sanctions. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1193 (9th Cir.
 2003).

27 ⁶ Le has not appealed the portion of the OSC vacating the RAS Order, nor has he sought
 28 relief from the OSC. Likewise, Le has not sought to annul the automatic stay so as to provide
 retroactive relief. See Schwartz v. United States (In re Schwartz), 954 F.2d 569, 573 (9th Cir.
 1992).

1 he learned of the November 4, 2014 eviction after the fact, that he advised Le to immediately
 2 stop the eviction proceeding, and that the eviction went forward against his advice. *Id.* at ¶¶ 19,
 3 20, and 21.

4 On December 3, 2014, a hearing on the OSC was conducted. Attorney Alexander
 5 appeared on behalf of the Debtor. Ann Kolber, Esq., appeared on behalf of Le. She advised the
 6 court that her client, Le, resides in California and was not in attendance. Attorney Leonard also
 7 appeared. To resolve the factual disputes appearing from the face of the record, an evidentiary
 8 hearing was ordered. At the agreement of all counsel, the court scheduled an evidentiary hearing
 9 for February 2, 2015, and established a deadline for witness lists and exhibits to be served and
 10 filed. On December 9, 2014, a written order was entered scheduling the evidentiary hearing.
 11 (ECF No. 41).

12 On February 2, 2015, the evidentiary hearing was conducted. Prior to the hearing,
 13 attorney Alexander had submitted a witness list and a number of proposed exhibits. Nothing had
 14 been submitted on behalf of Le. At the hearing, attorney Alexander appeared on behalf of the
 15 Debtor. Neither attorney Kolber nor attorney Leonard appeared, but Le appeared *in propria*
 16 *persona*.⁷ Upon inquiry from the court, Le represented that attorneys Kolber and Leonard no
 17 longer wanted to represent him and he therefore had terminated their services after having paid
 18 each of them at least \$1,000 for their prior services⁸ in connection with the case.⁹

19
 20 ⁷ The docket includes affidavits filed by the Debtor reflecting unsuccessful efforts to
 21 serve trial subpoenas on Homewood and its employee Deanna Thuna (“Thuna”). Attorney
 22 Kolber refused to accept service on behalf of Homewood (ECF No. 48) and the Debtor also
 23 made an unsuccessful attempt to serve Homewood at 4145 Wagon Trail Avenue, Las Vegas,
 24 Nevada (ECF No. 49) even though Debtor’s Schedule “G” shows Homewood’s address as 8935
 S. Pecos Rd., #21C, Henderson, Nevada. The other address apparently was taken from the lease
 agreement for the Angel Dreams Property originally signed in November 2013. A copy of the
 lease is attached as Exhibit “B” to the Leonard Declaration.

25 ⁸ Le did not specify when he terminated Leonard’s services, but did not contest that
 26 Leonard was his attorney at the time he filed the Leonard Declaration.

27 ⁹ In an opening statement, Le represented that he and his wife purchased the Angel
 28 Dreams Property as an investment for their child, that they live in California, that they hired
 Homewood to manage the property, that Homewood called him in August 2014, notifying him
 that an eviction was required, that it would be a special case because of a bankruptcy, that he

At the hearing, Debtor called her fiancé, Landon Amini (“Amini”),¹⁰ as well as her future mother-in-law, Nasrin Aminigohar (“Nasrin”), to testify with respect to the Contempt Motion. Debtor also testified. All were available to be cross-examined by Le. Le also testified on his own behalf. He was cross-examined by Debtor’s counsel. In addition to a copy of the OSC, the only exhibit admitted into evidence was a copy of the Leonard Declaration to which is attached a variety of documents. Attorney Leonard was not called to testify concerning the contents of his previous declaration. Attorney Alexander was not called to testify concerning his declaration filed in support of the Contempt Motion. After closing arguments were presented, the matter was taken under submission based upon the entire record.

APPLICABLE LEGAL STANDARDS

Under Section 362(a), the automatic stay generally arises as soon as a bankruptcy petition is filed.¹¹ The automatic stay applies to all entities with respect to “the commencement or continuation . . . of a judicial action or proceeding against the debtor that was or could have been commenced” before the bankruptcy was filed. 11 U.S.C. § 362(a)(1). It also applies to “any act to obtain possession of property of the estate . . . or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Because it arises “automatically” upon the filing of a bankruptcy petition, the stay applies regardless of whether a party has actual knowledge or even notice that

would have to hire a bankruptcy lawyer to obtain relief from stay, and that they referred him to attorney Leonard. Le also stated that attorney Leonard gave him an order granting relief from stay, that he then gave the order to Homewood, that Homewood then proceeded with eviction after his request and that a week later he received a notice that he would be sued for damages because he had not followed the correct procedure. Le further stated that he contacted Homewood and was told that they had followed everything properly, that he should obtain another bankruptcy lawyer, that after the last hearing the new bankruptcy lawyer no longer wanted to represent him and advised him to get a different bankruptcy lawyer, and that he cannot afford to get another lawyer to take over the representation.

¹⁰ Amini is the father of the Debtor’s two children: a three year old and a three month old. Both are shown as dependents on Debtor’s monthly expense Schedule “J.”

¹¹ A notable exception occurs when an individual debtor has had two or more bankruptcy cases dismissed within the previous year. 11 U.S.C. § 362(c)(4). An exception to the automatic stay also occurs with respect to real property where an order for in rem relief is entered in a prior bankruptcy proceeding encompassing the same property. 11 U.S.C. § 362(d)(4).

the bankruptcy was filed. See generally 3 COLLIER ON BANKRUPTCY, ¶ 362.02 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. 2014).

Actions taken in violation of the automatic stay are void as a matter of law. See Gruntz v. Cnty. of Los Angeles (In re Gruntz), 202 F.3d 1074, 1082 (9th Cir. 2000); Eden Place, LLC v. Perl (In re Perl), 513 B.R. 566, 572 (B.A.P. 9th Cir. 2014). Judicial proceedings in violation of the automatic stay also are void. See Kalb v. Feuerstein, 308 U.S. 433, 439 (1940); Griffin v. Wardrobe (In re Wardrobe), 559 F.3d 932, 934 (9th Cir. 2009). Parties who violate the automatic stay have an affirmative duty to discontinue any actions, return any property, and otherwise undo any consequences of the violation. See Sternberg v. Johnson (In re Sternberg), 595 F.3d 937, 943 (9th Cir. 2010).

Under Section 362(c)(1), the automatic stay of acts against property of the estate continues until the property is no longer property of the estate. Under Section 362(c)(2), the automatic stay of acts against the debtor continues until the earlier of the date the bankruptcy case is closed, the case is dismissed, or the date an individual Chapter 7 debtor is granted or denied a discharge. 11 U.S.C. § 362(d)(2)(A, B and C).¹²

Under Section 541(a), property of a bankruptcy estate includes “all legal or equitable interests of the debtor in property” when the bankruptcy petition is filed. Under Section 554, property may be abandoned by notice or motion, or may be administratively abandoned when a case is closed. 11 U.S.C. § 554(a, b and c). Personal property that is the collateral of a secured consumer creditor also may cease to be property of the estate if a debtor fails to file the statement of intention required by Section 521(a)(2). 11 U.S.C. § 362(h)(1).¹³ Under Section 363,

¹² This instant case has not been dismissed, is not closed, and the Debtor did not receive her discharge until January 28, 2015. (ECF No. 52). Under Section 362(c)(2), the automatic stay therefore has continued in place as to the Debtor at all relevant times.

¹³ In this case, Debtor timely filed her SOI, see discussion at 2, supra, and the personal property that was collateral for the RC Willey claim remained property of the estate. Compare Samson v. W. Capital Partners, LLC (In re Blixseth), 684 F.3d 865 (9th Cir. 2012) (all personal property securing scheduled debt was removed from bankruptcy estate due to Chapter 7 debtor’s failure to timely file statement of intention). None of the property of the Debtor’s bankruptcy estate, including any property claimed as exempt, has been abandoned as a result of an order of

property of a bankruptcy estate generally may be sold by the bankruptcy trustee or by the debtor with court authorization. 11 U.S.C. § 363(b).¹⁴

Under Section 362(k)(1), “an individual injured by any willful violation” of the automatic stay “shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances, may recover punitive damages.” A willful action is deemed to have occurred when a party knows about the automatic stay and acts intentionally. See Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002); Pinkstaff v. United States (In re Pinkstaff), 974 F.2d 113, 115 (9th Cir. 1992). A good faith mistake of law or a legitimate dispute as to legal rights does not relieve a willful violator of the consequences of his act. See Ramirez v. Fuselier (In re Ramirez), 183 B.R. 583, 589 (B.A.P. 9th Cir. 1995); Johnston v. Parker (In re Johnston), 321 B.R. 262, 281 (Bankr. D. Ariz.2005). This includes a failure to undo an act after the violation has been committed. See Eskanos & Adler, 309 F.3d at 1215.

In addition to costs and attorney’s fees, actual damages under Section 362(k)(1) may include pain, suffering and emotional distress. See America’s Servicing Co. v. Schwartz-Tallard, 438 B.R. 313, 321 (D. Nev. 2010).¹⁵ The recovery of attorney’s fees generally is limited to those incurred up until the violation of the automatic stay ceases. See In re Sternberg, 595 F.3d at 947. The recovery of punitive damages for a stay violation is appropriate where the

the court. Likewise, the case has not been closed and no property of the estate has been abandoned administratively.

¹⁴ In this case, neither the assigned Chapter 7 trustee nor the Debtor have sought authorization to sell or otherwise liquidate property of the estate.

¹⁵ The court in Schwartz-Tallard observed that “To recover damages for emotional distress under § 362(k), ‘an individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process).’ Emotional harm may be proved by: (1) medical evidence; (2) non-experts, such as family members, friends, or coworkers; or (3) ‘even without corroborative evidence’ where ‘significant emotional distress [is] readily apparent.’ The last category includes cases where the violator’s conduct is ‘egregious,’ or where the conduct is not egregious but the circumstances ‘make it obvious that a reasonable person would suffer significant emotional harm.’ ‘Fleeting or trivial anxiety or distress does not suffice’” 438 B.R. at 321-22 (citations omitted).

1 violator has engaged in egregious, intentional misconduct. See McHenry v. Key Bank (In re
 2 McHenry), 179 B.R. 165, 168 (B.A.P. 9th Cir. 1995).

4 DISCUSSION

5 For the reasons discussed below, the court concludes that Le willfully violated the
 6 automatic stay, that the Debtor suffered actual damages, and that punitive damages are
 7 appropriate. Accordingly, sanctions under Section 362(k)(1) will be awarded in the amounts set
 8 forth below.

9 1. Willful Violation of the Stay.

10 A. The Pertinent Events.

11 The record establishes that Le entered into a one-year residential lease agreement for the
 12 Angel Dreams Property with the Debtor and Amini on November 1, 2013. According to the
 13 lease, the one-year term would expire on October 31, 2014, and would continue on a month-to-
 14 month basis until terminated by either party. Additionally, all payments required by the lease
 15 would be made to Homewood, which is identified as the broker under the lease agreement. The
 16 last two pages of the lease agreement identifies Le as the owner, Timothy O. Mullins c/o
 17 Homewood as the broker and management company, and Thuna as the agent for the broker.¹⁶

18 On August 7, 2014, Homewood caused to be served a five-day notice to pay or quit upon
 19 the Debtor at the Angel Dreams Property. See Leonard Declaration, Ex. "C." The five day
 20 notice was addressed to the Debtor and Amini.

21
 22 ¹⁶ As the manager of the Angel Dreams Property for Le, Homewood acted as Le's agent.
 23 Le represented at the evidentiary hearing that he follows Homewood's recommendations and
 24 even hired attorney Leonard on such a recommendation. Presumably, Le authorized all of the
 25 actions taken by Homewood on his behalf. As to any unauthorized actions, it is well-established
 26 under Nevada law that a principal can ratify the unauthorized acts of an agent if the principal
 27 knows of the details of the agent's actions and fails to timely object. See Edwards v. Carson
 28 Water Co., 21 Nev. 469, 34 P. 381, 389 (Nev. 1893). See also Young v. Nev. Title Co., 103
 Nev. 436, 439, 744 P.2d 902, 903 (Nev. 1987) (principal who has no reason to know of agent's
 improper conduct or motives may be bound by the acts of its agent as to third parties). Because
 Homewood is not separately named as a respondent to the Contempt Motion, all references and
 findings in this memorandum decision to Homewood, or Homewood and Le, are to Homewood
 as Le's agent.

1 On August 20, 2014, Debtor commenced this bankruptcy proceeding triggering the
2 automatic stay under Section 362(a). Homewood was included on the mailing list, but notice of
3 the bankruptcy filing was not mailed until August 23, 2014.

4 On August 25, 2014, Homewood commenced an eviction proceeding against Debtor and
5 Amini in the Justice Court, Township of Las Vegas, Clark County, Nevada ("Justice Court"),
6 denominated Case No. 14E018850 ("First Eviction Action"). See Leonard Declaration, Ex. "F."
7 See also Alexander Declaration, Ex. "2."¹⁷ On August 27, 2014, a summary eviction order was
8 entered by the Justice Court. See Leonard Declaration, Ex. "F." See also Alexander
9 Declaration, Ex. "2." On September 2, 2014, a notice of pending bankruptcy was filed,
10 presumably by attorney Alexander, in the First Eviction Action. Id.¹⁸

11 Some time after the summary eviction order was entered by the Justice Court in the First
12 Eviction Action, Amini testified that Homewood's representative visited the Angel Dreams
13 Property in an attempt to have Amini, the Debtor, or both removed from the premises. Amini
14 advised the representative that the Debtor had filed for bankruptcy and a constable arrived
15 shortly thereafter. After the constable verified that the Debtor had filed for bankruptcy
16 protection, the constable departed and so did Homewood. Some time after this attempt, attorney
17 Leonard was retained by Le to obtain relief from the automatic stay. See Leonard Declaration at
18 ¶¶ 10, 11, and 12.

19 On October 23, 2014, Le commenced another eviction proceeding against the Debtor in
20 the Justice Court, denominated Case No. 14E023794 ("Second Eviction Action"). See Leonard
21
22

23 ¹⁷ The Justice Court's register in the First Eviction Action reflects both the Debtor and
24 Amini as the subject tenants, but the caption of the summary eviction complaint, see Leonard
25 Declaration, Ex. "E," identifies only Amini as the tenant.

26 ¹⁸ Rule 34(g) of the Local Rules of Practice for the Justice Court of Las Vegas Township
27 provides that "Unless otherwise ordered by the Court, an order for summary eviction shall expire
28 30 days after the order is issued. Such expiration must be conspicuously stated on the order for
summary eviction." The summary eviction order entered by the Justice Court in the First
Eviction Action would have expired on September 26, 2014, unless there was some other order
issued by that court.

1 Declaration, Ex. "G."¹⁹ As of that date, neither Leonard, Le, nor Homewood had obtained an
 2 order from this court granting relief from the automatic stay.

3 On October 24, 2014, attorney Leonard emailed to attorney Alexander the proposed RAS
 4 Stipulation, the proposed RAS Order, and a proposed "Stipulation and Order Granting Summary
 5 Eviction" ("Proposed Stipulated Eviction Order"). See Alexander Declaration, Exs. "3," "4,"
 6 "5" and "6."²⁰ The Proposed Stipulated Eviction Order bears the caption of the First Eviction
 7 Action, including Homewood as the plaintiff, and shows attorney Leonard as the attorney for
 8 plaintiff. See Alexander Declaration, Ex. "6." The Proposed Stipulated Eviction Order
 9 expressly provided that "**Defendants will have until November 15, 2014 at 5:00 p.m. to**
 10 **vacate the above premises** otherwise Plaintiffs can immediately seek to lock out the
 11 Defendants." Because the Proposed Stipulated Eviction Order bore the caption of the First
 12 Eviction Action, it appears that attorney Leonard was not aware that the Second Eviction Action
 13 had been commenced by Le.

14 On October 28, 2014, attorney Alexander emailed to attorney Leonard an authorization to
 15 affix his electronic signature on the RAS Stipulation. See Alexander Declaration, Ex. "3." On
 16 October 28, 2014, the Justice Court in the Second Eviction Action denied Le's request for
 17 summary eviction of the Debtor from the Angel Dreams Property. See Leonard Declaration, Ex.
 18 "G." See also Alexander Declaration, Ex. "2." Also on October 28, 2014, the RAS Stipulation
 19 was filed with this court by attorney Leonard, which permitted Le to seek entry of a stipulated
 20 order of eviction from the Justice Court.

21 On October 31, 2014, the RAS Order was entered, granting Le relief from stay to proceed

22
 23 ¹⁹ The Justice Court's register in the Second Eviction Action identifies the landlord as
 24 "Le, Randy, doing business as Homewood Asset Management." A copy of the summary
 25 eviction complaint that commenced the Second Eviction Action has not been provided to the
 26 bankruptcy court. It is unclear why Le is identified as doing business as Homewood on the
 27 Justice Court's register when the subject lease for the Angel Dreams Property separately
 identifies Le as the owner and Homewood as the broker. They do not appear to be one and the
 same, and Le represented at the evidentiary hearing that Homewood was used and continues to
 be used only as Le's manager of the Angel Dreams Property.

28 ²⁰ A copy of the email, but not the attachments, appears as Exhibit "H" to the Leonard
 Declaration.

1 in accordance with the RAS Stipulation, i.e., to obtain a stipulated order of eviction from the
2 Justice Court.

3 On the morning of November 4, 2014, Homewood, with the assistance of the constable,
4 caused the Debtor to be evicted from the Angel Dreams Property, along with other occupants of
5 the residence, including the Debtor's minor children, her fiancé Amini, her future mother in law
6 Nasrin, and other family members. As of that date, no stipulated order had been obtained from
7 the Justice Court authorizing the eviction of the Debtor from the Angel Dreams Property.²¹

8 On the morning that the eviction was taking place, attorney Leonard transmitted an email
9 to Le stating as follows:

10 I just got an angry call from Ms. Trueman's lawyer complaining
11 that you ordered the constable to evict Ms. Trueman. Her lawyer
12 discussed possible action against you. **As I explained to you in a**
13 **prior email sent on October 31, 2014, my legal opinion is that**
14 **the eviction order you obtained is not valid as to Ms. Trueman.**
This is because the eviction was started and the order was obtained
after Ms. Trueman filed for bankruptcy. If you proceed with the
eviction, you open yourself up to possible sanctions from the
bankruptcy court.

15 **As we had discussed, I obtained an agreement from Ms.**
16 **Trueman's lawyer that she would leave by November 15th.**
17 **This was obtained because we had previously discussed that**
you need to start the eviction process over due to the
bankruptcy.

18 At this time, my advice is to stop immediately with the lock-out of
19 Ms. Trueman and restart the eviction in the justice court.

20 Leonard Declaration, Ex. "H" (Emphasis added). On the same day, Le then forwarded attorney
21 Leonard's email to Thuna at Homewood stating simply: "We just got this email from Randy.

22
23 ²¹ The record before this court does not indicate that there ever was an order of eviction
24 entered by the Justice Court in the Second Eviction Case. Additionally, Amini was not a named
25 defendant in the Second Eviction Case and any order in that proceeding would not have served
26 as a basis to evict him for breach of the lease. Moreover, even if there was an order issued by
27 the Justice Court in the First Eviction Case, that order was entered in violation of the automatic
28 stay after the Debtor filed her bankruptcy petition and therefore was void as a matter of law.
Thus, any order issued in the First Eviction Case could not have served as a valid legal basis to
carry out an eviction of the Debtor at any time. Absent such an order, the eviction carried out by
Homewood with the constable's assistance appears to have been unlawful and perhaps even
criminal.

1 Can you please advise or call us back?" Id.²²

2 Also on November 4, 2014, attorney Alexander filed the instant Contempt Motion
3 seeking to set aside the RAS Order because Homewood had completed the eviction and had
4 locked the Debtor out of the premises. Apparently because Le had not followed his legal advice,
5 attorney Leonard agreed to an expedited hearing and an order shortening time was entered
6 scheduling a hearing to take place on November 13, 2014. Notice of the hearing was served
7 upon attorney Leonard electronically as well as by first class mail.

8 At the November 13, 2014 hearing, attorney Alexander appeared on behalf of the Debtor,
9 but neither attorney Leonard, nor Le appeared.²³ Additionally, neither Leonard, nor Le, nor
10 Homewood filed a written opposition. The court granted the request to set aside the RAS Order
11 and scheduled a hearing on the OSC. On the same date, the OSC was entered by the court, and
12 notice of the hearing on the OSC was served by attorney Alexander on attorney Leonard as well
13 as on Homewood.

14 _____
15 ²² Attorney Leonard's email refers to a prior email sent on October 31, 2014, as well as
16 an eviction order that Le had obtained. Leonard attests that the RAS Stipulation and RAS Order
17 was included in the October 31, 2014 email. See Leonard Declaration at ¶ 18. However, a copy
18 of the October 31, 2014 email was not attached to the Leonard Declaration. The only eviction
19 order evidenced by the record before this court was the summary eviction order obtained from
20 the Justice Court on August 27, 2014, reflected in the register in the First Eviction Action. For
21 reasons previously discussed at note 21, supra, that order was void as a matter of law as correctly
22 advised by attorney Leonard. Additionally, the same November 4, 2014, email refers to a
discussion between attorney Leonard and Le concerning an agreement reached with attorney
Alexander for the Debtor to vacate the residence no later than November 15, 2014. At the
evidentiary hearing, Le testified that he never authorized Leonard to agree to the proposed
November 15 departure date.

23 ²³ At the November 13, 2014, hearing, attorney Alexander represented to the court that
24 only the Debtor is on the lease to the Angel Dreams Property and not her fiancé Amini. That
25 appears to be contrary to the copy of the lease admitted in this case. See discussion at 9, supra.
The fact that Amini is on the lease also seems to support Le's concern that Amini might file a
separate bankruptcy proceeding to prevent an eviction from the premises. See Leonard
Declaration at ¶ 14. The court's records reflect a prior Chapter 7 case filed on June 1, 2011, by
26 Ali Aminigohar, Case No. 11-18627-BAM, and a prior Chapter 7 case filed on March 15, 2009,
27 by Nasarin Aminigohar, Case No. 09-13617-LBR, but no cases filed by Landon Amini. If one or
28 both of these individuals are Amini's parents, their financial difficulties also may explain why
the Debtor and Amini signed leases to both the Castle Ridge Property and the Angel Dreams
Property.

1 On Wednesday, November 26, 2014, Debtor, her fiancé, and other family members were
2 allowed access to the Angel Dreams Property to retrieve some of their personal belongings. On
3 Friday, November 28, 2014, Debtor, her fiancé, and other family members were allowed access
4 to retrieve the remainder of their belongings.

5 **B. Conclusion as to the Stay Violation.**

6 The automatic stay was in effect on August 20, 2014, when the Debtor filed her Chapter
7 7 petition. Because neither Homewood nor Le had obtained relief from the automatic stay under
8 Section 362(d), commencement of the First Eviction Action on August 25, 2014, was in
9 violation of the automatic stay regardless of whether Homewood or Le had received the notice of
10 bankruptcy filing from the court. See discussion at 6, supra. The First Eviction Action before
11 the Justice Court was void as a matter of law. See discussion at 7, supra.

12 Because neither Homewood, Le nor Leonard had obtained relief from the automatic stay,
13 commencement of the Second Eviction Action on October 23, 2014, also was in violation of the
14 automatic stay irrespective of whether they had received notice or had actual knowledge of the
15 bankruptcy filing. The Second Eviction Action before the Justice Court also was void as a
16 matter of law.

17 The RAS Order entered on October 31, 2014, did not grant relief from stay for
18 Homewood, Le, Leonard, or the constable to enter the Angel Dreams Property. The RAS Order
19 did not grant relief from stay for Homewood, Le, Leonard, or the constable to enter the Angel
20 Dreams Property to remove the Debtor, to change the locks, or to deny her access to property of
21 the bankruptcy estate. Rather, it only granted relief from stay for Le to obtain a stipulated
22 eviction order from the Justice Court. Neither Homewood nor Le obtained a stipulated eviction
23 order from the Justice Court.

24 Despite the absence of a stipulated eviction order from the Justice Court, Homewood
25 carried out an eviction of the Debtor and lockout from the premises, with the assistance of the
26 constable, on November 4, 2014. Despite the protests of attorney Alexander and despite the
27
28

1 advice of attorney Leonard, Homewood and Le completed the eviction and lockout.²⁴

2 The RAS Order was vacated and an order to show cause was issued on November 13,
3 2014, at a duly noticed emergency hearing that was agreed to by attorney Leonard. The OSC
4 was entered by the court on the same day, included the provisions vacating the RAS Order, and
5 was electronically served on attorney Leonard the same day. The OSC also was sent by first
6 class mail to Homewood.

7 Despite receiving notice that the RAS Order had been vacated and despite receiving
8 notice of the OSC on November 13, 2014, Homewood and Le did not immediately restore the
9 Debtor to the premises at the Angel Dreams Property, nor did they allow the Debtor access to the
10 estate personal property that remained on the premises. Instead, Homewood and Le granted
11 limited access to, but not possession of the premises on November 26, 2014, and then additional
12 access to, but not possession of the premises on November 28, 2014.²⁵ Only on those dates was
13 the Debtor able to remove all of the estate property²⁶ that had been held by Homewood and Le.

14 _____
15 ²⁴ It is astonishing to this court why Homewood and Le did not follow attorney Leonard's
16 advice, especially when Homewood referred Le to attorney Leonard to obtain relief from stay. It
17 is equally astonishing that Homewood and Le commenced the Second Eviction Action without
18 informing attorney Leonard and without previously obtaining relief from stay. It is no excuse
19 that Le lives in California rather than Nevada; he could have gone to any competent bankruptcy
20 attorney in California and received the same legal advice about the applicable legal standards in
21 the Ninth Circuit.

22 ²⁵ Attorney Leonard represented Le in the Debtor's bankruptcy proceeding at least
23 through November 28, 2014. Compare Perle v. Fiero (In re Perle), 725 F.3d 1023 (9th Cir.
24 2013) (attorney's knowledge of common bankruptcy on behalf of one client would not be
25 imputed to separate client). At the beginning of the evidentiary hearing, Le acknowledged that
26 Homewood specifically referred him to attorney Leonard for the express purpose of obtaining
27 relief from stay in the Debtor's bankruptcy proceeding. Le has not claimed and apparently
28 cannot claim that Leonard acted outside the area of his employment. Le has not claimed that he
lacked actual knowledge of the November 13, 2014, order vacating the RAS Order, and at the
very least the notice given to attorney Leonard that date would be imputed to Le.

²⁶ No evidence was presented as to any perishable items that may have been at the Angel
Dreams Property, e.g., food, beverages, plants, medications, or other personal property that
would be subject to spoilage or expiration, when the Debtor was evicted on November 4, 2014.
Debtor credibly testified that when she hurriedly departed the premises she took very few items
because she believed that she would soon regain access. Because Le and Homewood did not
follow the advice of attorney Leonard, Debtor was locked out of the residence and was not

Homewood and Le knew about the Debtor's bankruptcy, knew of the automatic stay, and Le hired attorney Leonard for the express purpose of obtaining relief from stay. The date on which Homewood and Le received the notice of bankruptcy by first class mail is unclear. Homewood's representative was informed of the bankruptcy filing, however, no later than the date of the first attempted eviction. The date of that first eviction attempt also is unclear, as is the exact date that attorney Leonard was hired.

There can be no dispute, however, that Homewood and Le had actual knowledge of the Debtor's bankruptcy and of the automatic stay when the Second Eviction Action was commenced on October 23, 2014. There can be no dispute that Homewood and Le had actual knowledge of the Debtor's bankruptcy when the eviction and lockout was carried out on November 4, 2014. There can be no dispute that Homewood and Le had actual knowledge of the Debtor's bankruptcy when the court vacated the RAS Order on November 13, 2014. There can be no dispute that Homewood and Le had actual knowledge of the Debtor's bankruptcy, and that the RAS Order had been vacated, when they allowed the Debtor only limited access to, but no possession of the Angel Dreams Property on November 26, 2014, and November 28, 2014.

Under these circumstances, the court finds that the actions of Homewood and Le were intentional and with knowledge of the automatic stay. The court therefore concludes that the violation of the automatic stay was willful within the meaning of Section 362(k)(1).

2. Debtor's Actual Damages.

A. Attorney's Fees.

No evidence was presented as to the attorney's fees and costs incurred by the Debtor through the date at which the automatic stay violation ceased. For purposes of this motion, the court treats November 28, 2014, as the relevant cessation date because the Debtor was able to retrieve her remaining personal items from the Angel Dreams Property on that date.

Additionally, because the unexpired lease had not been assumed by the bankruptcy trustee or the Debtor by October 19, 2014, see note 2, supra, and the lease was scheduled to expire by its own

allowed access until more than three weeks later.

1 terms on October 31, 2014, Debtor had no realistic basis to remain in the premises beyond the
2 November 28, 2014 cessation date. As the party injured by a willful automatic stay violation,
3 Debtor can recover as actual damages the costs and attorney's fees that were incurred through
4 November 28, 2014. See In re Sternberg, 595 F.3d at 947.

5 For purposes of this motion, the court also treats November 4, 2014, as the beginning
6 date for when the Debtor suffered damages for the automatic stay violation. There is no question
7 that the commencement of the First Eviction Action on August 25, 2014, violated the automatic
8 stay, but the eviction process stopped after the constable confirmed the Debtor's bankruptcy
9 filing and no evidence was presented that attorney Alexander was involved. There also is no
10 question that the commencement of the Second Eviction Action on October 23, 2014, also
11 violated the automatic stay, but the summary eviction requested by Homewood and Le was
12 denied by the Justice Court and neither attorney Leonard nor attorney Alexander were even
13 aware of the commencement of that action until the eviction commenced on November 4, 2014.
14 Only at that date were attorney Alexander's services required.

15 The court therefore will permit attorney Alexander to file and serve an itemized billing
16 statement for the period from November 4, 2014, through November 28, 2014, setting forth the
17 legal services counsel provided solely with respect to addressing the stay violation.

18 **B. Emotional Distress.**

19 Sufficient evidence was presented as to the emotional distress suffered by the Debtor as a
20 result of the stay violation. For purposes of this motion, the court does not treat the
21 commencement of the First Eviction Action as a willful violation that caused any actual
22 damages. Although the commencement of that action was void as an automatic stay violation,
23 there was little evidence that it caused significant emotional distress to the Debtor. At the
24 evidentiary hearing, Debtor testified that she remained in the premises when the Homewood
25 representative appeared to attempt the first eviction and when the constable arrived. Amini
26 testified that he, rather than the Debtor, dealt with the Homewood representative and the
27 constable outside of the premises. He testified that after the constable confirmed the Debtor's
28 bankruptcy filing, the constable departed and the eviction effort ended. Although the first

1 eviction effort ultimately may have had a cumulative effect on the Debtor, separate and apart
2 from “the anxiety and pressures inherent in the bankruptcy process”, see Schwartz-Tallard, 432
3 B.R. at 321, it was the unlawful eviction that occurred on November 4, 2014, that was the
4 beginning point of her emotional distress.

5 Debtor credibly testified that a representative of Homewood, accompanied by a
6 constable, arrived at the Angel Dreams Property early on the morning of November 4, 2014. All
7 of the occupants, including the Debtor, her two young children, Amini, Nasrin, and other family
8 members were informed that they had approximately five minutes to vacate the premises.
9 Debtor quickly left with her two children to a nearby park while her fiancé, Amini, remained
10 behind to explain that an agreement had been reached for the Debtor to remain in the residence
11 until November 15, 2014. Debtor credibly testified that she left the premises quickly, without
12 packing any articles of clothing or personal items for herself or her children, because she
13 believed that they would not be locked out. Thereafter, Amini and the other family members
14 joined her in the park where they remained until nightfall.

15 Debtor credibly testified that she, Amini, and her two children were forced to rent a hotel
16 room using discount coupons from Nasrin, while Nasrin and her husband found a room at
17 another hotel. Debtor was without extra clothing and also had no diapers for her three-month old
18 child. Debtor testified that she was on unpaid maternity leave from her job at a local hotel resort.
19 Borrowing money from family members and friends, Debtor and Amini eventually were able to
20 find another residence in the Las Vegas area to live²⁷ along with their two children and other
21 family members, but were without any basic furnishings, ordinary accouterments, or personal
22 effects.²⁸ She testified that Homewood and Le did not allow her access to the Angel Dreams
23

24 ²⁷ The docket in this case still reflects the Castle Ridge Property as the Debtor’s address.
25 A change of address has not been filed by the Debtor or by attorney Alexander on her behalf.
Ironically, only Le has filed a change of address. (ECF No. 56).

26 ²⁸ Debtor did not introduce evidence of the out-of-pocket expenses that she incurred as a
27 result of being displaced. She clearly incurred housing expenses from November 4, 2015,
28 through November 15, 2014, that would not have been necessary had Homewood and Le
complied with the Proposed Stipulated Eviction Order. Debtor testified that she stayed at a hotel
for at least the first two nights, but was unclear as to where she lived with her children and fiancé

1 Property until the Wednesday preceding Thanksgiving, and even then, forced her to wait at the
2 premises for several hours before allowing access. Debtor credibly explained that the manner in
3 which she and her family were evicted from the Angel Dreams Property was deeply humiliating
4 and caused substantial anxiety to herself and her family, manifesting in extreme anger towards
5 her fiancé, a sense of hopelessness, and even suicidal thoughts.

6 Although Nasrin obviously is an individual, she is not a debtor protected by the
7 automatic stay. She credibly testified, however, as to the sudden and unexpected arrival of the
8 Homewood representative and constable on the morning of the eviction, the chaos that was
9 created, and the minimal time her family was allowed to prepare for departure. Nasrin testified
10 that at that time, she was under treatment for a variety of medical conditions, including arthritis,
11 high blood pressure, stress, and another heart condition. She testified that in her panic, she only
12 took her purse and left her medications behind. Nasrin further testified to feeling humiliated by
13 the manner in which she and her family were forced out of their home and the fear she retains
14 about a similar event occurring.

15 Amini also is not a debtor protected by the automatic stay, but credibly testified as to the
16 confusion created by the eviction when he understood that an agreement had been reached
17 allowing the Debtor to remain in the Angel Dreams Property until November 15, 2014. After
18 Debtor left the premises with the children, Amini remained behind to attempt to convince the
19 Homewood representative and the constable that the eviction was invalid. Later that day, he
20 joined his family in the park where they attempted to figure out what to do. Amini also testified
21 credibly, albeit sheepishly, to the humiliation created by the eviction and the subsequent efforts
22 to subsist without any clothing or other personal belongings. He also testified that the family
23 now lives in a residence along with his sister, who moved from California and leased the current
24 residence in her own name. Amini further testified as to the considerable strain that the
25 displacement has created in his relationship with the Debtor.

26 _____
27 for some of the other nights. The cost for meals outside of the home, for replacement clothing
28 and laundry services, for replacement toiletries and personal effects, and other basic living
expenses, apparently were met by borrowing money from friends or relatives. Because Debtor
did not keep receipts for such expenses, they were not claimed.

1 No medical evidence was presented to substantiate the emotional distress suffered by the
2 Debtor. The testimony of Nasrin and Amini, however, corroborates both the circumstances of
3 the eviction, the subsequent efforts to address the results of the eviction, and the emotional
4 impact on the Debtor as well as the other members of the Debtor's family. Based on this
5 testimony, the court concludes that the Debtor has clearly established that she suffered
6 significant emotional harm that was directly caused by the automatic stay violation. Even
7 without such corroborative testimony, the court concludes that the unexpected, unauthorized
8 eviction of the Debtor, her children, and family from their personal residence, accompanied by
9 law enforcement, plus the continuous disregard for the Debtor's interests for more than two
10 weeks after the RAS Order was vacated, makes her significant emotional distress readily
11 apparent. An award of monetary damages to compensate the Debtor for her emotional distress
12 therefore is warranted.

13 In this judicial district, previous awards of emotional distress damages for automatic stay
14 violations have varied widely. In Schwartz-Tallard, the bankruptcy court held an evidentiary
15 hearing on a debtor's request for sanctions. 438 B.R. at 315. In that case, a lender repeatedly
16 attempted over a period of seven months to foreclose on the Chapter 13 debtor's family
17 residence even though the debtor was current on her payments. The lender posted an eviction
18 notice on the residence even though the automatic stay was in effect. Id. at 316. As a result of
19 the lender's various attempts to foreclose and then evict the debtor from her residence, debtor
20 suffered severe panic attacks, lost sleep, missed work, and was treated by a physician who
21 prescribed numerous anxiety and sleep medications. Apparently, the debtor also sustained
22 physical injury as a result of her nervous mental state. Id. at 316. After considering the debtor's
23 testimony as well as the corroborating testimony of her husband, the bankruptcy court awarded
24 \$40,000 in emotional distress damages. Id. That award under Section 362(k) was affirmed on
25 appeal. Id. at 321-23.

26 In Page Ventures, LLC v. Ventura - Linenko (In re Ventura-Linenko), 2011 WL 1304464
27 (D. Nev. Apr. 1, 2011), the bankruptcy court considered a debtor's request for sanctions under
28 Section 362(k). In that case, the debtor commenced litigation challenging the validity of a

1 foreclosure sale that had been conducted on her residence. 2011 WL 1304464, at *1. She was
2 living in the residence at the time she filed a Chapter 13 petition. Id. The purchaser at the
3 foreclosure sale, however, served a five day notice to quit after the bankruptcy petition was filed.
4 Id. After receiving notice that the debtor had commenced bankruptcy proceedings, the purchaser
5 indicated it would file a motion for relief from stay. Only after the debtor responded with a
6 motion for sanctions, the purchaser vacated a pending hearing on the eviction complaint. Id. at
7 *2. In support of her request for emotional distress damages, the debtor submitted a declaration
8 from her physician attesting that the debtor recently had been treated for serious medical
9 conditions, and after the stay violation had undergone acute stress, manifested by sleep
10 difficulties and lack of energy. The physician's medical records indicated that he had prescribed
11 anxiety and sleep medications both before and after the stay violation. Id. at *3. Debtor also
12 submitted her own declaration attesting to her anxiety, sleep difficulties, and fearfulness. Id.
13 Based on the declarations and the medical records, the bankruptcy court concluded that the
14 threatened dispossession from the residence would cause significant emotional distress, and
15 awarded the debtor \$3,500 in actual damages. Id. at *4. That award under Section 362(k) was
16 affirmed on appeal. Id. at *9-10.

17 The evidentiary record presented in the Schwartz-Tallard and Ventura-Linenko decisions
18 are easily distinguishable from the instant case: there is no testimony from treating physicians,
19 no record of medications prescribed to the Debtor, and no testimony from the Debtor that she
20 sought or even considered seeking medical treatment. The Debtor's living circumstances also
21 are easily distinguishable: her Chapter 7 proceeding was not intended to preserve a long-term
22 occupancy of the premises at the Angel Dreams Property. In fact, Debtor did not even reside in
23 the Angel Dreams Property until after she was evicted from the Castle Ridge Property.
24 Additionally, her bankruptcy attorney negotiated a November 15, 2014, departure date from the
25 Angel Dreams Property. Thus, unlike the debtors in Schwartz-Tallard and Ventura-Linenko, the
26 Debtor's ties to the Angel Dreams Property were limited.

27 Unlike the debtors in Schwartz-Tallard and Ventura-Linenko, however, the Debtor in this
28 case was physically removed from her temporary residence at the Angel Dreams Property, along

1 with her minor children, her fiancé, her future in-laws, and other family members. She had no
2 alternate housing arranged at the time, she was denied access to her personal belongings, and she
3 did not have even the minimal necessities for any parent to adequately care for her children.
4 And misery does not always love company: Debtor was surrounded by family members who also
5 had experienced and were suffering the effect of the sudden eviction and displacement, which
6 may have contributed to her distress. Debtor's nightmare involving the Angel Dreams Property
7 continued even after the RAS Order was vacated on November 13, 2014, because Homewood
8 and Le still denied the Debtor and her family access to the premises while the Debtor's personal
9 property was still property of the bankruptcy estate.

10 In affirming the award of \$40,000 in emotional distress damages, the court in Schwartz-
11 Tallard observed that "a reasonable person whose home is sold without being in default would
12 suffer significant emotional harm" 438 B.R. at 322 (emphasis added). In the instant case,
13 the court does not doubt that the Debtor suffered significant emotional harm, but it was not over
14 the seven month period suffered by the debtor in Schwartz-Tallard. Here, the Debtor was
15 restored to possession of all her personal property and had obtained alternate housing no later
16 than November 28, 2014.

17 Under these circumstances, the court concludes that an award of \$25,000 in emotional
18 distress damages is appropriate to compensate for the automatic stay violation.²⁹

19 **3. Punitive Damages.**

20 The stay violation by Homewood and Le was willful. Their conduct also was egregious
21 and intentional.

22 The RAS Order was vacated on November 13, 2014, and attorney Leonard was notified
23 electronically on the same day. By failing to restore possession of the premises at the Angel
24

25 ²⁹ This award is limited to the emotional distress damages to the Debtor for violation of
26 the automatic stay. It is based on a limited but sufficient record. If the postbankruptcy conduct
27 of Homewood and Le gave rise to other claims for relief under state or federal law in favor of the
28 Debtor, her fiancé, or other occupants of the Angel Dreams Property, those claims presumably
would not be part of the Debtor's bankruptcy estate. For such other claims, if any, the court
makes no findings as to the emotional distress damages that might be appropriate.

1 Dreams Property and by failing to deprive the Debtor of access to her belongings, Homewood
2 and Le continued to violate the automatic stay, particularly the duty to undo the consequences of
3 the violation. Each day thereafter, Homewood and Le knew the stay was being violated and they
4 intentionally refused to correct it. Thirteen days went by after the RAS Order was vacated, and
5 Homewood and Le still granted the Debtor only limited access to the premises to retrieve her
6 personal property, as well as that of her children, fiancé, and family. On Thanksgiving Day,
7 Homewood and Le continued to violate the stay by depriving the Debtor of any access at all. On
8 the fifteenth day after the RAS Order was vacated, Homewood and Le finally granted the Debtor
9 access to the Angel Dreams Property to gather the rest of her personal property. This conduct
10 between November 13, 2014 and November 28, 2014, was as egregious as it was intentional.
11 But that's not all.

12 The record also establishes that as of November 4, 2014, no "stipulated order between the
13 parties" had been entered in either the First Eviction Action or the Second Eviction Action. The
14 Proposed Stipulated Eviction Order that had been drafted by attorney Leonard bearing the
15 caption of the First Eviction Action was never entered, nor could it have been entered in the
16 Second Eviction Action because Homewood and Le never informed attorney Leonard of the
17 existence of that action. Both the First Eviction Action and the Second Eviction Action were
18 void in any event because both were commenced without a prior order granting relief from stay,
19 and no subsequent order was entered annulling the automatic stay. Any reliance that Homewood
20 or Le could place on the RAS Order was a fiction.³⁰

21 When attorney Leonard advised Le on November 4, 2014, that the ongoing eviction was
22 _____

23 ³⁰ If the November 4, 2014, eviction was carried out with the assistance of a constable, it
24 is unclear what order was provided to the constable by Homewood to gain that assistance. The
25 RAS Order did not authorize the eviction; it only permitted Le to obtain a stipulated eviction
26 order from the Justice Court. The Proposed Stipulated Eviction Order drafted by attorney
27 Leonard for submission in the First Eviction Action was never filed, nor was it ever filed or
28 entered in the Second Eviction Action. The prior summary eviction order entered in the First
Eviction Action on August 27, 2014, had expired under Rule 34 of the Justice Court's local
rules, see note 18, supra, and the First Eviction Action itself was void. Homewood and Le knew
that the prior summary eviction order was void because they facilitated the hiring of attorney
Leonard for the express purpose of obtaining relief from stay.

1 improvident, Le sought out Thuna and Homewood's advice rather than accepting the bad news
2 from his bankruptcy attorney. Having been warned in no uncertain terms by his bankruptcy
3 counsel that the November 4, 2014 eviction was improper, Le doubled down and went along
4 with Homewood's advice. Instead of minimizing the damage by re-changing the locks and
5 restoring the Debtor to her temporary residence at the Angel Dreams Property, Homewood and
6 Le turned a blind eye to the proper legal advice of attorney Leonard and, more importantly, to
7 the direct impact that their actions had on the Debtor, her children, and her family. This was as
8 egregious and intentional as it was cold-hearted.³¹

9 The record further establishes that Le was informed by Homewood after the first eviction
10 effort failed that he would have to obtain an order from the bankruptcy court granting relief from
11 stay. Le then engaged the services of attorney Leonard precisely for that purpose. But before an
12 order granting relief from stay was ever entered, the Second Eviction Action was commenced on
13 October 23, 2014, by the filing of a summary eviction complaint. At that point, attorney
14 Leonard had not even emailed attorney Alexander the proposed RAS Stipulation, nor the
15

16
17 ³¹ At the hearing, Le testified after listening to the testimony of the Debtor, Nasrin, and
18 Amini. From the witness stand, he apologized for the consequences suffered by the Debtor and
19 her family, but appeared to deflect responsibility to attorney Leonard by asserting that he had
20 never agreed to a November 15, 2014 departure date. Clearly, however, attorney Leonard had at
21 least apparent authority to make such an agreement on Le's behalf and attorney Alexander
22 clearly relied on that authority in authorizing the RAS Stipulation to be filed with the bankruptcy
23 court. Le was bound by that agreement. As an absentee and perhaps inexperienced landlord, Le
24 naively placed complete confidence in Homewood and simply ignored the clear, qualified, and
25 correct legal advice of attorney Leonard. When attorney Leonard's email on November 4, 2014,
26 explained that the sudden eviction of the Debtor and her family prior to November 15, 2014
27 agreed date was a violation of the automatic stay, Le gave no consideration to what would
28 happen to a family suddenly thrown out of their home. Instead, he forwarded attorney Leonard's
email to Homewood, whose representatives actually participated in the eviction and
displacement of the Debtor's family. Again, he gave absolutely no consideration to the young
family with elderly parents that was summarily removed from their home without any time to
prepare for a departure. Even if Le did not believe attorney Leonard had authority to agree to the
November 15, 2014 departure deadline, any reasonable landlord would have sought a second
opinion from another competent attorney, rather than simply accept the advice of the non-
attorney who actually carried out the disputed eviction. Tellingly, Le never apologized from the
witness stand for continuing to deprive the Debtor access to the Angel Dreams Property after the
RAS Order had been vacated.

1 Proposed Stipulated Eviction Order. It is readily apparent that attorney Leonard was unaware of
2 Homewood's and Le's activities because he drafted the Proposed Stipulated Eviction Order
3 using the caption of the First Eviction Action. It is clear that Homewood and Le took actions in
4 violation of the automatic stay on their own without consulting with attorney Leonard. This was
5 as egregious and intentional as it was ignorant.

6 In Schwartz-Tallard, the bankruptcy court awarded punitive damages in the amount of
7 \$20,000, i.e., one-half the amount of the emotional distress award. The award was based on the
8 bankruptcy court's determination that the lender acted with callous disregard of the debtor's
9 rights. 438 B.R. at 322. The appellate court concluded that the bankruptcy court's
10 determination was sufficient to find that the lender had engaged in egregious conduct. Id. The
11 bankruptcy court included an award of punitive damages to deter future misconduct. 438 B.R. at
12 317. The punitive damages award was not challenged on appeal.

13 In Ventura-Linenko, the bankruptcy court awarded \$3,500 in punitive damages, i.e., the
14 same as the amount of the emotional distress damages. The award was based on the bankruptcy
15 court's determination that the violator had acted with reckless or callous disregard for the
16 debtor's rights. 2011 WL 1304464, at *5. The appellate court concluded that the finding of
17 reckless or callous behavior supported the award of punitive damages. Id. at *11. It also
18 concluded that the \$3,500 amount provided deterrence proportional to both the amount of the
19 debtor's actual damages and the reprehensibility of the violator's conduct. Id. at *10-11.³² The
20 punitive damages award was not an abuse of discretion and therefore was affirmed. Id. at *11.

21 The stay violations by Homewood and Le in this case are far more serious than the
22 violation in Ventura-Linenko, and only slightly less serious than the violation in Schwartz-
23 Tallard. While no evidence was introduced that Homewood and Le have treated other tenants in
24 a similar fashion, their willingness to continually violate the automatic stay with respect to the
25 Debtor warrants significant deterrence. Taking into account the emotional distress award of

26
27 ³² The Ventura-Linenko court observed: "In reviewing a punitive damages award, the
28 goal is to determine 'whether the punitive damages achieved their ultimate objective of
deterrence and punishment, without being unreasonable or disproportionate.'" 2011 WL
1304464, at *11, quoting S. Union Co. v. Irvin, 563 F.3d 788, 791 (9th Cir. 2009).

\$25,000, as well as the attorney's fees and costs to be determined, the court concludes that an award of \$15,000 in punitive damages is appropriate.³³

CONCLUSION

Homewood and Le willfully violated the automatic stay. Actual damages in an amount to be determined will be awarded for the attorney's fees incurred by attorney Alexander in remedying the violation through November 28, 2014. Actual damages for the emotional distress caused by the violation will be awarded in the amount of \$25,000. Punitive damages for the egregious and intentional misconduct of the violators will be awarded in the amount of \$15,000.

A separate preliminary order has been entered concurrently herewith. A final order will be entered after the court determines the amount of the attorney's fees award.

Notice and Copies sent through:

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and sent via FIRST CLASS MAIL BY THE COURT AND/OR BNC to:

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³³ The punitive damage award might be even higher but for the Debtor's lack of receipts for the out-of-pocket expenses she incurred as a result of the violation.