

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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| <p><b>In re:</b></p> <p><b>TRUMP ENTERTAINMENT RESORTS,<br/>INC., et al.,<sup>1</sup></b></p> <p style="text-align: center;"><b>Debtors.</b></p> | <p>:</p> <p>:</p> <p><b>: Chapter 11</b></p> <p>:</p> <p><b>: Case No. 14-12103 (KG)</b></p> <p>:</p> <p><b>: Jointly Administered</b></p> <p>:</p> <p><b>: Hearing Date: November 5, 2014 at 11:00 a.m. (ET)</b></p> <p><b>: Objection Deadline: October 22, 2014 at 4:00 p.m. (ET)</b></p> |
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**DEBTORS’ MOTION, PURSUANT TO SECTIONS 105  
AND 362 OF THE BANKRUPTCY CODE, FOR ENTRY OF  
AN ORDER (I) ENFORCING THE AUTOMATIC STAY AGAINST  
UNITE HERE LOCAL 54, (II) REQUIRING UNITE HERE LOCAL 54  
TO ISSUE A LETTER INFORMING ALL PARTIES THAT RECEIVED UNION  
COMMUNICATIONS REGARDING THE CHAPTER 11 CASES THAT SUCH  
COMMUNICATIONS WERE MISLEADING AND IN VIOLATION OF THE  
AUTOMATIC STAY, (III) REQUIRING UNITE HERE LOCAL 54 TO PROVIDE  
THE DEBTORS WITH A LIST OF ALL PARTIES IT PREVIOUSLY DISTRIBUTED  
THE MISLEADING COMMUNICATIONS TO, AND (IV) AWARDING THE  
DEBTORS ATTORNEYS’ FEES AND EXPENSES FOR UNITE HERE  
LOCAL 54’S WILLFUL VIOLATION OF THE AUTOMATIC STAY**

Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit C (the “**Proposed Order**”), pursuant to sections 105(a) and 362 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), (a) enforcing the automatic stay of section 362 of the Bankruptcy Code (the “**Automatic Stay**”) against UNITE HERE Local 54

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

(the “**Union**”) to prohibit the Union from interfering with or utilizing property of the Debtors’ estates, (b) requiring the Union to issue a letter informing all parties that received Union Communications, as defined below, that such communications were misleading and in violation of the Automatic Stay, (c) requiring the Union to provide the Debtors with a list of all parties it distributed the Union Communications to, and (d) awarding the Debtors attorneys’ fees and expenses for the Union’s willful violation of the Automatic Stay . In support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 362(a)(3), and 362(k) of the Bankruptcy Code and Rule 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

### **BACKGROUND**

#### **A. General**

2. On September 9, 2014 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

3. On September 23, 2014, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code.

4. On October 1, 2014, the Debtors filed the *Disclosure Statement for Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 166] (the “**Proposed Disclosure Statement**”) and *Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 165] (the “**Proposed Plan**”). A hearing to consider the adequacy of the information contained in the Proposed Disclosure Statement is currently scheduled for November 5, 2014 at 11:00 a.m. (prevailing Eastern Time).

5. Additional information about the Debtors’ business and the events leading up to the Petition Date can be found in the *Declaration of Robert Griffin In Support of Debtors’ Chapter 11 Petitions and First-Day Motions and Applications* [Docket No. 2] (the “**First Day Declaration**”), which is incorporated herein by reference.

**B. Background Specific to the Motion**

6. As part of their overall plan to reorganize, on September 26, 2014, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Rejecting Collective Bargaining Agreement Between Trump Taj Mahal Associates, LLC and UNITE HERE Local 54 Pursuant to 11 U.S.C. § 1113(c) and (II) Implementing Terms of Debtors’ Proposal Under 11 U.S.C. § 1113(b)* [Docket No. 134] (the “**1113 Motion**”).<sup>2</sup> Per the 1113 Motion, the Debtors seek authorization to reject the collective bargaining agreement with the Union (the “**CBA**”) and implement the proposal provided to the Union on September 17, 2014 (the “**Proposal**”), which

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<sup>2</sup> Capitalized terms used, but not otherwise defined herein, have the meaning given to them in the 1113 Motion.

would help extricate the Debtors from the excessively costly multi-employer pension plan and unsustainable labor costs associated with the CBA.

7. As (a) described more fully in the 1113 Motion as well as the *Declaration of William H. Hardie III in Support of Debtors' Section 1113 Motion* [Docket No. 135], the *Declaration of Craig Keyser in Support of Debtors' Section 1113 Motion* [Docket No. 136], and the *Declaration of Howard S. Lavin in Support of Debtors' Section 1113 Motion* [Docket No. 137], (b) previously represented to the Court by counsel for the Debtors, and (c) testified to at a hearing on October 2, 2014 regarding the 1113 Motion by William H. Hardie III, managing director of Houlihan Lokey Capital, Inc., the Debtors' financial advisor and investment banker and Craig Keyser, founder and principal of Manchester HR Advisors LLC, the Debtors lead negotiator with the Union, the Debtors have repeatedly attempted to meet with the Union and to otherwise work cooperatively with the Union on modifying the CBA. Hr'g Tr. 10/2/14 at 19:12–13, 26:21–27:18, 44:20–48:25, 49:19–50:19; 62:23–67:7. However, despite the Debtors best efforts, the Union has been unwilling to work meaningfully and constructively with the Debtors. Instead, the Union has continued its pattern of delay tactics and has distributed flyers urging its members to “fight back,” “march,” and rally against the Debtors.

8. As if delay and rallying tactics were not enough, the Union has now gone a step further—it is directly contacting and harassing customers that have entered into contracts (the “**Contracts**”) with the Debtors for conventions or other events at the Taj Mahal. The Union is encouraging those customers to effectively terminate their Contracts and instead of patronizing the Taj Mahal, “consider patronizing: Bally’s, Borgata, Caesars, Harrah’s, Golden Nugget, [and] Resorts.” See Email from Kaitlyn Schechter, Customer Outreach Coordinator of the Union,

dated Sept. 26, 2014, attached hereto as Exhibit A (the “**Union Letter**”). The Union Letter further directs counterparties to the Contracts (the “**Counterparties**”) to,

Please check your event contract immediately to make sure you have secured language that will protect your event should the Taj Mahal close and/or if there is a labor dispute. We encourage all customers to insist the company insert our suggested model protective contract language in their contracts. It is enclosed with this letter.”

See Union Letter. The Union Letter also states, without any validation or support, “The [Debtors’] needs are so great and it is demanding concessions from so many parties, that it is *unlikely the company will be able to achieve the concessions it is demanding* from Atlantic City, Atlantic County and the State of New Jersey, as well as from the members of Local 54 in such a short time period.” See Union Letter (emphasis added). Finally, the Union Letter purports to quote the Debtors’ management, stating with emphasis that management “**expects that we will be terminating the operations of the Trump Taj Mahal in November**’ if Trump does not ‘achiev[e] significant reductions in expenses.’” See Union Letter (emphasis in original).

9. Unfortunately for the Debtors, their creditors, and other interested parties in these chapter 11 cases, the Union’s actions do not stop there. The Union has obtained, the Debtors’ believe illegally, the Debtors’ lists (the “**Attendee Lists**”) of individuals scheduled to attend upcoming conventions (the “**Convention Attendees**”). The Attendee Lists are not publicly available. The Debtors have been informed by Counterparties that the Union is directly calling the Convention Attendees (these verbal communications, along with the Union Letter and any correspondence similar to the Union Letter, the “**Union Communications**”) and reiterating not only the contents of the Union Letter, but also stating that (i) the Debtors are taking away the Union’s health plan, (ii) there will be picketing during these conventions and Convention Attendees would be forced to cross picket lines, (iii) hotel rooms will not be maintained,

(iv) employees will provide subpar service, and (v) groups should take their conventions to locations other than the Taj Mahal, among other things. See Letter to Craig Keyser from Manager dated October 6, 2014 (the “**Manager Letter 1**”), attached hereto as Exhibit B-1, and Letter to Craig Keyser from Manager dated October 6, 2014 (the “**Manager Letter 2**,” and collectively with the Manager Letter 1, the “**Manager Letters**”), attached hereto as Exhibit B-2. The Debtors are aware of one group that has cancelled its event due to the actions of the Union, and others may very well follow, resulting in significant damages to the Debtors. See Manager Letter 1.

10. The Union is harassing both the Counterparties and the Convention Attendees. These actions are undermining the Debtors’ relationships with both groups. These additional actions are exacerbating the damage caused by the Union Letter to the Debtors’ business and their estates and jeopardizing the Debtors’ efforts in these chapter 11 cases to maximize value for the benefit of all stakeholders.

**RELIEF REQUESTED**

11. By this Motion, the Debtors seek entry of an order (a) finding the Union in violation of the Automatic Stay imposed by section 362 of the Bankruptcy Code, (b) requiring the Union to issue a letter informing all parties that received any Union Communications that such communications were misleading and in violation of the Automatic Stay, (c) requiring the Union to provide the Debtors with a list of all parties it distributed the Union Communications to, and (d) awarding the Debtors attorneys’ fees and expenses for the Union’s willful violation of the Automatic Stay.

**BASIS FOR RELIEF REQUESTED**

12. The Union Communications are not only misleading propaganda and a blatantly improper (and self-defeating) negotiating tactic, but are a violation of the Automatic

Stay and a further indication that the Union has no interest in being a good faith participant in the Debtors' reorganization efforts. Furthermore, to the extent the Union obtained property of the Debtors' estates, namely the lists of Convention Attendees, this constitutes an additional violation of the Automatic Stay. The Union is interfering with and undermining the Debtors' not only the contractual relationships with the Counterparties but also the Debtors' relationships with the Convention Attendees to the detriment of all parties in interest by misleading both groups, suggesting that the Debtors will be unable to obtain the concessions they need in order to confirm a chapter 11 plan. Not only are sanctions appropriate, but the Court should also direct the Union to immediately issue a retraction, in a form acceptable to the Debtors, to any and all parties that received the Union Communications. Although neither sanctions nor a retraction will undo the damage the Union has done, sanctions and a retraction are a necessary step towards redressing the violation and repairing the Debtors' relationships with the Counterparties and Convention Attendees.<sup>3</sup>

**A. The Contracts Are Property of the Estate**

13. Section 541 of the Bankruptcy Code provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a)(1).

14. Courts have consistently held that property of the estate is to be defined broadly. See, e.g., United States v. Whiting Pools, Inc., 462 U.S. 198, 205 n.9 (1983) (Section

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<sup>3</sup> The Debtors reserve their rights to file a complaint against the Union seeking damages for, among other things, the harm caused by the Union from the Union Communications to the Debtors' business and their chapter 11 efforts.

541(a)'s legislative history demonstrates that the language of the provision was intended to sweep broadly to "include[] all kinds of property, including tangible or intangible property, causes of action . . . and all other forms of property currently specified in section 70a of the Bankruptcy Act."). This interpretation serves the purpose of bringing all interests of the Debtors into the estate in order to maximize creditor recovery.

15. Contracts, and the rights and interests arising from them, are property of the estate. See, e.g., ACandS, Inc. v. Travelers Cas. & Sur. Co., 435 F.3d 252 (3d Cir. 2006) (citing Westmoreland Human Opportunities, Inc. v. Walsh, 246 F.3d 233, 242 (3d Cir. 2001) for the proposition that the "definition of property 'encompasses rights and interests arising from ordinary contractual relationships.'"). The Contracts are therefore property of the Debtors' estates, and due to this, subject to, and protected by, the Automatic Stay. In re Enron Corp., 300 B.R. 201, 212 (Bankr. S.D.N.Y. 2003) ("Courts have consistently held that contract rights are property of the estate, and that therefore those rights are protected by the automatic stay.") (citations and internal quotations omitted); In re Ernie Haire Ford, 403 B.R. 750, 760 (Bankr. M.D. Fla. 2009) ("[Debtor's] rights under these executory contracts are property of the bankruptcy estate, and, therefore, exercising a terminable-at-will provision is not permitted without relief from stay.").

16. Further, the Attendee Lists are proprietary information and property of the Debtors' estates. First, "customer lists may be proprietary information under New Jersey law, depending on the nature of the business and the restrictions placed on employees." Fox v. Goz (In re Target Indus.), 386 Fed. Appx. 233, 236-237 (3d Cir. 2010) (citing Lamorte Burns & Co. v. Walters, 167 N.J. 285, 770 A.2d 1158, 1166 (N.J. 2001)). Customer Lists of service businesses are proprietary information and "receive special protection because the names and



addresses of customers are not publicly available or ascertainable.” Fox v. Goz (In re Target Indus.), 386 Fed. Appx. 233, 236-237 (3d Cir. 2010) (citing AYR Composition, Inc. v. Rosenberg, 261 N.J. Super. 495, 619 A.2d 592, 597 (N.J. Super. Ct. App. Div. 1993). Second, “[j]ust as executory contracts are property of the estate, so, too, are accounts receivable, rights of action to recover accounts receivable and intangibles such as customer lists and goodwill. In re Alert Holdings, 148 B.R. 194, 203 (Bankr. S.D.N.Y. 1992) (citing Debrececi v. Bru-Jell Leasing Corp., 710 F. Supp. 15, 21 (D.Mass. 1989)(intangibles such as customer lists and goodwill)(other internal citations omitted). Therefore, because the Debtors’ are a service business, the Attendee Lists are proprietary information and property of the Debtors’ estate.

**B. The Union’s Actions Constitute a Violation of the Automatic Stay**

17. Section 362 of the Bankruptcy Code provides a debtor with the protection of the Automatic Stay, an injunction applicable to all parties put in place upon the filing of a bankruptcy petition. 11 U.S.C. § 362(a). The Automatic Stay “is one of the fundamental debtor protections provided by the bankruptcy laws.” Cuffee v. Atlantic Bus. & Cmty. Dev. Corp. (In re Atlantic Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990). It “gives effect to Congress’ intent to protect debtors and creditors from ‘piecemeal dismemberment’ of the debtor’s estate.” In re Univ. Med. Ctr., 973 F.2d 1065, 1084 (3d Cir. Pa. 1992) (quoting In re Computer Commc’ns., Inc., 824 F.2d 725, 731 (9th Cir. 1987)). Furthermore, the purpose of the Automatic Stay is three-fold: “to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor’s assets due to legal costs in defending proceedings against it; and, in general, to *avoid interference with the orderly liquidation or rehabilitation of the debtor.*” Borman v. Raymark Indus., Inc., 946 F.2d 1031, 1036 (3d Cir.

1991) (quoting Ass'n of St. Croix Condo. Owners v. St. Croix Hotel, 682 F.2d 446, 448 (3d Cir. 1982)) (emphasis added).

18. One of the acts prohibited by the Automatic Stay is “any act to . . . exercise control over property of the estate[.]” 11 U.S.C. § 362(a)(3). This particular subsection of section 362 of the Bankruptcy Code, which is implicated by the Union’s actions, “is generally viewed as a provision designed to prevent the ‘dismemberment’ of the bankruptcy estate until the bankruptcy process permits either a financial reorganization of the debtor or an orderly liquidation of the assets of the bankruptcy estate.” Allentown Ambassadors, Inc. v. Northeast Am. Baseball, LLC (In re Allentown Ambassadors, Inc.), 361 B.R. 422, 435-436 (Bankr. D. Pa. 2007) (citing In re Burgess, 234 B.R. 793, 799 (D. Nev.1999); see also Lightfoot v. Borkon (In re Lightfoot), 399 B.R. 141, 145 (Bankr. E.D. Pa. 2008) (“To provide the bankruptcy process with an opportunity to resolve competing economic interests in an orderly and effective way, the automatic stay is designed to: (1) effectively stop all creditor collection efforts; (2) stop all harassment of a debtor seeking relief, and (3) maintain the status quo between the debtor and creditors.”) (internal citations omitted). As set forth above, the Debtors’ rights under the Contracts clearly constitute property of their estates as do the Attendee Lists.

19. In order to determine whether particular actions taken by a third party amount to an exercise of control over property of the estate, a court should determine whether the “non-debtors’ actions will adversely impact the estate’s property interests” and, if so, “then evaluate (1) the nexus between the conduct at issue and the property interests of the bankruptcy estate, (2) the degree of impact on the bankruptcy estate and (3) the competing legal interests of the non-debtor parties.” Allentown Ambassadors, 361 B.R. at 440.

(i) *Nexus Between Conduct and Property Interests*

20. There is a direct nexus between the Union's actions and the negative impact on the Debtors' estates. The Union has directly contacted both Counterparties and Convention Attendees, and the Union Communications are an attempt to directly interfere and impact the Debtors' rights in the Contracts by recommending that Counterparties include additional language in the contracts and both groups consider patronizing other casinos. See Union Letter and Manager Letter 2. Indeed, the Union is urging (i) the Counterparties to cancel their Contracts with the Debtors and book their conventions at a casino where the Union is content with the current terms of its collective bargaining agreement and (ii) Convention Attendees to not to attend the conventions. Furthermore, the Union is "utiliz[ing] [the Debtors'] customer list and attempt[ing] to harm its goodwill, all with the aim of . . . exercising control over property which is [also] property of the estate[,]" namely the Contracts. In re Alert Holdings, 148 B.R. at 203 (citing 11 U.S.C. § 362(a)(3)).

21. The facts here are incontrovertible: the Union is directly interfering with the Contracts, the Debtors' rights in the Contracts and the business those Contracts represent, and utilizing the Attendee Lists to do so. The Union, simply stated, is "interfering with the orderly . . . rehabilitation of the debtor[,]" which the Court of Appeals for the Third Circuit held is one of the fundamental purposes of the Automatic Stay. Borman, 946 F.2d at 1036 ("The automatic stay was designed to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor.") (internal citations omitted).

(ii) *Degree of Impact on the Debtors' Estates*

22. The Union's actions through the Union Communications are adversely affecting the Debtors and their estates' property interests. A significant component of the Debtors' business operations is hosting conventions and other events. The Debtors rely on the conventions and other events to generate revenue from the utilization of the facilities and amenities located in its 63,000 square feet of exhibition and convention space. The Taj Mahal has over 2,000 hotel rooms, sixteen dining locations, five cocktail lounges, and approximately 162,000 square feet of gaming space. Conventions utilize the exhibition and entertainment space while Convention Attendees book rooms, dine at the various dining establishments, gamble, and frequent the various other establishments and attractions at the Taj Mahal. The loss of conventions and the associated direct and indirect revenue generated would severely undermine the Debtors' business in the best of times. However, in light of the Debtors' current tenuous financial position, any further constraints or negative impacts on the Debtors' efforts to continue to generate revenue could severely undermine, if not derail, the Debtors' efforts to successfully reorganize. Cancellations due to the Union Communications would have a negative impact on the Debtors' short-term cash flows, cash flows needed to keep the Debtors' business operating while the Debtors' pursue confirmation of the Proposed Plan. Such an impact is exactly what the Union intended to produce through the issuance of the Union Communications, as Counterparties could decide to cancel their conventions or renegotiate their contracts due to the inflammatory and misleading language of the Union Communications and Convention Attendees could decide to not attend their conventions.

23. The Union's actions are irrational and self-defeating; if Contracts are canceled and business disappears, the Taj Mahal will surely close and the Union's members

working there will lose their jobs. The Union Communications do not just adversely impact the Debtors' estates on a minor scale, they undermine the Debtors' entire effort to reorganize, and demonstrate the disregard that the Union has for the chapter 11 process, the rights and the protections that such process affords to the Debtors and their estates, and the impact that the outcome of these chapter 11 cases will have on the Debtors' employees, creditors, and other interested parties—including the Union's own members.

(iii) *Competing Legal Interest*

24. The Union has no competing legal interest in the Contracts or the Attendee Lists. It is not a counterparty to the Contracts nor even a third-party beneficiary and has no interest, legal or equitable, in the Attendee Lists. The Union's actions are nothing more than a negotiation tactic in connection with the on-going collective bargaining. The Debtors' rights under the Contracts constitute property of their estate and the Attendee Lists are property of their estate. In light of this, the Debtors' interests in the Contracts and the Attendee Lists are "protected against termination *or other interference* that would have the effect of removing or hindering the debtor's rights in violation of section 362(a)(3)." 3 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 362.03 (16th ed.). The Union Communications represents such an interference that, if left unchecked, may erode the Debtors' estates to the detriment of the Debtors' chapter 11 efforts, the Debtors' employees and creditors, and other interested parties.

**C. The Awarding of the Debtors' Attorneys' Fees and Expenses Is Proper**

25. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of the [automatic] stay . . . *shall* recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1) (emphasis added). In the Third Circuit, a corporate debtor has

standing under section 362(k) of the Bankruptcy Code to recover damages for a willful violation of the stay. See Cuffee, 901 F.2d at 329 (interpreting section 362(h) of the Bankruptcy Code, which is now designated as section 362(k)).

26. An actionable violation of the automatic stay requires proof that the violator (a) knew of the existence of the stay; (b) acted willfully; and (c) those actions violated the stay. Cambell v. Countrywide Home Loans, Inc., 545 F.3d 348, 355 (5th Cir. 2008). A willful violation of the automatic stay does not require a specific intent to violate the automatic stay. Cuffe, 901 F.2d at 329. Instead, “[i]t is a willful violation of the automatic stay when a creditor violates the stay with knowledge that the bankruptcy petition has been filed.” In re Lansdale Family Rests., Inc., 977 F.2d 826, 829 (3d Cir. Pa. 1992) (internal citations omitted); see also Lightfoot, 399 B.R. at 148 (Bankr. E.D. Pa. 2008) (same). “Willfulness does not require that the creditor intend to violate the automatic stay provision, rather it requires that the acts which violate the stay be intentional.” Id. Moreover, in cases where the violator received actual notice of the automatic stay, courts must presume that the violation was deliberate. Fleet Mortgage Group, Inc. v. Kaneb, 196 F.3d 265, 269 (1st Cir. 1999).

27. The Union’s actions in sending the Union Communications constitute actionable violations of the automatic stay. First, it is beyond question that the Union had actual notice of the automatic stay, as the Union is represented by counsel and has actively participated in these chapter 11 cases by, among other actions, entering notices of appearance [Docket Nos. 71 and 177], filing a letter brief in opposition to the 1113 Motion [Docket No. 190], and appearing at the hearing on the 1113 Motion before this Court on October 2, 2014.

28. Second, the Union acted willfully. The subject of the Union Communications is itself the Debtors’ bankruptcy. The Union, therefore, acted “with knowledge

that the bankruptcy petition has been filed.” Lansdale Family Rests., Inc., 977 F.2d at 829. In light of this, the Union’s actions are undeniably willful.

29. Third, as discussed above, the Union violated the Automatic Stay by distributing the Union Letter, calling the Counterparties and Convention Attendees, utilizing the Attendee Lists, and likely taking similar actions of which the Debtors are not yet aware.

30. Based on the foregoing, the Debtors submit that the Union is liable to the Debtors and their estates under section 362(k)(1) of the Bankruptcy Code for actual damages, including, without limitation, costs and attorneys’ fees for bringing this Motion.

### **CONCLUSION**

31. In light of the above, the Debtors respectfully request that the Court issue an order confirming and enforcing the Bankruptcy Code’s automatic stay provisions under section 362 of the Bankruptcy Code. The Proposed Order will help protect the Debtors from further violations of the Automatic Stay by the Union. The Debtors believe entry of the Proposed Order is necessary for a successful restructuring because it will help prevent the erosion of a significant component of the Debtors’ business.

### **RESERVATION OF RIGHTS**

32. Nothing in the Proposed Order or this Motion shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any claims or causes of actions against the Union and its representatives, and the Debtors reserve all rights to supplement this Motion with additional facts as they become known to the Debtors.

### **NOTICE**

33. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) proposed counsel to the Committee; (iii) counsel to the First Lien Agent; (iv) counsel to the

Union; and (v) all parties that, as of the filing of this Motion, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

**NO PRIOR REQUEST**

34. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors request entry of the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 8, 2014  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ian J. Bambrick

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*Counsel to the Debtors and Debtors-in-Possession*



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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| <p><b>In re:</b></p> <p><b>TRUMP ENTERTAINMENT RESORTS,<br/>INC., et al.,<sup>1</sup></b></p> <p style="text-align: center;"><b>Debtors.</b></p> | <p>:</p> <p>:</p> <p><b>: Chapter 11</b></p> <p>:</p> <p><b>: Case No. 14-12103 (KG)</b></p> <p>:</p> <p><b>: Jointly Administered</b></p> <p>:</p> <p><b>: Hearing Date: November 5, 2014 at 11:00 a.m. (ET)</b></p> <p><b>: Objection Deadline: October 22, 2014 at 4:00 p.m. (ET)</b></p> |
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**NOTICE OF MOTION**

TO: (I) THE U.S. TRUSTEE; (II) PROPOSED COUNSEL TO THE COMMITTEE; (III) COUNSEL TO THE FIRST LIEN AGENT; (IV) UNITED HERE LOCAL 54, AND (V) ALL PARTIES THAT, AS OF THE FILING OF THE MOTION, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002

**PLEASE TAKE NOTICE** that Trump Entertainment Resorts, Inc. and its above captioned debtors and debtors in possession (each, a “**Debtor**,” and collectively, the “**Debtors**”) have filed the attached **Debtors’ Motion, Pursuant to Sections 105 and 362 of the Bankruptcy Code, for Entry of an Order, (I) Enforcing the Automatic Stay Against UNITE HERE Local 54, (II) Requiring UNITE HERE Local 54 to Issue a Letter Informing All Parties that Received Union Communications Regarding the Chapter 11 Cases that Such Communications Were Misleading and in Violation of the Automatic Stay, (III) Requiring UNITE HERE Local 54 to Provide the Debtors with a List of All Parties It Previously Distributed the Misleading Communications to, and (IV) Awarding the Debtors Attorneys’ Fees and Expenses for UNITE HERE Local 54’s Willful Violation of the Automatic Stay** (the “**Motion**”).

**PLEASE TAKE FURTHER NOTICE** that any objections to the Motion must be filed **on or before October 22, 2014 at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON NOVEMBER 5, 2014 AT 11:00 A.M. (EASTERN TIME) BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.**

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: October 8, 2014  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Ian J. Bambrick*

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Matthew B. Lunn (No. 4119)  
Robert F. Poppiti, Jr. (No. 5052)  
Ian J. Bambrick (No. 5455)  
Ashley E. Markow (No. 5635)  
Rodney Square  
1000 North King Street  
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-and-

STROOCK & STROOCK & LAVAN LLP  
Kristopher M. Hansen  
Erez E. Gilad  
Gabriel E. Sasson  
180 Maiden Lane  
New York, New York 10038-4982  
Telephone: (212) 806-5400  
Facsimile: (212) 806-6006

*Counsel to the Debtors and Debtors-in-Possession*

**Exhibit A**

**Union Letter**

**Subject:**Re: YOUR EVENT VENUE MAY PERMANENTLY CLOSE ON NOV. 13, 2014

**Date:**Fri, 26 Sep 2014 21:52:06 +0000

**From:**Kaitlyn Schechter <[kschechter@unitehere.org](mailto:kschechter@unitehere.org)>

**To:** [REDACTED]

Dear Executive Director,

I am writing you to inform you of an issue regarding the Trump Taj Mahal, the location of your upcoming event. Trump Taj Mahal has filed for bankruptcy. On September 10, the management at Trump Taj Mahal told the workers that the company **“expects that we will be terminating the operations of Trump Taj Mahal in November”** if Trump does not “achiev[e] significant reductions in expenses.” The Company’s needs are so great and it is demanding concessions from so many parties, that it is unlikely the company will be able achieve the concessions it is demanding from Atlantic City, Atlantic County and the State of New Jersey, as well as from the members of Local 54 in such a short time period.

Additionally, the union contract at the Trump Taj Mahal has expired, and the company has proposed to do away with the health plan that workers have fought for and sacrificed to maintain over the past 35 years. If the company persists in its position, there is a possibility of a labor dispute.

Please check your event contract immediately to make sure you have secured language that will protect your event should the Taj Mahal close and/or if there is a labor dispute. We encourage all customers to insist the company insert our suggested model protective contract language in their contracts. It is enclosed with this letter.

Given the hardships in Atlantic City, your business is all the more important to us. Please consider patronizing the following casinos:

Bally’s  
Borgata  
Caesars  
Harrah’s  
Golden Nugget  
Resorts

In order to deal with the crisis in Atlantic City, we requested contract extensions with all of the casinos, only Tropicana and Trump refused. **As a result, there is a possibility of a labor dispute at Tropicana as well.**

As a union of hospitality workers, we take great pride in serving our guests. We hope that you will view this notice as an extension of that service and take this time to ensure that your organization's events are protected. Furthermore, we hope that you will remain in contact with us over the coming weeks to stay up-to-date on what is happening here in our beloved Atlantic City. Please feel free to contact me at any

time for more information as the situation unfolds.

Sincerely,

Kaitlyn Schechter  
Customer Outreach Coordinator  
(609) 344-5400 ext. 107

Please consider the environment before printing.

This e-mail message and any attachments are for the sole use of the intended recipient(s) and may contain confidential information. If you are not an intended recipient, or an intended recipient's authorized agent, you are hereby notified that any dissemination, distribution or copying of this e-mail message or any attachments is strictly prohibited. If you have received this message in error, please notify the sender by reply e-mail and delete this e-mail message and any attachments from your computer system.

**Exhibit B**

**Manager Letters**

**Exhibit B-1**

**Manager Letter 1**

October 6, 2014

Trump Taj Mahal

[REDACTED]

[REDACTED] Manager

Craig Keyser:

On October 6, 2014, I received a phone call from my client, [REDACTED], from [REDACTED]. This group has been coming to the Taj Mahal since November 2008. He informed me that he received a call on his personal cell phone from Kaitlyn Schechter, identifying herself as a member of Local 54. He also received an email telling the group to take their business elsewhere, and that we may close and/or have a labor dispute.

She also told him the Taj Mahal was taking away the Union's health plan, and they would be contributing to that action. She further made my client feel badly about the Union and implied that their business was going to directly hurt employees and there also would be picketing in the city during their Conference. My client and their guests are non-union and are not interested in crossing any picket lines nor are they interested in hosting their events in Atlantic City.

My client was also told that the hotel rooms will not be clean, there will be no perishable food during their Convention and the employees that are here would give 50% service.

[REDACTED] then informed me the group would be canceling their Conference for this November and would not be booking anywhere in Atlantic City due to all mentioned above.



**Exhibit B-2**

**Manager Letter 2**

October 6, 2014

Trump Taj Mahal

[REDACTED]

[REDACTED] Manager

Addressed to:

Craig Keyser

On October 6, 2014, I received a phone call from my client, [REDACTED], at [REDACTED]. They are repeat clients and great business for the Taj Mahal. She informed me that four directors, and herself had received an email from Kaitlyn Schechter, identifying herself as a member of Local 54. The email tells them to take their business elsewhere, stating that we may close and/or have a labor dispute. She also personally received a phone call from Kaitlyn Schechter, whom she indentified from the prior email as a Local 54 member. She was held on the phone for half an hour while Kaitlyn urged her to take her business to a different location because the Taj Mahal was taking away the Union's health plan, and they would be contributing to that action. She further made my client feel badly about the Union and implied that their business was going to directly hurt employees. My client repeatedly stated that [REDACTED] would still be attending regardless of her information. Kaitlyn Schechter then asked my client how her group would feel if they had to cross a picket line to get into their conference. This is when my client became very upset, as she didn't want her group to be affected or a part of any such commotion. [REDACTED] felt very uncomfortable with the entire conversation, and was extremely displeased to receive this phone call. After our first correspondence, [REDACTED] called me again to inform me that six [REDACTED] from [REDACTED] [REDACTED] received phone calls from Kaitlyn Schechter, who is clearly identifying herself as a Local 54 member. My client is now very angry and bothered with this situation, as she is getting calls from upset [REDACTED] who are dealing with this woman.

**Exhibit C**

**Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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| <b>In re:</b><br><br><b>TRUMP ENTERTAINMENT RESORTS,<br/> INC., et al.,<sup>1</sup></b><br><br><p style="text-align: center;"><b>Debtors.</b></p> | :<br>:<br>: <b>Chapter 11</b><br>:<br>: <b>Case No. 14-12103 (KG)</b><br>:<br>: <b>Jointly Administered</b><br>:<br>: <b>Ref. Docket No. _____</b> |
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**ORDER (I) ENFORCING THE AUTOMATIC STAY  
AGAINST UNITE HERE LOCAL 54, (II) REQUIRING UNITE  
HERE, (III) REQUIRING UNITE HERE LOCAL 54 TO PROVIDE THE  
DEBTORS WITH A LIST OF ALL PARTIES IT PREVIOUSLY DISTRIBUTED  
THE MISLEADING COMMUNICATIONS TO, AND (IV) AWARDING THE  
DEBTORS ATTORNEYS’ FEES AND EXPENSES FOR UNITE HERE  
LOCAL 54’S WILLFUL VIOLATION OF THE AUTOMATIC STAY**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of Trump Entertainment Resorts, Inc. and its above-captioned affiliated debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order, pursuant to sections 105 and 362 of the Bankruptcy Code (a) enforcing the automatic stay against the Union to prohibit the Union from interfering with or utilizing property of the Debtors’ estates, (b) requiring the Union to issue a letter informing all parties that received Union Communications that such communications were misleading and in violation of the automatic stay, (c) requiring the Union to provide the Debtors with a list of all

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trump Entertainment Resorts, Inc. (8402), Trump Entertainment Resorts Holdings, L.P. (8407), Trump Plaza Associates, LLC (1643), Trump Marina Associates, LLC (8426), Trump Taj Mahal Associates, LLC (6368), Trump Entertainment Resorts Development Company, LLC (2230), TER Development Co., LLC (0425) and TERH LP Inc. (1184). The mailing address for each of the Debtors is 1000 Boardwalk at Virginia Avenue, Atlantic City, NJ 08401.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to them in the Motion.

parties it distributed the misleading communications to or otherwise contacted, and (d) awarding the Debtors attorneys' fees and expenses for the Union's willful violation of the automatic stay; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The actions undertaken by the Union, as set forth in the Motion, violated the automatic stay pursuant to section 362(a)(3) of the Bankruptcy Code. Effective immediately upon the entry of this Order, the Union shall cease distributing the Union Communications and taking any similar actions. In addition, within one (1) day of this Order, the Union shall turn over all copies of the Attendee Lists to the Debtors. In event that the Debtors determine that the Union is continuing to distribute the Union Communications and/or take any similar actions or has kept any copies of the Attendee Lists subsequent to the entry of this Order, the Debtors may promptly contact the Court and request that the Court schedule an emergency telephonic hearing to address any such actions and to enforce the terms of this Order with respect to any such actions.

3. Within three (3) days of the entry of this Order, the Union shall inform any parties to which it distributed the Union Communications that those communications were misleading and in violation of the automatic stay in writing via a letter agreed to by the Debtors.

4. Within three (3) days of the entry of this Order, the Union shall provide the Debtors with a list of all parties that received the Union Communications.

5. Within seven (7) days of receiving bills evidencing the same, the Union shall pay the Debtors' attorneys' fees and costs incurred in preparing and pursuing the relief sought in the Motion.

6. Nothing in this Order or the Motion shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any claims and causes of actions against the Union and their representatives, and the Debtors rights to seek pecuniary damages from the Union are hereby reserved.

7. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2014  
Wilmington, Delaware

\_\_\_\_\_  
Kevin Gross  
United States Bankruptcy Judge