Case No. 25-538

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re MELANIO L. VALDELLON and ELLEN C. VALDELLON

Debtors.

PHH MORTGAGE CORPORATION *et al.*,

Appellants,

vs.

MELANIO L. VALDELLON and ELLEN C. VALDELLON,

Appellees.

Appeal from an Order of the Bankruptcy Appellate Panel
of the U.S. Court of Appeals for the Ninth Circuit
BAP No. 24-1086

APPELLANTS' REPLY BRIEF

Robert W. Norman, Jr. (Cal. Bar No. 232470)
Emilie K. Edling (Cal. Bar No. 261872)
Neil J. Cooper (Cal. Bar No. 277997)
HOUSER LLP
9970 Research Drive
Irvine, CA 92618
Telephone: (949) 679-1111
Fax: (949) 679-1112
ncooper@houser-law.com

Counsel for 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

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INTRODUCTION

Secured creditors PHH Mortgage Corporation and Wells Fargo Bank as Trustee ("Creditors") demonstrated in their Opening Brief that debtors Melanio L. Valdellon and Ellen C. Valdellon ("Debtors") had not adequately alleged a violation of Section 524(i) because they (1) admitted an incurable default on the plan in their own pleadings; (2) failed to plead that a particular payment made during their plan was not credited; and (3) failed to and could not plead a material injury. Creditors further established that the BAP erred in concluding that the failure to treat the Loan as current following the bankruptcy necessarily meant that a failure to credit occurred because this conclusion contradicted existing law, which provided for Creditors' fully secured lien to pass through bankruptcy unaffected. In their Answering Brief, Debtors fail to address such law, point to irrelevant purported evidence and non-plan payments to claim Creditors failed to credit payments, ignore their pled and indisputable default on the plan, and otherwise misstate both Creditors' positions and the relevant law. The Bankruptcy Court correctly dismissed the Debtors' claim for violation of Section 524(i), and this Court should affirm.

Further, the viability of Debtors' claim for emotional distress damages was not properly raised by Debtors on appeal and therefore not appropriately considered by the BAP, and Defendants fail to meaningfully argue otherwise. The BAP violated the party presentation principle in reversing the Bankruptcy court's ruling on

emotional distress damages, and Debtors fail to brief this Court with any independent analysis on the subject and merely incorporate the BAP's decision, which, as Creditors point out, reads *Taggart v. Lorenzen*, 587 U.S. 554, 139 S.Ct. 1795 (2019), much too narrowly. Debtors receive assistance with a proposed amicus brief by the National Association of Consumer Bankruptcy Attorneys and the National Consumer Bankruptcy Rights Center (collectively, "Amici"), but the arguments therein are not supported by law or reason. Amici assert that the goal of bankruptcy is to provide debtors freedom from "harassment, anxiety, and embarrassment on account of discharged debts," and that this somehow justifies awards for emotional distress damages against creditors impacted by debtors' bankruptcy filings. To the contrary, the purpose of the discharge injunction is to protect a discharged debtor's pecuniary interests from the lingering claims of creditors. Historically, civil contempt sanctions were limited to pecuniary damages because they only protected pecuniary interests. Indeed, Amici do not identify any historic cases that awarded nonpecuniary damages for civil contempt.

The BAP should be reversed in full, and the Bankruptcy Court's decision dismissing Creditors upheld.

ARGUMENT

I. The BAP Erred in Finding Debtors Stated a Violation of Section 524(i) and Debtors Do Not Confront the Black Letter Law

A. Creditors' Lien Rode Through the Bankruptcy Unaffected

The BAP concluded that the failure to treat the Loan as current meant that a failure to credit necessarily occurred. However, that is not accurate: Creditors were not required to treat the Loan as current after the bankruptcy because the lien rode through the bankruptcy unaffected and continued to secure all sums due on the loan. *See* Opening Brief, at 38-41.

Despite claiming that Creditors "place a bewildering amount of reliance on *In re Brawders,* 503 F3d 856 (9th Cir. 2007)," Answering Brief, at 47, Debtors do not analyze or distinguish the case, which is directly on point. Notwithstanding plan treatment, liens pass through bankruptcy unaffected. In *Brawders*, the BAP held that "the [p]lan did nothing to reduce the amount of [the County's] underlying tax assessments or affect [the County's] lien rights." *See In re Brawders*, 503 F.3d at 874. The Ninth Circuit affirmed the BAP, holding that "the BAP properly concluded that the County's lien rights were not affected by the Plan" and that the debtors "were not due a refund of the taxes paid in excess of the confirmed Plan amount." *See id.*, at 859, 863.

Debtors attempt to distinguish *Brawders* by arguing that secured liens "do not always pass through unaffected" where the plan somehow modifies the loan. *See*

Answering Brief, at 49-50. Debtors provide a list of examples, such as lien stripping, collateral valuation, etc., each of which is irrelevant because they are the exception to the rule and not pursued in this case. *See* Answering Brief, at 49. The bankruptcy plan in this case did not involve lien stripping or any other proposal to affect the lien, and, indeed, the plan explicitly stated that no such treatment was proposed. (5-ER-1013 ["No claim modification and lien retention. Each Class 1 creditor shall retain its lien."].) Where a bankruptcy plan fails to provide clear notice of and a statement of how a lien is modified, the lien passes through unaffected: *In re Brawders* is directly on point in that regard, as that case involved a plan that did not affect creditors' lien rights or reduce the amount owed on the lien. *See also In re Nomellini*, 577 B.R. 851, 857 (N.D. Cal. 2017) (plan that provided for secured claim of $10,000 did not affect lien rights; "the confirmed plan only affected [creditor's] claim against the bankruptcy estate, and not the amount of the underlying assessment debt or [creditor's] in rem rights"); *In re Nomellini*, 747 Fed. Appx. 573 (9th Cir. 2018) ("For a debtor to avoid a creditor's lien or otherwise modify the creditor's in rem rights, the debtor's confirmed plan must do so explicitly and provide the creditor with adequate notice that its interests may be impacted. [Citation.] Any ambiguity in the plan will be interpreted against the debtor."). *In re Brawders* controls and establishes that Creditors were entitled to enforce their lien rights to the full amount of the debt post-bankruptcy, notwithstanding the plan's provisions. The BAP's

holding otherwise, which cited no authority and also did not address *In re Brawders*, was erroneous and must be reversed.

Debtors also do not try to distinguish *In re Barker*, 839 F.3d 1189, 1193 (9th Cir. 2016) ("a secured creditor, who does not wish to participate in a Chapter 13 plan or who fails to file a timely proof of claim, does not forfeit its lien"), *In re Blendheim*, 803 F.3d 477, 485 (9th Cir. 2015) ("for creditors holding liens secured by property, filing a proof of claim and participating in the allowance process – indeed, participating in the bankruptcy process as a whole – is completely voluntary. A creditor with a lien on a debtor's property may generally ignore the bankruptcy proceedings and decline to file a claim without imperiling his lien"), or *In re Nomellini*, 747 Fed. Appx. 573, 573-74 (9th Cir. 2018) (lien not affected by plan).

Debtors try to distinguish the other cases with little success and simply ignore what the cases say. For instance, the Ninth Circuit BAP case, *In re Schlegal*, clearly holds: "Secured creditors in a chapter 13 case may, but are not required to, file a proof of claim. Such creditors may choose not to participate in the bankruptcy case and look to their liens for satisfaction of the debt. Secured liens pass through bankruptcy unaffected." 526 B.R. 333, 342 (9th Cir. BAP 2015) (citations omitted). Rather than confront the holding, Debtors try to distinguish it on the basis that the opinion arose from a trustee's motion to dismiss, with no explanation of how the

procedural posture of the case purportedly affected the relevant law. *See* Answering Brief, at 48-49.

Similarly, in *In re Bisch*, the Ninth Circuit BAP held: "It is clear under the Code that any statutory lien that is valid under state law remains valid through the bankruptcy unless invalidated by some provision of the Code. Thus, there is no duty on the part of the secured party to object to the confirmation of the plan, and failure to do so does not somehow constitute a waiver of the party's secured claim. … We hold that the Debtors' failure to treat the IRS' lien in their Chapter 13 plan does not affect the lien's validity." 159 B.R. 546, 550 (9th Cir. BAP 1993) (citations omitted). Debtors try to distinguish *In re Bisch* on the ground that the lien was not provided for in the plan at all (Answering Brief, at 48), with no explanation or authority for why that matters or should result in a materially different outcome than the instant case, where Debtors' plan explicitly stated that the lien would be unaffected. (5-ER-1013.)

In sum, black letter law establishes that Creditors' lien passed through bankruptcy unaffected and continued to secure all sums due on the loan. Neither the BAP's decision nor Debtors present any applicable authority to the contrary. As such, the BAP's conclusion that Creditors' failure to treat the Loan as current necessarily meant Creditors had not applied one or more payments was in error, and the BAP decision should be reversed.

B. Debtors Did Not Identify a Miscredited Payment, Ignore Their Defaults, and Point to Payments That Were Not "Under the Plan"

As noted in the Opening Brief, Debtors' SAC made conclusory allegations that payments were not credited, without identifying any specific payments that were purportedly not credited. *See* Opening Brief, at 36-37. In response, Debtors point to inapposite evidence to assert that miscrediting occurred. For instance, Creditors' monthly statements for 2019/2020 show past-due balances, and Debtors claim this shows that Creditors failed to credit payments. *See* Answering Brief, at 27-28 and 42. Debtors' inference is wrong because it assumes that Debtors had made all payments to the Trustee, and the Trustee made all payments to Creditors. That was indisputably not the case: the record before the bankruptcy court was clear that Debtors admittedly defaulted in 2018, proposed a second amended plan, then immediately defaulted on it. (5-ER-1021-1033; 5-ER-1009-1017; 5-ER-1017; 5-ER-1003; 5-ER-999-1008.) Indeed, Debtors were more than $10,000 in default as of September 2019. (5-ER-1006.) Debtors cannot show that monthly statements claiming delinquency evidence a violation because Debtors were, in fact, delinquent. The monthly statements do not push an assertion of the failure to credit across the line from possible to plausible. *Cf. Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009).

Debtors also claim the customer activity statement shows the October 2019 and later payments were misapplied, and Debtors claim that the October 2019 and

later payments were payments "under a plan" for purposes of establishing a violation of Section 524(i). *See* Answering Brief, at 28-30, 43, and 47. First, those payments were not plan payments, as was established by the first motion to dismiss and appeal. (4-ER-602-603; 3-ER-577-579.) On appeal, the District Court confirmed that post-plan payments – those made in October 2019 and later – could not be payments "under a plan." (3-ER-577-579.) Rather, as Debtors note, the plan provided for the trustee to make post-petition payments to Creditors through September 2019, *see* Answering Brief, at 21-22, so payments made by Debtors after the plan ended cannot be payments made "under a plan." Alternatively, were the Court to accept Debtors' position, the plan would not be completed until the loan matures in July 2035, well beyond the 60-month plan limit. Second, Debtors' argument again assumes Creditors had received all payments, which was admittedly not the case as of October 2019.

Debtors have not plausibly alleged that Creditors failed to credit payments received under their plan. As set forth in the previous section, the BAP's conclusion that there must have been a failure to credit was incorrect, and Debtors have not themselves identified any payment that was not credited. As such, the BAP should be reversed and the Bankruptcy Court's dismissal upheld.

C. The BAP Erred in Reversing the Bankruptcy Court's Finding that Debtors had Incurably Defaulted on their Bankruptcy Plan

The Bankruptcy Court correctly held that Debtors were in breach of the plan and that, having already exceeded the 5-year term limit, the breach was incurable. (2-ER-190-194.) As both the Bankruptcy Court and BAP acknowledged, a debtor who has not made all payments under the plan within five years has an incurable default. (2-ER-192-194; 1-ER-24-25 (both citing *Kinney v. HSBC Bank USA, N.A. (In re Kinney*), 5 F.4th 1136 (10th Cir. 2021), *cert. denied,* 143 S. Ct. 302 (2022)).) The SAC pled that Debtors "made all post-petition monthly payments *due through and including September 1, 2019 through their Chapter 13 Plan* with payments made by Chapter 13 Trustee." (3-ER-550 ¶146 (emphasis added); *accord* 3-ER-550 ¶148.) That is, since the plan was to terminate following Debtors' September 2019 plan payment, Debtors pled that their plan was not completed within 5 years. Debtors thus pled they were in incurable default. Debtors' argument that they were not permitted to address the default and that the finding of an incurable default was "contrary to the allegations in the complaint," *see* Answering Brief, at 44-45, is simply erroneous. As quoted above, Debtors pled the plan was not completed before September 2019.

Debtors argue that the Trustee's demand for payments after the 60-month plan completion deadline was simply for maintenance payments on the loan. *See* Answering Brief, at 45-46. However, that was not pled in the SAC and is not in the

record: Debtors cite "Docket numbers docket 127, 129, 131, 132, 138, 139, 140, 141, 145, 146," Answering Brief, at 46, none of which were in either Creditors' Excerpts of Record, nor Debtors' Supplemental Excerpts of Record. Nor was that an argument Debtors made to the Bankruptcy Court. *Cf. Armstrong v. Brown*, 768 F.3d 975, 981 (9th Cir. 2014) (issues not raised to the trial court are waived); *Baccei v. U.S.*, 632 F.3d 1140, 1149 (9th Cir. 2011) ("Absent exceptional circumstances, we generally will not consider arguments raised for the first time on appeal"). In addition to Debtors failing to substantiate the assertion, the assertion is plainly contradicted: the plan required payments of $6,626.00 in June 2018, then $3,685 monthly thereafter through the end of the plan. (5-ER-1017.) Debtors underpaid in June 2018 by $3,685 and did not cure that default before month 60: they never paid more than the required plan payment before March 2019 and did not pay anything in April, May, or June 2019. (5-ER-1003-04.) To the extent the Bankruptcy Court went beyond the SAC's allegations to make a factual finding of incurable default, its finding was entitled to a clear error standard of review that the BAP did not follow. *See* Opening Brief, at 34-35; *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188 (9th Cir. 2024) (disagreement with the Bankruptcy Court's finding is insufficient to overturn findings subject to the clear error standard; only if it is implausible or "the record contains no evidence to support" the finding can it be overturned).

Debtors contend that the order granting them a bankruptcy discharge is a final judgment that has res judicata or claim preclusive effect as to whether Debtors timely completed their plan. *See* Answering Brief, at 44. However, that argument was never made to either the Bankruptcy Court or the BAP, and cannot be raised now. *See Armstrong*, 768 F.3d at 981; *Baccei*, 632 F.3d at 1149. In any event, claim preclusion seems to be the wrong theory because Creditors are not bringing claims against Debtors, *i.e.,* there is no claim for claim preclusion to bar. Debtors fail to articulate and analyze issue preclusion. Still, there is nothing in the record suggesting Debtors' timely completion of plan payments was actually litigated, a necessary element for issue preclusion. *See Howard v. City of Coos Bay*, 871 F.3d 1032, 1041 (9th Cir. 2017). Additionally, it is not clear that issue preclusion would even apply: it does not apply in an ongoing proceeding, which is how contempt of the discharge injunction must be raised. *See Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 509 (9th Cir. 2002); *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186 (9th Cir. 2011); *In re Hovis*, 356 F.3d 820, 822 (7th Cir. 2004) ("issue preclusion has no role within a unitary, ongoing proceeding"); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444–45 (1911) ("Proceedings for civil contempt are between the original parties, and are instituted and tried as a part of the main cause."). Claim preclusion is the wrong theory and inapplicable, and even issue preclusion would not apply.

Debtors do not attempt to defend or otherwise argue the BAP's use of the law of the case doctrine. As noted in the Opening Brief, even if Debtors had raised the law of the case doctrine before the Bankruptcy Court (which they did not), the doctrine would have allowed the Bankruptcy Court to revisit the question of whether Debtors timely completed their plan, and the Bankruptcy Court clearly found they had not. *See* Opening Brief, at 42-44. "[Debtors] managed to receive a discharge by the good grace of the Trustee. That, however, does not change the status of the second modified plan as a plan subject to an incurable material default." (2-ER-194.)

The BAP's reversal of the Bankruptcy Court in finding that Debtors had timely completed their plan was contradicted by the SAC. Further, there is no applicable legal doctrine that forces the conclusion that Debtors timely completed their plan. The BAP was wrong to overturn the Bankruptcy Court's finding that Debtors pleaded, and the record established, an incurable default of their bankruptcy plan. The BAP's ruling should be reversed.

D. Debtors Did Not and Cannot Show Material Injury

The BAP also erred in finding that Debtors alleged a viable Section 524(i) claim because such claims require allegations showing that a material injury arose from the Section 524(i) violation. Debtors did not plead any material injury arising from the alleged failure to credit their payments. *See* Opening Brief, at 44-45.

Once again, Debtors do not confront the argument that Creditors' lien rode through bankruptcy unaffected, rendering the purported miscrediting immaterial. Instead, Debtors argue that they have been injured by Creditors' failure to treat the loan as current following their bankruptcy, which is not a purported failure to credit payments and is not an accurate statement of the law. The lien passed through bankruptcy unaffected. *See* Section I.A., *supra;* Opening Brief, at 38-41. Debtors' purported "injury" arose from the lien passing through bankruptcy unaffected, not from any misconduct of Defendants.

E. The BAP Should Be Reversed, and the Bankruptcy Court's Decision Affirmed, on Any of the Numerous, Independent Grounds

To plead a violation of Section 524(i), Debtors were required to plead that they were not in default on the plan, that Creditors failed to credit a payment as required by the plan, and that Debtors suffered material injury as a result. Here, Debtors failed to allege viable facts for each element. The failure of any of these elements is itself sufficient to dismiss the claim, reverse the BAP, and affirm the Bankruptcy Court's dismissal. This Court may and should reverse the BAP on any of these grounds.

II. The Court Should Affirm Dismissal Based on the Fair Ground of Doubt Standard

Bankruptcy Courts may only exercise civil contempt against a party where there is "*no fair ground of doubt*" that the party's conduct violated a clear court

order; here, the Bankruptcy Court's discharge order. *Taggart*, 587 U.S. at 557 (italics in original). Here, *In re Brawders* and the other authorities Creditors cited in their Opening Brief (at 38-41) stand for the proposition that a creditor may enforce its full lien post-bankruptcy (unless the lien is stripped), regardless of how the bankruptcy plan dealt with the claim. *See* Section I.A., *supra*. Accordingly, it was objectively reasonable for Creditors to believe that their lien rights were retained and continued to provide them the ability to collect all sums due, reject payments insufficient to bring the Loan current, and foreclose.

Debtors repeatedly claim that Creditors are taking the position that they were not bound by the plan, which is objectively unreasonable. *See* Answering Brief, at 31-33 and 47-50. However, Creditors do not and have never taken such a position. Creditors acknowledge that they were, e.g., not entitled to be paid more from the trustee than provided by the plan and had no right to exercise remedies outside the plan during the length of the bankruptcy. That the plan bound Creditors is a wholly separate issue from whether, after the plan and bankruptcy were completed, Creditors retained and were free to assert their full lien rights. *See In re Brawders*, 503 F.3d at 869 ("The fact that the underlying debt to Ventura may equal or approximate any arrearage has nothing to do with whether the Plan purports to affect the underlying debt or the lien securing that debt. All that the Plan did was to limit

what Ventura would be paid from the bankruptcy estate. It did not purport to affect the underlying assessment debt to Ventura or its in rem rights.").

The BAP reversed the dismissal on the grounds that Creditors' failure to treat the loan as fully current following the bankruptcy necessarily meant a violation of Section 524(i) had occurred. That does not appear to be an accurate statement of the law, and Creditors' understanding of their in rem rights, given the prevailing case law establishing that a lien is not affected by a bankruptcy plan post-bankruptcy, was not objectively unreasonable. On that additional, independent basis, the Court should reverse the BAP and affirm the dismissal in favor of Creditors.

III. The BAP's Emotional Distress Damages Holding Should be Vacated

A. Debtors Did Not Properly Raise the Issue of Emotional Distress Damages on the BAP Appeal

Notwithstanding Debtors' clear failure to object to the Bankruptcy Court's ruling on emotional distress damages in their statement of issues for their appeal (2-ER-104-107), summary of argument (2-ER-137-141), or even their table of contents (2-ER-98), Debtors contend that they "present[ed]" the emotional distress damages issue in an easily overlooked, three-sentence paragraph in their Opening Brief to the BAP. *See* Answering Brief, at 52 (citing 2-ER-152-153). Specifically, Defendants mentioned the words "emotional distress" and noted that the issue was moot due to the Bankruptcy Court's ruling, while asserting – without citation to authority – that other courts have held emotional distress damages are available. Debtors offered

neither a coherent argument nor any authority.[1] (2-ER-152-153.) Accordingly, Debtors abandoned any argument that emotional distress damages were available before the BAP by failing to adequately brief the argument. *See, e.g., Badgley v. United States*, 957 F.3d 969, 978-79 (9th Cir. 2020) ("Badgley's argument regarding the formula is limited to two sentences and two footnotes, without a single citation to legal authority. As we have previously held, arguments presented in such a cursory manner are waived."); *Christian Legal Soc. Chapter of University of California v. Wu*, 626 F.3d 483, 485 (9th Cir. 2010) (issue must be presented in statement of issues, summary of argument, and argument); *Sekiya v. Gates*, 508 F.3d 1198, 1200 (9th Cir. 2007) ("Bare assertions and lists of facts unaccompanied by analysis and completely devoid of caselaw fall far short of the requirement"). As the issue of emotional distress damages was not properly before the BAP, the BAP violated the party presentation principle by addressing and reversing the Bankruptcy Court's holding as to the unavailability of emotional distress damages. *See* Opening Brief, at 48-49. The portion of the BAP's decision addressing emotional distress damages

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[1] In full, Debtors stated:

> I. The Bankruptcy Court's ruling with respect to the ability of the Court to award damages for emotional distress in connection with a claim under 11 U.S.C. 524(i)
>
> Issue was made moot by the Bankruptcy Court's dismissal of the first cause of action. Valdellons argue that the "old soil" related to the enforcement of injunctions has given rise to the court's ability to award emotional distress damages when an injunction is violated. That old soil has led to multiple cases and courts awarding emotional distress damages in an attempt to make debtors whole and give debtors the benefit of the Court's orders.

should be vacated for that simple reason, without the need to address the validity of its reasoning.

B. Debtors Fail to Defend the BAP's Holding

Debtors purport to simply "adopt the BAP opinion with respect to the availability of emotional distress damages," Answering Brief, at 53. However, as noted in the Opening Brief, the BAP read *Taggart* too narrowly, stating *Taggart* "did not address the range of permissible compensatory damages available under civil contempt, nor did it hold that courts should not look to § 362(k) by analogy in deciding compensatory damages for civil contempt." (1-ER-27.) However, *Taggart* did reject looking to Section 362(k) by analogy, and its holding that a bankruptcy court's use of civil contempt "brings the old soil with it" necessarily limits bankruptcy courts to traditional remedies. *See Taggart*, 587 U.S. at 560, 565. Debtors do not seriously challenge or address Creditors' argument as to the errors in the BAP's holding, and the BAP was wrong in concluding that emotional distress damages are available. *See* Opening Brief, at 49-51.

C. Amici's Arguments Mistake the Scope of the Bankruptcy Court's Civil Contempt Remedy and Purpose of the Discharge Injunction

Amici do not address the fact that the BAP should not have addressed the availability of emotional distress damages at all because the issue was not validly before it. Instead, Amici simply jump into the argument that emotional distress damages are an appropriate remedy for violations of the discharge injunction.

Amici's analysis for awarding emotional distress damages as part of civil contempt does not withstand scrutiny. Civil contempt provides redress for pecuniary injury or its equivalent, not expansive nonpecuniary interests. Further, Amici misrepresent the long-established principle that the purpose of bankruptcy protection is to allow a "fresh start" to debtors, arguing that this principle supports recognition of an award for emotional distress damages. The history of legislative intent to provide a "fresh start" to debtors is to protect debtors' pecuniary interests, not to allow them compensation for emotional distress. Finally, Amici fail to provide historic civil contempt cases compensating an aggrieved for emotional distress damages.

1. Amici Ignore the Limits of Bankruptcy Courts and Inflate the Historic Purpose of the Civil Contempt Power

Amici begin their argument by asserting that civil contempt is a "broad, inherent power," citing the inherent authority Article III courts possess and stating that civil contempt is not subject to limitations. *See* Amicus Brief, at 7-9. However, bankruptcy courts are not Article III courts and lack the same powers, having only those that Congress has given. *See, e.g., Matter of Highland Capital Management, L.P.*, 98 F.4th 170, 174 (5th Cir. 2024). Indeed, bankruptcy courts do not enforce the discharge injunction of Section 524(a) through any inherent authority, but only through the authority expressly granted in Section 105(a). *E.g., Taggart*, 587 U.S. 559-60.

Even for Article III courts, the contempt power has long been circumscribed. As initially enacted, "[t]he law happily prescribes the punishment which the court can impose for contempts. The seventeenth section of the Judiciary Act of 1789 declares that the court shall have power to punish contempts of their authority in any cause or hearing before them, by fine or imprisonment, at their discretion. The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment." *Ex parte Robinson*, 86 U.S. 505, 512 (1873) (unprescribed punishment was void); *accord Gompers*, 221 U.S. at 450–51 ("Congress, in recognition of the necessity of the case, has also declared (Rev. Stat. 725, U. S. Comp. Stat. 1901, p. 583) that the courts of the United States 'shall have power . . . to punish by fine or imprisonment . . . contempts of their authority,' including 'disobedience . . . by any party . . . to any lawful . . . order . . . of the said courts.'"). In addition to prescribing the mode of punishment, courts were prescribed in purpose. "The act of 1831 is, therefore, to [Circuit and District Courts] the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: …. As thus seen the power of these courts in the punishments of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and

processes." *Ex parte Robinson*, 86 U.S. at 511; *accord In re Chiles*, 89 U.S. 157, 168 (1874) ("The exercise of this power has a two-fold aspect, namely: first, the proper punishment of the guilty party for his disrespect to the court or its order, and the second, to compel his performance of some act or duty required of him by the court, which he refuses to perform."). Bankruptcy courts are limited to civil contempt, *Matter of Highland Capital Management, L.P.*, 98 F.4th at 174 (quoting and relying on *In re Bradley*, 588 F.3d 254, 266 (5th Cir. 2009)), thus limiting the purpose of their contempt power to compelling obedience to their orders.

Amici cite *Michaelson v. U. S. ex rel. Chicago, St. Paul, Minnesota & Omaha Ry. Co.*, 266 U.S. 42, 66 (1924) for the proposition that the contempt power "cannot 'be abrogated nor rendered practically inoperative,' and limits must be 'of narrow scope' and carefully limited.'" Amicus Brief, at 8-9. However, *Michaelson* was speaking to "the power to punish for contempts" and the statute requiring a jury for criminal contempt of the Clayton Act being "of narrow scope" and "carefully limited." *Michaelson*, 266 U.S. 42, 65-67; *accord id.*, at 65 ("the statute, reasonably construed, relates exclusively to criminal contempts"). So too, the other case relied upon by Amici, *Green v. U.S.*, 356 U.S. 165 (1958), rejected a limit on criminal contempt sanctions. *See Green*, 356 U.S. at 183-85 ("The claim is that proceedings for criminal contempts, if contempts are subject to prison terms of more than one year, must be based on grand jury indictments…"). As bankruptcy courts lack the

same criminal contempt power, *Matter of Highland Capital Management, L.P.*, 98 F.4th at 174; *In re Dyer*, 322 F.3d 1178, 1193 (9th Cir. 2003), the purported prohibition against limitations and the corresponding unlimited view of the contempt power are not applicable.

Rather than a broad inherent mandate to punish contemnors and validate their own power, bankruptcy courts are limited by tradition and statute to use civil contempt sanctions where "necessary or appropriate" to "carry out" other bankruptcy provisions. *See Taggart*, 587 U.S. at 560 (quoting 11 U.S.C. § 105(a)).

2. Historically, the Civil Contempt Remedy was Limited to Pecuniary Damages

Taggart changed the civil contempt landscape and reined in the practice, both rejecting reasoning by analogy to Section 362 and holding that the "old soil" of civil contempt constrained courts. The "old soil," *i.e.,* historic practice, shows that civil contempt was limited to, at most, pecuniary damages.

As noted in the Opening Brief, contrary to the BAP's decision, the *Taggart* Court distinguished the automatic stay statute from the discharge injunction statute, and rejected reasoning by analogy to Section 362. *See* Opening Brief at 49-51. In *Taggart*, the debtor argued that the Court should adopt a standard for determining whether a violation of the discharge injunction occurred that was akin to that of the automatic stay. *See Taggart*, 587 U.S. at 564. However, after comparing the statutes, the Supreme Court concluded that substantial "differences in language and

purpose sufficiently undermine[ed] [the debtor's] proposal to warrant its rejection." *Id*. at 565. As *Taggart* held that Section 362 cannot be looked to for guidance on civil contempt enforcement of a discharge injunction and rejected reasoning by analogy to Section 362 is impermissible, pre-*Taggart* cases that decide the availability of emotional distress damages based on Section 362 cannot be relief upon. Though Amici cite a number of Section 362 cases, those cases are inapposite precisely because they award damages under Section 362.

In holding that a bankruptcy court's use of civil contempt was constrained by "the 'old soil' that has long governed how courts enforce injunctions," *see Taggart*, 587 U.S. at 560, the Supreme Court necessarily limited not only the mode of enforcement but the remedies. *See also id*., at 1802 ("traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context"). Both in practice and in the language used, historical cases show that civil contempt was limited to, at most, pecuniary damages. Emotional distress is a nonpecuniary damage. *See, e.g., F.A.A. v. Cooper*, 566 U.S. 284, 302 (2012) ("nonpecuniary mental and emotional harm"); *U.S. v. Alvarez*, 567 U.S. 709, 749 n. 14 (2012) (Alito, J., with whom Scalia, J., and Thomas, J., joined, dissenting) ("the harm remedied by the torts of defamation, intentional infliction of emotional distress, and false-light invasion of privacy is often nonpecuniary in nature"); *Bohac v. Department of Agriculture*, 239 F.3d 1334, 1336, 1341 (Fed. Cir. 2001); *Rouse v. U.S. Dept. of*

State, 567 F.3d 408, 417 (9th Cir. 2009) (referring to "extreme emotional distress and other nonpecuniary harms").

Some early cases are explicit that the measure of civil contempt is pecuniary loss. For instance, *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418 (1911) repeatedly stated that pecuniary damages was the measure of the remedy in cases involving a violation of a negative injunction: "[t]he only possible remedial relief for such disobedience would have been to impose a fine for the use of complainant, measured in some degree by the pecuniary injury caused by the act of disobedience." *Gompers*, 221 U.S. at 443–44; *accord id.*, at 442 ("Imprisonment cannot undo or remedy what has been done, nor afford any compensation for the pecuniary injury caused by the disobedience."). Similarly, "[i]t is well settled" that the fine is for the "special damages," as opposed to general damages, that the party has suffered because of the contempt. *See Parker v. U. S.*, 126 F.2d 370, 380 (1st Cir. 1942).

In other cases, the courts refer to the measure as "actual losses." For instance, the Supreme Court has held that the measure of civil contempt sanctions could "compensate the complainant for losses sustained" and, "[w]hen compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss." *U.S. v. United Mine Workers of America*, 67 S.Ct. 677, 701, 330 U.S. 258, 303–04 (1947). Indeed, *Taggart* itself quoted *United States v. Mine Workers* to the effect that the civil contempt power

includes the authority to "'compensate the complainant for losses' stemming from the defendant's noncompliance with an injunction." *Taggart*, 587 U.S. at 560-61. "Actual losses" is distinct from "damages," and historically consisted of pecuniary harm. *See, e.g.,* Stewart Rapalje, *A Treatise on Contempt Including Civil and Criminal Contempts of Judicial Tribunals, Justices of the Peace, Legislative Bodies, Municipal Boards, Committees, Notaries, Commissioners, Referees and Other Officers exercising judicial and quasi-judicial functions*, L.K. Strouse & Co., Law Publishers (1884) at §§ 131 and 133 ("the 'loss or injury' for which the court may award compensation to the injured party, is a pecuniary loss or injury for which the party injured may recover damages by an action").[2]

Although the Supreme Court in *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448 (1932), affirmed a civil contempt sanction of lost profits, generally regarded as a nonpecuniary harm because it is the measure of benefit to the contemnor rather than the actual loss to the injured, that does not truly negate pecuniary injury as the limit for civil contempt. In the patent context, lost profits are an equivalent or substitute measure of the pecuniary harm the patent holder suffers

[2] Available at https://play.google.com/books/reader?id=G6xGAQAAMAAJ&pg=GBS.PP1&hl=en (last visited January 8, 2026).

from the invasion of its rights. *See Leman*, 284 U.S. at 456 (*quoting Mowry v. Whitney*, 14 Wall. 620, 653, 81 U.S. 620 (1871)).

Indeed, where courts look to historical precedent to determine whether emotional distress damages were part of the relief afforded by civil contempt, they find no support and, consequently, deny such damages. *See, e.g., In re Walters*, 868 F.2d 665, 670 (4th Cir. 1989) ("no authority is offered to support the proposition that emotional distress is an appropriate item of damages for civil contempt, and we know of none"); *McBride v. Coleman*, 955 F.2d 571, 577 (8th Cir. 1992) ("we do not believe civil contempt to be an appropriate vehicle for awarding damages for emotional distress"); *U.S. v. Harchar*, 331 B.R. 720, 730 (N.D. Ohio 2005) ("There is little indication that awarding damages for emotional harm was commonplace under the bankruptcy court's traditional contempt procedures – or in *any* contempt procedures familiar to Congress in 1984.")

3. Amici Fail to Present Any Historic Cases of Nonpecuniary Civil Contempt Awards

Amici present just two historical cases of nonpecuniary damages purportedly being awarded: *Robins v. Frazier*, 52 Tenn. 100 (1871), and *In re Tift*, 11 F. 463 (D.C. N.Y. 1881). *See* Amicus Brief, at 11. However, neither holds that a civil contempt fine may include nonpecuniary damages.

The case of *Robins v. Frazier*, 52 Tenn. 100 (1871), is not correctly read as a civil contempt case and instead supports limiting civil contempt to pecuniary

damages. There, the court acted pursuant to statutory authority and for criminal contempt. *See Robins*, 52 Tenn. at 103-05. Indeed, the court noted that in cases "of infringements of rights, or non-performance of duties created or imposed by the law, in which there is no element of fraud, willful negligence or malice, the compensation recovered in damages consists solely of the direct pecuniary loss." *Id*., at 104-05. Thus, the understanding was that civil contempt was limited solely to "direct pecuniary loss." However, in a sufficient case, the law "blends together the interest of society and of the aggrieved individual, and gives damages not only to recompose the sufferer, but to punish the offender." *Id*., at 105. That is precisely what the *Robins* court did: it went beyond civil contempt to punish the contemnor in accordance with the indignation of the community. *See id*., at 105-106. *Robins* did not award damages for indignation and suffering as a civil contempt remedy, but as a criminal contempt punishment.

Amici cite *In re Tift*, 11 F. 463 (D.C. N.Y. 1881), as a case allowing a fine exceeding actual damage for inconvenience. *See* Amicus Brief, at 22. However, that is not what the court did. The court noted that "[t]he bankrupt has also and properly instituted this proceeding, which has been protracted, and at every step stoutly contested. He should be fully reimbursed for all the expenses incurred thereby." *In re Tift*, 11 F. at 467. Thus, in addition to actual, pecuniary damages, the court held "that there be added to said sum the sum of $1,000, in reimbursement

of the expenses and trouble caused to said Tift by this proceeding." *Ibid*. The addition was not to compensate the debtor for his mental health or other nonpecuniary interests, but to offset his litigation expenses. The fine made payable to a complainant in a civil contempt case had long been for the costs of enforcing the injunction. *See, e.g., Cary Manufacturing Co. v. Acme Flexible Clasp Co*., 108 F. 873, 874 (2nd Cir. 1901) ("The power of the circuit court to direct the payment of a part or all of the fine to the complainant in an application for contempt, as a compensation for his time and outlay in prosecuting the application, has been often recognized in the circuit courts, especially in this circuit; and in practice is a power which ought to be exercised when the expenses and trouble to which the complainant has been subjected justify its exercise."); *Indianapolis Water Co. v. American Strawboard Co*., 75 F. 972, 980 (C.C.D. Ind. 1896) ("As the complainant was fully justified in moving against the defendant and its general manager, it is entitled to costs, with a moderate allowance for its solicitors' fees."); *Dias v Merle*, 2 Paige Ch. 494, 496 (N.Y. Ch. 1831) ("As this is a case in which the defendant has been put to expense for counsel fee, &c., beyond the amount of the taxable costs in consequence of this unjustifiable act of the complainant, an attachment must issue against him, unless he… pay to the defendant Merle, or to his solicitor, his costs on this application, together with reasonable counsel fees as between counsel and client"); *In re North Bloomfield Gravel-Min. Co*., 27 F. 795, 800 (C.C.D. Cal. 1886) ("Let

judgment for a fine of $1,500 be entered, with costs. As a compensation, in part, for the large expenses that must have been incurred in procuring evidence and prosecuting this proceeding for contempt, the money, when collected, will be paid over to complainant or his solicitors"); *Board of Trade of City of Chicago v. Tucker*, 221 F. 305, 307 (2nd Cir. 1915) ("It is well settled, however, in such cases, that the court may undertake to reimburse complainant for the expense to which it has necessarily been put in enforcing the disregarded order of the court.")

That courts could and did punish criminal contemnors and award prosecution costs as a fine against civil contemnors does not support the position that civil contempt fines traditionally included nonpecuniary damages.

4. The Fresh Start Policy is Misstated and Has No Application Here

Amici argue that the historical development of bankruptcy law focused on providing a "fresh start" to discharged debtors, but fail to explain how this legislative history supports allowing a windfall to parties who claim emotional distress post-discharge. *See* Amicus Brief, at 15-22. While a person with a fresh economic start might incidentally feel relief, what the legislature protected through the discharge injunction was a financial fresh start; the fresh start intended by legislators was not a state of mind a debtor enjoyed, but a fresh start from debilitating debts. *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 in business or commercial life, freed from the obligation and responsibilities which may have resulted from business misfortunes."). Indeed, the legislative history cited by Amici shows that the legislature was concerned with preventing abusive collection practices that would undermine the discharge's economic purpose, not with compensating emotional harm. *See* Amicus Brief, at 16-20. Continuing a quote begun by Amici, creditors "are informed expressly that if their claims are discharged they may not thereafter seek to obtain personal liability upon [debtor] in another court and, in fact, are enjoined from doing so. Thus, harassment lawsuits should be eliminated and the bankruptcy freed of the necessity to retain legal assistance in another court to assert his discharge and to be unburdened from the effects of judgments which today are not rightfully obtained either through default or 'sewer service.'" *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 98 (U.S. Gov't Printing Off. 1969) (Dkt. 31-3 herein). It is not mental harassment that debtors were freed from, but of subsequent litigations that had theretofore made the discharge's economic effect illusory. *Cf.* Amicus Brief, at 20

Amici further argue that "the last piece of the puzzle" for Chapter 13 debtors fell into place with Rule 3002.1, and argue in a footnote that "[p]lacing emotional-distress damages outside the contempt power of the bankruptcy courts would

effectively gut the protections of Rule 3002.1 in the Ninth Circuit." Amicus Brief, at 20-23 and n.7. However, Amici's argument assumes emotional distress is and should be within the ambit of the bankruptcy court, which they have not shown. Where Rule 3002.1 applies, it provides for sanctions. *See* Fed. R. Bankr. P. 3002.1(h); Advisory Comment to 2025 Amendment ("Subdivision (h) was previously subdivision (i). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take"). Those sanctions, notably, do not include any form of damages, but authorize "reasonable expenses and attorney's fees," *i.e.,* the traditional civil contempt fine for enforcement. *See* Fed. R. Bankr. P. 3002.1(h); Section I.C.3., *supra*.

In addition to Amici misstating the nature of the discharge's fresh start as being a psychological freedom rather than an economic one, they largely gloss over the fact that the Loan was not discharged, and Rule 3002.1 did not apply in this case. The court may grant a discharge of debts "except any debt – (a) provided for under section 1322(b)(5)." 11 U.S.C. § 1328(a)(1). Debts provided for under Section 1322(b)(5) include a "secured claim on which the last payment is due after the date on which the final payment under the plan is due." 11 U.S.C. § 1322(b)(5). The Loan was such a debt. (5-ER-1053.) Further, Rule 3002.1 applies only to primary residences, Fed. R. Bankr. P. 3002.1(a), and the Bankruptcy Court correctly found that the Property was not Debtors' primary residence and Rule 3002.1 was

inapplicable. (4-ER-669-676.) That is, the mistaken psychological policy considerations Amici raise to the Court are not even applicable to the present case.

Amici do not cite any apposite authority that, properly read, stands for the proposition that the discharge injunction intends to provide a discharged debtor with peace of mind. Rather, the discharge injunction's fresh start concerns pecuniary interest, with any mental relief being an incidental side-effect. Using contempt to provide a remedy for mental injury is a recent development, unintended by the history and purpose of the discharge injunction, and effectively constitutes courts legislating where Congress has not. Congress can make a remedy if it desires. Congress has not done so, and courts should not transgress into Congress's domain.

5. Emotional Distress Damages Are Not a Civil Contempt Remedy

In summary, Amici misread the history of the discharge injunction's fresh start as having, as its primary purpose, the protection of a debtor's mental well-being and thus conclude it is worthy of protection through civil contempt emotional distress damages. The fresh start provided by the bankruptcy code was historically, and remains, an economic one, with the legislative history showing that amendments were intended to ensure that debtors received the financial benefits of discharge. While, over the past 50 years, there has been a significant expansion of relief granted to debtors, the Supreme Court has reined in civil contempt, returning it to its traditional roots. *See Taggart*, 587 U.S. at 560-61. Amici fail to identify historic

civil contempt awards for emotional distress. Instead, historic cases show that civil contempt provides a remedy for pecuniary interests, not nonpecuniary ones. *E.g.*, *Gompers*, 221 U.S. at 442-44; *Parker*, 126 F.2d at 380 (1st Cir. 1942); *Robins*, 52 Tenn. at 104-05. The BAP's decision on the availability of damages for emotional distress should therefore be reversed.

IV. Punitive Damages are a Non-Issue

Debtors argue that punitive damages are appropriate. *See* Answering Brief, at 53-54. Neither the Bankruptcy Court, nor the BAP, nor the Opening Brief mentions or refers to punitive damages, so it is unclear what Debtors think they are responding to. It is established law in the Ninth Circuit that only mild fines, not serious punitive damages, are awardable. *See, e.g., In re Marino*, 577 B.R. 772, 788 (9th Cir. BAP 2017). Debtors' $4,500,000 punitive damages demand is not a mild fine. (3-ER-558.) Regardless, punitive damages are not properly an issue in the present appeal because there is nothing to appeal, and Debtors' argument may be passed over.

CONCLUSION

For the foregoing reasons, Creditors request that the Court vacate the decision of the BAP and affirm the Bankruptcy Court's judgment for Creditors.

Dated: January 23, 2026

HOUSER LLP

By: /s/ Neil J. Cooper
Robert W. Norman, Jr.
Emilie K. Edling
Neil J. Cooper
Attorneys for 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

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HOUSER LLP

By: /s/ Neil J. Cooper
Robert W. Norman, Jr.
Emilie K. Edling
Neil J. Cooper
Attorneys for 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