No. 25-538

United States Court of Appeals
for the Ninth Circuit

IN RE MELANIO L. VALDELLON III and ELLEN C. VALDELLON,

Debtors,

PHH MORTGAGE CORPORATION; and WELLS FARGO BANK, N.A., as Indenture Trustee under the Indenture Relating to the IMPAC CMB Trust Series 2005-6,

Defendant-Appellants,

v.

MELANIO L. VALDELLON III and ELLEN C. VALDELLON,

Plaintiff-Appellees.

On Appeal from the Bankruptcy Appellate Panel
for the Ninth Circuit, Case No. EC-24-1086-GCB
and the United States Bankruptcy Court for the
Eastern District of California (Hon. Christopher D. Jaime)
Case Nos. 14-bk-22555 and 21-ap-02008

BRIEF *AMICI CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLEES AND DISMISSAL OR AFFIRMANCE

Daniel J. Bussel
Eitan Arom
KTBS LAW LLP
1801 Century Park East, Suite 2600
Los Angeles, California 90067
(310) 407-4000

NOVEMBER __, 2025

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Rules

Legislative History

Other Authorities

FRAP 29(a)(4)(E) STATEMENT

Amici curiae National Association of Consumer Bankruptcy Attorneys and National Consumer Bankruptcy Rights Center respectfully state as follows under Federal Rule of Appellate Procedure 29(a)(4)(E): No party's counsel authored this brief in whole or in part; and no party, party's counsel, or any other person contributed money that was intended to fund preparing or submitting this brief.

s/ D. Eitan Arom

STATEMENT OF INTEREST OF *AMICI CURIAE*

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a nonprofit organization of more than 1,500 consumer bankruptcy attorneys nationwide. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Bankruptcy Rights Center ("NCBRC") is a nonprofit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. Among other things, it submits *amicus curiae* briefs when in its view resolution of a particular case may affect consumer debtors throughout the country. *See, e.g.*, *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382 (2023); *Mission Hen, LLC v. Lee*, 137 F.4th 1008 (9th Cir. 2025); *Evans v. McCallister* (*In re Evans*), 69 F.4th 1101 (9th Cir. 2023); *Numa Corp. v. Diven*, 2022 WL 17102361 (9th Cir. Nov. 22, 2022).

NCBRC, NACBA, and NACBA's members have a vital interest in the outcome of this case. In particular, NCBRC and NACBA hope to offer their perspective on the availability of emotional-distress damages in contempt cases for violations of the discharge injunction in section 524 of the Bankruptcy Code.[1] If this Court were to rule that courts may not award emotional-distress damages for

[1] All statutory citations refer to the Bankruptcy Code unless otherwise stated.

violations of the discharge injunction, many consumer debtors would be without effective redress or protection when harassing and abusive creditors, postbankruptcy, willfully violate their right to a fresh start. In addition, without this sanction, creditors may be emboldened to willfully violate the discharge injunction and absorb the relatively mild consequences that follow.

I. INTRODUCTION

Bankruptcy courts use contempt awards to protect debtors' statutory right to discharge when creditors violate the discharge injunction through postbankruptcy collection actions. This case asks whether the contempt power includes the authority to protect that interest through an award of nonpecuniary compensatory damages when creditors, postbankruptcy, cause emotional distress by willfully pursuing unlawful forcible collection activities on account of discharged debts.

The Supreme Court held in *Taggart v. Lorenzen* that courts should look to the "old soil" of "traditional civil contempt principles" in enforcing the discharge injunction through contempt. 587 U.S. 554, 561–62 (2019) (citation omitted). Tracing the historical origin of the right to discharge and the contempt power through to modern practice establishes that contempt includes the power to award compensatory emotional-distress damages when the injunction being enforced is designed to protect nonpecuniary interests, as the discharge injunction is.

As a threshold issue, *amici* believe this appeal should be dismissed because the Bankruptcy Appellate Panel ("BAP") opinion is not final under 28 U.S.C. § 158(d)(1). The BAP remanded the case to the bankruptcy court for a determination of damages, and the policy of avoiding piecemeal appeals dictates that the determination of damages should precede any appeal to this court. However, if the Court finds that it has jurisdiction, it should affirm the BAP's

opinion on the issue of emotional-distress damages because the opinion was consistent with the history and tradition of contempt and the discharge injunction.

First, traditional contempt principles are incompatible with an implied bar on nonpecuniary damages. Implied limits on contempt are disfavored. Moreover, the civil contempt power has long been thought to include all the authority necessary to fully remedy the damage caused by a contemnor's disobedience. Thus, where a court order protects nonpecuniary interests, courts must (and do) have the authority to enforce those protections through nonpecuniary damages. And, accordingly, courts commonly enforce their orders through nonpecuniary damages under their contempt authority in areas involving pain and suffering, nuisance, reputational harms, and domestic relations, among others.

Second, the discharge injunction undoubtedly protects the nonpecuniary interests of honest but unfortunate consumer debtors: the fresh start following bankruptcy and the peace of mind that freedom from discharged debts brings. These interests are a cornerstone of the American bankruptcy system, and history shows that the injunction was implemented to protect them. Under principles of bankruptcy preemption, contempt serves a vital role as the exclusive remedy available to debtors when creditors invade these interests by violating the injunction.

Third, since the enactment of the Bankruptcy Code, bankruptcy courts have always understood themselves to be able to award nonpecuniary damages for contempt. *Taggart* may have cast doubt on the reasoning of cases like *Ocwen Loan Servicing, LLC v. Marino* (*In re Marino*), which used an analogy to section 362(k)'s "actual damages" provision, in part, to justify emotional-distress damages for discharge violations. 577 B.R. 772, 787 (B.A.P. 9th Cir. 2017), *aff'd*, 949 F.3d 483 (9th Cir. 2020). But under the law of contempt, bankruptcy courts possess this authority irrespective of section 362(k), and were indeed already exercising it before section 362(k) was enacted in 1984. These damages continue to play an important role in deterring the type of conduct the injunction protects against.

The bankruptcy court's critique of emotional-distress damages in contempt awards cannot be reconciled with these legal and historical strands of development and was properly rejected by the BAP. This history shows that courts have always been empowered to use contempt to vindicate nonpecuniary interests, and the discharge injunction was expressly designed to protect the well-defined and well-recognized nonpecuniary interest in being freed from the debilitating and discouraging overhang of perpetual debt. To the extent it was a final order, the BAP's decision reversing the bankruptcy court on this point should be affirmed.

II. ARGUMENT

A. The BAP's Opinion Was Not an Appealable Final Order

This Court has jurisdiction over "final decisions, judgments, orders, and decrees" of the BAP. 28 U.S.C. § 158(d)(1). BAP decisions that remand a case for additional factfinding "will rarely have th[e] degree of finality" to fit within this provision, "unless the remand order is limited to ministerial tasks." *Gugliuzza v. Fed. Trade Comm'n* (*In re Gugliuzza*), 852 F.3d 884, 897 (9th Cir. 2017). For example, in *Ocwen Loan Servicing, LLC v. Marino* (*In re Marino*), this Court held that it had no jurisdiction over an appeal from a BAP order reversing and remanding a bankruptcy court opinion which ruled punitive damages were not available for a discharge violation. 949 F.3d 483, 486 (9th Cir. 2020). If the Court were to decide the appeal at that stage, it reasoned, "the parties would almost certainly climb back up the appellate ladder, asking us to consider the bankruptcy court's decision on punitive damages." *Id.* at 487. In addition, the BAP's remand likely would require additional factfinding on punitive damages, which is "not a ministerial task." *Id.* at 487–88 (citation and internal quotation marks omitted).

This case is an echo of *In re Marino*. As there, the bankruptcy court on remand would have to conduct additional factfinding and make a damages determination. The parties could well appeal the result of any such factfinding and

determination, resulting in another trip up the appellate ladder. Under this binding precedent, there is no jurisdiction to hear this appeal.

Amici nevertheless present their views, below, on the availability of emotional-distress damages in the event that the Court considers this issue.

B. The "Old Soil" of Contempt Includes Emotional-Distress Damages

The basic principle of civil contempt, rooted in tradition, is that courts possess all the powers necessary to award full remedial relief when a contemnor causes injury by disobeying a court order. That tradition suggests that courts must be able to protect nonpecuniary interests as well as financial ones. The few cases that conclude, to the contrary, that emotional-distress damages for contempt are implicitly barred should be rejected.

1. Civil contempt is a broad, inherent power

Courts' ability to issue civil contempt awards has long been recognized. The existence of a "civil execution . . . for the benefit of the injured party" dates back to English practice. 4 WILLIAM BLACKSTONE, COMMENTARIES 285 (1787) (hereafter, BLACKSTONE). This procedure became commonplace in the United States in the second half of the 19th century.[2]

[2] *See, e.g.*, *Indianapolis Water Co. v. Am. Strawboard Co.*, 75 F. 972, 979 (C.C.D. Ind. 1896); *Woodruff v. N. Bloomfield Gravel Mining Co.*, 27 F. 795, 800 (C.C.D. Cal. 1889); *Wells, Fargo & Co v. Or. Ry. & Navigation Co.*, 19 F. 20, 23 (C.C.D. Or. 1884); *In re Mulee*, 17 F. Cas. 968, 970–71 (C.C.S.D.N.Y. 1869).

Although the contempt power has been codified since 1789, *see* Judiciary Act of 1789, ch. 20, § 17, 1 Stat. 73, 83, these early cases do not rely on it. Many do not mention the 1789 Act at all. *E.g.*, *Woodruff*, 27 F. 795; *In re Mulee*, 17 F. Cas. 968. Instead, the Supreme Court repeatedly emphasized that contempt "has always been the power of the courts both of common law and equity." *In re Chiles*, 89 U.S. 157, 168 (1874). "The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power." *Ex parte Robinson*, 86 U.S. 505, 510 (1873). In fact, the contempt statute—authorizing courts to "punish by fine or imprisonment . . . all contempt of [their] authority"—was viewed not as a source of this power but "a limitation upon the manner in which the power shall be exercised, and . . . a negation of all other modes of punishment." *Id.* at 510 (1873) (citation omitted).

The inherent nature of contempt has two important corollaries. ***First***, courts narrowly construe limits on contempt, because, by definition, it must include the power necessary to protect their authority and enforce their orders. "The measure of the court's power in civil contempt proceedings is determined by the requirements of full remedial relief." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949). To be sure, Congress can impose reasonable limits. *E.g.*, *Ex parte Robinson*, 86 U.S. at 512 (disbarment not available under 1789 Act). But the power cannot "be abrogated nor rendered practically inoperative," and limits must

be "of narrow scope" and "carefully limited." *Michaelson v. U.S. ex rel. Chi., St. Paul, Minneapolis & Omaha Ry. Co.*, 266 U.S. 42, 66 (1924).

Moreover, courts hesitate to infer unwritten limits on the contempt power. For example, in *Green v. United States*, the Court rejected an "unexpressed limitation" capping imprisonment for contempt at one year. 356 U.S. 165, 181–83 (1958).[3] "The answer to those who see in the contempt power a potential instrument of oppression lies in assurance of its careful use and supervision, not in imposition of artificial limitations on the power." *Green*, 365 U.S. at 188; *accord Chamber v. NASCO, Inc.*, 501 U.S. 32, 47 (1991) (citation and internal quotation marks omitted) ("[W]e do not lightly assume that Congress has intended to depart from established principles such as the scope of a court's inherent power.").

Second, in civil contempt proceedings, courts have never been required to conduct a precise accounting of losses in awarding compensatory damages. *E.g.*, *Union Tool Co. v. United States*, 262 F. 431, 434 (9th Cir. 1920) (affirming $2,500 contempt award even though "the exact amount of such expenses does not seem to have been closely calculated"); *Bd. of Trade v. Tucker*, 221 F. 305, 307 (2d Cir. 1915) (where "it is not possible to assess any particular sum of money which will represent complainant's business loss," it is nevertheless "well settled . . . that the

[3] *But see Bloom v. Illinois*, 391 U.S. 194, 211 (1968) (holding such contempts are "serious crimes" subject to constitutional constraints).

court may undertake to reimburse [a] complainant"). Difficulty in assessing the precise monetary equivalent of a particular harm is not a bar to awarding full compensation for contempt.

For example, in *Leman v. Krentler-Arnold Hinge Last Co.*, the Supreme Court held that profits were available for violations of a patent-infringement injunction even though they did not track with "actual pecuniary loss." 284 U.S. 448, 455–56 (1932). *Leman* held that a suit in equity aims to "insure full compensation to the party injured," and contempt is as broad as the interests that the underlying order seeks to protect, meaning it likewise aims to afford "full compensation." 284 U.S. at 456. A contempt proceeding, the Court held, "is a part of the main cause in equity and is for the enforcement of the decree, and there is no reason why in such a proceeding equitable principles should not control the measure of relief to be accorded." *Id.* at 457.

Later cases have understood *Leman* as holding that "a civil contempt fine is not always dependent on a demonstration of 'actual pecuniary loss.'" *Manhattan Indus. v. Sweater Bee by Banff, Ltd.*, 885 F.2d 1, 5 (2d Cir. 1989); *accord*, *e.g.*, *Nat'l Lab. Rels. Bd. v. Nesen*, 211 F.2d 559, 564 (9th Cir. 1954) (civil contempt includes sanctions necessary "to grant full remedial relief . . . and to fully compensate the complainant for losses sustained").

2. Early and recent examples of emotional distress and contempt

These longstanding equitable principles are inconsistent with a prohibition on emotional-distress awards for contempt. Indeed, such a prohibition has never been settled law. For example, in 1871, the Tennessee Supreme Court affirmed a contempt award against a landlord for evicting a family, in violation of a court order, on "cold, rainy night" when "the wife was feeble and sickly, and some of the children sick," forcing the complainant's family to live in the woods for several days. *Robins v. Frazier*, 52 Tenn. 100, 101 (1871). The Tennessee Supreme Court held that the "indignation" and "suffering consequent upon being unable to find a shelter for his family" justified a $300 contempt award. *Id.* at 104–06.

In *In re Tift*, a creditor attached and sold estate assets after being served an injunction against any collection activities. 11 F. 463, 464–65 (E.D.N.Y. 1881). The court awarded contempt damages of $2,717.85 for economic loss, but it added "the sum of $1,000, *in reimbursement of the expenses and trouble caused to said Tift by this proceeding.*" *Id.* at 468 (emphasis added). *In re Tift* shows that pecuniary loss is not the only element of contempt damages; rather, "trouble caused"—*i.e.*, inconvenience—can also be compensated.

Modern examples abound of courts including emotional-distress damages as an element of contempt:

- In *Ferguson v. Waid*, the plaintiff, Ms. Ferguson, violated a court order by making false and defamatory statements about the defendant, Mr. Waid,

after being ordered not to do so. 2025 WL 2271488, at *1 (W.D. Wash. July 9 2025). The court held that "Mr. Waid has clearly suffered emotional distress . . . and should be compensated" with "$50,000 in presumed damages for Ms. Ferguson's defamatory statements." *Id.* at *2.

- In *Milburn v. Coughlin*, the district court denied compensatory damages for contempt against prison officials for failing to provide adequate healthcare, which caused one inmate to become wheelchair bound. 83 F. App'x 378, 380 (2d Cir. 2003). The Second Circuit reversed: "[T]he fact that compensatory damages may be difficult to ascertain does not relieve the district court of its duty to award compensatory damages if actual injuries are suffered." *Id.*

- In *Bessolo v. Rosario*, a child's mother was required to dismiss a protective order against the father under their stipulated marital settlement, but failed to do so and caused him to be arrested in front of their daughter. 966 N.E.2d 725, 728 (Ind. Ct. App. 2012). In light of this "humiliating experience," a contempt award could include $7,500 "for inconvenience, embarrassment, and mental suffering." *Id.* at 729, 732.

- In *Chadwick v. Alleshouse*, the defendants operated a racetrack in violation of a nuisance injunction. 233 N.E.2d 162, 166 (Ind. 1968). The Indiana Supreme Court held that $3,000 in contempt damages "could be considered rather minimal in view of the commotion, noise, frustration, . . . dust in the air, permeating the premises and Appellees' homes, etc." *Id.*

- In contempt proceedings for violating a preliminary injunction in a wrongful-termination case, damages could include "loss of job satisfaction," "mental distress and loss of professional reputation," and "mental anguish suffered away from work." *Sebastian v. Tex. Dept. of Corr.*, 558 F. Supp. 507, 510 (S.D. Tex. 1983).

The lesson of these cases is that courts have long believed they can compensate for harms to nonpecuniary interests when the interests an injunction protects include nonpecuniary ones.

3. Cases barring emotional-distress damages ignore the purpose and history of civil contempt

In light of this history and practice, opinions that foreclose emotional-distress damages for civil contempt lack foundation. These cases would deny meaningful compensation to parties whose injuries from contempt are largely nonpecuniary (including in the cases and contexts described above), thus running afoul of traditional contempt principles that call for full compensation.

In *McBride v. Coleman*, for example, the court overturned an emotional-distress award for contempt in a one-paragraph ruling. 955 F.2d 571, 577 (8th Cir. 1992) (cited Appellants' Br. at 51 n.2). It reasoned, first, that "problems of proof, assessment, and appropriate compensation . . . are troublesome enough in the ordinary tort case, and should not be imported into civil contempt proceedings." *Id.* And, second, "the contempt power is not to be used as a comprehensive device for redressing private injuries." *Id.* Both of these rationales are ahistorical. Contempt is "a comprehensive device" for remedying disobedience, and "problems of proof[and] assessment" have never been seen as categorical bars to full remedial relief.

The other cases cited by Appellants on this point are similarly flawed. *See Burd v. Walters* (*In re Walters*), 868 F.2d 665, 670 (4th Cir. 1989) (vacating emotional-distress award because "no authority is offered to support the proposition that emotional distress is an appropriate item of damages for civil

contempt"); *United States v. Harchar*, 331 B.R. 720, 730 (N.D. Ohio 2005) ("There is little indication that awarding damages for emotional harm was commonplace under . . . traditional contempt procedures."). Even setting aside the examples provided above of this use of the contempt authority, these cases make the fundamental error of assuming that contempt powers are, by default, limited and circumscribed instead of broad and inclusive. To the contrary, courts reject "artificial limitations" on contempt where Congress has not implemented any. *Green*, 356 U.S. at 188.

The remaining cases cited by Appellants in support of excluding emotional-distress damages, Appellants' Br. at 51 n.2, do not stand for that view. Several simply do not address contempt.[4] *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444 (1911), and *Hovey v. Elliott*, 167 U.S. 409, 436 (1897), say that contempt awards can include pecuniary loss, but not that they *exclude* all other damages.

[4] *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022); *United States v. Alvarez*, 567 U.S. 709 (2012); *Fed. Aviation Admin. v. Cooper*, 566 U.S. 284 (2012); *Rouse v. Dep't of State*, 567 F.3d 408 (9th Cir. 2009); *Bohac v. Dep't of Agric.*, 239 F.3d 1334 (Fed. Cir. 2001); *Farrens v. Meridian Oil, Inc.*, 852 F.2d 1289 (9th Cir. 1988). *Weitzman v. Stein* also is not on point because it says only that the district court in that case "was within its right to reject Weitzman's claim for compensation for the emotional distress," not that those damages are *per se* unavailable. 98 F.3d 717, 720 (2d Cir. 1996).

In sum, where a contemner's action causes pecuniary loss, pecuniary damages are appropriate. But where the harms sought to be protected are nonpecuniary, history and tradition suggest that a court can remedy those, too.

C. The Discharge Injunction Protects Nonpecuniary Interests Long Enshrined in the Bankruptcy Laws

The bankruptcy discharge has always offered debtors protection against nonpecuniary harms. Indeed, in its original conception, discharge protected debtors from languishing in debtors' prisons. The discharge *injunction*, enacted in 1970, is a more modern invention. Still, it was implemented to protect the long-recognized policy that honest debtors deserve a fresh start free from the worries of prepetition debts, and it continues to serve that purpose today.

1. Historical development of the "fresh start" policy

For several centuries English law punished unpaid debts with imprisonment or worse. *See* Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR. L.J. 325, 334–36 (1991) (hereafter, Tabb). Anglo-American law first recognized a discharge of debts with the Statute of Anne. *Id.*; 4 Anne, c. 17, § 7 (1705). The new procedure was seen as a reprieve "against the inhumanity of the creditor, who is not suffered to confine an honest bankrupt after his effects are delivered up" so that "the bankrupt becomes a clear man again." 2 BLACKSTONE 473, 484.

The 1898 Bankruptcy Act, this nation's first permanent federal bankruptcy legislation, enshrined the discharge in American law. Bankruptcy Act of 1898, ch. 541, § 14(c), 30 Stat. 544, 550; *see also* Tabb at 348–53, 363 (tracing American history of discharge enactments). Cases interpreting the 1898 Act understood one of its "primary purposes" to be allowing "the honest debtor . . . to start afresh . . . [with] a new opportunity in life and a clear field for future effort." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *accord*, *e.g.*, *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904) ("Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which has become oppressive, and to permit him to have a fresh start . . . .").

2. Enactment of the modern discharge injunction

Until 1970, however, there was a major catch for discharged debtors. Bankruptcy courts could issue discharges, but creditors could still sue in state court on discharged debts, forcing debtors—now stripped of all non-exempt assets by the bankruptcy—to plead the discharge as an affirmative defense. Tabb at 360. Commentators saw these suits as pretextually exploiting discharge exceptions, for example, by pointing to minor misstatements in credit applications as precluding discharge. *E.g.*, Note, *1970 Amendment to the Bankruptcy Act: An Attempt to Remedy Discharge Abuses*, 69 MICH. L. REV. 1347, 1351 (1971). Under *Local Loan*, bankruptcy courts could only enjoin these postbankruptcy collection actions

"under unusual circumstances." 292 U.S. at 241. As a result of having to defend one's discharge in state court, "the relief which the bankrupt got from his discharge was dubious at best." Vern C. Countryman, *The New Dischargeability Law*, 45 AM. BANKR. L.J. 1, 10 (1971) (hereafter, Countryman).

Calls for reform from the bankruptcy bar and lower courts ultimately culminated in a pair of competing bills, supported by the National Bankruptcy Conference, the National Conference of Referees in Bankruptcy, and the Administrative Office of the United States Courts ("AOUSC"), that would allow bankruptcy courts to determine whether a debt was dischargeable and, if so, to enjoin collection actions in the state courts. Countryman at 20–21. At a hearing on the bills in October 1969 before a subcommittee of the House Judiciary Committee, a parade of bankruptcy referees, judges, officials, and scholars told legislators that these postbankruptcy lawsuits were "the worst defect in the [1898] Bankruptcy Act." *Hearing Before Subcomm. No. 4 of the H. Comm. on the Judiciary on S.J. Res. 88, H.R. 6665, and H.R. 12250*, 91st Cong., 1st Sess., at 12 (Doc. No. 37-207) (U.S. Gov't Printing Off. 1969) (hereafter, *Subcomm. Hearing*) (statement of Hon. Ernest C. Friesen, Jr., Dir., AOUSC).[5]

[5] Citations to the transcript of the October 1, 1969 hearing and the law review article by Professor Countryman describing the 1970 enactment are to their published versions, but these materials are not easily accessible online, and are therefore attached hereto as Exhibits A and B for the Court's convenience.

For example, AOUSC director Friesen explained that, as a result of postbankruptcy lawsuits, "the rehabilitation of the bankrupt which the Bankruptcy Act seeks to accomplish has become largely mythical." *Subcomm. Hearing* at 12. "[T]his bill," he testified, "will . . . assure these honest but unfortunate debtors that they can really have a fresh start free of oppressive debt and free of the harrassment of creditors' lawsuits." *Id*; *accord, e.g.*, *id.* at 25 (statement of Hon. Edward Weinfeld, S.D.N.Y.) (under then-current law, "the concept of turning the bankrupt out of court with a clean slate and providing him with the opportunity to make a fresh start is lost"); *id.* at 38 (statement of Daniel R. Cowans, Pres., Nat'l Conf. of Referees in Bankr.) ("Passage of this legislation will enhance the possibility of a fresh start for American bankrupts.").

Still, the proposed bills did not contain a mandatory discharge injunction in every case, but rather provided that the bankruptcy court "*may* make such protective orders as are necessary to protect or effectuate its [discharge] determination." *See Subcomm. Hearing* 3–4 (emphasis added) (reprinting bills). The idea of a discharge injunction in every case appears to have come up at the hearing itself. In a colloquy with Daniel Cowans, president of the National Conference of Referees in Bankruptcy, Congressman Charles Wiggins ventured a suggestion to broaden the impact of the legislation:

> Mr. WIGGINS. Do you think there is any value in granting, as a part of the original relief in all cases, restraining orders against the

> filing of subsequent lawsuits in State courts of the debt that has been discharged?
>
> Mr. COWANS. Do you mean a blanket restraining order?
>
> Mr. WIGGINS. As a routine matter couldn't it be just one of the other orders that you might give in any case?
>
> . . . .
>
> Mr. WIGGINS. Under the legislation pending before this committee, is there any device for stopping the unscrupulous creditor from filing the lawsuit in a State court and putting the debtor to the burden of asserting his affirmative defense?
>
> Mr. COWANS. . . . I don't know how we can handle the problem at the point of preventing them from filing in the State court where they don't assert there was a bankruptcy.
>
> If it is just a plain suit on a note, there is no way of the state[court] knowing. If we notify that creditor, the creditor is listed and we notify him, *then presumably if we issued some kind of blanket restraining order he would be in contempt and possibly the existence of the contempt sanction would tend to stop it.*

Id. at 53 (emphasis added).

In the days following the hearing, members of the supporting organizations held a series of meetings to reconcile the two bills and address the comments at the hearing. Countryman at 22–23. These efforts culminated in a new bill, submitted to the subcommittee two weeks later, which, for the first time, stated that: "An order of discharge shall . . . enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt." *Subcomm. Hearing* at 93 (reprinting revised text). The bill's proponents, including the AOUSC, felt this

injunction "will have sufficient *in terrorem* effect to foreclose abuse." Countryman at 45. As a memorandum from the National Bankruptcy Conference explained, under the redrafted bill, creditors would have notice that "they may not thereafter seek to obtain personal liability upon [the debt] in another court and, in fact, are enjoined from doing so. Thus, harassment lawsuits should be eliminated . . . ." *Subcomm. Hearing* at 98.

As revised, the bill quickly became law without amendment. Countryman at 23. The remaining legislative history confirms that the bill and the new discharge injunction it contained aimed to curb postbankruptcy abuse and harassment. *E.g.*, H.R. REP. NO. 91-1502, 91st Cong., 2d Sess. (1970), *reprinted in* 1970 U.S.C.C.A.N. 4156, 4156 ("The major purpose of the proposed legislation is to effectuate, more fully, the discharge in bankruptcy by rendering it less subject to abuse by harassing creditors."). In short, the discharge injunction's history demonstrates that it aimed to protect debtors' psychological and dignitary interest in being free from harassment by prebankruptcy creditors.

3. Discharge under the 1978 Bankruptcy Code

Since 1970, Congress and the courts have continued to fine-tune the discharge injunction and other procedures to protect consumers' fresh-start interests. The 1978 Bankruptcy Reform Act incorporated and broadened the 1970 law by providing in Bankruptcy Code section 524(a) that a discharge "operates as

an injunction against . . . any act, to collect, recover or offset any such debt as a personal liability of the debtor." Pub. L. 95-598, 92 Stat. 2549, 2592 (1978); *see also* S. REP. NO. 95-989, 95th Cong., 2d Sess. (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5866 (explaining that the injunction would operate "as a total prohibition on debt collection efforts," including "any act to collect, such as dunning by telephone or letter, or . . . harassment, threats of repossession, and the like").

Protecting the fresh-start interest of chapter 13 debtors has required special attention. Because home mortgages ride through chapter 13 unmodified except as to the cure of arrearages, 11 U.S.C. § 1322(b)(2), (b)(5), mortgagees remain positioned to foreclose post-confirmation. Before section 524(i) was enacted in 2005,[6] mortgage lenders frequently rode quietly through bankruptcy only to assert, after discharge, that plan payments failed to account for undisclosed, accrued charges. Debtors, far from enjoying a fresh start upon payment of arrearages as required under the plan, often faced foreclosure. For example, in *In re Chess*, the debtor's mortgage servicer failed to object to the trustee's accounting, but asserted, postdischarge, that the debtor's payments had increased during bankruptcy and she was now in default. 268 B.R. 150, 153–55 (Bankr. W.D. Tenn. 2001). The

[6] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, tit. II, § 202, Pub L. No. 109-8, 119 Stat. 23, 43.

bankruptcy court found that the servicer had "'laid in wait' for the discharge order to be entered so that it could then proceed to foreclose upon the property for the arrearage which had knowingly been accruing." *Id.* at 158; *see also*, *e.g.*, *In re Riser*, 289 B.R. 201, 204 (Bankr. M.D. Fla. 2003) (mortgage lender asserted postdischarge debtor was in default due to unpaid attorney's fees and "allowable corporate advances"); *In re Ronemus*, 201 B.R. 458, 458–60 (Bankr. N.D. Tex. 1996) (failure to apply plan payments resulted in "increased interest charges" and "unauthorized late charges"); *In re Rathe*, 114 B.R. 253, 255–57 (Bankr. D. Idaho 1990) (servicer improperly diverted plan payments to "impound accounts, late charges, professional fees and other charges"). Section 524(i) makes clear that, if "willful," this "failure . . . to credit payments received under a plan" is subject to sanctions as a violation of the discharge injunction.

For chapter 13 debtors, the last piece of the puzzle fell into place in 2011 with the implementation of the new Federal Rule of Bankruptcy Procedure 3002.1. Echoing the pre-section 524(i) decisions about undisclosed mortgage charges, the Advisory Committee on Bankruptcy Rules was concerned that mortgage lenders were still failing to disclose fees and charges in bankruptcy, meaning a debtor could "find himself in foreclosure the day after a discharge is granted." Memo. to the Adv. Comm. on Bankr. R. from the Subcomm. on Consumer Issues at 1–2 (Aug. 27, 2008), *available at* https://www.uscourts.gov/sites/default/files/

fr_import/BK2008-10.pdf (quoting *In re Jones*, 366 B.R. 584, 596 (Bankr. E.D. La. 2007)). This outcome was "clearly at odds with the notion of providing a successful debtor a fresh start." *Id.* at 2. The new rule required mortgagees to itemize all postpetition charges and instructed the trustee to file a "notice of the final cure payment" that would become preclusive unless successfully opposed. Fed R. Bankr. P. 3002.1(c), (f)–(i).[7]

Contempt proceedings have thus become the central enforcement vehicle in this longstanding effort to protect debtors' fresh start. Indeed, they are the exclusive means of offering compensation for these nonpecuniary harms, given that courts have held that section 524 cuts off causes of action that would otherwise be available to the extent those actions are based on alleged violations of section 524. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 510 (9th Cir. 2002); *see also*, *e.g.*, *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 916 (9th Cir. 1996) (malicious prosecution); *Grossi v. Bosco Credit, LLC*, 2017 WL 3453347, at *13 (N.D. Cal. Aug. 10, 2017) (state foreclosure laws); *Helman v. Udren L. Offs., P.C.*, 85 F. Supp. 3d 1319, 1330 (S.D. Fla. 2014) (state collection-practices act).

[7] Because the Appellees do not allege that the subject property was their primary residence, this Rule does not apply to this case, but its function and legislative history demonstrate how the courts and Congress have sought to protect debtors' nonpecuniary interests in a fresh start. Placing emotional-distress damages outside the contempt power of bankruptcy courts would effectively gut the protections of Rule 3002.1 in the Ninth Circuit.

D. Bankruptcy Courts Have Regularly Awarded Emotional-Distress Damages for Contempt

The history of contempt and the discharge injunction suggest, respectively, that (1) courts can compensate parties for all harms caused by contempt, pecuniary or otherwise; and (2) the discharge injunction protects debtors from harassment that would impinge on their nonpecuniary interests in a fresh start. As the Supreme Court instructed in *Taggart*, sections 105(a) and 524 brought this "old soil" with them. 587 U.S. at 560. Not surprisingly, then, in the immediate aftermath of the Code's enactment, bankruptcy courts freely awarded emotional-distress damages when merited.

For example, in *In re Pody*, the debtor's ex-wife, after his discharge, attempted to enforce a discharged judgment against him for failing to perform under their divorce decree by garnishing his wages. 42 B.R. 570, 572 (Bankr. N.D. Ala. 1984). Holding the ex-wife in contempt, the court awarded attorney's fees and another $150 "as compensation for loss of use of wages garnishe[d], *embarrassment and anguish suffered by the debtor as a result of the defendant's obstinance* . . . and the resultant impairment of the fresh start to which the debtor was entitled." *Id.* at 574 (emphasis added).

Similarly, in *Hix v. Avco Financial Services of Ohio, Inc.*, a creditor sent the debtors multiple letters and made numerous late-night collection calls, both before and after discharge. 13 B.R. 752, 753 (Bankr. S.D. Ohio 1981). The court noted

the "discomfort and distress" of the debtors and awarded $750 for "damages [that] have been inflicted both upon the Debtors and upon the spirit and intent of the legal safeguards enacted by Congress 'to give complete effect to the discharge and to eliminate any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts.'" *Id.* at 754 (citation omitted).[8]

Even more common among these early Bankruptcy Code cases were emotional-distress damages for automatic-stay violations. These cases, likewise, make clear that courts felt their contempt arsenal in fact included emotional-distress damages:

- In *In re Lohnes*, the debtor filed a chapter 7 petition the day before a scheduled foreclosure sale of his home, but the foreclosure referee went forward with the sale. 26 B.R. 593, 594–95 (Bankr. D. Conn. 1983). Holding the referee in contempt, the court found that the debtor "suffered emotional distress as a result of the foreclosure sale" and awarded $50 in damages. *Id.* at 596.

- In *In re Reed*, creditors who had sold a restaurant to the debtors collected a bag of trash and spoiled food from the shuttered restaurant and dumped it on the debtors' porch, causing the debtors to feel "very shocked, very humiliated" and "totally invaded." 11 B.R. 258, 261, 277 (Bankr. D. Utah 1981). "The value of the food," the court found, "pales in comparison with this invasion of privacy. . . . Under these circumstances, loss to the debtors, although difficult to measure, was no less than $500. This figure includes debtors' labor in cleaning their yard, as well as mental suffering." *Id.* at 277.

[8] The court in *Hix* stated that "the issues will be treated in trespass, rather than contempt." *Id.* at 754. It is questionable whether this conduct—letters and phone calls—could be considered trespass. In any case, *Hix* demonstrates that post-1978 bankruptcy courts felt they could punish discharge violations through emotional-distress awards.

- In *In re Gibson*, a retailer who sold home appliances to the debtors made numerous threatening phone calls and attempted four times to repossess the appliances, even though a chapter 13 plan had been confirmed. 16 B.R. 682, 683 (Bankr. S.D. Ohio 1981). The court awarded damages "representing compensation for the harassment and inconvenience caused by" this conduct. *Id.* at 684–85.

Each of these cases awarding emotional-distress damages was decided before section 362(k) (then styled section 362(h)) took effect. *See* Bankruptcy Amendments and Federal Judgeship Act, § 304, Pub. L. 98-353, 98 Stat. 333, 352 (1984). As a result, they necessarily rely on the preexisting and inherent authority of the bankruptcy courts and do not rely (directly or by analogy) on section 362(k).

In the intervening years, bankruptcy courts have consistently awarded emotional-distress damages for discharge violations that approach or exceed the amount of attorney's fees and costs.[9] These awards can eclipse fees and costs by a ratio of two-to-one or more.[10] Cutting off this remedy threatens to turn contempt

[9] *E.g.*, *In re Warenski*, 2019 WL 5777657, at *4 (Bankr. D. Nev. Aug. 2, 2019) (emotional distress damages of $4,000 and fees and costs of $4,403.60); *In re Vanamann*, No. 09-33809, Dkt. 185 at 4 (Bankr. D. Nev. Sept. 21, 2016) (attorney's fees of $31,848.90); *In re Vanamann*, 561 B.R. 106, 130 (Bankr. D. Nev. 2016) (emotional-distress damages of $60,000); *In re Breul*, 533 B.R. 782, 796–97 (Bankr. C.D. Cal. 2015) (emotional-distress damages of $5,000 and fees and costs of $6,296.87); *In re Nordlund*, 494 B.R. 507, 522, 525 (Bankr. E.D. Cal. 2011) (emotional-distress damages of $40,000 and fees and costs of $37,263.18).

[10] *In re Marino*, 577 B.R. at 787–89 (affirming emotional-distress award of $119,000); *In re Marino*, No. 13-50461, Dkt. 126 at 2 (Bankr. D. Nev Nov. 4, 2016) (fees and costs of $34,955.90); *In re Go*, 2023 WL 4311405 (Bankr. D. Nev. May 9, 2023) (fees and costs of $34,647.40); *In re Go*, 651 B.R. 891, 910–11 (Bankr. D. Nev. 2023) (emotional-distress damages of $85,000); *In re Gaston*,

(footnote continued)

proceedings for willful discharge violations into a slap on the wrist. Creditors may well decide to roll the dice on collection efforts and absorb the occasional fees-and-costs award. The availability of compensation for emotional distress is, therefore, a lynchpin of protecting the fresh start that the bankruptcy discharge guarantees.

III. CONCLUSION

A fundamental goal of bankruptcy is to free debtors from harassment, anxiety, and embarrassment on account of discharged debts. Congress chose to protect these interests through an injunction, issued in every case, against actions that frustrate a debtor's fresh start. Consistent with the traditional view of civil contempt as broad and remedial, courts immediately understood the injunction as enforceable through nonpecuniary damages, since the interests it sought to protect were, at bottom, nonpecuniary ones. Disabling these nonpecuniary damages would hobble the remedial scheme that Congress developed in section 524. Provided that it hears this appeal and reaches this vital issue, the Court should affirm the BAP's opinion.

2011 WL 1434758, at *3–4 (Bankr. D. Haw. Apr. 14, 2011) (emotional-distress damages of $50,000 and fees and costs of $20,937.57).

Respectfully submitted,

s/ D. Eitan Arom

Daniel J. Bussel (State Bar No. 121939)
Eitan Arom (State Bar No. 342703)
KTBS LAW LLP
1801 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 407-4000
Facsimile: (310) 407-9090
E-Mail: dbussel@ktbslaw.com
earom@ktbslaw.com

Attorneys for Amici Curiae *National Association of Consumer Bankruptcy Attorneys and National Consumer Bankruptcy Rights Center*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 25-528

I am the attorney or self-represented party.

This brief contains 6,495 **words,** including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[X] is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
- [ ] it is a joint brief submitted by separately represented parties.
- [ ] a party or parties are filing a single brief in response to multiple briefs.
- [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/*D. Eitan Arom* **Date** Nov. 18, 2025
*(use "*s/[typed name]*" to sign electronically-filed documents)*

CERTIFICATE OF SERVICE

On November __, 2025, I served a copy of the foregoing *Brief* Amici Curiae *National Association of Consumer Bankruptcy Attorneys and National Consumer Bankruptcy Rights Center in Support of Appellees and Dismissal or Affirmance* via filing on the CM/ECF system on the following counsel of record for all parties:

Robert W. Norman, Jr.
(rnorman@houser-law.com)

Emilie K Edling
(jpearl@omm.com)

Mr. Neil Cooper
(ncooper@houser-law.com)

HOUSER & ALLISON, APC
9970 Research Drive
Irvine, CA 92618

Attorneys for Defendant-Appellants PHH Mortgage Corporation and Wells Fargo Bank, N.A., as Indenture Trustee under the Indenture Relating to the IMPAC CMB Trust Series 2005-6

Mark A. Wolff
(attorneys@wolffandwolff.com)

WOLFF & WOLFF
8861 Williamson Drive, Suite 30
Elk Grove, CA 95624

Attorneys for Plaintiff-Appellees Melanio L. Valdellon, III and Ellen C. Valdellon

s/