



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
February 12, 2015

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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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 COURT<sup>1</sup>**

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

<sup>1</sup> 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.

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

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

18 On August 25, 2014, the owner of the Castle Ridge Property filed a motion seeking relief  
19 from stay to complete an eviction of the Debtor based on nonpayment of rent. (ECF No. 16).  
20 The motion alleged that an order of summary eviction had been entered on August 19, 2014,  
21 prior to the filing of the bankruptcy case. That motion was heard on September 10, 2014.  
22 Debtor’s counsel appeared along with counsel for the moving party. No opposition was filed or  
23 presented and the motion was granted. On September 22, 2014, a written order was entered  
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27 <sup>2</sup> If a Chapter 7 trustee does not assume or reject an unexpired lease of residential real  
28 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.<sup>3</sup>

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 Le<sup>4</sup> in contempt for violation

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21 <sup>3</sup> 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  
26 simultaneously were obligated on that lease in addition to the lease on the Angel Dreams  
27 Property.

28 <sup>4</sup> The introductory paragraph to the Contempt Motion seeks to order “RANDY LE,  
‘doing business as HOMEWOOD ASSET MANAGEMENT’ (‘LE’) to appear and show cause  
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.”<sup>5</sup> 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).<sup>6</sup> 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

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against Homewood.

<sup>5</sup> Although some bankruptcy courts previously treated automatic stay violations as contempt of court, see, e.g., In re Eisenberg, 7 B.R. 683, 687 (Bankr. E.D.N.Y. 1980), the statutory remedy for a stay violation is governed by Section 362(k). Bankruptcy courts have 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).

<sup>6</sup> Le has not appealed the portion of the OSC vacating the RAS Order, nor has he sought 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*.<sup>7</sup> 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 services<sup>8</sup> in connection with the case.<sup>9</sup>

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20 <sup>7</sup> 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 <sup>8</sup> 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 <sup>9</sup> 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

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

### 10 APPLICABLE LEGAL STANDARDS

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

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19 would have to hire a bankruptcy lawyer to obtain relief from stay, and that they referred him to  
20 attorney Leonard. Le also stated that attorney Leonard gave him an order granting relief from  
21 stay, that he then gave the order to Homewood, that Homewood then proceeded with eviction  
22 after his request and that a week later he received a notice that he would be sued for damages  
23 because he had not followed the correct procedure. Le further stated that he contacted  
24 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.

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

27 <sup>11</sup> A notable exception occurs when an individual debtor has had two or more bankruptcy  
28 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).

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

3 Actions taken in violation of the automatic stay are void as a matter of law. See Gruntz  
4 v. Cnty. of Los Angeles (In re Gruntz), 202 F.3d 1074, 1082 (9th Cir. 2000); Eden Place, LLC v.  
5 Perl (In re Perl), 513 B.R. 566, 572 (B.A.P. 9th Cir. 2014). Judicial proceedings in violation of  
6 the automatic stay also are void. See Kalb v. Feuerstein, 308 U.S. 433, 439 (1940); Griffin v.  
7 Wardrobe (In re Wardrobe), 559 F.3d 932, 934 (9th Cir. 2009). Parties who violate the  
8 automatic stay have an affirmative duty to discontinue any actions, return any property, and  
9 otherwise undo any consequences of the violation. See Sternberg v. Johnson (In re Sternberg),  
10 595 F.3d 937, 943 (9th Cir. 2010).

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

16 Under Section 541(a), property of a bankruptcy estate includes “all legal or equitable  
17 interests of the debtor in property” when the bankruptcy petition is filed. Under Section 554,  
18 property may be abandoned by notice or motion, or may be administratively abandoned when a  
19 case is closed. 11 U.S.C. § 554(a, b and c). Personal property that is the collateral of a secured  
20 consumer creditor also may cease to be property of the estate if a debtor fails to file the statement  
21 of intention required by Section 521(a)(2). 11 U.S.C. § 362(h)(1).<sup>13</sup> Under Section 363,  
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23 <sup>12</sup> This instant case has not been dismissed, is not closed, and the Debtor did not receive  
24 her discharge until January 28, 2015. (ECF No. 52). Under Section 362(c)(2), the automatic  
25 stay therefore has continued in place as to the Debtor at all relevant times.

26 <sup>13</sup> In this case, Debtor timely filed her SOI, see discussion at 2, supra, and the personal  
27 property that was collateral for the RC Willey claim remained property of the estate. Compare  
28 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

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

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

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

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

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

23 <sup>15</sup> The court in Schwartz-Tallard observed that “To recover damages for emotional  
24 distress under § 362(k), ‘an individual must (1) suffer significant harm, (2) clearly establish the  
25 significant harm, and (3) demonstrate a causal connection between that significant harm and the  
26 violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent  
27 in the bankruptcy process).’ Emotional harm may be proved by: (1) medical evidence; (2)  
28 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).

## 3 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.<sup>16</sup>

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.

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22 <sup>16</sup> 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.”<sup>17</sup> 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.<sup>18</sup>

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  
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23 <sup>17</sup> 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 <sup>18</sup> 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."<sup>19</sup> 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."<sup>20</sup> 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

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23 <sup>19</sup> 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 <sup>20</sup> 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.<sup>21</sup>

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.**  
15 This is because the eviction was started and the order was obtained  
16 after Ms. Trueman filed for bankruptcy. If you proceed with the  
17 eviction, you open yourself up to possible sanctions from the  
18 bankruptcy court.

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

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

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

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28 <sup>21</sup> The record before this court does not indicate that there ever was an order of eviction  
entered by the Justice Court in the Second Eviction Case. Additionally, Amini was not a named  
defendant in the Second Eviction Case and any order in that proceeding would not have served  
as a basis to evict him for breach of the lease. Moreover, even if there was an order issued by  
the Justice Court in the First Eviction Case, that order was entered in violation of the automatic  
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.<sup>22</sup>

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.<sup>23</sup> 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 <sup>22</sup> 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  
23 discussion between attorney Leonard and Le concerning an agreement reached with attorney  
24 Alexander for the Debtor to vacate the residence no later than November 15, 2014. At the  
25 evidentiary hearing, Le testified that he never authorized Leonard to agree to the proposed  
26 November 15 departure date.

27 <sup>23</sup> At the November 13, 2014, hearing, attorney Alexander represented to the court that  
28 only the Debtor is on the lease to the Angel Dreams Property and not her fiancé Amini. That  
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  
Ali Aminigohar, Case No. 11-18627-BAM, and a prior Chapter 7 case filed on March 15, 2009,  
by Nasarin Aminigohar, Case No. 09-13617-LBR, but no cases filed by Landon Amini. If one or  
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  
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28

1 advice of attorney Leonard, Homewood and Le completed the eviction and lockout.<sup>24</sup>

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.<sup>25</sup> Only on those dates was  
13 the Debtor able to remove all of the estate property<sup>26</sup> that had been held by Homewood and Le.

14 \_\_\_\_\_  
15 <sup>24</sup> 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 <sup>25</sup> 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.

<sup>26</sup> 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

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

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

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

19 **2. Debtor's Actual Damages.**

20 **A. Attorney's Fees.**

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

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

27 \_\_\_\_\_  
28 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 live<sup>27</sup> along with their two children and other  
21 family members, but were without any basic furnishings, ordinary accouterments, or personal  
22 effects.<sup>28</sup> She testified that Homewood and Le did not allow her access to the Angel Dreams  
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24 <sup>27</sup> 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 <sup>28</sup> 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.<sup>29</sup>

### 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

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25 <sup>29</sup> 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.<sup>30</sup>

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

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23 <sup>30</sup> 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.<sup>31</sup>

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

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16  
17 <sup>31</sup> 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.<sup>32</sup> 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

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26  
27 <sup>32</sup> 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).

1 \$25,000, as well as the attorney's fees and costs to be determined, the court concludes that an  
2 award of \$15,000 in punitive damages is appropriate.<sup>33</sup>

3 **CONCLUSION**

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

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

11  
12 Notice and Copies sent through:

13 CM/ECF ELECTRONIC NOTICING AND/OR BNC MAILING MATRIX

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

15 KRISTIN MICHELLE TRUEMAN  
16 8716 CASTLE RIDGE  
17 LAS VEGAS, NV 89129

18 RANDY LE  
19 121 SUNSET COVE  
20 IRVINE, CA 92602

21 RANDY LE  
22 C/O RANDAL R. LEONARD  
23 500 S. EIGHTH ST.  
24 LAS VEGAS, NV 89101

25 ANN E. KOLBER, ESQ.  
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27 5516 S. FORT APACHE ROAD, SUITE 110  
28 LAS VEGAS, NV 89146

29 HOMEWOOD ASSET MANAGEMENT  
30 8935 S. PECOS, SUITE 21C  
31 HENDERSON, NV 89074

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32  
33 The punitive damage award might be even higher but for the Debtor's lack of receipts  
34 for the out-of-pocket expenses she incurred as a result of the violation.