



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 13, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 13-12466-MKN
	)	Chapter 13
WILLIE N. MOON and ADNETTE M.	)	
GUNNELS-MOON,	)	
	)	Date: January 13, 2022
Debtors.	)	Time: 1:30 p.m.
	)	

**MEMORANDUM DECISION ON REMAND<sup>1</sup>**

On January 13, 2022, this case came before the court on a variety of matters after appellate remand. The appearances of counsel were noted on the record. After arguments were presented, the matters were taken under submission.

**BACKGROUND**

On February 25, 2020, the court entered its Memorandum Decision After Evidentiary Hearing (“Contempt Decision”).<sup>2</sup> (ECF No. 157). That Contempt Decision set forth the court’s findings of fact and conclusions of law on the Motion to Hold Creditor, Rushmore Loan Management in Contempt for Violation of the Automatic Stay Under §362(a) and for Violation of the Discharge Injunction Under 11 U.S.C. §524(a)(2) and to Hold Creditor SN Servicing Corporation in Contempt for Violating the Discharge Injunction Under 11 U.S.C. §524(a)(2) and

<sup>1</sup> In this Order, all references to “ECF No.” are to the documents entered on the case docket maintained by the Clerk of the Court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

<sup>2</sup> The Contempt Decision is reported at 613 B.R. 317 (Bankr. D. Nev. 2020).

1 for Actual Damages, Emotional Distress Damages, Punitive Damages and Attorney Fees and  
2 Sanctions Against Both Creditors, Rushmore Loan Management and SN Servicing Corporation  
3 (“Contempt Motion”). The Contempt Motion was brought by debtors Willie N. Moon (“Willie  
4 Moon”) and Adnette M. Gunnels-Moon (“Adnette Moon”), who had commenced the above-  
5 captioned Chapter 13 proceeding on March 26, 2013, and whose Chapter 13 discharge was  
6 entered on September 28, 2016.

7 After conducting a two-day evidentiary hearing, the court entered a written decision  
8 finding that Rushmore Loan Management Services, LLC (“Rushmore”) willfully violated the  
9 automatic stay under Section 362(k) as to both Willie Moon and Adnette Moon. After a detailed  
10 discussion of the evidence presented, the court found that Rushmore had received notice of the  
11 Debtors’ bankruptcy case on December 20, 2014, through a telephone call to the Debtors’  
12 residence that Rushmore’s representative had with Willie Moon.<sup>3</sup> The court also found that  
13 Rushmore thereafter willfully violated the automatic stay on multiple occasions until the  
14 Debtors’ discharge under Chapter 13 was entered on September 28, 2016. From December 20,  
15 2014, through September 28, 2016, the court found that Rushmore made sixty-eight telephone  
16 calls to the Debtors’ residence, mailed thirty Account Information and Mortgage Statements and  
17 other correspondence to the Debtors’ residence, and even physically posted on the door of the  
18 Residence a notice advising the Debtors to call Rushmore’s collection department. Based on that  
19 history of willful violations of the automatic stay, the court awarded in favor of Willie Moon and  
20 Adnette Moon (jointly, the “Debtors”) pecuniary damages in the amount of \$742.10 for fees

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21  
22 <sup>3</sup> A transcript of the December 20, 2014, telephone call between Rushmore’s  
23 representative and Willie Moon was admitted at the evidentiary hearing. The conversation  
24 reflected in that transcript is set forth in the court’s discussion of the reprehensibility of  
25 Rushmore’s conduct. See Contempt Decision at 56:1 to 57:13. During the telephone call, Willie  
26 Moon specifically informed Rushmore’s representative that the Debtors had been in Chapter 13  
27 for almost two years and the representative said she would “notate the account.” The  
28 representative also told Willie Moon that if Rushmore had the bankruptcy information “it would  
not even allow me to call you if it was in our system.” The transcript also reflects, however, that  
the representative never informed Willie Moon that he was an unauthorized third party under  
Rushmore’s unwritten, undisclosed policy, whose information would not be treated as notice that  
his wife, Adnette Moon, was in bankruptcy.

1 incurred in reopening the Chapter 7 proceeding, emotional distress damages to Willie Moon in  
2 the amount of \$100,000, punitive damages in the amount of \$200,000.00, and attorney's fees in  
3 an amount to be determined. Based on the evidence presented, the court also found that  
4 Rushmore<sup>4</sup> violated the discharge injunction under Section 524(a)(2), but declined to award  
5 damages for civil contempt under Section 105(a)<sup>5</sup> due to an insufficient evidentiary basis to  
6 establish the date that Rushmore received notice of the Debtors' discharge.

7 On May 29, 2020, the court entered its Order on Motion for Attorney Fees and Costs  
8 from Order on Motion for Contempt (DKT.# 158) ("First Fee Decision"). (ECF No. 231). That  
9 First Fee Decision set forth the court's award of attorney's fees in the amount of \$56,150.00 and  
10 costs in the amount of \$10,857.94 in favor of the Debtors against Rushmore. Debtors' request  
11 for an enhancement of the fee award, however, was denied.

12 On July 21, 2020, the court entered its Order on Supplemental Fee Application to  
13 Amended Motion for Attorney Fees (Dkt. #179) ("First Fee Supplement Decision"). (ECF No.  
14 289). That First Fee Supplement Decision set forth the court's award of additional attorney's  
15 fees in the amount of \$3,500.00 in favor of the Debtors against Rushmore.

16 On July 21, 2020, the court entered its Order on Second Motion for Attorney Fees and  
17 Costs for Rushmore's Continuing Stay Violation in Filing Adversary No. 19-01090-MKN  
18 ("Second Fee Decision"). (ECF No. 291). That Second Fee Decision denied the Debtors'  
19 request for attorney's fees and costs incurred in responding to a separate adversary proceeding  
20 brought by Rushmore ("Rushmore Adversary").<sup>6</sup>

21  
22 <sup>4</sup> Debtors had previously settled with SN Servicing Corporation.

23 <sup>5</sup> Punitive damages for violation of the discharge injunction are not available under  
24 Section 105(a). See, e.g., In re Vanamann, 561 B.R. 106, 122 (Bankr. D. Nev. 2016), citing  
25 Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1193 (9th Cir. 2003).

26 <sup>6</sup> The Rushmore Adversary was commenced by Rushmore less than two weeks before the  
27 evidentiary hearing on the Contempt Motion. The relief sought by Rushmore effectively negated  
28 the relief sought by the Debtors through their Contempt Motion. Debtors never answered the  
complaint in the Rushmore Adversary, but a variety of motion practice ensued. After the court  
entered its order on the Contempt Motion, Rushmore eventually filed a notice voluntarily  
dismissing the Rushmore Adversary. Thereafter, Debtors filed a Second Motion for Attorney

1 On July 21, 2020, the court entered its Final Order on Motion for Contempt Against  
2 Rushmore Loan Management Services for Violation of the Courts Order Confirming Plan #2  
3 Against Creditor, Rushmore Loan Management Services, LLC and for its Continuing Violation  
4 of the Stay and Damages for Both and to Confirm Avoidance of Rushmores Second Mortgage  
5 under FRBP 5009(d) (“Second Contempt Decision”). (ECF No. 295). That Second Contempt  
6 Decision denied the Debtors’ request to hold Rushmore in civil contempt for violation of their  
7 Chapter 13 discharge.

8 Entry of the Contempt Decision, First Fee Decision, First Fee Supplement Decision,  
9 Second Fee Decision, and Second Contempt Decision, led to a series of appeals and cross-  
10 appeals to both the Bankruptcy Appellate Panels for the Ninth Circuit (“BAP”) as well as the  
11 Ninth Circuit Court of Appeals (“Ninth Circuit”).

12 Rushmore appealed the Contempt Decision to the BAP. On January 7, 2021, the BAP  
13 entered its memorandum decision (“BAP Contempt Decision Memorandum”)<sup>7</sup> affirming in part,  
14 reversing in part, vacating and remanding.<sup>8</sup> As the BAP observed, Rushmore did not appeal this  
15 court’s “ruling that it willfully violated the automatic stay with its collection efforts or the award  
16 of compensatory damages of \$742.10.” See BAP Contempt Decision Memorandum at 10.  
17 Rushmore did appeal the award of emotional distress damages to Willie Moon, the award of  
18 punitive damages to Willie Moon, and the admission of testimony of the Debtors’ expert. The  
19 BAP concluded that Rushmore did not violate the automatic stay with respect to Willie Moon  
20 because only Adnette Moon was the borrower. Id. at 10-16.<sup>9</sup> The BAP affirmed as to the

21 \_\_\_\_\_  
22 Fees and Costs for Rushmore’s Continuing Stay Violation in Filing Adversary No. 19-1090-  
23 MKN (“Second Fee Motion”). (ECF No. 242).

24 <sup>7</sup> The BAP Contempt Decision Memorandum is reported at 2021 WL 62629 (B.A.P. 9th  
25 Cir. Jan. 7, 2021).

26 <sup>8</sup> The BAP Contempt Decision Memorandum addressed Rushmore’s appeal of the  
27 Contempt Decision that was assigned BAP Appeal No. 20-1057, as well as Debtors’ cross-  
28 appeal that was assigned BAP Appeal No. 20-1070.

<sup>9</sup> Rushmore took the position and the BAP agreed, that there was no provision of Section  
362(a) that applied to Willie Moon with respect to Rushmore’s conduct, and that Willie Moon

1 admission of the expert testimony. Debtors cross-appealed the court's ruling denying any award  
2 of damages for Rushmore's violation of the discharge injunction. The BAP affirmed the court's  
3 denial of damages with respect to the discharge violation. The BAP therefore reversed and  
4 vacated the award of any damages as to Willie Moon, but remanded for a reconsideration of  
5 punitive damages as to Adnette Moon. Both Rushmore and the Debtors appealed the BAP  
6 decision to the Ninth Circuit. On or about April 19, 2021, the Ninth Circuit entered an order  
7 dismissing the appeals for lack of jurisdiction. Both Rushmore and the Debtors sought  
8 reconsideration from the Ninth Circuit. On or about July 23, 2021, the Ninth Circuit denied the  
9 motions for reconsideration. On August 2, 2021, the Ninth Circuit issued the mandate on its  
10 order dismissing the appeals for lack of jurisdiction.<sup>10</sup>

11 Rushmore and the Debtors appealed the First Fee Decision to the BAP. On January 7,  
12 2021, the BAP entered its memorandum decision ("BAP First Fee Decision Memorandum")<sup>11</sup>  
13 affirming in part, vacating and remanding in part.<sup>12</sup> The BAP affirmed the award of attorney's  
14 fees for violation of the automatic stay, vacated the amount awarded, and remanded for an  
15 explanation of the amount for an automatic stay violation rather than a discharge violation. Both  
16 Rushmore and the Debtors appealed the BAP decisions to the Ninth Circuit. On or about April

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18 therefore could not seek damages under Section 362(k)(1). See BAP Contempt Decision  
19 Memorandum at 10-15. The net result in this joint Chapter 13 case is that Willie Moon is not  
20 treated under Section 362(k)(1) as an individual injured by Rushmore's willful violation of the  
21 stay with respect to Adnette Moon, with whom he shares the marital residence.

22 <sup>10</sup> Prior to issuance of the Ninth Circuit mandate on the Contempt Decision, Rushmore  
23 filed a motion seeking a mandatory settlement conference. (ECF No. 396). Debtors opposed on  
24 various grounds, including that Willie Moon had a pending request before the Ninth Circuit for  
25 rehearing and rehearing en banc on the issue of his standing to assert a violation of the automatic  
26 stay. Rushmore's motion initially was heard on July 21, 2021, and continued. Shortly thereafter,  
27 the Ninth Circuit issued its mandate, and the settlement motion was subsequently denied. (ECF  
28 No. 408).

<sup>11</sup> The BAP First Fee Decision Memorandum is reported at 2021 WL 62630 (B.A.P. 9th  
Cir. Jan. 7, 2021).

<sup>12</sup> The BAP First Fee Decision Memorandum addressed Rushmore's appeal of the First  
Fee Decision that was assigned BAP Appeal No. 20-1144, as well as Debtors' cross-appeal that  
was assigned BAP Appeal No. 20-1155.

1 19, 2021, the Ninth Circuit entered an order dismissing the appeals for lack of jurisdiction. On  
2 May 11, 2021, the Ninth Circuit issued the mandate on its order dismissing the appeals for lack  
3 of jurisdiction.

4 Rushmore appealed the First Fee Supplement Decision to the BAP. On February 4,  
5 2021, the BAP entered its memorandum decision (“BAP First Fee Supplement Decision  
6 Memorandum”)<sup>13</sup> vacating the award of attorney’s fees and remanded for an explanation of the  
7 amount consistent with the BAP’s ruling on the First Fee Decision.

8 Debtors appealed the Second Fee Decision to the BAP. On February 4, 2021, the BAP  
9 entered its memorandum decision (“BAP Second Fee Decision Memorandum”)<sup>14</sup> vacating and  
10 remanding. The BAP vacated the denial of attorney’s fees incurred by the Debtors in responding  
11 to Rushmore’s separate adversary proceeding, and remanded for a determination of the amount  
12 appropriate under Section 362(k)(1). Neither the Debtors nor Rushmore appealed the BAP’s  
13 decision to the Ninth Circuit.

14 Debtors appealed the Second Contempt Decision to the BAP. On February 4, 2021, the  
15 BAP entered its memorandum decision affirming the Second Contempt Decision (“BAP Second  
16 Contempt Decision Memorandum”).<sup>15</sup> Neither the Debtors nor Rushmore appealed the BAP’s  
17 decision to the Ninth Circuit.

18 In light of the multiple appeals and cross-appeals sought by both Rushmore and the  
19 Debtors, the BAP entered a series of orders on February 25, 2021, with respect to the Debtors’  
20 requests for appellate attorney’s fees under Section 362(k)(1). In each of those orders, the BAP  
21 directed this court to “decide the appropriate amount of appellate fees with its consideration of  
22 the damages and fees already remanded to the bankruptcy court.”<sup>16</sup> As a result of the mandates  
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24 <sup>13</sup> The BAP First Fee Supplement Decision Memorandum is reported at 2021 WL 408838  
(B.A.P. 9th Cir. Feb. 4, 2021).

25 <sup>14</sup> The BAP Second Fee Decision Memorandum is reported at 2021 WL 414608 (B.A.P.  
26 9th Cir. Feb. 4, 2021).

27 <sup>15</sup> The BAP Second Contempt Decision Memorandum is reported at 2021 WL 414613  
28 (B.A.P. 9th Cir. Feb. 4, 2021).

1 and orders issued by the BAP, the court is required to address the following matters in  
2 connection with the Contempt Decision, First Fee Decision, First Fee Supplement Decision, and  
3 Second Fee Decision:

- 4 1. To determine the amount of punitive damages to be awarded for a willful  
5 violation of the automatic stay, given the reduction of compensatory  
6 damages. See BAP Contempt Decision Memorandum at 29-30. The  
7 BAP expressly stated that the “bankruptcy court may consider the amount  
8 of attorney’s fees and costs in determining the size of a punitive damages  
9 award under § 362(k)(1).” Id. at 23.
- 10 2. To explain the award of attorney’s fees for violation of the automatic stay  
11 and to reconsider whether a fee enhancement is appropriate. See BAP  
12 First Fee Decision Memorandum at 15-16; BAP First Fee Supplement  
13 Decision Memorandum at 6. The BAP expressly stated that the court  
14 must explain the “attorney’s fees awarded under § 362(k)(1) for what  
15 appears to be time spent on the discharge injunction violation.” BAP First  
16 Fee Decision Memorandum at 15.
- 17 3. To award reasonable attorney’s fees and costs incurred in responding to  
18 Rushmore’s arguments in defense of its stay violation. See BAP Second  
19 Fee Decision Memorandum at 14. The BAP expressly stated that “at least  
20 some of the fees and costs the Moons incurred in the Rushmore Adversary  
21 were incurred as part of their stay violation damages claims against  
22 Rushmore under § 362(k)(1).” Id. at 12-13.
- 23 4. To determine the amount of appellate attorney’s fees to which Adnette Moon  
24 is entitled under Section 362(k)(1), if any.

25 No further matters need be considered in connection with the Second Contempt Decision.

26 On October 6, 2021, a status conference was conducted to schedule presentation of the  
27 written and oral arguments on the matters remanded.

28 On November 1, 2021, an order was entered scheduling arguments by the Debtors and  
Rushmore (“Scheduling Order”) to address the matters remanded. (ECF No. 413). In  
accordance with the Scheduling Order, Debtors submitted their opening brief on November 10,

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<sup>16</sup> Debtors filed separate motions before the BAP seeking appellate fees under Section 362(k)(1), copies of which have been provided to the bankruptcy court.



1 2021 (“Debtors Opening Brief”) and Rushmore submitted its opening brief on the same date  
2 (“Rushmore Opening Brief”).<sup>17</sup> (ECF Nos. 416 and 417).

3 On December 10, 2021, Debtors submitted their responsive brief (“Debtors Response”)  
4 and Rushmore submitted its response (“Rushmore Response”).<sup>18</sup> (ECF Nos. 419 and 420).

5 On December 29, 2021, Debtors submitted their reply (“Debtors Reply”)<sup>19</sup> and Rushmore  
6 submitted its reply (“Rushmore Reply”). (ECF Nos. 421 and 422).

### 7 DISCUSSION

8 These matters are governed by the mandates of the BAP. The “rule of mandate” applies  
9 in bankruptcy proceedings. See, e.g., Barton Properties v. Blaskey (In re Blaskey), 2016 WL  
10 4191775, at \*5 (B.A.P. 9th Cir. Aug. 8, 2016) (bankruptcy court on remand correctly applied the  
11 mandate of the BAP from a prior appeal). The rule of mandate applies to an appellate decision  
12 rendered in the same proceeding. The Ninth Circuit has explained that

13 A district court that has received the mandate of an appellate court cannot  
14 vary or examine that mandate for any purpose other than executing it...At the  
15 same time, the rule of mandate allows a lower court to decide anything not  
16 foreclosed by the mandate...A district court is limited by our remand when  
the scope of the remand is clear...Violation of the rule of mandate is a  
jurisdictional error...

17 Hall v. City of Los Angeles, 697 F.3d 1059, 1067 (9th Cir. 2012) (citations omitted, emphasis  
18 added). See also Stacy v. Colvin, 825 F.3d 563, 567-68 (9th Cir. 2016); Creech v. Tewalt, 2022  
19 WL 60602, at \*3 (D. Idaho Jan. 5, 2022).

20  
21 <sup>17</sup> Attached as Exhibit “D” to the Rushmore Brief is a copy of a telephone “call log” and  
22 a transcription of a telephone call that took place on December 20, 2014, both of which  
23 previously were admitted at trial as part of Debtors’ Trial Exhibit 2 and Rushmore Trial Exhibit  
V. The remaining attachments to the Rushmore Brief consist of copies of the relevant BAP  
decisions in this case and transcripts of the trial in this matter.

24 <sup>18</sup> Attached as Exhibit “A” to the Rushmore Response is a copy of a decision by the  
25 United States District Court for the Northern District of California in a bankruptcy appeal  
26 entitled In re Sarah-Jane Parker, Case No. 19-cv-2588-YGR.

27 <sup>19</sup> Attached as Exhibit “1” to the Debtors Reply is a summary of bankruptcy attorney’s  
28 fees incurred by the Debtors. Attached as Exhibit “2” are copies of various motions for appellate  
attorney fees that the Debtors had filed before the BAP in connection with the multiple appeals  
presented.



1 The BAP did not disturb any of the factual findings made by this court that were based on  
2 the evidence presented at the hearing. Because the BAP suggested that the court should consider  
3 the attorneys fee awards in determining the amount of any punitive damages, the court initially  
4 must address the BAP First Fee Decision Memorandum as well as the BAP First Fee Supplement  
5 Decision Memorandum. The punitive damages inquiry required by the BAP Contempt Decision  
6 Memorandum will be addressed thereafter, followed by the subject of the BAP Second Fee  
7 Decision Memorandum.

8 **I. Explanation for the award of attorney’s fees for violation of the automatic**  
9 **stay and reconsideration of request for fee enhancement.**

10 As observed by the BAP, this court awarded \$67,007.94 in attorney’s fees and costs after  
11 reviewing the declarations and accompanying billing statements admitted in evidence. See BAP  
12 First Fee Decision Memorandum at 3 to 5 & nn. 3 and 4. See also First Fee Decision at 4:8-15.  
13 The BAP concluded that the Debtors are entitled to a reasonable attorney’s fee under Section  
14 362(k)(1), but remanded because this court “did not explain, either legally or factually, why it  
15 awarded attorney’s fees under § 362(k)(1) for what appears to be time spent on the discharge  
16 injunction violation.” BAP First Fee Decision Memorandum at 14-15. The BAP remanded for  
17 this court to provide a “concise but clear” explanation that includes “some indication of how  
18 [this court] arrived at the amount of compensable hours for which fees were awarded to allow for  
19 meaningful appellate review.” Id. at 15. In directing such explanations, the BAP authorized this  
20 court to reconsider whether to grant the fee enhancement previously requested by the Debtors.  
21 Id. at 16. Because the First Fee Supplement Decision was closely related, the BAP directed a  
22 similar discussion.

23 The Contempt Motion was prosecuted and presented as a contested matter through an  
24 evidentiary hearing. No request was made to bifurcate the proceeding into separate automatic  
25 stay violation and discharge violation inquiries. At the hearing, evidence was presented through  
26 the live testimony of four witnesses and the admission of 60 exhibits. The testimony and  
27 exhibits were presented by all parties on a combined basis.<sup>20</sup> After conclusion of the evidentiary

28 <sup>20</sup> During the course of a trial involving separate legal theories and different burdens of  
proof, it would be unusual for counsel for any of the parties to even attempt to bifurcate the offer

1 hearing, post-trial briefs and closing arguments were presented. After consideration of the  
2 evidence, the court awarded monetary sanctions only for the automatic stay violation, but also  
3 concluded that the Debtors sufficiently established that Rushmore violated the discharge  
4 injunction. See Contempt Decision at 59:13-15.<sup>21</sup> Applying the required civil contempt  
5 standard, however, the court declined to award monetary damages for violation of the discharge  
6 injunction solely because there was insufficient evidence to establish when Rushmore received  
7 notice of the Debtors' discharge. See BAP Contempt Decision Memorandum at 28.

8 The services provided by Debtors' counsel in connection with the automatic stay  
9 violation and the discharge injunction violation were inextricably linked. The evidence  
10 presented by both the Debtors and Rushmore overlapped, including the testimony as to the  
11 damages suffered by both Adnette Moon and Willie Moon. The testimony presented by a  
12 representative of Rushmore as to its process for addressing borrowers, both before and after a  
13 bankruptcy discharge, was material to the assessment of noncompensatory damages for  
14 violations of the automatic stay as well as the discharge injunction. The testimony of the expert  
15 witness on the standard practices of residential loan servicers was material to the assessment of  
16 the stay violation and the discharge violation. The evidence presented at trial included the  
17 existence of the unwritten and undisclosed policy that resulted in Rushmore's disregard for  
18 Adnette Moon's bankruptcy status. The effect of that disregard extended beyond the date of the  
19 Debtors' discharge and through the date that Rushmore ceased servicing Adnette Moon's loan.

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21 \_\_\_\_\_  
22 and admission of evidence. Like most cases, the witness testimony presented in this proceeding  
23 was not elicited in chronological sequence during the give and take of cross-examination. There  
24 was no demarcation of the purpose for which the evidence was being offered or admitted.

25 <sup>21</sup> Rushmore has repeatedly mischaracterized the court's conclusion as a finding that it  
26 did not violate the Debtors' discharge. See, e.g., Rushmore Opposition to Second Fee Motion at  
27 2:20-22. At the hearing on remand, Rushmore continued to mischaracterize the court's  
28 conclusion and counsel was admonished not to do so. An award of punitive damages may take  
into consideration that the litigant defends its position "with great stubbornness" to discourage  
parties from pursuing meritorious claims as a cost of doing business. See, e.g., Mathias v. Accor  
Economy Lodging, Inc., 347 F.3d 672, 677-78 (7th Cir. 2003) (affirming punitive damages  
award under 37.2 to 1 multiplier).

1 The only reason damages for violation of the discharge injunction were not awarded is that an  
2 actual date when Rushmore received notice of the discharge could not be determined. Any  
3 assertion that the Debtors did not succeed in proving that Rushmore violated the discharge  
4 injunction is delusional.<sup>22</sup> There was a core of evidence and facts that produced all of the results  
5 of the evidentiary hearing. In other words, all of the hours spent by Debtors' counsel were  
6 compensable because they applied to the automatic stay violation claim as well as the discharge  
7 violation claim.<sup>23</sup> The declarations and billing statements presented by Debtors' counsel  
8 demonstrate that the compensation requested reflects a reasonable number of hours expended at  
9 reasonable hourly rates appropriate to address Rushmore's willful violation of the automatic  
10 stay. Applying the lodestar approach, the previous award of \$67,007.94, included attorney's fees  
11 in the amount of \$56,150.00. Those amounts remain appropriate on remand.

12 In the First Fee Decision, the court authorized the Debtors to separately seek additional  
13 fees in connection with their response to Rushmore's objections to the First Fee Motion. See  
14 First Fee Decision at 9 n.11. The First Fee Supplement Decision considered the objections

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16 <sup>22</sup> Compare Arizona v. ASARCO, LLC, 773 F.3d 1050, 1061 (9th Cir. 2014) (“[G]iven  
17 the overlap between Aguilar’s harassment claim and her other claims, ASARCO’s argument that  
18 she prevailed on merely one claim is incorrect.”). See also Passantino v. Johnson & Johnson  
19 Consumer Products, Inc., 212 F.3d 493, 518 (9th Cir. 2000) (“Although [plaintiff] did not prevail  
20 on her discrimination claims or her claim for injunctive relief, she prevailed on her retaliation  
21 claims, which were inextricably intertwined with her discrimination claims. In fact, in order to  
22 prevail on her retaliation claims, she had to prove she reasonably believed that [defendant] was  
23 engaged in discriminatory activity... Thus, the time spent on her discrimination claims  
24 contributed to the success of her retaliation claims...”).

25 <sup>23</sup> The Contempt Motion was not presented as a bifurcation between the violation of the  
26 automatic stay and the violation of the discharge injunction. The primary reason was that  
27 Rushmore never filed a written objection to the substantive basis for the Contempt Motion at any  
28 time before the evidentiary hearing. Rushmore never even filed a written trial statement, while  
the Debtors did so. As the BAP noted, Rushmore’s position that only Adnette Moon was  
protected by the automatic stay was not raised until the evidentiary hearing itself. See BAP  
Contempt Decision Memorandum at 10 (“The bankruptcy court did not address this threshold  
issue, even though Rushmore raised it at the evidentiary hearing. We asked for further briefing  
on the matter at oral argument.”). In other words, because Rushmore never raised before  
commencement of the evidentiary hearing the primary arguments for which it obtained relief on  
appeal, Debtors presented the evidence to establish both the automatic stay violations and the  
discharge violations. Debtors succeeded in doing both.

1 raised by Rushmore that duplicated Rushmore's objections to the First Fee Motion. The court  
2 reviewed the billing statements submitted with the supplemental fee request. The court  
3 concluded that no duplicate fees were requested and that Debtors' counsel billed a reasonable  
4 amount of time at reasonable hourly rates. The fees requested by the supplement were awarded  
5 under Section 362(k)(1) based on the court's prior determination that Rushmore willfully  
6 violated the automatic stay. For the same reasons that the Debtors are entitled to attorney's fees  
7 in connection with the First Fee Motion, they are entitled to \$3,500 in supplemental fees in  
8 responding to Rushmore's fee objections.

9 As authorized by the BAP, the court again considers whether a fee enhancement is  
10 appropriate. The court previously denied such a request because Debtors' counsel provided no  
11 specific evidence that would support a fee enhancement above the lodestar amount. See First  
12 Fee Decision at 11:2-12. The record is no different on remand. For the same reason, the court  
13 therefore denies a fee enhancement on remand.

14 As authorized by the BAP, the award of attorney's fees and costs totaling \$67,007.94,  
15 plus the supplemental amount of \$3,500.00, will apply in the reconsideration of the award of any  
16 punitive damages appropriate for Adnette Moon under Section 362(k)(1). The total amount as  
17 supplemented is \$70,507.94.

18 **II. Reconsideration of the amount of punitive damages to be awarded for a**  
19 **willful violation of the automatic stay, given the reduction of compensatory**  
20 **damages.**

21 As affirmed by the BAP, actual damages in the amount of \$742.10, reflecting out of  
22 pocket expenses, were awarded to Adnette Moon based on Rushmore's willful violation of the  
23 automatic stay. See Contempt Decision Memorandum at 10 and 29. See also Contempt  
24 Decision at 53:15 to 54:18. That amount, in addition to the attorney's fees and costs, result in  
25 the award of actual damages required under Section 362(k)(1) totaling \$71,250.04.

26 As affirmed by the BAP, an award of punitive damages for Rushmore's willful violation  
27 of the automatic stay as to Adnette Moon is warranted under Section 362(k)(1). See BAP  
28 Contempt Decision Memorandum at 21. As the BAP observed, "there are two underlying

1 purposes for punitive damage awards: to punish outrageous conduct and to deter future similar  
2 conduct.” See BAP Contempt Decision Memorandum at 16.

3 Section 362(k)(1) authorizes the recovery of punitive damages “in appropriate  
4 circumstances.” Because there was no automatic stay violation as to Willie Moon permitting an  
5 award of \$100,000 of emotional distress damages to him under Section 362(k)(1), the BAP  
6 directed the court to reconsider the \$200,000 in punitive damages awarded against Rushmore.  
7 But why did the BAP agree that Rushmore’s conduct constituted appropriate circumstances  
8 warranting punitive damages? The BAP stated as follows:

9 The bankruptcy court found, while Rushmore’s policies  
10 acknowledged the fundamental importance of the automatic stay to its  
11 borrowers, putting it on fair notice of the consequences under §362(k),  
12 Rushmore adopted express procedures to narrow the sources of bankruptcy  
13 information that it was willing to acknowledge, and does not even tell its  
14 borrowers what those sources are...Specifically, the court found that  
15 Rushmore had an unwritten policy or procedure for deeming sources as  
16 “unauthorized” parties whose information will not deter or prevent it from  
17 violating the bankruptcy protections of its borrowers....The court was  
18 particularly troubled by Rushmore’s failure to follow up on the  
19 representative’s notation in the loan file that the Moons were in bankruptcy,  
20 in spite of Rushmore’s expressly stated policy that it “will act promptly in  
21 response to notice of any nature, whether written or oral (telephonic or in  
22 person), that a borrower has filed for bankruptcy protection.”...The court  
23 found Rushmore’s procedures especially egregious considering that the  
24 sources of notification specified in its procedures manual were not limited to  
25 just the borrower; four of the five sources were non-borrower sources. Thus,  
26 for Rushmore to suggest that a borrower’s spouse would be an unauthorized  
27 third party while multiple non-borrower, third-party sources would be  
28 authorized sources of notification was “absurd at best.”...Ultimately, the  
court found Rushmore’s conduct “reprehensible,” and that its formalized  
procedures were used in this case “to maintain a veil of ignorance of the  
Chapter 13 proceeding of its borrower.”...Therefore, under the  
circumstances, the court concluded that punitive damages were warranted in  
the amount of \$200,000.

Rushmore argues that the bankruptcy court’s interpretation of its  
policy was implausible, and that it did not show reckless disregard for the  
Moons’ rights. Rushmore argues that its policies do not limit notification of  
a bankruptcy to only the five sources listed considering the permissive  
language therein: “Notification of a new bankruptcy case **can** come through  
the following sources.” However, Younger testified that a bankruptcy notice  
from even a borrower’s spouse who lives in the home with the borrower will

1 not trigger a PACER search to verify the information. Younger testified that  
2 the only step Rushmore takes to verify that the borrower has filed for  
3 bankruptcy when the information comes from an unauthorized source,  
4 including a borrower's spouse, is to note the file and continue to call the  
5 borrower. And if that is unsuccessful, it services the loan as normal.

6 Rushmore also argues that its policies suggest an intention to keep it  
7 informed about bankruptcies, rather than willfully blind to them, because it  
8 is subscribed to ACCER – an automatic notification service that provides  
9 daily alerts of consumer bankruptcy filings. No one explained why ACCER  
10 failed in this case. While this argument has some surface appeal, it does not  
11 remedy the fact that Rushmore's institutional policy of disregarding a  
12 bankruptcy notice from an "unauthorized" third party is contrary to law.

13 Notice of a bankruptcy filing need not be formal for knowledge of the  
14 automatic stay and for purposes of a willful stay violation....Clearly, Willie's  
15 informal notice in the December 20, 2014 phone call sufficed and constituted  
16 actual notice to Rushmore. Once Rushmore had actual notice of the  
17 bankruptcy, it has a duty to ascertain the correctness of the information, not  
18 to disregard it. Rushmore also had the responsibility to ensure that the stay  
19 was not violated...

20 A sophisticated loan servicer like Rushmore with a policy that  
21 intentionally limits the means by which it gains knowledge of a bankruptcy  
22 filing supports a finding of reckless or callous disregard for the law and the  
23 rights or its borrowers. That no PACER search was done here is not just a  
24 one-off case of negligence. No PACER search was done as a matter of an  
25 intentional yet flawed institutional policy. As the bankruptcy court noted,  
26 "limiting the sources of knowledge of a bankruptcy is as foolish as it is  
27 perilous."...Accordingly, the bankruptcy court's interpretation of  
28 Rushmore's policies and procedures was not "implausible," and we see no  
29 clear error as to its finding that the case warranted punitive damages.

30 BAP Contempt Decision Memorandum at 18-21 (citations to Contempt Decision omitted).

31 (Emphasis added.) Having agreed that punitive damages should be awarded under Section

32 362(k)(1), the BAP then addressed the considerations relevant to setting the appropriate amount.

33 The BAP observed as follows:

34 Rushmore argues that an award of \$200,000 was excessive and  
35 disproportionate and not necessary to deter it from future violations.  
36 Rushmore cites a variety of stay violation cases involving lesser awards. The  
37 bankruptcy court as the fact finder has considerable discretion in fixing  
38 damages. *Prof'l Seminar Consultants, Inc. v. Sino Am. Tech. Exch. Council,*  
39 *Inc.*, 727 F.2d 1470, 743 (9<sup>th</sup> Cir. 1984).

40 An award of punitive damages often bears a relationship to the amount  
41 of compensatory damages awarded and may take the form of a multiplier of  
42 the compensatory damage award. *State Farm*, 538 U.S. at 424-25; *Prof'l*



1 *Seminar Consultants, Inc.*, 727 F.2d at 1473 (punitive damages award must  
 2 reasonably relate to compensatory damages). As the Ninth Circuit Court of  
 3 Appeals recently noted in *Ramirez v. TransUnion LLC*, 951 F.3d 1008 (9<sup>th</sup>  
 4 Cir. 2020), *cert. granted in part sub nom. TransUnion LLC v. Ramirez*, No.  
 5 20-297, 2020 WL 7366280 (U.S. Dec. 16, 2020),<sup>24</sup> while “[t]here is no bright-  
 6 line rule about the maximum ratio due process permits between the harm  
 7 suffered by the plaintiff (i.e., the compensatory damages) and the punitive  
 8 damages,” the Supreme Court has noted that ‘punitive’ awards exceeding a  
 9 single-digit ratio’ will rarely satisfy due process, and punitive awards  
 10 exceeding four times the amount of compensatory damages ‘might be close  
 11 to the line of constitutional impropriety.’” *Id.* at 1036-37 (quoting *State*  
 12 *Farm*, 538 U.S. at 425). On the other hand, “[a] ratio higher than 4 to 1 may  
 13 be upheld where ‘a particularly egregious act has resulted in only a small  
 14 amount of economic damages.’” *Id.* (quoting *State Farm*, 538 U.S. at  
 15 425)(quoting *Gore*, 517 U.S. at 582)).

16 In fixing the punitive damages at \$200,000, the bankruptcy court decided  
 17 not to apply a large multiplier because Rushmore did not formally initiate or  
 18 complete foreclosure proceedings. Hence, it was applying only a modest  
 19 single-digit multiplier of 2.0. *In re Moon*, 613 B.R. at 360-61.

20 We would have had little trouble affirming the bankruptcy court’s  
 21 punitive damages award of \$200,000 based on Moons’ compensatory  
 22 damages of \$100,742.10, because we perceive no error in its finding that  
 23 Rushmore’s conduct in this case was “reprehensible.”<sup>25</sup> However, because  
 24 we reverse the award of damages to Willie, we must remand the punitive  
 25 damages award so the bankruptcy can reconsider the amount in light of the  
 26 significantly reduced compensatory award. Nonetheless, bankruptcy courts  
 27 may consider the amount of attorney’s fees and costs in determining the size  
 28 of a punitive damages award under § 362(k)(1). See *Diviney v. Nationsbank*  
*of Tex., N.A. (In re Diviney)*, 225 B.R. 762, 777 (10<sup>th</sup> Cir. BAP 1998) (holding  
 that attorney’s fees and costs may be considered when determining the  
 punitive damages ratio, because fees and costs are a component of “actual  
 damages” under former § 362(h)).

BAP Contempt Decision Memorandum at 21-23. (Emphasis added.)

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24 The Court granted certiorari to address the standing of various members of the plaintiff  
 class, but not the Ninth Circuit’s discussion of the permissible amount of a punitive damages  
 award. On the issue of standing, the Court reversed and remanded the Ninth Circuit decision.  
 141 S.Ct. 2190 (2021).

25 In *BMW North America, Inc. v. Gore*, 517 U.S. 559 (1996), the Court articulated three  
 guideposts that courts should follow in awarding punitive damages: (1) the degree of  
 reprehensibility of the defendant’s conduct, (2) the disparity between the harm suffered and the  
 amount of the award, and (3) the difference between the amount of the award and comparable  
 civil penalties. *Id.* at 418. See BAP Contempt Decision Memorandum at 16.



1 The BAP's mandate directs the court to reconsider the size of the punitive damages  
2 award and the reprehensibility of Rushmore's conduct is the most important consideration.<sup>26</sup> In  
3 doing so, the court views the reprehensibility of Rushmore's conduct in light of the BAP's  
4 conclusion that the borrower's spouse, Willie Moon, was not protected by the automatic stay  
5 arising from the joint Chapter 13 petition filed by this married couple. See discussion at 4-5,  
6 supra. While reaching that conclusion, the BAP also concluded that "Rushmore's institutional  
7 policy of disregarding a bankruptcy notice from an 'unauthorized' third party is contrary to the  
8 law." BAP Contempt Decision Memorandum at 20.<sup>27</sup>

9 Despite what even the BAP described as Rushmore's "intentional yet flawed institutional  
10 policy," the unintended consequence of the BAP's former conclusion is that Rushmore  
11 knowingly and repeatedly contacted a Chapter 13 debtor at his residence without repercussion.  
12 As a further consequence, however, the egregiousness of Rushmore's unwritten policy is far  
13 worse. As previously discussed at 2, supra, Rushmore contacted the Debtors almost one hundred  
14 times after receiving notice of the Debtors' bankruptcy proceeding. The same institutional  
15 policy permitted Rushmore to deprive Willie Moon of the solace expected from filing for  
16 bankruptcy protection. Other than telling Willie Moon that she would "notate it in the account,"

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17  
18 <sup>26</sup> The degree of reprehensibility of a defendant's conduct is given the greatest weight.  
19 See Hardeman v. Monsanto Co., 997 F.3d 941, 972 (9th Cir. 2021); Ramirez v. TransUnion, 951  
20 F.3d at 1036. Determining that degree requires the court to consider whether the harm caused is  
21 physical or economic, whether the conduct evinced indifference or a reckless disregard for the  
22 health or safety of others, whether the target of the conduct had financial vulnerability, whether  
the conduct involved repeated actions or isolated incidents, and whether the harm resulted from  
intentional malice, trickery or deceit rather than mere accident. See State Farm Mut. Auto. Ins.  
Co. v. Campbell, 538 U.S. 408, 419 (2003).

23 <sup>27</sup> Still attempting to justify its improvident policy, Rushmore observes on remand as  
24 follows: "It is not unusual for a loan servicer to require a requesting property (sic) to be  
25 authorized. For example, Nevada law recognizes that a loan servicer may request authorization  
26 in certain contexts. *See, e.g.*, NRS 107.230. Federal law also limits certain disclosure of  
27 nonpublic personal information to third parties. *See, e.g.*, 12 C.F.R. § 1016.10." Rushmore  
28 Reply at 10 n.10. Neither of those provisions, of course, relieved Rushmore of its obligation to  
comply with the automatic stay upon receiving notice that Adnette Moon was in bankruptcy.  
Moreover, no evidence was offered that Rushmore's representatives ever informed Willie Moon  
that his wife needed to provide Rushmore with specific authorization to discuss the residential  
loan with her husband.

1 see Contempt Decision at 56:23-25, Rushmore's representative never informed him that his  
2 information would be disregarded as to Adnette Moon because Rushmore's undisclosed policy  
3 did not treat him as an authorized third party. Rushmore continued to contact Willie Moon at his  
4 residence in spite of having knowledge that he was in a Chapter 13 proceeding. Willie Moon  
5 had no reason to know that his communications with Rushmore would never end the phone calls  
6 or other collection activity received at the residence. But despite what Rushmore now was  
7 legally permitted to do to Adnette Moon's husband, it was not permitted to do the same to her  
8 because Rushmore had notice of her joint Chapter 13 proceeding as of December 20, 2014.

9 Examining the degree of reprehensibility in this additional light, it is without dispute that  
10 Rushmore's institutional policy deprived Adnette Moon of a fundamental bankruptcy protection  
11 afforded by the automatic stay: a breathing spell from her creditors while she completed her  
12 confirmed Chapter 13 plan. Rushmore's failure to take any steps to ascertain Adnette Moon's  
13 bankruptcy status after its representative made a notation to its own records evinced an  
14 indifference and disregard for Adnette Moon's bankruptcy rights as acknowledged by  
15 Rushmore's own written policy and procedures manual.<sup>28</sup> Unless Rushmore adopted its  
16 unwritten policy solely for the Debtors, all similarly situated borrowers with loans serviced by  
17 Rushmore would be subject to the same treatment. Rushmore's undisclosed policy itself  
18 restricted the sources of information to verify whether borrowers such as Adnette Moon were  
19 under bankruptcy protection: the financial vulnerability of borrowers in bankruptcy was  
20 demonstrated by the Rushmore's multiple efforts to contact her.

21 It is clear that the communications with the Debtors between December 20, 2014 and  
22 September 28, 2016, were no accident: they occurred because of Rushmore's unwritten,  
23 undisclosed institutional policy that allowed it to disregard the information that was provided by  
24 Willie Moon. Those communications were not isolated, but repeated: sixty-eight phone calls to  
25 the residence, thirty letters to the residence, and even one collection notice physically attached to

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26  
27 <sup>28</sup> See Contempt Decision at 34:13 to 35:18, quoting page 7 of the Policy Manual  
28 followed by Rushmore in connection with the loan with Adnette Moon. See also BAP Contempt  
Decision Memorandum at 18.

1 the door of the Debtors' residence. As determined by the BAP, however, Rushmore was not  
2 prevented from communicating with Willie Moon despite knowledge of the Chapter 13  
3 bankruptcy because he was not protected by the automatic stay applicable to the loan and the  
4 residence.<sup>29</sup> Under these circumstances, Rushmore's failure to investigate its borrower's  
5 bankruptcy status after noting the telephone call with the borrower's husband is even more  
6 pernicious: the practice impacts all similarly situated borrowers in bankruptcy whose loans are  
7 serviced by Rushmore while allowing Rushmore to continue dunning the non-borrower debtor.<sup>30</sup>  
8 A much greater degree of reprehensibility now exists.

9  
10 <sup>29</sup> It appears that the December 20, 2014, phone conversation that Rushmore initiated  
11 with Willie Moon could have been repeated with him during the other sixty or more calls,  
12 without violating the automatic stay. In fact, a Rushmore representative had another telephone  
13 conversation with Willie Moon on March 28, 2016, during which he informed the representative  
14 that the Debtors had a lawyer. See Contempt Decision at 38 n.42. Based on the evidence  
15 presented, the court awarded \$100,000 in emotional distress damages to Willie Moon due to  
16 Rushmore's repeated communications. Because the court's finding of an automatic stay  
17 violation was reversed as to Willie Moon, the emotional distress award was vacated. Thus, even  
18 though Rushmore's post-bankruptcy communications caused substantial emotional distress to  
19 Adnette Moon's husband and co-Chapter 13 debtor, Willie Moon is not considered to be an  
20 individual injured by a violation of the automatic stay under Section 362(k)(1).

21 <sup>30</sup> The court awarded Willie Moon emotional distress damages of \$100,000 for  
22 Rushmore's repeated violations of the automatic stay. The evidence presented demonstrated that  
23 Willie Moon is an elderly Vietnam veteran who suffers from post-traumatic stress disorder  
24 (PTSD). See Contempt Decision at 21-22 & n.24. The persistent phone calls by Rushmore  
25 despite having knowledge of his bankruptcy status should be troubling enough, but failing to  
26 inform Willie Moon that his information would not be considered notice of his wife's bankruptcy  
27 was cruel. Id. at 20:7-19. It is unclear why Rushmore would not inform a borrower's spouse,  
28 irrespective of whether the spouse suffers from PTSD, that the bankruptcy information must  
29 come from another source. It is unclear why any business operator would lead a consumer to  
30 believe that his legitimate legal concerns would be addressed while concealing that the exact  
31 opposite would occur. Moreover, it is unclear what more Adnette Moon could do to notify  
32 Rushmore that she was in bankruptcy when Rushmore's representative "notated" the account  
33 based on her husband's information but told neither of the Debtors that the information from the  
34 non-borrower husband was not effective notice under Rushmore's unwritten policy. Until  
35 Rushmore's own witness testified at the evidentiary hearing on September 16, 2019, there is no  
36 indication that the Debtors were even aware of the unwritten, undisclosed policy. Based on  
37 Rushmore's own records, the suggestion that Adnette Moon failed to mitigate the damages  
38 caused by Rushmore's willful violation of the automatic stay between December 20, 2014, and  
39 September 28, 2016, see Rushmore Opening Brief at 16:10 to 18:11, comes perilously close to  
40 being frivolous.

1 Rushmore argued to the BAP that a punitive damage award of \$200,000 was excessive  
 2 “and not necessary to deter it from future stay violations.” BAP Contempt Decision  
 3 Memorandum at 21. Because Rushmore now is permitted, however, to contact joint bankruptcy  
 4 debtors who are not co-borrowers or co-owners of residential property without violating the  
 5 automatic stay, a deterrent is essential to prevent Rushmore from employing the same or similar  
 6 unwritten, undisclosed policy to frustrate the protections of the automatic stay. Adnette Moon’s  
 7 economic damages of \$742.10, is not determinative of the appropriate amount of punitive  
 8 damages. The Ninth Circuit has observed:

9 There is no bright-line rule about the maximum ratio due process permits  
 10 between the harm suffered by the plaintiff (i.e., the compensatory damages)  
 11 and the punitive damages. *State Farm*, 538 U.S. at 425, 123 S.Ct. 1513.  
 12 However, the Supreme Court has noted that punitive “awards exceeding a  
 13 single-digit ratio” will rarely satisfy due process, and punitive awards  
 14 exceeding four times the amount of compensatory damages “might be close  
 15 to the line of constitutional impropriety.” *Id.* A ratio higher than 4 to 1 may  
 16 be upheld where “a particularly egregious act has resulted in only a small  
 17 amount of economic damages.” *Id.* (quoting *Gore*, 517 U.S. at 582, 116 S.Ct.  
 18 1589). But “[w]hen compensatory damages are substantial,” a ratio lower  
 19 than 4 to 1 may be the limit. *Id.*

20 Ramirez v. TransUnion LLC, 951 F.3d at 1036-37 (emphasis added).

21 The most significant factor in determining the amount of a punitive damages award is the  
 22 reprehensibility of the conduct. For the reasons discussed, the court concludes that the degree of  
 23 reprehensibility of Rushmore’s conduct is greater now than what existed upon entry of the  
 24 Contempt Decision. That Rushmore apparently believes no deterrent to future violations is  
 25 required - even when its own witness testified that Rushmore has undisclosed, unwritten policies  
 26 at odds with its written policies – amply demonstrates that Rushmore is not self-policing.<sup>31</sup> An

27 <sup>31</sup> Rushmore continues to deny responsibility for its own unwritten, undisclosed policy.  
 28 Instead, Rushmore maintains that “Adnette has never accepted responsibility for her part in the  
 dispute with Rushmore.” Rushmore Opening Brief at 17:12. Remarkably, it argues that Adnette  
 Moon “insisted on having Willie handle Rushmore’s calls and letters, without ever authorizing  
 Rushmore to speak to him. Instead of correcting any of these errors, she waited for years – all  
 the while Rushmore’s communications continued to accumulate and Adnette’s damages  
 continued to increase.” *Id.* at 17:17-20. But exactly how would Adnette Moon have known that  
 her husband was not authorized to respond to Rushmore’s calls and letters? Rushmore’s own  
 witness testified that its unwritten policy was to treat Willie Moon as an unauthorized third party

1 increased punitive damages award is necessary to deter<sup>32</sup> its misguided conduct.<sup>33</sup>

2 Under these circumstances, punitive damages in the amount of \$500,000 will be awarded  
3 to Adnette Moon under Section 362(k)(1) for Rushmore's repeated and willful violations of the  
4 automatic stay. Given that the economic damages and attorney's fees awarded in this matter  
5 total \$71,250.04, the punitive damage amount represents a single-digit multiplier of  
6 approximately 7 to 1.<sup>34</sup> The amount awarded results from a multiplier greater than 4 to 1, but the  
7 egregious and even more reprehensible conduct of Rushmore towards Adnette Moon, in addition  
8 to possibly other bankruptcy debtors having loans serviced under the same policies, requires an  
9

10 \_\_\_\_\_  
11 who could not provide notice of Adnette Moon's bankruptcy. Rushmore's own transcript of the  
12 December 20, 2014, telephone call from Rushmore to Willie Moon established that Rushmore's  
13 representative committed to "notate" Adnette Moon's account but never told Willie Moon that  
14 the notation made no difference. Whatever hope Willie Moon was given that the postpetition  
15 phone calls would stop was a false hope.

16 <sup>32</sup> Rushmore also denies responsibility for its unwritten, undisclosed policy, by deflecting  
17 blame to the Debtors' original bankruptcy counsel for using incorrect addresses for Rushmore.  
18 See Rushmore Opening Brief at 17:21-24 ("...Adnette's damages and corresponding attorney's  
19 fees could have been significantly curtailed if Adnette had mitigated here damages, as she was  
20 obligated to do. Instead, she filed a contempt motion and incurred an attorneys' fees bill of  
21 \$84,906.44 – 'a house to squash a mosquito.'). But the use of incorrect addresses before  
22 December 20, 2014, is irrelevant: from that date forward, Rushmore had notice of Adnette  
23 Moon's bankruptcy and she has sought sanctions under Section 362(k)(1) only for the period in  
24 which Rushmore has had knowledge of the Chapter 13 proceeding. If the term "mitigation" has  
25 any application in this dispute, it would be to the unmitigated gall it takes for a loan servicer to  
26 blame the victim for its own unwritten policy that led to an undisputed violation of the automatic  
27 stay.

28 <sup>33</sup> The unwritten policy adopted by Rushmore prevented it from taking steps to confirm  
that its borrower, Adnette Moon, was in bankruptcy. The absurdity of Rushmore's unwritten  
policy in the Ninth Circuit is self-evident: acts in violation of the automatic stay are *void ab*  
*initio*, rather than simply voidable. See Contempt Decision at 41 n.49. As a result of the  
unwritten policy, parties whose loans are serviced by Rushmore may take steps in violation of  
the automatic stay that are void and which would subject them to sanctions under Section  
362(k)(1).

<sup>34</sup> Neither the multiplier nor the amount of the punitive damages award takes into account  
the fees sought in connection with the Debtors' response to the Rushmore Adversary, nor the  
amounts awarded in prevailing on the various appeals.

1 effective deterrent.<sup>35</sup> In this court's judgment, \$500,000 is both proportionate to the  
 2 egregiousness of Rushmore's policy that fosters violations of the automatic stay and reasonable  
 3 in amount to deter Rushmore from maintaining such policies.

4 **III. Determination of reasonable attorney's fees and costs incurred in responding**  
 5 **to the Rushmore Adversary.**

6 As concluded by the BAP, this court incorrectly denied the Debtors' Second Fee Motion  
 7 that sought attorney's fees and costs incurred in responding to the Rushmore Adversary.  
 8 Concluding that the Debtors were entitled to at least a portion of such fees under Section  
 9 362(k)(1), the BAP observed:

10 In the Rushmore Adversary, the Moons were compelled to defend  
 11 against certain arguments Rushmore should have, but failed to, raise in  
 12 defense of the First Contempt Motion. And the Moons had to continue to  
 13 defend against those arguments after the bankruptcy court had already  
 14 rejected them in the First Contempt Order and awarded the Moons damages  
 15 for Rushmore's willful stay violation. The Moons incurred attorney's fees  
 16 and costs as a result. Rushmore cannot now shield itself from those fees and  
 17 costs simply because their defense to the First Contempt Motion was brought  
 18 under the guise of an adversary proceeding. That amounts to an end run  
 19 around the statute and exalts form over substance. In fact, we see no other  
 20 reason for why Rushmore chose to raise nearly all of its defenses to the First  
 21 Contempt Motion in the Rushmore Adversary, other than to avoid payment  
 22 of the Moons' attorney's fees and costs under § 362(k)(1). Thus, despite  
 23 labels, at least some of the fees and costs the Moons incurred in the Rushmore  
 24 Adversary were incurred as part of their stay violation damages claim against  
 25 Rushmore under § 362(k)(1).

26 <sup>35</sup> To some, seven is a lucky number and to others it is a magic number, but it is not an  
 27 arbitrary number in this instance. As of the hearing on the various remanded matters (January  
 28 13, 2022), over seven years have elapsed since Rushmore commenced (December 20, 2014) its  
 willful violation of the automatic stay protecting Adnette Moon. At the time of the evidentiary  
 hearing on the Sanctions Motion (September 16, 2019), Adnette Moon was 72 years old and  
 Willie Moon was 74 years old. Both have a variety of significant health issues. Even though  
 Rushmore does not contest that it willfully violated the automatic stay, it continues to deny  
 culpability for its unwritten, undisclosed policy by which it denies receipt of notice of  
 bankruptcy cases. Rushmore even implored the BAP that no deterrent was necessary to prevent  
 it from continuing to use an unwritten, undisclosed policy. During the same seven years, it is  
 unknown how many other debtors were denied the fundamental protection of the automatic stay  
 as a result of the same unwritten, undisclosed policy. Even though punitive damage multipliers  
 are not required to be single-digit and far greater numerical ratios have been permitted, the court  
 concludes that seven is the appropriate multiplier to apply at this stage to deter Rushmore from  
 continuing to violate the automatic stay.



1 BAP Second Fee Decision Memorandum at 12-13. (Emphasis added.)

2 The Second Fee Motion was accompanied by declarations from Debtors' counsel that  
3 provided two separate billing statements. The first billing statement encompassed services  
4 rendered from September 4, 2019 through July 8, 2020.<sup>36</sup> The second billing statement  
5 encompassed additional or revised time entries for three specific dates during the same period.  
6 See Second Fee Decision at 10:25 to 11:9. The total amount of attorney's fees and costs  
7 reflected in those two billing statements was \$14,827.00. Id. at 11 n.7. Because the court  
8 rejected the basis on which the Second Fee Motion was presented, a review of the billing  
9 statements was not required. In light of the BAP's reversal of this court's legal decision,  
10 however, the court has reviewed the billing statements for fees and costs incurred as part of the  
11 Debtors' claim that Rushmore willfully violated the automatic stay. In this review, the court  
12 takes into account the BAP's related decision that Rushmore did not violate the automatic stay  
13 with respect to Willie Moon, and he, therefore, is not entitled to an award of attorney's fees and  
14 costs under Section 362(k)(1).

15 The billing statements reflect that counsel's services in the Rushmore Adversary  
16 primarily involved prosecuting Debtors' motion to dismiss and in responding to Rushmore's  
17 summary judgment motion. Debtors' dismissal motion sought to terminate the Rushmore  
18 Adversary entirely while Rushmore's summary judgment motion sought to entirely preclude  
19 Debtors from pursuing the Contempt Motion. Inasmuch as the Contempt Motion sought  
20 sanctions against Rushmore based on both a violation of the automatic stay and a violation of the  
21 discharge injunction, Debtors were required to respond to the Rushmore Adversary and the  
22 Rushmore summary judgment motion to obtain stay violation damages under Section 362(k)(1).

23 The court previously determined that the \$500 hourly rate charged by Debtors' counsel  
24 through December 31, 2019, were reasonable. See First Fee Decision at 7:1 to 8:2. As reflected  
25 by the billing statements accompanying the Second Fee Motion, the hourly rate charged by

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26  
27 <sup>36</sup> The Rushmore Adversary was commenced on September 4, 2019, and separate  
28 dispositive motions brought by Rushmore and the Debtors were vacated from the court's  
calendar on June 4, 2020.



1 Debtors' counsel increased to \$595 as of January 1, 2020.<sup>37</sup> For the reasons stated in connection  
 2 with the First Fee Motion, the court finds that Debtors' counsel is well qualified and that the  
 3 increased hourly rate is commensurate with the value of his services.

4 Because the Rushmore Adversary sought to deny any basis for recovery of any relief by  
 5 Adnette Moon, including for Rushmore's willful violation of the automatic stay, all of the  
 6 attorney's fees and costs she incurred were necessarily part of her stay violation damages claim.  
 7 Because there is no dispute that the services set forth in the billing statements were necessarily  
 8 provided at an appropriate hourly rate, attorney's fees and costs in the total amount of  
 9 \$14,827.00 will be awarded to Adnette Moon under Section 362(k)(1) in connection with her  
 10 defense of the Rushmore Adversary.

11 **IV. Determination of the amount of appellate attorney's fees to which**  
 12 **Adnette Moon is entitled under Section 362(k)(1), if any.**

13 As the BAP observed, in the Ninth Circuit appellate attorney's fees are available under  
 14 Section 362(k). See America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard), 803  
 15 F.3d 1095, 1101 (9th Cir. 2015).<sup>38</sup> See also Easley v. Collection Service of Nevada (In re  
 16 Easley), 910 F.3d 1286 (9th Cir. 2018).<sup>39</sup> Because the BAP also concluded that only Adnette

17 <sup>37</sup> In the First Fee Supplement Motion, Debtors represented that their counsel billed at  
 18 \$600 per hour, but counsel's declaration attested that the rate was \$595 per hour. (ECF No.  
 19 239). The fees requested appear to be calculated based on the latter rate.

20 <sup>38</sup> "When a party is entitled to an award of attorney's fees in the court of first instance, as  
 21 [the debtor] was here, she is ordinarily entitled to recover fees incurred in successfully defendant  
 22 the judgment on appeal...We see no reason why fee awards under § 362(k) should be subject to a  
 23 different rule. [Debtor] is therefore entitled to recover the attorney's fees reasonably incurred in  
 24 opposing [creditor's] appeal in the district court." 803 F.3d at 1101, citing Voice v. Stormans,  
 25 Inc., 757 F.3d 1015, 1016 (9th Cir. 2014).

26 <sup>39</sup> "Section 362(k) provides relief for debtors in the form of damages and attorneys' fees  
 27 and costs when a creditor willfully violates the automatic stay. And, as previously noted, the  
 28 provision of attorneys' fees and costs is critically important for 'the very class of plaintiff  
 authorized to sue – individual debtors in bankruptcy – [who] by definition will typically not have  
 the resources to hire private counsel.'...Section 362(k) thus seeks to make debtors whole, as if  
 the violation never happened, to the degree possible. This reasonably includes awarding  
 attorney's fees and costs on appeal to a successful debtor, even when a debtor must bring the  
 appeal." 910 F.3d at 1292-93.

1 Moon is protected by the automatic stay in this matter, the court considers whether that  
2 conclusion impacts the appellate fees that may be awarded, if any. Debtors seek the following  
3 amounts of appellate attorney's fees and costs:

- 4 • Contempt Motion - \$56,227.50, plus \$317.28 costs, totaling \$56,544.78<sup>40</sup>
- 5 • First Fee Motion - \$28,084.00, plus \$307.30 costs, totaling \$28,391.30<sup>41</sup>
- 6 • First Fee Supplement Motion - \$16,541.00, plus \$0.00 costs, totaling \$16,541.00<sup>42</sup>
- 7 • Second Fee Motion - \$25,109.00, plus \$374.65 costs, totaling \$25,483.65<sup>43</sup>

8 The total amount of appellate attorney's fees set forth in the hourly billing statements is  
9 \$125,961.50, plus appellate costs in the amount of \$999.23.

10 As previously discussed, the hourly rates charged by Debtors' counsel are commensurate  
11 with his experience, qualifications, and performance in matters before this court. Although the  
12 court does not have knowledge of counsel's services for the subject appeals, both in presenting  
13 written or oral written argument, the court also has reviewed the hourly billing statements  
14 presented. The statements describe the services rendered in sufficient detail and hourly  
15 increments to permit review under a lodestar standard.<sup>44</sup>

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16 <sup>40</sup> The application for such fees and costs is included in Exhibit "2" to the Debtors Reply,  
17 which consists of the declaration of their counsel along with an attached hourly billing statement.  
18 The application appears from pages 2 through 16.

19 <sup>41</sup> The application for such fees and costs is included in Exhibit "2" to the Debtors Reply,  
20 which consists of the declaration of their counsel along with an attached hourly billing statement.  
21 The application appears from pages 17 through 31

22 <sup>42</sup> The application for such fees and costs is included in Exhibit "2" to the Debtors Reply,  
23 which consists of the declaration of their counsel along with an attached hourly billing statement.  
24 The application appears from pages 32 through 46.

25 <sup>43</sup> The application for such fees and costs is included in Exhibit "2" to the Debtors Reply,  
26 which consists of the declaration of their counsel along with an attached hourly billing statement.  
27 The application appears from pages 47 through 60.

28 <sup>44</sup> Pursuant to FRE 201(b), the court also takes judicial notice of the appellate briefs filed  
with the BAP. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also In re Blas, 614  
B.R. 334, 339 n. 27 (Bankr. D. Alaska 2019)("This court may take judicial notice of the dockets  
of other courts."). All references to "BAP ECF No." are to the docket numbers assigned to the  
relevant briefs filed in the various appeals.

1 The court also has reviewed the objections raised by Rushmore to the appellate fees  
2 sought by Debtors' counsel. See Rushmore Response at 9:12 to 10:17; Rushmore Reply at 10:19  
3 to 11:2. Rushmore does not object to the hourly rates charged, the description of services  
4 provided, the hours billed for the services, or the necessity of the tasks performed. With respect  
5 to the requested appellate attorney's fees, Rushmore primarily argues that the Debtors did not  
6 prevail on the appeals. See Rushmore Response at 10:11 to 12:17; Rushmore Reply at 8:19 to  
7 9:2. Of course, Debtors maintain that they did prevail on the appeals. See Debtors Response at  
8 5:25 to 6:20; Debtors Reply at 11:14 to 13:12.

9 A review of the BAP's rulings reveals which party prevailed on which appeal.<sup>45</sup> On their  
10 Contempt Motion, Debtors successfully demonstrated that Rushmore violated the automatic stay  
11 and violated the discharge injunction. Compensatory and punitive damages were awarded for  
12 the automatic stay violation, but no damages were awarded for the discharge violation.  
13 Rushmore appealed the Contempt Decision on several grounds. It prevailed before the BAP on  
14 the availability of automatic stay sanctions for Willie Moon, but failed on all other issues,  
15 including that Adnette Moon was entitled to sanctions under Section 362(k) for Rushmore's  
16 willful violation of the automatic stay. Debtors cross-appealed the Contempt Decision with  
17 respect to the denial of damages for the discharge violation. Debtors failed in their appeal on the  
18 discharge violation, but prevailed on the automatic stay violation sanctions for Adnette Moon.  
19 The BAP remanded for the court to reconsider the appropriate amount of punitive damages in  
20 favor of Adnette Moon for the automatic stay violation.

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22  
23 <sup>45</sup> Because the BAP had remanded matters for further determinations by the bankruptcy  
24 court, the Ninth Circuit dismissed for lack of jurisdiction the parties' further appeals from the  
25 BAP Contempt Decision Memorandum and the BAP First Fee Decision Memorandum. Whether  
26 additional appeals will be taken from the instant Memorandum Decision After Remand,  
27 including to the BAP or U.S. District Court for the District of Nevada, and thereafter to the Ninth  
28 Circuit, is unknown. The attorney's fees and costs awarded in connection with such appeals, if  
any, presumably might be included as part of any actual damages required under Section  
362(k)(1). Whether such additional appellate attorney's fees and costs, if any, must be  
considered in determining the appropriate measure of punitive damages, if any, under Section  
362(k)(1), also is unknown. Whether additional attorney's fees and costs may be sought for  
these proceedings on remand also is unknown.

1 On their First Fee Motion, Debtors obtained an award of attorney's fees and costs for  
2 prevailing on their Contempt Motion. Rushmore appealed the First Fee Decision, challenging  
3 the Debtors' entitlement to any fees. Debtors cross-appealed the First Fee Decision, challenging  
4 the denial of a fee enhancement. The BAP vacated the award and remanded for an explanation  
5 of the basis and amount of fees awarded for the automatic stay violation. The BAP also  
6 authorized the court to reconsider the Debtors' request for a fee enhancement.

7 On their First Fee Supplement Motion, Debtor obtained an award of attorney's fees and  
8 costs for responding to Rushmore's objections to the First Fee Motion. Rushmore appealed the  
9 First Fee Supplement Decision, challenging the Debtors' entitlement to any attorney's fees  
10 whatsoever. The BAP vacated that award and remanded for the same explanations required in  
11 connection with the First Fee Motion.

12 On their Second Fee Motion, Debtors were denied an award of attorney's fees and costs  
13 for responding to the Rushmore Adversary. Debtors appealed the Second Fee Decision. The  
14 BAP concluded that the Rushmore Adversary presented a defense to the Contempt Motion.  
15 Because Adnette Moon prevailed on the automatic stay violation, the BAP vacated the Second  
16 Fee Decision and remanded for a determination of the amount of attorney's fees to be awarded to  
17 Adnette Moon for prevailing on the automatic stay violation.

18 The result of these appeals is dictated by the language of Section 362(k)(1): Adnette  
19 Moon is "an individual injured by [Rushmore's] willful violation" of the automatic stay and  
20 therefore "shall recover actual damages, including costs and attorneys' fees..." Rushmore  
21 objected to the Debtors' recovery of any attorneys' fees, but the BAP concluded that Adnette  
22 Moon is entitled to all of the attorney's fees and costs resulting from Rushmore's willful  
23 violation of the automatic stay. The BAP First Fee Decision Memorandum, BAP First Fee  
24 Supplement Memorandum, and BAP Second Fee Decision Memorandum all permit Adnette  
25 Moon to recover her appropriate fees and costs incurred before the bankruptcy court. Those  
26 decisions clearly permit Adnette Moon to seek attorney's fees and costs as actual damages for  
27 Rushmore's automatic stay violation. Adnette Moon prevailed on her claim under Section  
28 362(k)(1) and all three of these BAP decisions enable her to liquidate the amount of her

1 attorney's fees and costs as part of her actual damages. Rushmore's objections to the appellate  
2 attorney's fees and costs in all three matters are overruled. As previously mentioned, Rushmore  
3 does not object to the hourly rates charged by Debtors' counsel nor to any specific billing entry.  
4 The court has independently reviewed the billing statements provided by Debtors' counsel in  
5 connection with the appeals. The court concludes that the hourly rates charged are appropriate  
6 and that the services described were reasonably necessary. Thus, the full amount of the  
7 aggregate appellate attorney's fees sought in connection with these three matters, \$70,415.95,  
8 will be awarded.<sup>46</sup>

9 On the Contempt Motion, the Debtors demonstrated that Rushmore willfully violated the  
10 automatic stay under Section 362(k) and also violated the discharge injunction under Section  
11 524(a)(2). Debtors were awarded actual damages and punitive damages for the automatic stay  
12 violation, but were awarded no damages for the discharge violation.<sup>47</sup> Rushmore appealed on the  
13 award of automatic stay violation damages in favor of Willie Moon, and Debtors cross-appealed  
14 on the denial of damages for the discharge violation. Both Adnette Moon and Rushmore  
15 prevailed on appeal on various aspects of the Contempt Decision. The BAP affirmed Adnette  
16 Moon's ability to recover actual damages, appropriate attorney's fees and costs, and punitive  
17 damages, based on Rushmore's willful violation of the automatic stay. The BAP reversed Willie  
18 Moon's recovery of any damages or attorney's fees attributable to Rushmore's violation of the

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19 <sup>46</sup> As discussed at 24, supra, the appellate fee motions presented by the Debtors in  
20 connection with the First Fee Motion, First Fee Supplement Motion, and Second Fee Motion,  
21 respectively, seek attorney's fees and costs in the amounts of \$28,391.30, \$16,541.00, and  
22 \$25,483.65.

23 <sup>47</sup> Debtors received their Chapter 13 discharge on September 28, 2016, and Rushmore's  
24 servicing of the loan ended on October 15, 2018. While there was evidence establishing that  
25 Rushmore learned of the discharge sometime during that period, there was no evidence  
26 establishing precisely when Rushmore was informed of the discharge. Absent such evidence, the  
27 duration of the discharge violation could not be determined and appropriate damages could not  
28 be calculated or awarded. By contrast, the evidence established December 20, 2014, as the date  
Rushmore learned of the Debtors' bankruptcy and the automatic stay terminated as a matter of  
law on September 28, 2016. The court found that during the 648-day period between  
Rushmore's receipt of notice of the bankruptcy and the entry of the Chapter 13 discharge,  
Rushmore made at least 68 telephone calls to the Debtors and mailed them at least fifty Account  
Information and Mortgage Statements, and other collection letters.

1 automatic stay. The BAP, however, sustained the court's finding that Rushmore's conduct was  
2 reprehensible and directed this court to reconsider the amount of punitive damages available to  
3 Adnette Moon appropriate for Rushmore's willful automatic stay violation. The BAP affirmed  
4 the decision to award no civil contempt damages for Rushmore's violation of the discharge  
5 injunction. The result of the BAP Contempt Decision Memorandum is that Adnette Moon may  
6 be awarded the full measure of her actual damages, attorney's fees and costs, as well as  
7 appropriate punitive damages for the automatic stay violation under Section 362(k)(1), but no  
8 civil contempt damages for the discharge violation under Section 105(a).

9 Because at least some of the Debtors' appeal of the Contempt Decision addressed the  
10 discharge violation not encompassed by Section 362(k), a reduction in the appellate attorney's  
11 fees and costs incurred on the Debtors' appeal of the Contempt Motion Decision is warranted.  
12 Unlike presentation of the evidence and arguments on the Contempt Motion, however, Debtors'  
13 defense of the automatic stay violation ruling is separable from their cross-appeal that was  
14 limited to the denial of damages for the discharge violation. Having taken judicial notice of the  
15 appellate briefs submitted by the Debtors in connection with the Contempt Decision,<sup>48</sup> the court  
16 concludes that no more than twenty percent of the Debtors' written argument was focused to  
17 their appeal of the discharge violation damages. No additional reduction is warranted inasmuch  
18 as the award of civil contempt sanctions for violation of the discharge would be subject to the  
19 limitations on a bankruptcy court's authority to impose punitive sanctions. See note 5, supra. As  
20 it now stands, Adnette Moon's defense of the Contempt Decision allows her to obtain all of her  
21 actual damages, including attorney's fees and costs, as well as punitive damages from Rushmore.

22 Consistent with its opposition to the other appellate attorney's fees and costs, Rushmore  
23 does not object to the hourly rates charged by Debtors' counsel nor to any specific billing entry.  
24 Like the other requests, the court has independently reviewed the billing statements provided by

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25 <sup>48</sup> The BAP's dockets for the Rushmore appeal and Debtors cross-appeal denominated  
26 Appeal Nos. 20-1057 and 20-1070, respectively, identify four written legal arguments filed by  
27 the Debtors: Appellees Answering Brief and Cross-Appellants Opening Brief dated 5/11/2020  
28 (BAP ECF No. 22); Appellees/Cross-Appellants Fourth Brief dated 6/29/2020 (BAP ECF No.  
28); Letter of August 19, 2020, presenting additional citation (BAP ECF No. 47); and  
Appellees/Cross-Appellants Supplemental Brief dated 10/7/2020 (BAP ECF No. 56).

1 Debtors' counsel in connection with the appeal of the Contempt Decision. The court concludes  
2 that the hourly rates charged are appropriate and that the services described for counsel's  
3 representation on appeal were reasonably necessary. Thus, the court will apply a twenty percent  
4 reduction to the appellate fees and costs sought by the Debtors in connection with this matter  
5 totaling \$56,544.78. The resulting fee amount awarded for the fourth appellate matter is  
6 \$45,235.82.

7 Based on the foregoing, the court awards aggregate appellate attorney's fees and costs to  
8 Adnette Moon under Section 362(k) in the total amount of \$115,651.77.

9 **V. Further Adjustment of the Punitive Damages Award under Section**  
10 **362(k)(1).**

11 As previously discussed, the BAP remanded the determination of punitive damages and  
12 authorized the court to consider the amount of attorney's fees and costs as a component of actual  
13 damages in applying a multiplier. While the BAP directed the court to determine the award of  
14 attorney's fees and costs in connection with Debtors' response to the Rushmore Adversary as  
15 well as the appellate proceedings, it did not specify whether those additional amounts may be  
16 considered in determining the punitive damages ratio. The fees and costs awarded on the  
17 Rushmore Adversary (\$14,827.00), plus the aggregate amount awarded on the appeals  
18 (\$115,651.77), comes to a total of \$130,478.77. If that total of Rushmore Adversary and  
19 appellate attorney's fees is added to the fees and costs incurred before the bankruptcy court on  
20 the Contempt Motion (\$70,507.94), the total amount of fees and costs would be \$200,986.71. If  
21 those total fees and costs are added to Adnette Moon's out of pocket expenses of \$742.10, the  
22 total amount of her actual damages under Section 362(k)(1) are \$201,728.81.

23 Also as previously discussed, the court concludes that punitive damages in the amount of  
24 \$500,000 is warranted to punish Rushmore for its egregious conduct and to deter Rushmore for  
25 adopting and enforcing an unwritten, undisclosed policy that fosters its violation of the automatic  
26 stay. That amount reflects a multiplier of approximately 7 to 1. That amount applied to all  
27 actual damages of \$201,728.81, would reflect a multiplier of approximately 2.48 to 1. If the  
28 actual damages of \$201,728.81 was subject to a 7 to 1 multiplier, the punitive damages award  
would be \$1,412,101.60. At this juncture, the court will not adjust the reconsidered punitive



1 damages award of \$500,000 under Section 362(k)(1), absent a reason to believe the amount is  
2 insufficient to deter Rushmore from continuing such conduct.<sup>49</sup>

3 **CONCLUSION**

4 To the extent required by the mandates of the BAP, this Memorandum Decision After  
5 Remand constitutes the court's findings of fact and conclusions of law entered pursuant to FRBP  
6 7052.

7 A separate order has been entered concurrently herewith.

8  
9 Copies sent via CM/ECF ELECTRONIC FILING

10 Copies sent via BNC to:  
11 WILLIE N. MOON  
12 ADNETTE M. GUNNELS-MOON  
13 3391 EAGLE BEND STREET  
14 LAS VEGAS, NV 89122

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<sup>49</sup> The BAP previously observed that it would have “little trouble affirming the bankruptcy court’s punitive damage award of \$200,000 based on Moons’ compensatory damages of \$100,742.10, because we perceive no error in its finding that Rushmore’s conduct in this case was ‘reprehensible.’” If the actual damages are \$201,728.81, the increased reprehensibility of Rushmore’s conduct presents little problem to this court in applying a 2:48 to 1 multiplier than the 2 to 1 multiplier originally applied in the Contempt Decision.