NOT FOR PUBLICATION

FILED

APR 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELANIO L. VALDELLON and ELLEN C. VALDELLON, Plaintiffs - Appellees, v. PHH MORTGAGE CORPORATION et al, Defendants - Appellants.	No. 25-538 BAP No. 24-1086 MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Scott H. Gan, Frederick Philip Corbit, and Julia W. Brand, Bankruptcy Judges, Presiding

Argued and Submitted March 4, 2026
San Francisco, California

Before: M. SMITH and R. NELSON, Circuit Judges, and MORRIS, Chief District Judge.**
Partial Concurrence and Partial Dissent by Judge R. NELSON.

Plaintiffs-Appellees Melanio L. Valdellon and Ellen C. Valdellon ("Debtors")

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Brian M. Morris, United States Chief District Judge for the District of Montana, sitting by designation.

filed a bankruptcy petition for relief under Chapter 13. The bankruptcy trustee ("Trustee") filed a Notice of Completion of Plan Payments and Notice of Final Cure Payment ("NOFC") on September 27, 2019. Defendant-Appellant PHH Mortgage Corporation and Wells Fargo Bank, N.A. (collectively "Creditors") filed a response to the NOFC on October 18, 2019. Creditors agreed that Debtors cured in full pre-petition arrears and that Debtors were current on post-petition monthly mortgage payments. The Bankruptcy Court entered a discharge on June 1, 2020.

Debtors subsequently filed an adversary proceeding and second amended complaint ("SAC") against Creditors pursuant to 11 U.S.C. § 524(i), alleging violations of the discharge order, which acts as an injunction. The Bankruptcy Court dismissed Debtors' SAC for failure to state a claim. The Bankruptcy Appellate Panel ("BAP") reversed and remanded. BAP concluded (1) that Debtors sufficiently alleged a claim pursuant to § 524(i), and (2) that emotional distress damages are a potential contempt remedy. Creditors appeal BAP's decision. Because the parties are familiar with the facts of this case, we do not recount the facts in full here except as necessary to provide context for our ruling.

We review de novo a ruling on a motion to dismiss. *See Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768, 772 (9th Cir. 2002). We must accept as true all factual allegations contained in the complaint and must draw all reasonable inferences in the plaintiff's favor. *Id.*

1. We have jurisdiction pursuant to 28 U.S.C. § 158(d)(1) to review BAP's decision reversing, in part, the Bankruptcy Court's dismissal of the SAC, and remanding. Courts of appeal have jurisdiction to review "all final decisions, judgments, orders, and decrees" issued by BAP. 28 U.S.C. §§ 158(b)(1), (d)(1). A BAP order "is considered final 'where it 1) resolves and seriously affects substantive rights and 2) finally determines the discrete issue to which it is addressed.'" *In re SK Foods, L.P.*, 676 F.3d 798, 802 (9th Cir. 2012) (quoting *In re AFI Holding,* 530 F.3d 832, 836 (9th Cir. 2008)).

Courts of appeal may review a BAP order that remands to the bankruptcy court if the following factors weigh in favor of review: "(1) the need to avoid piecemeal litigation; (2) judicial efficiency; (3) the systemic interest in preserving the bankruptcy court's role as the finder of fact; and (4) whether delaying review would cause either party irreparable harm." *In re Gugliuzza*, 852 F.3d 884, 894 (9th Cir. 2017) (quoting *In re Perl*, 811 F.3d 1120, 1126 (9th Cir. 2016)). BAP's order affected the parties' substantive rights and disposed of the legal issues between the parties regarding the plausibility of Debtors' § 524(i) claim and the question whether emotional distress damages are available. BAP held that Debtors sufficiently had stated a claim under § 524(i) by alleging that Creditors had failed to give Debtors' plan payments their curative effect and that bankruptcy debtors could recover emotional distress damages as a civil contempt remedy even in the

wake of *Lorenzen v. Taggart (Taggart)*, 587 U.S. 554 (2019). BAP remanded to the Bankruptcy Court for further proceedings consistent with its disposition. We conclude that our resolution of the legal questions raised on appeal would avoid piecemeal litigation and prevent the parties from later climbing back up the appellate ladder on the same issues. *See Ocwen Loan Servicing LLC v. Marino (In re Marino)*, 949 F.3d 483 (9th Cir. 2020).

2. We agree with BAP that the Bankruptcy Court erred in concluding that Debtors failed to state a claim under § 524(i) for contempt sanctions. Creditors may not willfully fail to credit payments received under a bankruptcy plan unless the plan is in default. 11 U.S.C. § 524(i). Doing otherwise is a violation of the discharge injunction. *Id.* Debtors' proof of claim on Creditors' loan stated arrears of $19,140.48 to be paid by Trustee to Creditors under the plan. Debtors' SAC sufficiently alleged that they had cured arrears with total payments of $19,140.48 made under the plan. Debtors alleged that Creditors misapplied payments to pre-petition arrears, rather than applying payments to the on-going monthly mortgage payments. This alleged misapplication resulted in the appearance of a delinquency in Debtors' on-going monthly mortgage payments. Creditors' own records reflect that Creditors applied $20,623.04 during the bankruptcy proceedings toward pre-petition arrears. The alleged misapplication of Trustee payments to pre-petition arrears rather than to the monthly mortgage payment is sufficient to allege a willful

misapplication of payments under the plan under § 524(i).

We also agree with BAP that whether Debtors were in incurable default is "not determinative of their ability to assert a § 524(i) violation." Section 524(i) prohibits a creditor from willfully failing to credit payments received under a plan unless "the plan is in default." BAP determined that a debtor's cure of a plan default requires creditors to give curative effect to the payments received under the plan. We agree.

The Bankruptcy Court relied on *In re Kinney*, 2019 WL 7938815 (Bankr. D. Colo. Feb. 27, 2019), *aff'd*, *Kinney v. HSBC Bank USA, N.A. (In re Kinney)*, 5 F.4th 1136 (10th Cir. 2021), to make its determination on Debtors' incurable material default. The Bankruptcy Court in *Kinney* determined that the debtors' failure to make the last three mortgage payments within the five-year plan term represented a "material default." *Id*. at *10. *Kinney* dismissed the bankruptcy proceedings without entering discharge after the creditor filed a motion to dismiss. *Id*. at *11.

Here, in contrast, Debtors completed all plan payments owed to Creditors. Creditors did not object to Trustee's NOFC, which stated that Trustee had paid pre-petition arrears in full and that Debtors were current on the loan. Creditors also did not argue at that time that Debtors materially defaulted by making payments outside the 60-month term. Most importantly, the Bankruptcy Court concluded that all plan payments had been completed under the plan and entered a discharge, despite

Debtors having made the final three payments after the 60-month term. The Bankruptcy Court's discharge is now final and not subject to revocation or reversal. *See* 11 U.S.C. § 1328(e). Debtors' completion of plan payments and the Bankruptcy Court's final entry of discharge precludes a finding that the "plan is in default" at the time Debtors allege Creditors misapplied payments under the plan.

BAP correctly held that Debtors are not precluded from seeking relief pursuant to § 524(i) where they plausibly allege that Creditors failed to treat the arrears as satisfied and reinstate the loan after Debtors completed all plan payments and cured the alleged defaults, and the Bankruptcy Court entered discharge. Debtors allege that Creditors continued to send them monthly statements following the completion of plan payments that indicated unsatisfied arrears and "past unpaid amounts." Thus, Debtors sufficiently alleged that Creditors failed to treat the arrears as satisfied upon completion of the plan due to miscrediting. These allegations allow Debtor to seek relief pursuant to § 524(i).

We find unpersuasive Creditors' argument that even if Creditors miscredited pre-petition amounts due rather than post-petition amount due, its lien passed through bankruptcy unaffected and secured all sums due on the loan. Section 524(i) "simply enforces the plan provisions and ensures that the completion of the plan will actually result in a fresh start for the debtor." *In re Pompa*, 2012 WL 2571156, at *8 (Bankr. S.D. Tex. June 29, 2012). Debtors' bankruptcy plan provided that Debtor's

completion of the plan payments would cure all pre-petition arrears and make Debtors current on their loan with Creditors. Debtors have plausibly alleged that Creditors' miscrediting of plan payments prevented such a result. Accordingly, Debtors sufficiently have alleged a § 524(i) violation.

3. The Bankruptcy Court also erred by dismissing the SAC because it found that Creditors had an objectively reasonable basis for asserting that Debtors' loan was in default following the bankruptcy discharge and that Creditors did not violate the discharge injunction. We agree with BAP that Creditors lacked an objectively reasonable basis to declare Debtors in default following the bankruptcy discharge. Creditors' own alleged miscrediting undermines any fair ground of doubt.

"[A] court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." *Taggart*, 587 U.S. at 557. BAP correctly concluded that completion of a bankruptcy plan reinstated Creditors' loan and Creditors' failure to reinstate the loan is sufficient to plausibly suggest that Creditors failed to credit Debtors' payments. BAP appropriately determined that the proof of claim and confirmation order fixed the curative amount of prepetition arrears at $19,140.48.

It appears that the parties had agreed at one point that the loan remained post-

discharge. Debtors allege that they made monthly post-plan payments to Creditors beginning in October 2019. Debtors allege that Creditors accepted all monthly payments from October 2019 through June 2020. However, Creditors allegedly did not accept the monthly payment in July 2020 or any future payments from Debtors because the amounts tendered were insufficient to bring the loan current. The dispute seemed to be not whether the loan remained, as the parties now dispute, but whether Debtors were in default on their payments.

We agree with BAP that the pre-petition arrears were satisfied once Debtors completed the payments outlined within the proof of claim and the default was cured. We agree with BAP's conclusion that the Bankruptcy Court erred by holding that Debtors were precluded from relief pursuant to § 524(i). Instead, the discharge order established that Debtors had completed their plan and received a discharge. A plan cannot be discharged while in default. We agree with BAP that the discharge order is a final order that established timely completion of payments under the bankruptcy plan.

Debtors further argue that no objectively reasonable explanation exists for Creditors' failure to use the numerous available opportunities to ensure full payment of the pre-petition arrears, or to dispute the amount being paid through the Chapter 13 Plan, only to later decide that Debtors had underpaid them. We agree. Creditors may have had a reasonable basis to believe the loan passed through bankruptcy

unaffected. But Debtors have alleged that Creditors concluded that Debtors were in default and refused to accept Debtors' payments based on their own miscrediting, which undermines any fair ground of doubt that Creditors' conduct was lawful.

4. BAP did not err in determining that emotional distress damages are an available contempt remedy, and *Taggart* does not change our analysis. BAP did not violate the party presentation principle by addressing an issue that was both raised by Debtors in their opening appellate brief and addressed by the Bankruptcy Court. Creditors had a chance to respond. *See United States v. Yates*, 16 F.4th 256, 270–71 (9th Cir. 2021); *see generally United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020).

In *Taggart*, the Court concluded that courts must consider the "old soil" of traditional civil contempt principles when evaluating their authority in bankruptcy contempt proceedings. 587 U.S. at 560–61. *Taggart* determined that the "old soil" does "not grant courts unlimited authority to hold creditors in civil contempt." *Id*. at 561. *Taggart* reasoned that instead "the bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction." *Id*. *Taggart* further stated that "[t]hese traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context." *Id*. *Taggart* addressed mainly *when* civil contempt is appropriate. *Taggart* did not directly address what remedies, or measures of

damages, are proper when a party is held in civil contempt by a bankruptcy court. *Taggart* provides no specific limitations on courts determining which civil contempt remedies prove appropriate in the bankruptcy discharge context. The Bankruptcy Court and BAP reached different conclusions about the implications of *Taggart*'s reasoning for the availability of specific civil contempt remedies. We agree with BAP's conclusion.

BAP reasoned that it, and the Ninth Circuit, previously determined in *In re Marino* that bankruptcy courts can award compensatory damages for emotional distress and that *Taggart* did not alter a bankruptcy court's authority to do so. *See In re Marino*, 577 B.R. 772, 788 (9th Cir. BAP 2017), *aff'd in part & dismissed in part*, 949 F.3d 483 (9th Cir. 2020). BAP reasoned that *Taggart* should be limited to its holding, which did not address the range of permissible compensatory damages under civil contempt. We are likewise persuaded that *Taggart* should not be read to limit the range of available compensatory losses based on a discharge violation. We decline to extend the holding in *Taggart*, particularly when it is not clear that the Bankruptcy Court will award emotional distress damages here at all, and if it does, in what amount. *Taggart* did not effectively abrogate the holding in *In re Marino*, which we find persuasive.[1] *Taggart*'s reasoning casts doubt upon the usefulness of

[1] Although BAP suggested otherwise, our court did not review the question whether bankruptcy courts can award emotional distress damages on its merits in *In re Marino*. *See In re Marino*, 949 F.3d 483 (9th Cir. 2020).

analogies to the automatic stay provisions in the discharge context, but the principles of *In re Marino* still apply based on the reasoning in *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 455–56 (1932).

In *Leman*, the U.S. Supreme Court concluded that an award for lost profits was an available contempt remedy in a patent-infringement case despite the fact that lost profits clearly could be distinguished from pecuniary damages. 284 U.S. at 456. The Court reasoned that "a suit in equity" aims to "[e]nsure full compensation to the party injured." *Id*. The Court recognized that courts of equity "administer full relief," which includes nonpecuniary damages, such as lost profits, "as an equitable measure of compensation." *Id*. (internal quotation omitted). The full and equitable relief in that context allowed damages for lost profits, and civil contempt law permitted an award of nonpecuniary damages. *Id*. The same reasoning dictates that full and equitable relief in the bankruptcy discharge context allows potential damages for emotional distress and that civil contempt law permits such an award of nonpecuniary damages. We base this conclusion partially on *Leman*'s guidance that civil contempt aims to compensate a party fully for their damages, and partially on the fresh start purpose behind bankruptcy discharge.

We further conclude, in the alternative, that nonpecuniary damages are available based on traditional civil contempt principles. For example, the court in *Robins v. Frazier*, 52 Tenn. 100 (1871), determined that damages could be awarded

for the direct pecuniary loss in a criminal contempt case, and also to compensate the injured party who wrongfully had been evicted for the "the actual damage estimated in connection with the condition of complainant's family—the circumstances of aggravation or mitigation attending the disobedience of the order, such as the ejection in the night time, during the prevalence of a cold rain, the length of time kept out of possession, the suffering consequent upon being unable to find a shelter for his family, etc." *Robins* determined that contempt awards served to "recompose the sufferer" for the full "damages inflicted." *Id.* at 105 (internal quotation omitted); *see also In re Tift*, 11 F. 463, 476–68 (E.D. N.Y. 1881) (awarding damages to the plaintiff beyond the demonstrated losses for the "expenses and trouble caused" by the "protracted" and "stoutly contested" proceeding). This reasoning is persuasive.

At least some authorities conclude that damages are available to compensate for nonpecuniary injuries from a party's contempt. *See Ferguson v. Waid*, 2025 WL 2271488, at *2 (W.D. Wash. July 9, 2025); *Milburn v. Coughlin*, 83 F. App'x 378, 380 (2d Cir. 2003); *Bessolo v. Rosario*, 966 N.E.2d 725, 728 (Ind. Ct. App. 2012); *Chadwick v. Alleshouse*, 233 N.E.2d 162, 166–68 (Ind. 1968); and *Sebastian v. Tex. Dept. of Corr.*, 558 F. Supp. 507, 510 (S.D. Tex. 1983). Creditors fail to provide persuasive authority concluding otherwise, much less cases with substantive analysis over the historical and traditional principles of civil contempt. The conclusion that emotional distress damages are a potential remedy comports with

our understanding of the purpose of civil contempt remedies, and specifically of the rationale behind the fresh start principle in bankruptcy. We decline to conclude that emotional distress damages are categorically unavailable, particularly in a case where the Bankruptcy Court has yet to determine if it will award emotional distress damages, and if so, in what amount.

We agree with Creditors that the issue of punitive damages is not properly an issue in this appeal as it has not been raised or discussed until now.

The Court affirms BAP's order in full.

AFFIRMED.

FILED

APR 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

***PHH Mortgage Corporation v. Valdellon*, No. 25-538**

R. NELSON, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that the Bankruptcy Court erred by dismissing the claim for sanctions under § 524(i) and that Creditors lacked an objective reasonable basis for asserting default. *See* Maj. Op. at 4–9. I would reverse the portion of the BAP's order concluding that the Bankruptcy Court can award compensatory damages for emotional distress. *Cf. id.* at 9. I therefore respectfully dissent in part.

To begin with, "there is no private right of action" to enforce the discharge injunction. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 509 (9th Cir. 2002). Instead, the "enforcement mechanism for violations of § 524 [are] the contempt remedies available under § 105(a)." *Id.* The compensatory civil contempt remedies allow "an aggrieved debtor to obtain compensatory damages, attorneys fees, and the offending creditor's compliance with the discharge injunction." *Id.* at 507.

As the Bankruptcy Court noted, there has been "disagreement" both in and among the circuits as to whether those contempt remedies extend to damages for emotional distress "in cases involving the violation of the discharge injunction." *In re Valdellon*, 659 B.R. 377, 385–86 & n.7 (Bankr. E.D. Cal. May 17, 2024) (citation omitted). The BAP relied on its reasoning from *In re Marino* that our circuit's rule allowing "emotional distress damages for automatic stay violations" "should apply to violations of the discharge injunction." 577 B.R. 772, 787 (9th Cir. BAP 2017), *aff'd in part & dismissed in part*, 949 F.3d 483 (9th Cir. 2020) (cleaned up).

The majority agrees with BAP's reasoning that "it, and the Ninth Circuit, previously determined in *In re Marino* that bankruptcy courts can award compensatory damages for emotional distress." Maj. Op. at 10. But the Ninth Circuit did not determine that. Rather, it dismissed the contempt order appeal for lack of jurisdiction. *In re Marino*, 949 F.3d at 486, 488 ("Ocwen appeals from the bankruptcy court's contempt and reconsideration orders . . . We dismiss Ocwen's appeals for lack of appellate jurisdiction."). That leaves only the BAP's reasoning in *In re Marino*, and "we are not bound by BAP decisions." *Fantasia v. Diodato*, 154 F.4th 1123, 1131 (9th Cir. 2025).

And the BAP's reasoning from *In re Marino* was abrogated by *Taggart*. "The bankruptcy statutes," the Supreme Court unanimously held, "do not grant courts unlimited authority to hold creditors in civil contempt." *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019). It explained the "differences in language and purpose" between the automatic stay and the discharge injunction. *Taggart*, 587 U.S. at 565. Likewise, it held that courts must view their authority to issue discharge injunctions through the "old soil" of "traditional civil contempt principles." *Id.* at 560–62.

The majority ignores *Taggart*, arguing it "should be limited to its holding," because it "did not address the range of permissible compensatory damages under civil contempt." Maj. Op. at 10. But "we are bound not only by the holdings of the Supreme Court's decisions but also by their mode of analysis." *MK Hillside*

Partners v. Comm'r of Internal Revenue, 826 F.3d 1200, 1206 (9th Cir. 2016) (cleaned up). *Taggart*'s mode of analysis—"the traditional standards in equity practice"—bars courts from awarding emotional distress damages in violation of the discharge injunction. As the Bankruptcy Court rightly noted, "the historical measure of compensation awarded in civil contempt actions was pecuniary loss," while emotional distress damages are considered nonpecuniary. *Valdellon*, 659 B.R. at 388–90 (collecting cases).

Leman v. Krentler-Arnold Hinge Last Co. does not change the analysis. 284 U.S. 448 (1932). The majority reads *Leman* as recognizing "that courts of equity 'administer full relief,' which includes nonpecuniary damages, such as lost profits, 'as an equitable measure of compensation.'" Maj. Op. at 11 (citing 284 U.S. at 456). This misconstrues *Leman*'s reasoning. In that case, because the district court had "ascertained" the amount of lost profits, the Supreme Court held that they could be treated "as an equivalent or a substitute for legal damages." *Leman*, 284 U.S. at 455–56. As the Bankruptcy Court put it, "*Leman* added more to the bucket of pecuniary losses recoverable as compensatory damages for civil contempt. It did not add new or different types of damages to that bucket, *i.e.*, nonpecuniary for emotional distress or otherwise, as Plaintiffs suggest." *Valdellon*, 659 B.R. at 391.

As for the majority's alternative conclusion "that nonpecuniary damages are available based on traditional contempt principles," its reliance on out-of-circuit,

mostly unpublished decisions—largely from state and lower courts—is unpersuasive. To conduct the "old soil" analysis, I would instead rely on published guidance from the Supreme Court and our sister circuits: "[t]he only possible remedial relief for [civil contempt] would have been to impose a fine . . ., *measured in some degree by the pecuniary injury caused by the act of disobedience*." *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444 (1911) (emphasis added); *see also 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) ("Even assuming *arguendo* a causal relationship between the violation of the injunction and the harm suffered, we do not believe civil contempt to be an appropriate vehicle for awarding damages for emotional distress."); *Weitzman v. Stein*, 98 F.3d 717, 720 (2d Cir. 1996) ("Likewise, the district court was within its right to reject [Plaintiff's] claim for compensation for the emotional distress . . . suffered because of the contempt.").

Taggart's reasoning compels us to reexamine the BAP's application of the automatic stay rule to discharge injunctions. Under that new analysis, guided by the "old soil" of "traditional standards in equity practice," it becomes clear that Plaintiffs may not recover emotional distress damages based on a violation of the discharge injunction through § 524(i). I therefore respectfully dissent in part.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d). The deadlines for seeking reconsideration of a non-dispositive order are set forth in 9th Cir. R. 27-10(a)(2).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
    - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
    - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

9th Cir. Case Number(s)

Case Name

Name of party/parties requesting costs to be taxed:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

*(use "*s/[typed name]*" to sign electronically-filed documents)*

COST TAXABLE	**REQUESTED** *(each column must be completed)*			
DOCUMENTS / FEE PAID	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*			$	$
Principal Brief(s) *(Opening Brief; Answering Brief; 1st, 2nd , and/or 3rd Brief on Cross-Appeal; Intervenor Brief)*			$	$
Reply Brief / Cross-Appeal Reply Brief			$	$
Supplemental Brief(s)			$	$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee/Appeal from District Court filing portion of fee ($5)				$
			TOTAL:	$

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:*
No. of Copies: 4; Pages per Copy: 500; Cost per Page: $.10 (or actual cost IF less than $.10);
TOTAL: 4 x 500 x $.10 = $200.