



ORDERED in the Southern District of Florida on September 8, 2023.

Peter D. Russin

Peter D. Russin, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

Matthew Withington
and Martha Cobo

Debtors.

Case No. 20-15425-PDR

Chapter 11

**ORDER GRANTING, IN PART, DEBTORS' MOTION FOR
ADDITIONAL SANCTIONS AND PUNITIVE DAMAGES
FOR NON-COMPLIANCE WITH COURT ORDERS**

THIS MATTER came before the Court for an evidentiary hearing on June 20, 2023, at 10:00 a.m., on the Debtors' Motion for Additional Sanctions and Punitive Damages for Non-Compliance with Court Orders dated (i) April 5, 2022 and (ii) October 4, 2022.¹ Twice this Court has found Citibank, N.A. in violation of the

¹ Doc. 174.

automatic stay. Twice this Court has ordered Citibank to cease its collection efforts, which have included inaccurately reporting its debt to the credit reporting agencies. Twice this Court has ordered Citibank to pay damages for the harm its stay violation has caused. Twice Citibank has disregarded this Court's orders. For the reasons that follow, this Court will now award the Debtors \$52,031.71 in compensatory damages and \$175,607.02 in punitive damages to compensate them for the harm Citibank's willful stay violations have caused and to deter Citibank from violating the automatic stay in the future.

I. Findings of Fact

Prepetition, the Debtors had a Citicard credit card. When they filed for chapter 11 bankruptcy, the Debtors scheduled a \$29,376 unsecured debt owed on the credit card.² In their chapter 11 plan, which they served on "Citicards Cbna," the Debtors proposed to pay the Citicard debt by paying \$10,017.21 over 20 quarterly payments of \$500.86.³ The Debtors served their plan on "Citicards Cbna" by U.S. mail at P.O. Box 6217, Sioux Falls, SD 57117-6217.⁴

Two ballots accepting the plan were filed on behalf of Citibank, N.A.⁵ The ballots were signed by Benjamin Rippe.⁶ Underneath his signature, was a stamped

² Doc. 1, Schedule F.

³ Docs. 62 & 63.

⁴ Doc. 65.

⁵ Docs. 79 & 80.

⁶ *Id.*

signature block indicating Mr. Rippe worked for Citibank, N.A. On the ballots, the name of the creditor was listed as “Citibank,”⁷ which presumably issued the Debtors’ Citicard credit card.⁸

On November 23, 2020, the Court confirmed the Debtors’ plan.⁹ After making their initial plan payment, the Debtors filed a motion to administratively close their case,¹⁰ which the Court granted on December 22, 2020.¹¹ The confirmation order, which the Debtors served on Citibank at the same address as the plan and disclosure statement,¹² provides that so long as the Debtors complied with the confirmation order and made all their plan payments, the automatic stay continued to remain in effect even after the case was administratively closed.¹³

Three months after the case was administratively closed, the Debtors received an invoice on their Citicard account.¹⁴ Although the invoice reflected the Debtors’

⁷ *Id.*

⁸ Apparently, it is not uncommon for Citicard credit card holders to identify their card issuer as “Citicard CBNA” instead of Citibank. *See, e.g., Smith v. Am. Express*, 2014 WL 4388259, at *1 n.2 (S.D. W. Va. Sept. 4, 2014) (“In filing its Notice of Removal and Answer, Citibank notes that Plaintiff improperly designated Citibank, N.A., as Citicard CBNA.”); *Smith v. Am. Express*, 2014 WL 1338518, at *1 n.2 (S.D. W. Va. Jan. 15, 2014) (“In filing its Notice of Removal and Answer, Citibank notes that Plaintiff improperly designated Citibank, N.A., as Citicard CBNA.”); *Robinson v. Citibank, South Dakota, N.A.*, 2008 WL 11435766, at *1 n.1 (E.D.N.Y. 2008) (“When plaintiff commenced this action, she erroneously named defendant Citibank as ‘Sears/Citicards Citibank.’”).

⁹ Doc. 98.

¹⁰ Doc. 101.

¹¹ Doc. 106.

¹² Doc. 99.

¹³ Doc. 98, ¶ 8(c).

¹⁴ Doc. 126-10; Doc. 193-17, ¶ 11.

\$500.86 plan payment, it claimed the balance due on the account was \$28,956.52.¹⁵ The invoice, which enclosed a payment coupon, demanded a minimum payment of \$28,956.52 by March 3, 2021.¹⁶

It appears Citibank also reported to the credit reporting agencies that the Debtors' Citicard account was delinquent.¹⁷ The Debtors notified Citibank that it was incorrectly reporting the debt with the credit reporting agencies.¹⁸ But Citibank took no action to correct how the Citicard debt was reported.

In July 2021, the Debtors had their case reopened and then moved to enforce the confirmation order and impose sanctions against Citibank ("Motion for Sanctions").¹⁹ In their Motion for Sanctions, the Debtors alleged that the automatic stay remained in effect after their case had been administratively closed, and that Citibank had violated the automatic stay by (1) sending the invoice demanding payment; and (2) incorrectly reporting the debt as delinquent to the credit reporting agencies.²⁰ As sanctions, the Debtors sought their actual damages (the attorney's fees

¹⁵ Doc. 126-10.

¹⁶ *Id.*

¹⁷ Doc. 119, ¶ 17 (alleging that "Citi has been incorrectly reporting that Debtors' account [is] in delinquency, thus affecting Debtors' credit reports"); Doc. 126-11 (notifying Citibank that "Citibank reported incorrect amounts to be paid on the account and incorrectly reported the account as delinquent on credit reports").

¹⁸ Doc. 126-11.

¹⁹ Docs. 113, 117 & 119.

²⁰ *Id.*

and costs incurred bringing their motion, as well as any U.S. Trustee fees they incurred reopening their case) and punitive damages.²¹

The Court set the Motion for Sanctions for an evidentiary hearing on February 3, 2022.²² The Debtors served a copy of their Motion for Sanctions by certified mail on Rohan Weerasinghe, Esq., as Secretary and General Counsel for Citibank, N.A.²³ They also served notice of the February 3 hearing by U.S. mail on Brent McIntosh, as Citibank’s General Counsel and Corporate Secretary.²⁴ Citibank, however, failed to appear at the February 3 evidentiary hearing.

Following the February 3 evidentiary hearing, the Court entered an order granting, in part, the Debtors’ motion for sanctions on April 5, 2022 (the “April 5 Order”).²⁵ In the April 5 Order, the Court found that Citibank willfully violated the automatic stay.²⁶ The Court awarded the Debtors \$3,500 in attorney’s fees and \$500 in costs, which the Court ordered Citibank to pay within 30 days.²⁷ The Court also directed Citibank to “cease all activities associated with recovering prepetition debts

²¹ *Id.* at 5 – 7.

²² Doc. 147.

²³ Doc. 121.

²⁴ Doc. 148.

²⁵ Doc. 150.

²⁶ *Id.* at 7, ¶ 2.

²⁷ *Id.* ¶ 2(b).

from the Debtors,” warning Citibank that it may be liable for punitive damages if it continued to violate the confirmation order or the automatic stay.²⁸

The Debtors sent a copy of the April 5 Order by U.S. mail to Mr. Weerasinghe as Secretary and General Counsel for Citibank.²⁹ Citibank, however, failed to pay the \$4,000 within 30 days. Worse, it continued to report the debt as delinquent with the credit reporting agencies. On July 5, 2022, the Debtors notified the Court that Citibank had failed to comply with its April 5 Order.³⁰

Two weeks later, the Debtors moved for sanctions against Citibank based on its failure to comply with the Court’s April 5 Order (“Second Motion for Sanctions”).³¹ According to the motion, the Debtors were unable to reclose their bankruptcy case because Citibank failed to pay the \$4,000 due under the April 5 Order, causing the Debtors to incur additional U.S. Trustee fees, as well as additional attorney’s fees and costs preparing and filing postconfirmation quarterly reports.³² The Debtors again asked the Court to award them actual damages (\$11,350 in attorney’s fees and costs) and punitive damages (\$25,000).³³

²⁸ *Id.* ¶ 3.

²⁹ Doc. 151.

³⁰ Doc. 153.

³¹ Doc. 157.

³² *Id.* at 3, ¶ 18.

³³ *Id.* at 4 – 9.

The Court set the Debtors' Second Motion for Sanctions for an evidentiary hearing on September 28, 2022.³⁴ The Debtors served the Second Motion for Sanctions and the notice of the September 28 evidentiary hearing by certified mail on Mr. Weerasinghe, as Citibank's Secretary and General Counsel.³⁵ Once again, Citibank failed to appear at the hearing on the sanctions motion.

Following the evidentiary hearing, the Court entered an order granting, in part, the Debtors' Second Motion for Sanctions on October 4, 2022 ("October 4 Order").³⁶ The Court's October 4 Order directed Citibank to (1) update its credit reporting to all three credit reporting agencies to reflect that the Debtors' accounts were included in a chapter 11 bankruptcy; and (2) provide the Debtors proof it had done so.³⁷

Moreover, the October 4 Order awarded the Debtors an additional \$3,437.50 in fees incurred prosecuting its original Motion for Sanctions and \$9,780 in fees and costs incurred enforcing the April 5 Order and prosecuting its Second Motion for Sanctions.³⁸ The Court also awarded the Debtors \$25,000 in punitive damages.³⁹ Thus, the Court directed Citibank to pay the Debtors \$42,217.50 (the \$4,000 awarded

³⁴ Doc. 162.

³⁵ Docs. 164 & 165.

³⁶ Doc. 172.

³⁷ *Id.* ¶ 2.

³⁸ *Id.* ¶ 3(a) – (d).

³⁹ *Id.* ¶ 4.

under the April 5 Order and the \$38,217.50 awarded under the October 4 Order) within 30 days.⁴⁰

The Debtors served a copy of the October 4 Order by U.S. mail on Mr. Weerasinghe as Secretary and General Counsel for Citibank.⁴¹ Yet again, Citibank failed to comply with this Court's order.

So, on February 24, 2023, the Debtors moved for additional sanctions and punitive damages ("Third Motion for Sanctions").⁴² The Debtors allege they "are beginning to feel hopeless" because even though "[t]hey have worked hard for almost three years to make all their Plan payments," Citibank is still standing in the way of their fresh start.⁴³

The Debtors allege that because Citibank continues to incorrectly report the Citicard debt to the credit reporting agencies, the rent on their apartment has gone up; their car insurance has gone up; they cannot get a car loan; they cannot get a credit card; and they cannot seek new professional opportunities because they cannot afford to travel.⁴⁴ They also say they are suffering physical manifestations from the stress this situation is causing, which has forced them to seek medical treatment.⁴⁵

⁴⁰ *Id.* ¶ 5.

⁴¹ Doc. 173.

⁴² Doc. 174.

⁴³ *Id.* ¶ 19 (footnote omitted).

⁴⁴ *Id.* ¶ 20.

⁴⁵ *Id.*

The Court scheduled an evidentiary hearing on the Debtors' Third Motion for Sanctions for June 20, 2023.⁴⁶ The Debtors served a copy of their Third Motion for Sanctions and notice of the June 20 evidentiary hearing by certified mail on Brent McIntosh, as Secretary and General Counsel for Citibank.⁴⁷ Citibank failed to appear yet again.

At the June 20, 2023 evidentiary hearing on the Debtors' Third Motion for Sanctions, the Debtors proffered their written testimony and testified.⁴⁸ The Debtors also presented documentary evidence in support of their claims, including excerpts from their credit reports showing that Citibank continues to inaccurately report the Citicard account, which continues to negatively impact their credit scores;⁴⁹ documents showing that the Debtors' credit card applications have been denied;⁵⁰ lease extensions showing that the Debtors' rent has increased;⁵¹ bank statements showing that the Debtors have paid monthly credit monitoring charges;⁵² documents showing that the Debtors' car insurance rates have increased;⁵³ statements showing

⁴⁶ Doc. 180.

⁴⁷ Docs. 176 & 181.

⁴⁸ Docs. 193-18 & 193-19.

⁴⁹ Docs. 193-2, 193-10 & 193-24 – 193-31.

⁵⁰ Doc. 193-9.

⁵¹ Docs. 193-4 & 193-32.

⁵² Docs. 193-5 & 193-33.

⁵³ Docs. 193-6 & 193-34.

that the Debtors have paid U.S. Trustee fees;⁵⁴ statements showing the attorney's fees the Debtors have incurred;⁵⁵ a summary of the treatment by the Debtors' doctor; and receipts for expenses incurred for medical treatment, travel, and lodging.⁵⁶

In all, the Debtors put on evidence of \$80,478.80 in actual damages:

Damages	Amount
Out-of-Pocket Expenses	
Medical Treatment for Emotional Distress	\$3,447.09
Increased Rent	\$8,100.00
Credit Monitoring	\$359.82
Increased Car Insurance	\$611.89
<i>Subtotal</i>	<i>\$12,518.80</i>
Emotional Distress Damages	
Emotional Distress	\$25,000.00
<i>Subtotal</i>	<i>\$25,000.00</i>
Attorney's Fees	
April 5 and October 4 Orders	\$17,217.50
October 3, 2022 to Present	\$21,242.50
<i>Subtotal</i>	<i>\$38,460.00</i>
Costs	
U.S. Trustee Fees	\$4,500.00
<i>Subtotal</i>	<i>\$4,500.00</i>
Total	\$80,478.80

The Debtors have also asked for punitive damages using a 3.375 multiplier, which would result in \$271,615.91 in punitive damages.

⁵⁴ Docs. 193-7, 193-35 & 193-36.

⁵⁵ Docs. 193-8 & 193-37.

⁵⁶ Docs. 193-11 & 193-20 – 193-23.

II. Conclusions of Law

The filing of a bankruptcy case operates as an automatic stay against “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case.”⁵⁷ Bankruptcy Code § 362(k) mandates that “an individual injured by any willful violation of [the automatic stay] *shall recover actual damages*, including costs and attorneys’ fees.”⁵⁸ In appropriate circumstances, an individual injured by a willful stay violation may also recover punitive damages.⁵⁹ This Court also has inherent authority—as well as statutory authority under Bankruptcy Code § 105—to sanction a party for violating the automatic stay and disregarding this Court’s orders.⁶⁰ After considering the evidence presented at the June 20 evidentiary hearing, the Court concludes that the Debtors have proven they have been injured by willful violations of the automatic stay, Citibank has repeatedly disregarded this Court’s orders, and the Debtors are entitled to \$52,031.71 in compensatory damages and \$175,607.02 in punitive damages.

⁵⁷ 11 U.S.C. § 362(a).

⁵⁸ 11 U.S.C. § 362(k) (emphasis added).

⁵⁹ *Id.*

⁶⁰ *Jove Eng’g, Inc. v. IRS*, 92 F.3d 1539, 1554 (11th Cir. 1996) (“[W]e conclude § 105(a) grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent such awards are ‘necessary or appropriate’ to carry out the provisions of the Bankruptcy Code.”).

A. Citibank was properly served with the Third Motion for Sanctions.

Under Bankruptcy Rule 9014(b), stay violation sanctions must be requested by a motion served in accordance with Rule 7004.⁶¹ Rule 7004(h) provides that an insured depository institution must be served by certified mail addressed to an officer at the institution:

(h) Service of Process on an Insured Depository Institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless —

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Citibank is an insured depository institution.⁶² It has not appeared through counsel; the Court has not permitted service by first class mail; and Citibank has not

⁶¹ Fed. R. Bankr. P. 9014(a) – (b).

⁶² The Federal Deposit Insurance Corporation maintains a list of all “depository institutions” under section 3 of the Federal Deposit Insurance Act. The list can be found at <https://banks.data.fdic.gov/bankfind-suite/bankfind>.

waived its right to be served by certified mail. So, Rule 7004(h) required that Citibank be served with the Third Motion for Sanctions by certified mail on an officer.

That is exactly what the Debtors did. The Debtors served the Third Motion for Sanctions by certified mail on Brent McIntosh, Esq., as Secretary and General Counsel of Citibank.⁶³ The Debtors likewise served notice of the June 20, 2023 evidentiary hearing on the Third Motion for Sanctions on Mr. McIntosh, as Secretary and General Counsel of Citibank, by certified mail.⁶⁴ Despite proper service, Citibank failed to appear at the June 20 evidentiary hearing.

B. Citibank willfully violated the stay.

Historically, courts have determined that a stay violation is willful if the party who violated the stay (1) knew the automatic stay was invoked; and (2) intended the actions that violated the stay.⁶⁵ But, as the court in *In re Sanders* pointed out, that was before the United States Supreme Court's decision four years ago in *Taggart v. Lorenzen*.⁶⁶

In *Taggart*, which involved a discharge injunction violation, the Supreme Court concluded that a creditor may be held in civil contempt only when “there is not

⁶³ Doc. 176.

⁶⁴ Doc. 181.

⁶⁵ *In re Lyubarsky*, 615 B.R. 924, 929 (Bankr. S.D. Fla. 2020) (citing *Jove Eng'g v IRS (In re Jove Eng'g, Inc.)*, 92 F.3d 1539, 1555 (11th Cir. 1996)); see *In re Sanders*, 2020 WL 6020347, at *2 (Bankr. M.D. Fla. Sept. 15, 2020) (“It is almost universally held that ‘[a] violation of the automatic stay is willful if the party knew the automatic stay was invoked and intended the actions which violated the stay.’”) (quoting *In re Lyubarsky*, 615 B.R. at 929).

⁶⁶ 139 S. Ct. 1795 (2019).

a ‘fair ground of doubt’ as to whether the creditor’s conduct might be lawful under the discharge order.”⁶⁷ Since *Taggart*, “some courts have assumed without deciding that ‘willfulness’ under § 362(k)(1) changed to include *Taggart*’s ‘fair ground of doubt’ standard.”⁶⁸ Regardless of which standard applies, Citibank’s stay violation was willful.

1. Citibank knew of the automatic stay.

There is no question that Citibank was served with—and received—a copy of the plan and the disclosure statement. After all, Citibank filed two ballots accepting the Debtors’ plan. Both the plan and the disclosure statement specifically referenced the automatic stay.⁶⁹ Moreover, the confirmation order—which was served on Citibank at the same address and in the same manner as the plan and disclosure statement—provided that the automatic stay would remain in effect after the case was administratively closed.⁷⁰ Thus, Citibank knew about the automatic stay.

2. Citibank had notice of this Court’s April 5 and October 4 Orders.

The Debtors served the First and Second Motions for Sanctions—both of which alleged stay violations—on Citibank in accordance with Rule 7004(h). The First Motion for Sanctions was served by certified mail on Rohan Weerasinghe, Esq., as

⁶⁷ *Id.* at 1804.

⁶⁸ *In re Abril*, 2021 WL 3162637, at *4 (Bankr. M.D. Fla. June 24, 2021) (citing *Suh v. Anderson (In re Moo Jeong)*, 2020 WL 1277575, at *4 & n.3 (B.A.P. 9th Cir. Mar. 16, 2020)).

⁶⁹ Doc. 62 at 11; Doc. 63, ¶ 5.07.

⁷⁰ Doc. 98, ¶ 8(c).

Secretary and General Counsel of Citibank, N.A.⁷¹ The Second Motion for Sanctions was likewise served by certified mail on Mr. Weerasinghe.⁷² Those motions led to the April 5 and October 4 Orders.

The Debtors served the April 5 and October 4 Orders on Mr. Weerasinghe as Citibank's Secretary and General Counsel.⁷³ Although the orders were served by U.S. mail, the Court is not aware of any requirement that they be served by certified mail under Rule 7004(h). In any event, the Second Motion for Sanctions attached the April 5 Order as an exhibit,⁷⁴ and the Third Motion for Sanctions specifically discussed the April 5 and October 4 Orders.⁷⁵ Because the Second and Third Motions for Sanctions were properly served under Rule 7004(h), and those motions either attached or specifically referenced the April 5 and October 4 Orders, the Court concludes Citibank had notice of the April 5 and October 4 Orders.

3. Citibank failed to comply with this Court's orders.

The April 5 Order required Citibank to (1) pay the Debtors \$4,000 within 30 days; and (2) to "cease all activities associated with recovering prepetition debts from the Debtors."⁷⁶ The October 4 Order required that, within 30 days, Citibank (1) pay

⁷¹ Doc. 121.

⁷² Doc. 165.

⁷³ Docs. 151 & 173.

⁷⁴ Doc. 157.

⁷⁵ Doc. 174, ¶¶ 14 – 17.

⁷⁶ Doc. 150 at 7, ¶¶ 2 – 3.

the Debtors \$42,217.50 (which subsumed the \$4,000 required by the April 5 Order); (2) update its credit reporting to all three credit reporting agencies “to reflect that the Debtors’ account was included in a Chapter 11 bankruptcy”; and (3) provide the Debtors proof it updated its credit reporting. Based on their plain and unambiguous language, there can be no “fair ground of doubt” about what the April 5 and October 4 Orders required.

Yet, the record is indisputable that Citibank has not paid the Debtors the \$42,217.50 required by the October 4 Order. It is equally indisputable that Citibank never provided the Debtors proof it updated its credit reporting to all three credit reporting agencies and that two TransUnion credit reports generated more than 30 days after the October 4 Order fail to reflect that the Debtors’ Citicard account was included in a chapter 11 bankruptcy.⁷⁷ Thus, Citicard has not complied with either the April 5 or October 4 Order.

C. The Debtors have been damaged by Citibank’s willful stay violation.

The Debtors claim to have suffered \$79,353.80 in compensatory damages: \$38,460 in attorney’s fees and costs (inclusive of the amounts awarded under the April 5 and October 4 Orders); \$3,375 in U.S. Trustee fees; \$12,561.74 in out-of-pocket costs (i.e., medical expenses; increased rent; credit monitoring fees; and increased car insurance); and \$25,000 in emotional distress damages. The Debtors bear the burden

⁷⁷ Docs. 193-2 & 193-27.

of proving actual damages.⁷⁸ The Court concludes that the Debtors have met their burden with respect to their attorney’s fees, U.S. Trustee fees, and out-of-pocket costs (other than the medical expenses), but they have failed to meet their burden with respect to the out-of-pocket medical expenses and emotional distress damages.

1. The Debtors are entitled to recover \$52,031.71 in attorney’s fees, U.S. Trustee fees, and out-of-pocket costs.

Section 362(k) provides that actual damages for a willful stay violation *include* attorney’s fees and costs.⁷⁹ The use of the word “include” is not intended to be “limiting.”⁸⁰ Indeed, “[c]ourts traditionally view ‘actual damages’ as a broad umbrella term, including, but not limited to, lost time damages, out-of-pocket expenses, and emotional damages.”⁸¹ Thus, in addition to their attorney’s fees and costs, the Debtors may recover U.S. Trustee fees and out-of-pocket costs.

- a. The Debtors are entitled to \$38,460 in attorney’s fees and costs.

Six years ago, in *In re Horne*, the Eleventh Circuit held that § 362(k)’s broad and explicit language permits a debtor to recover reasonable fees incurred in stopping a stay violation, as well as all reasonable fees incurred prosecuting an action to

⁷⁸ *In re Tavera*, 645 B.R. 299, 310 (Bankr. M.D. Fla. 2022).

⁷⁹ 11 U.S.C. § 362(k).

⁸⁰ 11 U.S.C. § 102(3) (explaining that “includes” and “including” “are not limiting”).

⁸¹ *Defeo v. Winyah Surgical Specialists, P.A. (In re Defeo)*, 635 B.R. 253, 267 (Bankr. D.S.C. 2022) (quoting *In re Ojiegbe*, 539 B.R. 474, 479 (Bankr. D. Md. 2015)); see also *In re Franklin*, 614 B.R. 534, 548 (Bankr. M.D.N.C. 2020).

recover damages resulting from the stay violation.⁸² Here, the Debtors seek to recover a total of \$38,460 in attorney's fees and costs incurred trying to stop Citibank's stay violation and prosecuting their sanctions motions.

To support their fee claim, the Debtors introduced a billing ledger reflecting the time entries for the work their lawyers have done on the case from April 8, 2021 through July 6, 2023. In all, Debtors' counsel billed 132 hours at hourly rates ranging from \$175 to \$350. Debtors' counsel testified that her firm and its associates performed all the work on the itemized billing ledger,⁸³ the times listed next to each entry reflected the actual time worked, the standard rates charged for the work performed are similar to those charged for the same work in the same field or practice, and this Court has previously found the firm's rates to be reasonable.

To determine whether those fees are reasonable, this Court applies the well-known *Johnson* factors.⁸⁴ The *Johnson* factors require the Court to consider:

- the time and labor involved;
- the novelty and difficulty of the questions;
- the skill requisite to perform the legal service properly;
- the preclusion of other employment by the attorney due to acceptance of the case;
- the customary fee;
- whether the fee is fixed or contingent;

⁸² *Mantiply v. Horne (In re Horne)*, 876 F.3d 1076, 1081 (11th Cir. 2017) (“This explicit, specific, and broad language permits the recovery of attorney’s fees incurred in stopping the stay violation, prosecuting a damages action, and defending those judgments on appeal.”).

⁸³ Docs. 193-8 & 193-37.

⁸⁴ The *Johnson* factors were articulated in the Eleventh Circuit’s decision nearly 50 years ago in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 – 18 (11th Cir. 1974).

- time limitations imposed by the client or the circumstances;
- the amount involved and the results obtained;
- the experience, reputation, and ability of the attorneys;
- the “undesirability” of the case;
- the nature and length of the professional relationship with the client; and
- awards in similar cases.⁸⁵

Applying the *Johnson* factors here, the Court concludes the \$38,460 in attorney’s fees and costs is reasonable. Hourly rates ranging from \$175 to \$350 are standard in this market and have previously been found to be reasonable by this Court. And 132 hours billed is reasonable considering Citibank’s stay violation has necessitated three sanctions motions and three evidentiary hearings. Had it not been for Citibank’s willful stay violation, the Debtors would not have incurred these attorney’s fees and costs. The Court therefore concludes that the Debtors are entitled to recover \$38,460 in attorney’s fees and costs.

b. The Debtors are entitled to \$4,500 in U.S. Trustee fees.

To stop Citibank’s stay violation, the Debtors were forced to reopen this administratively closed case. Once their case was reopened, the Debtors were obligated to pay quarterly fees to the U.S. Trustee.⁸⁶ The Debtors have presented competent, substantial evidence that, since their case was reopened, they have paid

⁸⁵ *Johnson*, 488 F.2d at 717 – 18.

⁸⁶ 28 U.S.C. § 1930(a)(6).

\$4,500 in quarterly fees to the U.S. Trustee.⁸⁷ Had it not been for Citibank's willful stay violation, the Debtors would not have incurred the \$4,500 in quarterly fees. The Debtors are therefore entitled to recover \$4,500 in quarterly fees paid to the U.S. Trustee.

c. The Debtors are entitled to \$9,071.71 in out-of-pocket costs.

The Debtors have presented competent, substantial evidence of other out-of-pocket expenses. The Debtors provided excerpts of credit reports showing that Citibank's reporting of the Debtors' account is still inaccurate, which has caused the Debtors' credit score to go down.⁸⁸ The Debtors also provided copies of their lease extensions and insurance premiums, both of which have gone up as the Debtors' credit scores have gone down.⁸⁹ Because of their declining credit scores, the Debtors have been unable to avoid the increased rent by finding a new apartment.⁹⁰ And because Citibank continues to incorrectly report the Debtors' account, the Debtors have been forced to incur monthly credit monitoring charges.⁹¹ Had it not been for Citibank's willful stay violation, the Debtors would not have incurred \$8,100 in increased rent; \$611.89 in car insurance; or \$359.82 in credit monitoring charges. The Debtors are therefore entitled to recover \$9,071.71 in other out-of-pocket costs.

⁸⁷ Docs. 193-35 & 193-36.

⁸⁸ Docs. 193-2, 193-10 & 193-24 – 193-31.

⁸⁹ Docs. 193-4 & 193-32.

⁹⁰ Docs. 193-5 & 193-33.

⁹¹ Docs. 193-4 & 193-32.

2. The Debtors are not entitled to recover out-of-pocket medical expenses or emotional distress damages.

The Eleventh Circuit has held that to recover emotional distress damages for a willful stay violation, a debtor must (1) have suffered “significant emotional distress”; (2) clearly establish the “significant emotional distress”; and (3) demonstrate a “causal connection” between the “significant emotional distress” and the willful stay violation.⁹²

In *In re Lyubarsky*, the court awarded emotional distress damages for a willful stay violation.⁹³ There, a creditor’s lawyer threatened debtors’ counsel that unless the debtors paid the creditor \$250,000, the creditor was going to send information to the chapter 7 trustee and U.S. Attorney showing that the debtors had not disclosed all their assets on their schedules.⁹⁴ After finding that the demand for payment was a willful stay violation, the court turned to the debtors’ claim for emotional distress damages.

At trial, the debtor-husband testified he had gone to the hospital several times with panic attacks, though the attacks subsided once he got there.⁹⁵ The debtor-

⁹² *Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263 (11th Cir. 2014) (“We thus hold that, at a minimum, to recover “actual” damages for emotional distress under § 362(k), a plaintiff must (1) suffer significant emotional distress, (2) clearly establish the significant emotional distress, and (3) demonstrate a causal connection between that significant emotional distress and the violation of the automatic stay.”).

⁹³ 615 B.R. 924, 933 (Bankr. S.D. Fla. 2020).

⁹⁴ *Id.* at 928 – 31.

⁹⁵ *Id.* at 933.

husband's psychiatrist corroborated that testimony.⁹⁶ The psychiatrist also opined that the threat was a "huge trigger for [the debtor-husband's] anxiety"; that his anxiety "got progressively worse"; and that it deteriorated his previous condition.⁹⁷ Based on the testimony of the debtor-husband and his psychiatrist, the court concluded that the debtors proved the emotional distress claim by the debtor-husband.⁹⁸

Here, the Debtors put on evidence that they have suffered significant emotional distress. For example, Ms. Cobo testified that in 2006, nearly 15 years before this bankruptcy case, she had an emergency surgery to repair a ruptured diverticula caused by abnormal levels of stress.⁹⁹ To reconnect her digestive system, Ms. Cobo needed a colostomy bag for four months and a second surgery.¹⁰⁰ As a result, she lost half her colon and suffers from chronic fatigue, hypothyroidism, and vertigo.¹⁰¹ Ms. Cobo testified she spent years working with doctors to limit her discomfort and keep her symptoms at bay.¹⁰²

According to Ms. Cobo, her health had been thriving until Citibank began incorrectly reporting the Debtors' Citicard account to the credit reporting agencies,

⁹⁶ *Id.*

⁹⁷ *Id.* at 932.

⁹⁸ *Id.*

⁹⁹ Doc. 193-18, ¶ 6(i).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

which has caused her symptoms to flare up.¹⁰³ Ms. Cobo testified that as a result of Citibank's actions, she has had to see internists, endocrinologists, and gastroenterologists.¹⁰⁴ Because the only doctor who has been able to treat Ms. Cobo is in Orlando and does not accept insurance, she has had to travel to Orlando, pay for lodging, and pay cash for her treatment.¹⁰⁵

For his part, Mr. Withington testified he suffers from psoriasis.¹⁰⁶ He testified his symptoms flare up when experiencing high stress levels.¹⁰⁷ Until the issues with Citibank, Mr. Withington testified his symptoms were manageable.¹⁰⁸ But he testified that Citibank's actions have "put [him] under long periods of abnormally high levels of stress," causing his psoriasis to flare up.¹⁰⁹

Unlike in *Lyubarsky*, however, the Debtors have not offered any testimony by a treating physician or medical professional. No medical professional has testified that the Debtors' preexisting medical conditions were under control and the Citibank's actions exacerbated them. Nor has any medical professional testified that the medical treatment Ms. Cobo underwent was necessitated by Citibank's willful stay violation. Absent that evidence, the Court concludes the Debtors have failed to

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Doc. 193-19, ¶ 6(h).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

establish the requisite causal connection between their significant emotional distress and Citibank's willful stay violation. The Court therefore declines to award the Debtors their out-of-pocket medical expenses, travel and lodging, or emotional distress damages.

D. Punitive damages are appropriate in this case.

Section 362(k) permits recovery of punitive damages for a willful stay violation "in appropriate circumstances."¹¹⁰ Eight years ago, in *In re Parker*, the Eleventh Circuit held that punitive damages for a willful stay violation are appropriate "when a party acts with 'reckless or callous disregard for the law or rights of others.'"¹¹¹ In determining whether a party has acted with a "reckless or callous disregard for the law or rights of others," bankruptcy courts in the Eleventh Circuit traditionally consider five factors:

- the nature of the creditor's conduct;
- the nature and extent of the harm to the debtor;
- the creditor's ability to pay;
- the motives of the creditor; and
- any provocation by the debtor.¹¹²

Here, all five factors weigh in favor of awarding the Debtors punitive damages. Citibank's stay violation is egregious. Citibank had notice of this bankruptcy case. Indeed, it affirmatively accepted its plan treatment, only to turn around and attempt

¹¹⁰ 11 U.S.C. § 362(k).

¹¹¹ *Parker v. Credit Central South, Inc. (In re Parker)*, 634 F. App'x 770, 773 (11th Cir. 2015) (quoting *In re McLean*, 794 F.3d 1313, 1325 (11th Cir. 2015)).

¹¹² *In re Lyubarsky*, 615 B.R. 924, 933 (Bankr. S.D. Fla. 2020).

to collect the purported \$28,956.52 “balance due” on the account from the Debtors and report the Citicard account as delinquent to the credit reporting agencies. Citibank has been served with three motions for sanctions under Rule 7004. The Second and Third Motions for Sanctions specifically reference this Court’s April 5 Order; the Third Motion for Sanctions also references the October 4 order. Yet, despite having notice of this bankruptcy and its stay violation, Citibank persists in incorrectly reporting the Debtors’ Citicard account to the credit reporting agencies.

As a result of Citibank’s conduct, the Debtors have had to come out of pocket more than \$50,000. Citibank has the ability to pay punitive damages commensurate with the harm it has caused. Although Citibank’s motives are not clear, the Debtors certainly have not provoked their conduct. To the contrary, the Debtors simply proposed, in good faith, a chapter 11 plan that pays Citibank 34 cents on the dollar on its unsecured debt, which Citibank accepted—making Citibank’s conduct even more egregious.

The facts here are like those in *In re Rhodes*, where the bankruptcy court imposed punitive damages against a creditor for a willful stay violation.¹¹³ The debtor in *Rhodes* valued two properties that Nationstar held mortgages on and confirmed a plan that paid the value of those properties over two-years, with a balloon payment due at the end of the two years.¹¹⁴ To make the balloon payments, the debtor

¹¹³ 563 B.R. 380, 391 – 92 (Bankr. M.D. Fla. 2017).

¹¹⁴ *Id.* at 383 – 84.

attempted to sell the properties.¹¹⁵ But Nationstar would not provide a payoff letter, which forced the debtor to file a motion to sell the properties and seek to compel Nationstar to release its liens.¹¹⁶ The sale order, which Nationstar did not oppose or appeal, provided that Nationstar would release its liens upon the receipt of the balloon payments.¹¹⁷

Although Nationstar received a check for the balloon payments and negotiated it in February 2014, it did not release its liens as required under the sale order until two years later.¹¹⁸ During that two-year period, the debtor made numerous calls to Nationstar requesting it comply with the sale order.¹¹⁹ But Nationstar informed that debtor it “couldn’t do anything.”¹²⁰ Even a letter from the debtor’s U.S. Senator was not enough to force Nationstar to comply.¹²¹

The bankruptcy court found that Nationstar’s failure to comply with the confirmation and sale orders for more than two years—despite numerous requests by the debtor—was “inconceivable and reprehensible.”¹²² Nationstar failed to provide

¹¹⁵ *Id.* at 384.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 385.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 392.

any explanation or mitigating circumstances for its disregard of the court's orders.¹²³ Nor was it able to point to any defects with those orders.¹²⁴ The Court concluded Nationstar's conduct "threatened the fresh start to which [the] 'honest but unfortunate' Debtor was entitled and [had] earned."¹²⁵ Because Nationstar "flouted" the court's orders and "unjustifiably infringed" upon the debtor's fresh start, the court concluded that punitive damages were appropriate.¹²⁶

Like Nationstar in *Rhodes*, Citibank has flouted this Court's orders. Because it has failed to appear at any of this Court's three evidentiary hearings, Citibank has not offered any justification for its disregard of this Court's April 5 and October 4 Orders. Not only has Citibank's disregard of this Court's orders forced the Debtors to incur more than \$50,000 in expenses, but it has also interfered with their fresh start. Accordingly, the Court concludes that an award of punitive damages is appropriate.

In determining the amount of punitive damages, bankruptcy courts in Florida have used a multiplier. The court in *Lyubarsky*, for example, calculated punitive damages by multiplying the debtor's actual damages by two.¹²⁷ In *In re Harrison*, the court used a multiplier of two to calculate punitive damages against a creditor's lawyer for a stay violation and a multiplier of 3.375 to calculate punitive damages

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ 615 B.R. 924, 939 (Bankr. S.D. Fla. 2020).

against the creditor.¹²⁸ This Court, like the Court in *Harrison*, determines that a 3.375 multiplier is appropriate to deter future stay violations. Accordingly, the Debtors are entitled to \$175,607.02 in punitive damages.

III. Conclusion

Because the Court has concluded Citibank willfully violated the automatic stay, this Court must award the Debtors their actual damages. At the June 20 evidentiary hearing, the Debtors proved \$52,031.71. Given Citibank's willful stay violation—and its disregard of this Court's prior orders—the Court concludes \$175,607.02 ($\$52,031.71 \times 3.375$) in punitive damages is appropriate to deter future stay violations.

Accordingly, the Court hereby **ORDERS**:

1. The Debtors' Third Motion for Sanctions is **GRANTED**.
2. The Debtors are entitled entry of judgment in their favor and against Citibank, N.A. in the amount of \$227,638.73:
 - a. \$38,460.00 in attorney fees;
 - b. \$4,500.00 in U.S. trustee fees;
 - c. \$9,071.71 in out-of-pocket costs; and
 - d. \$175,607.02 in punitive damages
3. The Court reserves jurisdiction to enforce this Order.

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Copies to:
All parties in interest.

¹²⁸ 599 B.R. 173, 192 (Bankr. N.D. Fla. 2019).