

ELLIOTT H. STONE, (SBN 264569)  
**THE STONE LAW FIRM APC**  
4660 La Jolla Village Drive ▪ Suite 500  
San Diego, California 92122  
Tel: (858) 467-0300 ▪ Fax: (858) 467-0330

Attorney for Debtor

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

In re  
DAVID C. KATZ d/b/a OAK OUTLET  
PLUS,  
  
Debtor.

Case Number: 10-05104-MM11

Chapter 11

**EMERGENCY MOTION UNDER  
SECTION 362(K) OF THE UNITED  
STATES BANKRUPTCY CODE.**

**Hearing Requested**

Judge: Hon. Margaret M. Mann

TO: THE HONORABLE MARGARET M. MANN, UNITED STATES BANKRUPTCY  
JUDGE IN THE ABOVE CAPTIONED CHAPTER 11 CASE, THE OFFICE OF THE  
UNITED STATES TRUSTEE, CERTAIN CREDITORS AND OTHER PARTIES IN  
INTEREST.

Debtor, David C. Katz, d/b/a Oak Outlet Plus, as debtor-in-possession in the above-  
captioned case, hereby moves this Court for an award of damages under Section 362(k) of the  
Bankruptcy Code for injuries sustained as a result of Creditor AURORA LOAN SERVICES  
willful disregard of this Court’s automatic stay under Section 362(a) whereby Aurora conducted  
a trustee’s sale of Debtor’s residence without an order of this Court permitting it to do so.

///

///

///

THE STONE LAW FIRM, APC  
4660 LA JOLLA VILLAGE DRIVE ▪ SUITE 500  
SAN DIEGO ▪ CALIFORNIA ▪ 92122  
TEL: (858) 467-0300

THE STONE LAW FIRM, APC  
4660 LA JOLLA VILLAGE DRIVE • SUITE 500  
SAN DIEGO • CALIFORNIA • 92122  
TEL: (858) 467-0300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I.**  
**FACTS**

**A. Procedural Background**

This Court has jurisdiction over this Motion under 11 U.S.C. §362(k).

On March 30, 2010 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

On Debtor’s schedule of real property was listed Debtor’s primary residence located at 903 Northwoods in Chula Vista California. The Northwoods residence was scheduled with a corresponding first position lien in favor of Creditor Aurora Loan Services LLC (“Aurora”) of approximately \$1,200,000.00

On April 29, 2010, Creditor Aurora filed with this Court, Proof of Claim No. 3-1, which identified a secured claim in the amount of \$1,213,308.61 in the Debtor’s Northwoods residence. Claim No. 3-1, is incorporated by reference into this motion.

Between the Petition Date and August 16, 2010, Creditor Aurora had no communication or contact with the Debtor or Debtor’s counsel.

On August 13, 2010, Aurora conducted a trustee’s sale (foreclosure) of the Debtor’s Northwoods residence without first seeking leave of this Court for an Order to foreclose its security in Debtor’s Northwoods residence. A copy of the *Trustee’s Deed Upon Sale* which Aurora caused to be recorded with the San Diego County Recorder is attached hereto as Exhibit “A.”

**B. Basis of Relief Under Section 362(k)**

Section 362(k) of the Bankruptcy Code provides as follows:

- (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.
- (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

11 U.S.C. § 362(k)

THE STONE LAW FIRM, APC  
4660 LA JOLLA VILLAGE DRIVE • SUITE 500  
SAN DIEGO • CALIFORNIA • 92122  
TEL: (858) 467-0300

1 As explained below, Debtor is within the class of persons which § 362(k) was intended to  
2 protect. Further, the type of harm suffered by the Debtor resulting from Aurora’s improper  
3 foreclosure is the type of harm which § 362(k) was meant to prevent.

4 1. Debtor is an Individual

5 Debtor David C. Katz is an individual.

6 2. Debtor Has Been Injured by Aurora’s Actions in Violation of §362(a)

7 As a result of Aurora’s actions in conducting a trustee’s sale of Debtor’s home in  
8 violation of the automatic stay provided under § 362(a), Debtor has been stripped of the  
9 ownership of his home. Further, Debtor has been harassed, and continues to be harassed, by  
10 Aurora’s agents who have been hounding the Debtor and the Debtor’s family threatening that if  
11 they do not immediately vacate the Northwoods property that the Sheriff would, “... do it for  
12 you.” [emphasis added]

13 3. Aurora’s Conduct Is Willful

14 Aurora had full knowledge of the pending Bankruptcy case as evidenced by the fact  
15 Aurora filed a secured proof of claim less than a month after the Debtor filed his petition.

16 Further, Debtor is represented by Pite Duncan LLP, a an experienced creditor’s firm here  
17 in San Diego and there can be no doubt that Aurora was fully aware that an automatic stay was  
18 in place upon the filing of Debtor’s bankruptcy case.

19 **C. Debtor’s Right to Recover Under §362(k).**

20 Section 362(k) permits an injured debtor, such as Mr. Katz, to recover: (i) actual  
21 damages, (ii) costs and attorneys’ fees, and (iii) punitive damages.

22 1. Debtor’s Damages

23 Debtor asks this Court for an order awarding actual damages in the amount of  
24 \$630,000.00, the amount which Debtor’s home sold for at the August 13, 2010 trustee’s sale.

25 In the alternative, Debtor’s asks this Court for an order awarding the costs of relocation  
26 and temporary replacement housing, of comparable accommodations, in the event Debtor and his  
27 family are displaced from the Northwoods home.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Attorneys' Fees

Debtor asks this Court for an order awarding attorneys' fees and costs related to Debtor's enforcement of its rights respecting Aurora's violation of the automatic stay, this motion and in the anticipated adversary proceeding which may be necessary to restore title in the Northwoods residence to the Debtor.

3. Punitive Damages

Debtor asks this Court for an order awarding punitive damages according to proof and in an amount sufficient to punish and deter future similar conduct on the part of Aurora in an amount of not less than \$2,000,000.00.

Debtor further seeks an order awarding additional punitive damages against Aurora cancelling the creditor's note and security interest in the Northwoods property.

DATED: September 1, 2010

Respectfully submitted,  
THE STONE LAW FIRM APC

By:       /s/ Elliott H. Stone        
Elliott H. Stone, Attorney for Debtor David C. Katz

THE STONE LAW FIRM, APC  
4660 LA JOLLA VILLAGE DRIVE • SUITE 500  
SAN DIEGO • CALIFORNIA • 92122  
TEL: (858) 467-0300