

DEC 24 2013

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No.	CC-13-1145-TaDKi
)		
7	H GRANADOS COMMUNICATIONS,)	Bk. No.	1:12-bk-10197-AA
	INC.,)		
8)		
	Debtor.)		
9)		
	<hr/>			
10	REDIGER INVESTMENT)		
	CORPORATION; DURINGER LAW)		
11	GROUP, PLC,)		
)		
12	Appellants,)		
)		
13	v.)	O P I N I O N	
)		
14	H GRANADOS COMMUNICATIONS,)		
	INC.)		
15)		
	Appellee.)		
16)		
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Argued and Submitted on November 21, 2013
at Pasadena, California

Filed - December 24, 2013

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Alan M. Ahart, Bankruptcy Judge, Presiding

Appearances: _____
Edward L. Laird, II of Duringer Law Group, PLC
argued for appellants Rediger Investment
Corporation and Duringer Law Group, PLC; Elaine
V. Nguyen of Weintraub & Selth, APC argued for
appellee H. Granados Communications, Inc.

Before: TAYLOR, DUNN, and KIRSCHER, Bankruptcy Judges.

1 TAYLOR, Bankruptcy Judge:

2
3 The bankruptcy court held appellants Rediger Investment
4 Corporation ("Rediger") and its counsel, the Durringer Law Group,
5 PLC ("Durringer Firm" and, jointly, the "Appellants") in civil
6 contempt under 11 U.S.C. § 105(a)¹ for violation of the
7 automatic stay. As a result, it awarded sanctions against the
8 Appellants, jointly and severally, in the amount of \$23,072.09.
9 Rediger and the Durringer Firm appeal. We AFFIRM.

10 **FACTS**

11 The Durringer Firm, representing Rediger, commenced an
12 unlawful detainer action in state court ("State Court Action")
13 against H Granados Communications, Inc. ("Debtor") and its
14 president, Henry Granados. Four months later, the Debtor filed
15 for bankruptcy relief under chapter 11. It listed Rediger on
16 its Schedule F, its List of Creditors Holding 20 Largest
17 Unsecured Claims, and its creditor mailing matrix.² As a
18 result, Rediger promptly received notice ("Notice of
19 Bankruptcy") of the bankruptcy case (the "Bankruptcy"). At an
20 early point in the Bankruptcy, the Debtor obtained an order
21 limiting notice of most events in the chapter 11 case to, among

22
23 ¹ Unless otherwise indicated, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
25 All "Rule" references are to the Federal Rules of Bankruptcy
26 Procedure and all "Civil Rule" references are to the Federal
27 Rules of Civil Procedure.

28 ² We exercise our discretion to take judicial notice of
documents filed in the bankruptcy case. See O'Rourke v.
Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955,
957-58 (9th Cir. 1989).

1 others, the 20 largest unsecured creditors; this included
2 Rediger. Thus, Rediger received notices throughout the
3 Bankruptcy.

4 It also appears that the Debtor filed the Notice of
5 Bankruptcy in the State Court Action on or about the petition
6 date of January 8, 2012. The record includes a copy of the
7 Notice of Bankruptcy bearing a stamp of the Executive
8 Officer/Clerk for the Superior Court of California, County of
9 Los Angeles, dated January 8, 2012. ECF No. 226, Ex. G at 29.
10 The record also contains a copy of the case summary in the State
11 Court Action as of January 23, 2013, which includes an entry
12 dated January 8, 2012 and states "Notice of Bankruptcy Filed."
13 ECF No. 242, Ex. J at 70. Debtor's counsel submitted these
14 documents, and there is no evidence that the Durringer Firm
15 objected to submission of the documents as evidence. In fact,
16 and as discussed further below, the Durringer Firm conceded the
17 veracity of these documents at oral argument.

18 Despite this notice, the Durringer Firm (on behalf of
19 Rediger) continued to prosecute the State Court Action against
20 the Debtor during the first three-quarters of 2012: it obtained
21 a default judgment against the Debtor and Mr. Granados, filed a
22 declaration of accrued interest, and eventually obtained a writ
23 of execution.

24 Debtor's bankruptcy counsel apparently was oblivious to the
25 events occurring in the State Court Action;³ but eventually, on
26

27 ³ It is unclear from the record who represented the Debtor
28 in the State Court Action.

1 November 1, 2012, she personally filed a notice of stay of
2 proceedings ("Notice of Stay") in the State Court Action and
3 served the same on both Rediger and the Durringer Firm. As a
4 result, there is no dispute that as of November 2, 2012, both
5 Rediger and the Durringer Firm knew that the Bankruptcy existed.

6 One month later, the Los Angeles County Sheriff levied on
7 the Debtor's DIP bank account at City National Bank ("Bank"),
8 which deprived the Debtor of the use of \$27,941.26. In
9 response, Debtor's counsel wrote to the Sheriff and the Bank,
10 advising of the pending Bankruptcy and demanding a release of
11 the levy. Debtor's counsel also sent this letter to the
12 Durringer Firm, underscoring the bankruptcy notices previously
13 provided to the Appellants.

14 This letter initiated a series of communications between
15 Debtor's counsel and the Durringer Firm. It appears, in
16 particular, that the latter was attempting to obtain
17 verification of the exact party in bankruptcy; that is, whether
18 it was the Debtor or Mr. Granados or both. The volley of
19 communications went on for over a month.

20 At the end of December 2012, the Debtor moved for an order
21 to show cause why the Appellants should not be found in contempt
22 for willfully violating the automatic stay. The bankruptcy
23 court issued an order to show cause and identified five events
24 as possible stay violations: (1) filing a request for entry of
25 default judgment and supporting declaration in the State Court
26 Action; (2) obtaining entry of default judgment; (3) filing a
27 declaration of accrued interest and obtaining a writ of
28 execution; (4) causing the Los Angeles County Sheriff to serve a

1 levy on the Debtor's DIP bank account at the Bank; and
2 (5) refusing to release the levied funds despite repeated
3 requests by Debtor's counsel.

4 During this time, the Debtor also actively worked to remedy
5 (or limit the effects of) the stay violations with respect to
6 both the State Court Action and levied funds. On January 15,
7 2013, the levy of funds finally was released and credited to the
8 Debtor's DIP bank account. One week later, the state court
9 vacated the previously entered default judgment.

10 The bankruptcy court heard the OSC and found that both
11 Rediger and the Durringer Firm willfully violated the stay. It,
12 therefore, held them in civil contempt under § 105(a), awarded
13 compensatory damages, and instructed the Debtor to file
14 declaratory evidence of the fees and costs incurred as a result
15 of the stay violations. The Debtor submitted a memorandum
16 ("Damages Memorandum"), along with the declarations of its
17 counsel and an employee, detailing the costs and expenses
18 incurred by counsel and employees in connection with the stay
19 violations. The bankruptcy court entered its order holding the
20 Appellants in civil contempt ("Contempt Order") on February 19,
21 2013.

22 At a continued hearing on the sanctions issue, the
23 bankruptcy court, relying on its tentative ruling, awarded the
24 compensatory sanctions for costs incurred as a result of the
25 stay violations. These included attorneys' fees for review of
26 the Appellants' opposition to the Damages Memorandum and
27 appearance at the sanctions hearing. The bankruptcy court
28 thereafter entered an order awarding sanctions against the

1 Appellants, jointly and severally, in the amount of \$23,072.09
2 ("Sanctions Award").

3 The Appellants timely appealed.

4 JURISDICTION

5 The bankruptcy court had jurisdiction under 28 U.S.C.
6 §§ 1334 and 157(b). We have jurisdiction over this appeal
7 pursuant to 28 U.S.C. § 158.

8 ISSUES

9 Did the bankruptcy court abuse its discretion in:

10 (1) finding that the Appellants wilfully violated the automatic
11 stay and, thus, holding them in civil contempt; or (2) awarding
12 sanctions against them in connection with the civil contempt
13 determination?

14 STANDARDS OF REVIEW

15 We review the decision to impose contempt and an award of
16 sanctions for an abuse of discretion. See Knupfer v. Lindblade
17 (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003) (civil
18 contempt); Rosales v. Wallace (In re Wallace), 490 B.R. 898,
19 904-05 (9th Cir. BAP 2013) (sanctions award for civil contempt).
20 The underlying factual findings are reviewed for clear error.
21 In re Dyer, 322 F.3d at 1191.

22 Abuse of discretion is a two-prong test; first, we
23 determine de novo whether the bankruptcy court identified the
24 correct legal rule for application. See United States v.
25 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc). If
26 not, then the bankruptcy court necessarily abused its
27 discretion. See id. at 1262. Otherwise, we next review whether
28 the bankruptcy court's application of the correct legal rule was

1 clearly erroneous; we will affirm unless its findings were
2 illogical, implausible, or without support in inferences that
3 may be drawn from the facts in the record. See id.

4 DISCUSSION

5 **A. Preliminary Issues**

6 **1. The Appellants' request for judicial notice is denied.**

7 The Appellants move for this Panel's judicial notice,
8 pursuant to Federal Rule of Evidence 201, of the following
9 documents in the State Court Action: (1) the state court
10 complaint; and (2) a judgment and writ of possession entered on
11 September 22, 2011. We reviewed the documents and deny the
12 motion for judicial notice as the documents do not enhance our
13 review or otherwise lend assistance in the present appeal.

14 **2. The scope of appeal includes the Contempt Order.**

15 The Debtor argues that appeal of the Contempt Order is
16 untimely. It contends that Appellants filed the Notice of
17 Appeal more than 14 days after entry of the Contempt Order and
18 also failed to designate the Contempt Order therein.

19 The Contempt Order was an interlocutory order that became
20 final and appealable once the bankruptcy court awarded
21 sanctions. See Weyerhaeuser Co. v. Int'l Longshoremen's &
22 Warehousemen's Union, 733 F.2d 645, 645 (9th Cir. 1984); see
23 also Donovan v. Mazzola, 761 F.2d 1411, 1417 (9th Cir. 1985).
24 Upon entry of the Sanctions Award, the Contempt Order merged
25 into the earlier order. Thus, the Contempt Order is also
26 subject to this appeal. See Am. Ironworks & Erectors, Inc. v.
27 N. Am. Const. Corp., 248 F.3d 892, 897-98 (9th Cir. 2001).

28 ///

1 **B. The Bankruptcy Court Did Not Err in Entering the Contempt**
2 **Order.**

3 **1. The record is sufficient to review the issues on**
4 **appeal.**

5 A motion for contempt is a contested matter and,
6 consequently, subject to Rule 9014. In turn, in a contested
7 matter, the bankruptcy court must render findings of fact and
8 conclusions of law as required by Civil Rule 52(a) (incorporated
9 by Rules 7052 and 9014(c)).

10 Here, the bankruptcy court made no express findings in
11 connection with the Contempt Order, but did adopt a tentative
12 ruling. The tentative, however, merely states that the
13 bankruptcy court intended to grant the Debtor's request for
14 civil contempt; it contains no factual discussion or legal
15 analysis. Thus, the tentative is not a substitute for the
16 findings required by Rule 9014(c).

17 Where the bankruptcy court rules without articulating its
18 findings, however, there is no reversible error where the record
19 provides the reviewing court with a full, complete, and clear
20 view of the issues on appeal. First Yorkshire Holdings, Inc. v.
21 Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470
22 B.R. 864, 871 (9th Cir. BAP 2012) (citation omitted). Review of
23 the record suffices when it contains clear references to the
24 factual basis supporting the bankruptcy court's ultimate
25 conclusions. Id. Here, the record as a whole provides us with
26 a full, complete, and clear view of the issues on appeal.
27 Therefore, we turn to review of the Contempt Order.

28 ///

1 **2. The Appellants wilfully violated the automatic stay.**

2 Section 362(k) permits the recovery of damages resulting
3 from a stay violation. This subsection, however, applies only
4 to individuals, which, as relevant here, excludes corporations.

5 See Johnston Env'tl. Corp. v. Knight (In re Goodman), 991 F.2d
6 613, 619 (9th Cir. 1993) (discussing former § 362(h)).

7 Nonetheless, a corporation may be entitled to recovery for a
8 stay violation under § 105(a) as a sanction for civil contempt.

9 See id. at 620; In re Dyer, 322 F.3d at 1191 (for civil contempt
10 purposes, the automatic stay under § 362 "qualifies as a
11 specific and definite court order.").

12 To find a party in civil contempt for a stay violation, the
13 threshold inquiry turns on a finding of "willfulness." Id. at
14 1191. The bankruptcy court must find that: (1) the party knew
15 of the automatic stay; and (2) the party's actions that violated
16 the stay were intentional. Id. Thus, it is irrelevant whether
17 the party exhibited bad faith or had a subjective intent to
18 violate the stay. Id. The movant bears the burden of showing
19 by clear and convincing evidence that the party violated the
20 stay. See id.

21 In its opening brief, the Durringer Firm contends that it
22 was unaware of the Bankruptcy until Debtor's counsel served it
23 with the Notice of Stay on November 2, 2012. The law firm does
24 not expressly contest that Rediger, its client, was aware of the
25 Bankruptcy; in fact, the law firm conceded as much at the
26 sanctions hearing.

27 At oral argument, however, the Appellants expressly
28 conceded a willful violation of the automatic stay. In

1 particular, the Durringer Firm, in substance, conceded that the
2 Notice of Bankruptcy was filed in the State Court Action at the
3 commencement of the Bankruptcy. The law firm subsequently
4 conceded that the stay was willfully violated. This is
5 sufficient to affirm a "willfulness" finding under § 105(a), and
6 our review of the bankruptcy court's finding of civil contempt
7 for a stay violation need not go any farther.

8 Even so, the record supports the bankruptcy court's
9 determination of "wilfulness." First, as previously stated, the
10 record contains two documents showing that the Notice of
11 Bankruptcy was filed in the State Court Action on or about the
12 date of the bankruptcy petition. The Appellants neither
13 contested this below or on appeal; the Durringer Firm, instead,
14 conceded the veracity of the documents at oral argument. This
15 establishes that the Appellants were cognizant of the Bankruptcy
16 - and, more importantly, aware of the automatic stay - in
17 January of 2012.

18 In addition, the record further supports that the
19 Appellants were otherwise made aware of the Bankruptcy and the
20 automatic stay long before the OSC issued. As to Rediger, the
21 record shows that it was served with the Notice of Bankruptcy at
22 the end of January 2012. And, as one of the Debtor's largest 20
23 creditors, Rediger continued thereafter to receive notices of
24 the Debtor's filings. Rediger, thus, was, charged with notice
25 of the stay shortly after the case was filed.

26 As to the Durringer Firm, even if we accept that it was
27 unaware of the Bankruptcy until November 2012 - which we do not
28 - the record is clear that Debtor's counsel served the law firm

1 with the Notice of Stay on November 2, 2012. The law firm,
2 thus, clearly had notice of the Bankruptcy as of that date.

3 In sum, the record provides alternative evidence supporting
4 that the Appellants were aware of the Bankruptcy and, thus,
5 charged with knowledge of the automatic stay at various points
6 during the Bankruptcy; this satisfies the first prong of the
7 "willfulness" standard under Dyer.

8 The second prong requires that the actions taken in
9 violation of the stay were intentional. The record affirms that
10 the Durringer Firm, on behalf of its client Rediger, pursued
11 relief in the State Court Action that violated the stay: namely,
12 moving for and then obtaining a default judgment; filing a
13 declaration of accrued interest; obtaining a writ of execution;
14 and causing the Los Angeles County Sheriff to levy on the
15 Debtor's DIP bank account. The Durringer Firm also failed to
16 take affirmative action to undo the effects of stay violative
17 action after receiving the November 2, 2012 notice; it did not
18 vacate, and it did not cancel, the default judgment. True,
19 there was limited confusion as Debtor's counsel initially
20 checked a box indicating that both defendants, not just the
21 Debtor, were in bankruptcy. But this over-inclusion of parties,
22 if anything, required a cessation of the entire State Court
23 Action until further clarification - instead, it stopped
24 nothing.

25 These instances are each and independently an intentional
26 stay violation. These were not accidental or inadvertent
27 actions by the Durringer Firm. Thus, the second prong of the
28 Dyer standard is satisfied.

1 This record clearly supported a determination of
2 "willfulness." The Durringer Firm's admission at oral argument
3 further supports that the bankruptcy court did not abuse its
4 discretion in holding the Appellants in civil contempt for
5 violation of the automatic stay.

6 **C. The Bankruptcy Court Did Not Err in Entering the Sanctions**
7 **Award.**

8 It appears that the Appellants advance three main arguments
9 against the Sanctions Award: (1) that under Sternberg v.
10 Johnston, 595 F.3d 937 (9th Cir. 2010), damages for a stay
11 violation under § 105(a) are limited to efforts to enforce the
12 stay or remedy a violation, but do not include costs incurred in
13 pursuing sanctions; (2) that in order for Debtor to recover
14 damages, the Appellants' actions must have interfered with the
15 Debtor's reorganization efforts; and (3) that the charges
16 awarded are beyond the scope authorized by Ninth Circuit and
17 U.S. Supreme Court authority and otherwise are unreasonable. We
18 address these arguments in turn.

19 **1. Stay violation damages appropriately include**
20 **attorneys' fees incurred after the Appellants remedied**
21 **the stay violations.**

22 In the Ninth Circuit, a debtor's recovery of attorneys'
23 fees under § 362(k) is limited to fees and costs incurred in
24 enforcing and remedying the stay violation; it does not include
25 fees and costs incurred in pursuing damages for the stay
26 violation. Sternberg, 595 F.3d at 947. Sternberg, however,
27 does not control here because the Debtor is not an individual
28 and, thus, as a matter of law, § 362(k) is inapplicable.

1 Moreover, Sternberg does not limit the recovery of fees and
2 costs to § 362(k); instead, a debtor's recovery of damages is
3 also available under § 105(a). This is confirmed in the
4 decision itself, which provides that the basis for the decision
5 was the statutory language of § 362(k), not the bankruptcy
6 court's civil contempt authority under § 105(a). See id. at 946
7 n.3 ("As this opinion does not consider the civil contempt
8 authority of the court, it does not limit the availability of
9 contempt sanctions, including attorney fees, for violation of
10 the automatic stay, where otherwise appropriate.").

11 There is no clear authority in our circuit that expressly
12 limits the recovery of fees under § 105(a) solely to those
13 incurred in enforcing and remedying a stay violation. Indeed,
14 analogous case authority involving § 105(a) sanctions suggests a
15 result to the contrary. In the context of a willful violation
16 of the discharge injunction, the bankruptcy court may award
17 actual damages *and* attorneys' fees to the debtor as a civil
18 contempt sanction. See Walls v. Wells Fargo Bank, N.A., 276
19 F.3d 502, 507 (9th Cir. 2002) ("[C]ompensatory civil contempt
20 allows an aggrieved debtor to obtain compensatory damages,
21 attorneys fees, and the offending creditor's compliance with the
22 discharge injunction."); Nash v. Clark Cnty. Dist. Attorney's
23 Office (In re Nash), 464 B.R. 874, 880 (9th Cir. BAP 2012)
24 (bankruptcy court may award actual damages, punitive damages,
25 and attorneys' fees as a civil contempt sanction for a willful
26 violation of the discharge injunction); see also Espinosa v.
27 United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th
28 Cir. 2008), aff'd, 559 U.S. 260 (2010) (same). While not

1 identical transgressions, a stay violation under § 105(a) is
2 analogous to a discharge injunction violation; both implicate
3 offenses to prophylactic injunctions exclusively available under
4 the Bankruptcy Code.

5 Further, unlike a damages award under § 362(k), an award of
6 attorneys' fees and costs under § 105(a) does not arise in "an
7 ordinary damages action." See Sternberg, 595 F.3d at 948. The
8 text of § 105(a) does not provide for or otherwise reference the
9 term "damages." Instead, civil contempt under § 105(a) enables
10 the bankruptcy court to remedy a violation of a specific order.
11 See In re Dyer, 322 F.3d at 1196. Thus, the "American Rule" on
12 attorneys' fees is inapplicable in a § 105(a) context. See In
13 re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th
14 Cir. 2011) (exception to the American Rule exists where a party
15 violates a court order).

16 Based on the foregoing, we hold that a damages award under
17 § 105(a) for a willful stay violation may appropriately include
18 attorneys' fees and costs incurred in pursuing damages for the
19 violation.

20 **2. Whether a creditor's stay violation interferes with a**
21 **chapter 11 debtor's reorganization efforts is**
22 **irrelevant to calculating damages.**

23 The Appellants next argue that in order to recover damages
24 for a stay violation, a debtor must show that the creditor's
25 actions interfered with the debtor's reorganization efforts. In
26 support of this proposition, they cite In re Orient River Invs.,
27 Inc., 105 B.R. 790 (Bankr. E.D. Pa. 1989); Matter of Lehan
28 Bros., Inc., 29 B.R. 553 (Bankr. M.D. Fla. 1983); and In re

1 Augustino Enters., Inc., 13 B.R. 210 (Bankr. D. Mass. 1981).

2 We reject this argument. The case authority cited in
3 support of this proposition is inapposite. None of these cases
4 involved sanctions under § 105(a); instead, they predominantly
5 address damages under the predecessor of § 362(k), which, as
6 previously discussed, does not apply here. The relevant inquiry
7 in calculating damages is whether the Debtor sustained injury as
8 a result of the Appellants' violative actions; the manner in
9 which it sustained injury is not, in and of itself, dispositive
10 of the inquiry.

11 **3. The bankruptcy court did not err in awarding the**
12 **attorneys' fees based on the Appellants' civil**
13 **contempt.**

14 Further, the Appellants contend that certain charges
15 awarded (as designated in an exhibit to their opposition to the
16 Debtor's Damages Memorandum) exceed the scope of fees permitted
17 under pertinent authority and are otherwise unreasonable. They
18 assert that, at most, Debtor's counsel may claim \$4,534.50 and
19 that, under federal law, this amount is subject to further
20 reduction under the lodestar method. Additionally, they assert
21 that other considerations require further reduction, including
22 Debtor's counsel's request for attorneys' fees for clerical
23 tasks and online research. In conclusion, Appellants argue that
24 \$2,500 is a reasonable amount for sanctions based on these
25 considerations, as well as the experience of Debtor's counsel,
26 the limited skill required to file a motion for a contempt
27 order, and the fact that Debtor could have avoided the whole
28 encounter had its counsel promptly communicated with the

1 Durringer Firm.

2 Sanctions for civil contempt must either be compensatory or
3 designed to coerce compliance. See In re Dyer, 322 F.3d at
4 1192. Attorneys' fees are an appropriate component of civil
5 contempt sanctions. Id. at 1195. This includes reasonable
6 attorneys' fees incurred in the process of voiding the stay
7 violation. Id. An award of fees incurred in litigating an
8 issue that does not flow from the stay violation, however, is
9 improper. Id. at 1195 & n.19.

10 The record shows that Debtor's counsel submitted a detailed
11 time summary of fees incurred. These entries reflect legal
12 tasks performed by counsel in connection with the stay violation
13 issues and within the appropriate time frame.

14 The bankruptcy court approved these costs. In doing so, it
15 implicitly determined that the costs were reasonable and
16 supported by evidence. This, in turn, is supported by the
17 bankruptcy court's statement at the sanctions hearing, providing
18 that it awarded almost but not all of the requested fees and
19 costs. As reflected in the Sanctions Award, it subtracted
20 messenger fees and costs to copy the pleadings filed in the
21 State Court Action. Nor is there anything in the record showing
22 that the Appellants objected to any particular cost or expense
23 with any level of detail or specificity. It, thus, is clear
24 that the bankruptcy court not only reviewed the pertinent
25 documents, but determined that the costs were reasonable and
26 adequately supported.

27 With the exception of application of the lodestar method,
28 the Appellants fail to support any of these arguments with any

1 authority. They fail to adequately explain, for example, how
2 this Panel may reduce the amount of fees awarded by substituting
3 its own calculation based on the lodestar method. The
4 Appellants also fail to expressly identify which time entries
5 relate to clerical tasks or other inappropriate functions.
6 Ultimately, they paint with broad strokes, but fail to properly
7 support their arguments within the framework of appellate
8 review. We are not in the business of substituting our own
9 factual determinations for those of the bankruptcy court.

10 At oral argument, the Appellants also argued that the
11 bankruptcy court should have employed a comparative fault system
12 in assessing damages. They argued that the bankruptcy court
13 failed to take into account the Appellants' actions - and the
14 Debtor's alleged inaction - in mitigating the damages resulting
15 from the stay violation. First, we need not consider these
16 arguments inasmuch as it does not appear that the Appellants
17 expressly raised these points before the bankruptcy court.

18 Second, this is simply not the standard under § 105(a).
19 The Durringer Firm makes much of its efforts to contact Debtor's
20 counsel during the final months of 2012 to confirm whether the
21 Debtor filed bankruptcy. Whatever its motive or belief, the law
22 firm's excuse is irrelevant. Once the Appellants were made
23 aware of the Bankruptcy, the onus was on them to cease all
24 efforts related to the Debtor in the State Court Action without
25 further order from the bankruptcy court and to remedy the impact
26 of existing stay violative actions. See In re Dyer, 322 F.3d at
27 1192 (creditor has an affirmative duty to remedy a stay
28 violation).

1 It was not the responsibility of Debtor's counsel to
2 further confirm the existence of the Bankruptcy with the
3 Durringer Firm. To the extent that the law firm was truly
4 confused, a search in PACER or the bankruptcy court's CM/ECF
5 system⁴ would have provided a simple and swift answer. Nothing
6 precluded the law firm from accessing PACER or CM/ECF - like
7 numerous other creditors and law firms do on a daily basis. It
8 is unclear why the law firm insisted on obtaining this
9 information directly from Debtor's counsel. Instead, it
10 inappropriately disclaimed responsibility for its stay
11 violations, and it failed to take affirmative action to remedy
12 the various stay violations for nearly two months - a violation
13 of the stay in and of itself. Thus, the arguments as to
14 mitigation are largely (or completely) inapposite under these
15 circumstances.

16 In sum, on this record, the bankruptcy court did not err in
17 awarding the fees as compensatory damages.

18 **CONCLUSION**

19 For the reasons set forth above, we AFFIRM the bankruptcy
20 court.

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23
24
25 ⁴ In fact, our independent review of the website for the
26 Central District of California, see Fed. R. Evid. 201(b)(2) and
27 (c)(1), confirms that links for PACER and CM/ECF exist directly
28 on the actual homepage. See United States Bankruptcy Court for
the Central District of California, <http://www.cacb.uscourts.gov>
(last visited on Dec. 24, 2013).