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' OPENING BRIEF

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Under the Indenture Relating to the IMPAC CMB Trust Series 2005-6

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 34. Disclosure Statement under FRAP 26.1 and Circuit Rule 26.1-1

Instructions for this form: http://www.ca9.uscourts.gov/forms/form34instructions.pdf

9th Cir. Case Number(s) 25-538

Name(s) of party/parties, prospective intervenor(s), or amicus/amici filing this form:

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

Under FRAP 26.1 and Circuit Rule 26.1-1, I make the following disclosures:

1. I disclose the following information required by FRAP 26.1(a) and/or Circuit Rule 26.1-1(b) for any nongovernmental corporation, association, joint venture, partnership, limited liability company, or similar entity[1] which is a party, prospective intervenor, or amicus curiae in any proceeding, or which the government identifies as an organizational victim below in section 2 of this form,[2] or which is a debtor as disclosed below in section 3 of this form.

   a. Does the party, prospective intervenor, amicus, victim, or debtor have any parent companies? Parent companies include all companies that control the entity directly or indirectly through intermediaries.
   ◉ Yes ○ No

   If yes, identify all parent corporations of each entity, including all generations of parent corporations *(attach additional pages as necessary)*:

   Appellant PHH Mortgage Corporation's parent company is Onity Group, Inc., a publicly traded company (NYSE: ONIT).

   b. Is 10% or more of the stock of the party, prospective intervenor, amicus, victim, or debtor owned by a publicly held corporation or other publicly held entity?
   ◉ Yes ○ No

[1] A corporate entity must be identified by its full corporate name as registered with a secretary of state's office and, if its stock is publicly listed, its stock symbol or "ticker."

[2] To the extent it can be obtained through due diligence.

If yes, identify all such owners for each entity *(attach additional pages as necessary)*:

Appellant PHH Mortgage Corporation's parent company is Onity Group, Inc., a publicly traded company (NYSE: ONIT).

2. In a criminal case, absent good cause shown, the government must identify here any organizational victim of the alleged criminal activity:

N/A

3. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must identify here each debtor not named in the court of appeals caption:

Debtors Melanio L. Valdellon and Ellen C. Valdellon

4. Are you aware of any judge serving on this Court who participated at any stage of the case, either in district court, administrative proceedings, or in related state court proceedings?

○ Yes ◉ No

If yes, list the name of the judge and the case name, case number, and name of court of the related proceedings:

I certify that *(select only one)*:

◉ this is the first disclosure statement filed in the above-referenced case by the above-identified party/parties, prospective intervenor(s), or amicus/amici, and this disclosure statement complies with FRAP 26.1 and Circuit Rule 26.1-1.

○ the party/parties, prospective intervenor(s), or amicus/amici submitting this supplemental disclosure statement has previously filed a compliant disclosure statement in this case, and this updated disclosure statement discloses changed or additional information.

○ I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Signature s/ Neil J. Cooper **Date** 10/9/25

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

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INTRODUCTION

Debtors Melanio L. Valdellon ("Borrower") and Ellen C. Valdellon (collectively, "Debtors") brought a bankruptcy adversary proceeding contending secured creditors PHH Mortgage Corporation ("PHH") and Wells Fargo Bank, N.A., as Indenture Trustee Under the Indenture Relating to the IMPAC CMB Trust Series 2005-6 ("Wells Fargo as Trustee" and, collectively, "Creditors") violated the discharge injunction, 11 U.S.C. § 524 ("Section 524"). Specifically, Debtors claimed that Creditors failed to credit loan payments received under their Chapter 13 plan in the manner required by the plan, a violation of Section 524(i).

The Bankruptcy Court dismissed, finding Debtors had not shown an actionable violation because they had not identified a miscredited payment and were in an incurable default on their plan due to not having completed it within 60 months. The United States Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") reversed, holding it was unnecessary for Debtors to identify a specific payment mis-credited because the simple fact that the loan was not current at the end of the plan necessarily meant a violation had occurred. The BAP reasoned that "[w]hen a plan provides for a cure of prepetition arrears and maintenance of ongoing mortgage payments, the creditor must reinstate the loan and treat prepetition arrears as satisfied upon completion of plan payments" (1-ER-21) and held that "[t]he amount necessary to cure the prepetition arrearage was fixed by the proof of claim and confirmation

order at $19,140.48." (1-ER-22.) However, the BAP cited no authority for these propositions, which ignore that the proof of claim (filed by Debtors' counsel, not Creditors) and plan had understated the amounts owed and were in direct contravention of existing law, which mandates that a creditor's fully secured lien ordinarily passes through bankruptcy unaffected, regardless of the plan or Creditors' failure to file a proof of claim. The BAP also erroneously concluded that Debtors completed their plan: it was undisputed that Debtors did not pay all amounts due under the plan until month 66 of their 60-month plan, and clear bankruptcy law does not allow a debtor to cure a default after the 60-month deadline. Finally, the BAP erroneously reversed the Bankruptcy Court's holding that emotional distress damages are not available as a contempt remedy after *Taggart v. Lorenzen*, 587 U.S. 554, 139 S.Ct. 1795 (2019), given the thorough, well-reasoned and fully supported analysis provided by the Bankruptcy Court on that issue and the fact that Debtors did not challenge the Bankruptcy Court's ruling on appeal. Creditors now appeal the BAP's erroneous holdings and conclusions of law.

JURISDICTIONAL STATEMENT

I. The Appeal is Timely

Creditors appeal an opinion and judgment of the BAP. (6-ER-1123-1155.) The BAP reversed an amended order ("Order") and amended judgment ("Judgment") of the United States Bankruptcy Court for the Eastern District of

California ("Bankruptcy Court") granting Creditors' motion to dismiss Debtors' adversary complaint with prejudice. (1-ER-2-30.)

The Bankruptcy Court entered the original order and judgment on April 30, 2024. (2-ER-208-246.) On May 14, 2024, the Debtors moved for reconsideration and an extension of the appeal deadline. Consequently, the Debtors' deadline to appeal was suspended. *See* Fed. R. Bankr. P. 8002(b)(1)(B). On May 17, 2024, the Bankruptcy Court entered an order on reconsideration and amended opinion ("Opinion"), as well as the Order and Judgment. (Order [2-ER-205-207]; Judgment [2-ER-203-204]; Opinion [2-ER-164-202].) The Debtors timely filed their notice of appeal on May 30, 2024. *See* Fed. R. Bankr. P. 8002(a)(1), (b)(1). (2-ER-166 (ordering Debtors to file any appeal within fourteen days).)

The BAP's Opinion and Judgment were entered on December 20, 2024. (1-ER-2-30.) Consequently, Creditors' deadline to appeal was January 19, 2025. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(1)(A). Creditors timely filed their notice of appeal on January 17, 2025. (6-ER-1123-1188.)

II. Creditors Appeal a Final Decision

The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 157 and 1334. *See, e.g., In re Frye*, Case No. CC-08-1258-MkHPa, 2009 WL 7751434, at *3 (9th Cir. BAP Apr. 7, 2009). The BAP had jurisdiction under 28 U.S.C. § 158(a)-(c). This Court has jurisdiction under 28 U.S.C. § 158(d).

The Bankruptcy Court's judgment was indisputably final: it entered a judgment that terminated an adversary proceeding in favor of Creditors. *Cf. Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015) ("a case in federal district court culminates in a 'final decision,' 28 U.S.C. § 1291, a ruling 'by which a district court disassociates itself from a case,' [citation].")

There are two tests for finality of a BAP decision. Where the decision of the BAP is to reverse or affirm, a two-part test applies. *See In re Gugliuzza*, 852 F.3d 884, 894 (9th Cir. 2017); *In re Marino*, 949 F.3d 483, 487 (9th Cir. 2020) (BAP orders are appealable "if they 'finally dispose of discrete disputes within the larger case.'"); *In re Perl*, 811 F.3d 1120, 1126 (9th Cir. 2016). In contrast, a four-part test applies where a case is remanded for additional fact finding. *See In re Gugliuzza*, 852 F.3d at 894-895; *In re Marino*, 949 F.3d at 487 ("an order from the BAP is not final if it 'remands for factual determinations on a central issue'"); *In re Perl*, 811 F.3d at 1126.

Here, the BAP decision reversed the final judgment of the Bankruptcy Court. While reversal necessarily entails remanding for further proceedings, it was not remanded for the Bankruptcy Court to make *further* factual findings: there had been no factual findings. *Cf. In re Gugliuzza*, 852 F.3d at 894-895 (collecting cases that all involved remand for factual findings). Accordingly, the appeal is one of a pure question of law, the two-part test applies, and the test has been met with respect to

the BAP decision. Under the two-part test, an 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)). The BAP decision resolved and seriously affected the parties' substantive rights and finally determined discrete issues when it: (1) reversed a final judgment that had been in Creditors' favor and (2) determined the issues of whether a Section 524(i) claim had been pled and whether emotional distress damages were available. Accordingly, this Court has jurisdiction over the BAP's decision.

Even if the Court were to gauge appealability under the four-part test, the Court should find that it has jurisdiction. The four-part test considers "'(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 Marino*, 949 F.3d at 487 (quoting *In re Gugliuzza*, 852 F.3d at 894). Here, this Court's review of the instant appeal serves the purposes of judicial efficiency and avoiding piecemeal litigation, as the issues before this Court are discrete issues that do not require further litigation. *Cf. Bullard*, 575 U.S. at 503-04 (piecemeal litigation where debtor appeals denial of plan confirmation that is not accompanied by dismissal); *In re Marino*, 949 F.3d at 487 (piecemeal litigation where liability is established, but the damages are not).

Here, there was finality to the decision. Allowing the appeal serves judicial efficiency. Should the Bankruptcy Court's order be affirmed, the case is over. However, should the BAP's decision stand, the Bankruptcy Court and parties will have to deal with discovery and discovery disputes, summary judgment, and possibly a trial. Further, as set forth below, Creditors contend the BAP relied on an erroneous legal standard in making its ruling. Allowing it to stand could result in multiple appeals with the parties first trying the case under the incorrect standard, appealing to get the correct standard from this Court, then having to re-try the case under the correct standard. The bankruptcy court's role as the finder of fact is not abrogated by exercising jurisdiction. As to irreparable harm, Creditors acknowledge that protracted litigation costs generally do not qualify as irreparable harm. *See In re Marino*, 949 F.3d at 488. However, overall, the test favors the existence of jurisdiction for the Court hearing and resolving the appeal.

STATEMENT OF ISSUES

1. Did the BAP err in holding that the failure of the loan to be brought current at the end of the plan necessarily meant that Creditors mis-credited payments received under the plan in violation of Section 524(i), where existing law provides that liens pass through bankruptcy unaffected, regardless of the plan and proof of claim, and regardless of the plan's and proof of claim's accuracy?

2. Did the BAP err in holding that Debtors cured the default in their 60-month plan 6 months after the plan ended, where existing law provides that a default cannot be cured after the plan ends?

3. Even if the BAP did not err, should this Court affirm the Bankruptcy Court's dismissal on the alternative ground that, due to the lack of clarity in the law, Creditors had an objectively reasonable basis for asserting that Debtors' loan was in default following their bankruptcy discharge?

4. Did the BAP err in holding that emotional distress damages are an available contempt remedy (1) where Debtors did not properly raise the issue to the BAP and (2) in light of the decision in *Taggart v. Lorenzen*, 587 U.S. 554, 139 S.Ct. 1795 (2019) finding that civil contempt is subject to traditional limitations?

STATEMENT OF PRIMARY AUTHORITY

At issue in this case are the following pertinent subsections of 11 U.SC. §§ 105 and 524. Pursuant Section 524(a) and (i),

> (a) A discharge in a case under this title--
>
> …
>
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and
>
> …
>
> (i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute

> a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

11 U.S.C. § 524(a)(2), (i). Then, under Section 105(a) –

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

STATEMENT OF THE CASE[1]

I. The Debtors File for Bankruptcy and Repeatedly Default on the Plan

In 2005, Borrower obtained the Loan, which was secured by a deed of trust against Debtors' real property in Roseville, California ("Property"). The Loan is owned by Wells Fargo as Trustee and serviced by PHH. (3-ER-537-538.)

Debtors filed a Chapter 13 bankruptcy in 2014. (3-ER-537-538.) At the time they filed the bankruptcy, Debtors were delinquent on the Loan. (3-ER-537.) Creditors did not file a proof of claim. Rather, Debtors' then-counsel filed a proof

[1] As the appeal arises from a motion to dismiss, the factual allegations are taken from the operative Second Amended Complaint ("SAC") and supplemented by other portions of the record. To the extent the SAC is cited, any facts discussed therein are only presumed to be true for the purpose of the instant appeal.

of claim for the Loan ("Claim 9-1"), which understated pre-petition arrears and the post-petition monthly payment. (5-ER-1046-1049; 4-ER-690.)

Debtors' first modified plan provided that both $19,140.48 in pre-petition arrears and post-petition payments would be paid through the plan by the Trustee over a 60-month period and that Debtors were not modifying the Loan. (3-ER-538-539; 5-ER-1012-1013; 5-ER-1037; 5-ER-1053.)

However, Debtors defaulted on their payments under the first modified plan, and the Trustee filed a motion to dismiss on November 29, 2017. (5-ER-1028-1033.) The Trustee filed a second motion to dismiss on May 11, 2018, leading to Debtors proposing and confirming the second modified plan. (5-ER-1021-1033; 5-ER-1009-1017.) The second modified plan required Debtors to pay $6,626 in June 2018 and $3,685 monthly thereafter. (5-ER-1017.) Debtors paid just $2,941 in June 2018, and $3,685 monthly thereafter through March 2019; paid nothing in April, May, or July 2019; and paid less than the required $3,685 in June and August 2019. (5-ER-1003.) In other words, Debtors defaulted on their plan by paying less than required in June 2018, they did not cure that default before March 2019, and they fell further into default after March 2019.

The Trustee moved to dismiss on September 9, 2019 because (1) the debtors were delinquent in their payments on the plan at that time in the amount of $10,246.37 and (2) the "commitment period exceed[ed] the permissible limit

imposed by 11 U.S.C. Section 1325(b)(4)." (5-ER-999-1008.) The Trustee also noted that the Debtor was in month 66 of a 60-month plan. (*Ibid*.) However, before the Trustee's motion was heard, Debtors paid the default amount and the motion was withdrawn. (5-ER-998.) On September 27, 2019, the Trustee filed a Notice to Debtor of Completed Plan Payments and Obligation to File Documents and a Notice of Final Cure Payment, and Creditors filed a response that did not object to the Trustee's representation that Debtors were current with post-plan payments and advising the loan was due for November 1, 2019 (hereinafter, "Response to Notice of Final Cure"). (4-ER-540-541.)

Debtors received a discharge on June 1, 2020, and the bankruptcy was closed on June 15, 2020. (4-ER-541; 5-ER-984-986.)

II. Debtors' Post-Plan Payments

Debtors sent monthly payments directly to PHH beginning in October 2019. (5-ER-541-542.) Although Creditors accepted the October 2019 through June 2020 payments, it did not accept the July 2020 or later payments because the amount tendered was not sufficient to bring the Loan current. (5-ER-541-543.)

III. Debtors File an Adversary Proceeding and Move to Exclude Evidence

Debtors re-opened their bankruptcy on January 20, 2021 to file an adversary proceeding against Creditors to stop foreclosure proceedings. (5-ER-980-982.) The adversary complaint alleged a violation of the discharge injunction, 11 U.S.C. § 524,

as well as state law claims, without specifically setting out the allegations for each count. (5-ER-961-979.) Following initial discovery, in May 2021, Debtors filed a "Motion to Exclude Evidence and to Conclusively Find and Determine Facts." (4-ER-800-807.) The motion essentially sought summary judgment in their adversary proceeding, arguing that (1) pursuant to Bankruptcy Rule 3002.1(g) and (i), Creditors' failure to dispute Debtors' cure of prepetition arears or the status of their ongoing monthly payments in its response to the NOFC was binding on Creditors and precluded Creditors from submitting evidence contradicting the same; and (2) the Bankruptcy Court should make factual findings that Creditors violated the discharge order and discharge injunction and award Debtors damages and attorney fees. (*Ibid*.) Creditors opposed the motion on various grounds and noted that, while the motion to exclude was brought under Rule 3002.1, the applicability of that rule was in dispute because it only applies to certain debts secured by a debtor's principal residence, and it did not appear that the Property was Debtors' principal residence. (4-ER-788.) *See* Fed. R. Bankr. P. 3002.1(a). To resolve the dispute on the applicability of Rule 3002.1, the Bankruptcy Court ordered Debtors to submit their tax returns for *in camera* review. (4-ER-683-687.)

On June 28, 2021, the Bankruptcy Court denied Debtors' motion. (4-ER-669-677.) The Bankruptcy Court noted that Rule 3002.1 only applies when the claim is secured by a debtor's principal residence (*see* Rule 3002.1(a)), but the Property was

not Debtors' principal residence, as evidenced by, *inter alia*, Debtors' tax returns. (4-ER-669-677.) "That also means that Bankruptcy Rule 3002.1, generally, and Bankruptcy Rules 3002.1(g) and (i) specifically, are inapplicable." (4-ER-676.) Accordingly, the Response to Notice of Final Cure had no special significance or legal impact. On June 28, 2021, the Bankruptcy Court entered an order directing Debtors to file an amended complaint and warning them that their adversary action otherwise faced dismissal. (4-ER-678-682.) The Bankruptcy Court noted that the complaint was a "shotgun pleading" consisting of "189 paragraphs of purported allegations and 12 paragraphs that include demands for relief, including a demand for money damages of $3,500,000.00." (4-ER-679.) The Bankruptcy Court noted that the complaint also failed to separately designate individual causes of action, which was necessary to proceed to trial, particularly in light of the large damages demand. (4-ER-680-681.)

IV. Debtors' First Amended Complaint, Dismissal, and First Appeal

Debtors filed a first amended complaint ("FAC") on July 13, 2021. (4-ER-643-668.) The FAC alleges the following counts: (1) violation of the discharge order/injunction, (2) intentional infliction of emotional distress, (3) "contract, negligent infliction of emotional distress and/or declaratory relief," and (4) unfair business practices. (*Id.*) On the discharge violation count, Debtors alleged they cured pre-petition arrearages and made all post-petition payments through

September 1, 2019, and that Creditors refused to credit all payments made after October 1, 2019, and misapplied those payments. (4-ER-657-658.) According to Debtors, the failure to credit those payments violated Section 524(i), which requires that creditors credit plan payments, and such conduct also violated the discharge order and discharge injunction of Section 524(a), which prohibit attempts to collect a discharged debt. (*Id*.)

Creditors filed a motion to dismiss on July 26, 2021. (4-ER-612-642.) The motion to dismiss argued, *inter alia*, that (1) Debtors failed to state a claim for violation of the discharge injunction because the allegations did not implicate the discharge injunction or plan because the Loan was not discharged and instead passed through bankruptcy unaffected and (2) state law claims were either preempted by bankruptcy law or the Bankruptcy Court was without jurisdiction to hear them. (*Id*.)

The Bankruptcy Court entered an order granting the motion to dismiss on August 20, 2021. (4-ER-595-611.) The Bankruptcy Court first reasoned that Creditors' handling of post-plan, pre-discharge payments (*i.e.* October 2019 through May 2020) could not violate the discharge order or the discharge injunction because there was no discharge order or injunction to violate during that time. (4-ER-601-602.) Second, the Bankruptcy Court found that Creditors' conduct after the discharge was entered could not constitute a discharge violation because the Loan was not discharged. (4-ER-602.) Accordingly, the only remaining basis for Debtors'

claim for a discharge violation was their allegation that Creditors failed to credit payments received under the plan as required by Section 524(i). However, Debtors' FAC concerned payments made in October 2019 and later, not payments made under the plan. (4-ER-602-604.) Therefore, the Bankruptcy Court concluded that Debtors had not stated a claim and, as Debtors did not request leave to amend, dismissed their FAC with prejudice. (4-ER-604.)

As to the remaining claims, the Bankruptcy Court dismissed them with prejudice to the extent they were based on the purported discharge violation and merely duplicative and, for the claims that were not merely duplicative, the Bankruptcy Court found it lacked jurisdiction over them and, even if there had been jurisdiction over the state law claims, abstained from deciding such claims. (4-ER-604-609.) The Bankruptcy Court, therefore, dismissed the entirety of the FAC and entered judgment for Creditor. (4-ER-609-610; 4-ER-591-593.)

Debtors appealed. (3-ER-587-586.) The appeal was heard by the District Court. The District Court affirmed dismissal as to the claimed breach of Section 524(a) and found the Bankruptcy Court properly dismissed the claim under Section 524(i) as pled, but held that Debtors should be given leave to amend. (3-ER-567-586.) Accordingly, the District Court reversed and remanded. (*Id*.)

V. Debtors' Second Amended Complaint and Second Dismissal

On remand, Debtors filed the operative SAC on July 12, 2024. (3-ER-536-566.) The SAC alleged claims for: (1) violation of Section 524(i), (2) intentional infliction of emotional distress, (3) "contract, negligent infliction of emotional distress and/or declaratory relief," and (4) unfair business practices. (*Id*.) On the Section 524(i) count, Debtors alleged they cured pre-petition arrears and made all post-petition payments and asserted the conclusory allegation that Creditors failed to credit payments made by both the Trustee during the plan and made by Debtors post-plan. (3-ER-549-557.) However, despite discovery and more than three years of litigation, Debtors did not identify any specific plan payments that were purportedly miscredited; rather, the only specific payments identified as being incorrectly credited were the post-plan payments. (*Id*.)

Creditors filed a motion to dismiss on March 13, 2024. (2-ER-268-295.) The motion to dismiss argued, *inter alia*, that (1) Debtors failed to state a claim for violation of Section 524(i) because they had not pled facts constituting a violation thereof and (2) state law claims were either preempted by bankruptcy law or the Bankruptcy Court was without jurisdiction to hear them. (*Id*.) Creditors argued that the SAC failed to state a claim for violation of Section 524(i) for two reasons. First, Debtors did not plead facts showing Creditors misapplied any payments made under the plan, let alone that it did so while Debtors were performing on the plan. Debtors did not identify any specific plan payments that were supposedly misapplied. Nor

did Debtors' assertion that monthly statements showing a different figure than the pre-petition arrears set forth in the plan suffice to establish a violation because Debtors did not plead any purported misapplication occurred while they were performing on the plan; to the contrary, the Bankruptcy Court's records and SAC show Debtors repeatedly defaulted and were in default from June 2018 onward. (*Id*.) Second, Debtors failed to plead facts showing a material injury. Because Creditors' lien rode through the bankruptcy unaffected as a matter of law, and misallocation from post-petition amounts owed to pre-petition amounts owed would not change the total amount due, any purported misallocation was not material. (*Id*.)

The Bankruptcy Court issued the original order, judgment, and opinion on April 30, 2024, dismissing the Section 524(i) and intentional infliction of emotional distress claims with prejudice, and the remaining state law claims without prejudice. (2-ER-208-246.) Debtors filed a motion for reconsideration and request for an extension of the deadline to appeal. The Bankruptcy Court granted reconsideration in part and issued the amended Order, Judgment, and Opinion on May 17, 2024. (2-ER-164-207.) The Order amended the Court's dismissal of the intentional infliction of emotional distress claim, dismissing the claim with prejudice only to the extent it was based on the purported violation of Section 524(i) and without prejudice to the extent it was not. (2-ER-164-202.) In its ruling, the Bankruptcy Court determined that Debtors could not state a claim for relief under Section 524(i) because their SAC

failed to plead that any plan payments had been miscredited by Creditors and Debtors were not in default on their Bankruptcy Plan, as required to state a violation. *See* 11 U.S.C. § 524(i). (2-ER-189-197.) The Bankruptcy Court noted that Debtors had defaulted on their bankruptcy plan both when they failed to make payments due, and when they failed to timely complete their plan within 60 months. (2-ER-191-197.) The Bankruptcy Court noted that the failure to complete their plan within 60 months was an incurable material default. (2-ER-190-194.) The Bankruptcy Court further noted that Debtors' SAC failed to identify any specific plan payments that they contended Creditors miscredited. (2-ER-195-197.) Accordingly, the Section 524(i) claim was dismissed. As to Debtors' state law claims, the Bankruptcy Court also held that emotional distress damages were not available for violation of Section 524(i), given the Supreme Court's ruling in *Taggart v. Lorenzen*, 587 U.S. 554, 139 S. Ct. 1795 (2019), and dismissed the intentional infliction of emotional distress cause of action to the extent it was premised on the Bankruptcy Code violation. (2-ER-177-189.) Finally, the Bankruptcy Court ruled that it lacked jurisdiction over the remaining state law claims and that discretionary abstention was also warranted. (2-ER-197-201.) Accordingly, judgment was again entered for Creditor. (2-ER-203-204.)

VI. The BAP Appeal and Opinion, and Appeal to This Court

Debtors appealed the second dismissal to the BAP, though only as to the Order and Judgment, not the Opinion. (2-ER-161-163.) In their opening brief, Debtors asserted that the issue on appeal was whether they had stated a claim pursuant to Section 524(i); they did not put the emotional distress damages holding at issue or argue the holding was erroneous. (2-ER-92-160; 2-ER-104-107.)

The BAP reversed, finding that (1) Debtors had sufficiently alleged a Section 524(i) claim because Creditors did not treat the loan as fully cured following the completion of plan payments and (2) the Bankruptcy Court erred in holding the plan was in default "because the discharge order conclusively bars a later finding of default." (1-ER-4-5.) The BAP also held that emotional distress damages were an available contempt remedy, relying on pre-*Taggart* decisions and despite Debtors' failure to challenge or brief the ruling on appeal. (1-ER-5.)

The BAP's ruling was premised on several legal conclusions the Court reached. First, the BAP held that a creditor must treat a loan as reinstated at the completion of a confirmed plan, and the failure to do so evidenced a failure to credit a debtor's payments. The court therefore concluded that "even if PHH applied every cure payment to the outstanding loan balance, it could still willfully fail to 'credit' those payments if it intentionally did not give them the curative effect required by the plan." (1-ER-20-22.) According to the BAP, "[t]he amount necessary to cure the prepetition arrearage was fixed by the proof of claim and confirmation order ….

Upon completion of those payments, the prepetition arrears were completely satisfied, and the default was cured." (1-ER-20-22.) However, the BAP cited no authority for this proposition nor did it address Creditors' argument and authorities that existing law provides for liens to pass through bankruptcy unaffected. (2-ER-80-84.)

Second, the BAP held that the Bankruptcy Court "erred by making a factual finding of an incurable default … without giving Debtors an opportunity to respond" and held that the discharge order established that Debtors had completed their plan. (1-ER-22-23; *but see* 2-ER-277-278 (motion to dismiss arguing default).) The BAP held that a debtor may state a Section 524(i) violation for failing to credit payments as required by the plan if the loan was not treated as current following completion of the plan. (1-ER-23.) The BAP ruled that the completion of plan payments was a necessary conclusion where discharge was entered and, since discharge was entered, it must follow that the plan was completed. (1-ER-23-24.) However, the BAP also acknowledged that payments made after the plan term ends cannot be payments under the plan and cannot result in a discharge as a matter of law. (1-ER-24-25.) Rather than resolve the discrepancy and reach the conclusion – supported by the trustee's records – that Debtors did not timely complete payments and should never have received a discharge, the BAP fell back on the law of the case doctrine, holding that the discharge order was a final order from the Court establishing timely

completion of payments under the plan, even if they were not actually timely completed. (1-ER-24-25.) Despite quoting *In re Commercial Money Center, Inc.*, 392 B.R. 814 (9th Cir. BAP 2008) for its law of the case holding, the BAP did not acknowledge or address the Bankruptcy Court's ability to revisit whether the plan was in default, as stated in that decision. (1-ER-24.)

Third, the BAP held that emotional distress damages were an available contempt remedy. (1-ER-25-30.) However, that was not an issue raise or briefed on appeal. (2-ER-92-160.) Further, the BAP read *Taggart* too narrowly and relied on pre-*Taggart* cases that analogized to Section 362, despite *Taggart* rejecting such analogies. (1-ER-25-30.)

The BAP issued its opinion and judgment on December 20, 2024. (1-ER-2-30.) Creditors filed their notice of appeal to this Court on January 17, 2025. (6-ER-1123-1188.)

SUMMARY OF THE ARGUMENT

This appeal arises following a motion to dismiss for failure to state a claim for violation of Section 524(i). The Bankruptcy Court correctly held that Debtors did not and could not plead a material violation of Section 524(i) and dismissed the adversary proceeding. Section 524(i) states that, where a creditor willfully fails to apply payments as required by a plan and it causes material injury to the debtor, it is

a violation of Section 524(a)(2)'s discharge injunction, unless the plan is in default or the creditor has not received payments.

Here, Debtors failed to state a claim for relief because they plead no facts establishing a miscrediting of plan payments, nor did they plead a material injury or the absence of default on their plan. Despite discovery and years of litigation, even on appeal Debtors did not identify any payment Creditors received that was miscredited. Debtors also did not plead the absence of default, and it is undisputed that the Debtors repeatedly defaulted due to their missed plan payments and failed to timely complete their bankruptcy plan. Finally, Debtors did not plead facts showing material injury caused by any purported misapplication. It is established law that Creditors' fully secured lien passed through bankruptcy unaffected and secured all sums due on the loan. *See In re Brawders*, 503 F.3d 856 (9th Cir. 2007). Even if a few hundred dollars (of the $151,975.81 paid to Creditors) was mis-credited to pre-petition amounts due rather than post-petition amounts due, there was no allegation that payments were applied to amounts Debtors did not owe or would not have owed but for the misallocation. Since the total debt was secured and any purported misallocation did not change the amount due, any purported misallocation did not cause a material injury as required to state a violation.

The BAP's reversal was erroneous on numerous grounds. First, the BAP's holding that a loan must be deemed and treated as fully cured is contrary to existing

law that liens pass through bankruptcy unaffected. Thus, the holding that Debtors sufficiently pled a violation of Section 524(i) by pleading that the loan was not treated as current following the bankruptcy must be overturned. Second, the BAP's holding that the plan cannot have been in default due to the law of the case doctrine, despite acknowledging plans cannot be cured after the plan term ends and despite the fact that the SAC itself acknowledged the Debtors' default such that it was undisputed in the record, was clearly erroneous. The Bankruptcy Court correctly found that Debtors were in incurable breach and, even if the law of the case applied, the Bankruptcy Court was allowed to revisit the issue and make a contrary finding.

Further, even if this Court finds that the Bankruptcy Court erred in any of its conclusions of law, dismissal of Debtors' SAC was appropriate because Creditors cannot be held liable for a violation of the discharge injunction where, as here, the law is unclear (as is evident from the Bankruptcy Court's and BAP's disagreement on the law) and a good faith argument (in fact, a strong argument) exists that the law does not support liability.

Finally, the BAP should never have addressed whether emotional distress damages were available, as that was not raised or briefed as an issue on appeal. However, even if properly addressable, the BAP erred by narrowly reading *Taggart* to ignore its core holding that contempt sanctions are limited by the traditional means

used to enforce injunctions and that does not include awarding emotional distress damages.

ARGUMENT

I. Standard of Review

The ruling on a motion to dismiss is reviewed de novo. *See Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768, 772 (9th Cir. 2002). All factual allegations are accepted as true and all reasonable inferences are drawn in the plaintiff's favor. The Court generally accepts as true facts stated within the complaint, but does not accept as true conclusory allegations, legal characterizations cast in the form of factual allegations, allegations that contradict matters subject to judicial notice, unwarranted deductions of fact, or unreasonable inferences. *See Bell Atl. Corp v. Twombly*, 550 U.S. 544, 557 (2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Lacano Investments, LLC v. Balash*, 765 F.3d 1068, 1071 (9th Cir. 2014); *Mezibov v. Allen*, 411 F.3d 712, 716 (6th Cir. 2005).

On review, the Bankruptcy Court's factual findings are be reviewed for clear error and its decision reviewed for an abuse of discretion. *See Kelly v. Wengler*, 822 F.3d 1085, 1094 (9th Cir. 2016); *Labor/Community Strategy Center v. Los Angeles County Metro. Transp. Auth.*, 564 F.3d 1115, 1119 (9th Cir. 2009) (denial of motion for contempt reviewed for abuse of discretion); *Hook v. Arizona Dept. of Corr.*, 107 F.3d 1397, 1403 (9th Cir. 1997) ("The district court 'has wide latitude in determining

whether there has been contemptuous defiance of its order.'" (internal quotation and citation marks omitted)). Mere 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. *See Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188 (9th Cir. 2024).

II. The BAP Erred in Finding Debtors Stated a Violation of Section 524(i)

Debtors claim Creditors violated Section 524(i), which provides:

> The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

11 U.S.C. § 524(i). Thus, in order to state a claim, a plaintiff must plead sufficient facts to plausibly allege that (1) the creditor willfully failed to credit payments received under a plan in the manner required by the plan, (2) the plan was not in default and the creditor received the required payments, and (3) the failure caused the plaintiff material injury. Here, Debtors fail as to each element.

The Bankruptcy Court correctly held that Debtors failed to plead specific allegations supporting a claim for violation of Section 524(i) and were in incurable

default, and appropriately dismissed their Section 524(i) claim with prejudice. However, the BAP erroneously reversed, first staking out a position that contradicts existing law that liens ride through bankruptcy to find Creditors necessarily miscredited payments, and then overruling the Bankruptcy Court as to a factual matter (Debtors' default) that was both pled in the operative complaint and plain from the record.

A. Debtors Did Not Plead Creditors Failed to Credit a Plan Payment

Debtors failed to plead facts showing that Creditors misapplied their plan payments when Debtors were not in default. Instead, the SAC merely provides the conclusory allegation that Creditors "willfully fail[ed] and refuse[ed] to credit payments received from Trustee under [Debtors'] confirmed Chapter 13 Plan in accordance with the terms of [Debtors] confirmed Chapter 13 plan [sic] in violation of 11 U.S.C. [§] 524(i)." (3-ER-549.) The allegation is an example of the kind of "naked assertion[] devoid of further factual enhancement" that merely recites an element of a Section 524(i) violation claim, and is inadequate. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). Though Debtors repeat the conclusion that Creditors violated Section 524(i) or misapplied payments throughout their SAC, they do not plead any factual details. Debtors' SAC does not identify any payment supposedly misapplied or allege when the supposed misapplication occurred. The only specific payments or time frame addressed in the SAC concern post-plan

payments made by Debtors, which the District Court affirmed (and Debtors did not further appeal) did not count as payments made "under a plan" for purposes of Section 524(i). (3-ER-541-556.)

The closest Debtors' SAC came to articulating a miscrediting before September 2021 is to note that Creditors' monthly statements stated more money had been applied to pre-petition arrears than the amount designated in the plan for pre-petition arrears: "As of January 17, 2019 Defendants credited $19,211.02 to pre-petition arrears from payments received from the Chapter 13 Trustee. See Exhibit 23." (3-ER-552.) "Through August 16, 2019 Defendants credited $20,623.04 to pre-petition arrears from payments received from the Chapter 13 Trustee. See Exhibit 23." (*Id*.) Debtors note their plan only called for arrears of $19,140.48 to be paid toward prepetition arrears and therefore surmise a miscredit occurred. (*Id*.) In short, Debtors point to a discrepancy in the amount PHH stated it had credited to pre-petition arrears from what should have been credited to pre-petition arrears, and conclude that there must have been a miscredit at some point. However, these allegations do not push the claim across the line from possible to plausible, as required by *Iqbal*. Indeed, given that it was Debtors' obligation to show a failure to credit by clear and convincing evidence, *see In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003), the mere possibility raised by Debtors is patently insufficient to state a violation. The failure to credit a payment as required by a plan is not actionable if

done when "the plan is in default, or the creditor has not received payments required to be made under the plan…." 11 U.S.C. § 524(i). Debtors did not provide facts suggesting any purported miscredit occurred at a time the plan was not in default and Creditors were receiving payments.

The BAP took the position that Debtors did not need to identify any payment miscredited because the mere fact that the Loan was not regarded as totally current when the plan ended necessarily meant that a miscredit had occurred: "the creditor must reinstate the loan and treat prepetition arrears as satisfied upon completion of plan payments." (ER-20-22.) However, it is black-letter law that pre-existing liens pass through bankruptcy unaffected unless action is taken to avoid them. *See Dewsnup v. Timm*, 502 U.S. 410, 418 (1992); *In re Schlegel*, 526 B.R. 333, 342 (9th Cir. BAP 2015); *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive bankruptcy."); 11 U.S.C. § 1322(b)(5). Although a debtor may be discharged from personal liability for a secured debt, the creditor's *in rem* remedies – including foreclosure when not all sums due thereunder are paid – remain unchanged. *See, e.g., Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) ("[A] bankruptcy discharge extinguishes only one mode of enforcing a claim – namely, an action against the debtor in personam – while leaving intact another – namely, an action against the debtor in rem."). Indeed, the Discharge Order explicitly stated that "a creditor with a lien may enforce a claim against the debtors'

property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile." (5-ER-984.) It further specified that "[s]ome debts are not discharged," such as "debts provided for under 11 U.S.C. § 1322(b)(5) and on which the last payment or other transfer is due after the date on which the final payment under the plan was due." *Id.*; *accord* 11 U.S.C. § 1322(b)(5). Further, the plan did not provide for bifurcation, lien stripping, or modification of the Loan. (5-ER-1012-13.) As such, there could be no change to the Loan or Creditors' right to collect all amounts due thereunder.

For instance, in *In re Brawders*, 503 F.3d 856 (9th Cir. 2007), the debtors were indebted to the County on their property taxes and proposed a certain repayment in their Chapter 13 Plan. *See In re Brawders*, 503 F.3d at 860. The County did not object and the Plan was confirmed. *Id*. The County accepted the planned payments from the trustee. *See id*. However, while the Plan was in effect, the County sent notices stating it intended to foreclose. *See id*. Ultimately, the secured lender paid the County more than $26,000 worth of taxes that were not provided for under the Plan. *See id*. Debtors filed an adversary complaint against the County, who moved for summary judgment on the grounds that the confirmed Plan did not alter the tax lien and it therefore had a right to use its lien to recoup all pre-petition taxes. *See id*., at 861. The bankruptcy court rejected the County's

position, finding that the plan's treatment controlled and the County was limited to collecting as provided for in the plan, and issued judgment with damages in favor of the debtors. *See id*., at 861-62. However, the BAP reversed, noting that "liens ordinarily pass through bankruptcy unaffected, regardless whether the creditor holding that lien ignores the bankruptcy case, or files an unsecured claim when it meant to file a secured claim, or files an untimely claim after the bar date has passed." *See id*., at 867-68. Accordingly, the BAP found 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 id*., at 874. The Ninth Circuit affirmed the BAP, finding 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. *Accord In re Bisch*, 159 B.R. 546, 550 (9th Cir. BAP 1993) ("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."); *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"); *In re Nomellini*, 747 Fed.Appx. 573, 573-74 (9th Cir. 2018) (lien neither provided for nor expressly avoided by the plan passed through unaffected); *In re Bowman*, 630 F.Supp.3d 1216 (N.D. Cal. 2022) (FTB did not waive its lien by filing an claim as an unsecured creditor).

Notwithstanding the proof of claim Debtors filed on Creditors' behalf or the Plan's treatment of that claim, Creditors' lien was unaffected. Had there been no claim filed, the subject deed of trust would nonetheless secure all pre-petition and post-petition amounts due on the Loan. The BAP's ruling in this case overturns *In re Brawders* and the other cases cited above without addressing those cases or any citation to authority.

In sum, the BAP erred in holding that the failure to treat the Loan as current necessarily meant Creditors had failed to credit payments and, as Debtors did not identify or otherwise plead sufficient facts to show Creditors' failure to credit payments, the Bankruptcy Court's dismissal was correct.

B. Debtors Pled Their Incurable Default on the Plan

During the bankruptcy, Debtors repeatedly defaulted on plan payments. In November 2017, the Trustee moved to dismiss the bankruptcy due to nonpayment,

noting that "[a]s of November 28, 2017, payments are delinquent in the amount of $4,574.00." (5-ER-1028-1033.) In September 2019, the Trustee again moved to dismiss the bankruptcy due to nonpayment and due to the Debtors having exceeded the period for payments described in the bankruptcy plan. The Bankruptcy Trustee noted in its motion: "The debtors are delinquent to the trustee in the amount of $10,246.37…. The Debtor is currently in month 66 of a 60 month plan." (5-ER-1007-1008.) The default was not only apparent from the record, Debtors' SAC admitted they did not complete the plan within 5 years, stating that they were making payments through September 2019. (3-ER-550.) Plans may not exceed 5 years. *See* 11 U.S.C. §§ 1322(d), 1325(b)(4), and 1329(c). The Bankruptcy Court correctly held Debtors were in breach of the plan and, having already exceeded the 5-year term, the breach was incurable. As both the Bankruptcy Court and BAP acknowledged, a debtor who has not made all payments under the plan by the end of the plan term 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)).)

Notwithstanding that Debtors' default was undisputed, the BAP held that because completion of plan payments was a condition precedent to discharge and a discharge could not be entered while a plan was in default, the existence of Debtors' discharge meant Debtors had somehow, necessarily completed payments under the

plan. (1-ER-23-25.) However, the proper conclusion, given the undisputed facts, was that Debtors never should have received a discharge at all. As the Bankruptcy Court noted, dismissal of the bankruptcy would have been appropriate, but no one objected so 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.) Further, while the BAP held that the law of the case doctrine barred the Bankruptcy Court from revisiting the issue of whether the plan was in default (1-ER-24), the very case cited by the BAP expressly states that issues may be revisited. "However, even if the law of the case doctrine applies, a court may decide, in its discretion, to revisit the issue if: '(1) the first decision was clearly erroneous and would result in manifest injustice; (2) an intervening change in the law has occurred; or (3) the evidence on remand [is] substantially different.'" *In re Commercial Money Center, Inc.*, 392 B.R. 814, 832–33 (9th Cir. BAP 2008). Accordingly, the Bankruptcy Court was not bound by the law of the case doctrine, and could and did make the finding that the Debtors had not timely completed their plan. The law of the case doctrine was not put at issue by Debtors previously and, despite quoting *In re Commercial Money Center, Inc.* for its law of the case holding, the BAP did not acknowledge or address the Bankruptcy Court's ability to revisit the issue. The Bankruptcy Court's determination that Debtors did not timely complete payments under the plan is

reviewed for clear error. *See Kelly*, 822 F.3d at 1094. That conclusion was not clearly erroneous, as the default was both pled and apparent from the record. The BAP had no cause to overturn the Bankruptcy Court, ignore the trustee's motion and Debtors' own pleading, and instead find Debtors completed their plan based on a discharge that never should have been entered.

Debtors were in default, did not cure the default before the plan term ended, and such default was incurable once the plan term ended. Accordingly, Debtors did not and cannot state a violation of Section 524(i).

C. Debtors Did Not and Cannot Show Material Injury

A material injury caused by the failure to credit payments is a necessary component of a Section 524(i) claim. *See* 11 U.S.C. § 524(i). Here, however, Debtors did not and could not plead facts as to a material injury. As noted above, under the Bankruptcy Code, Creditors' lien was unaffected by the bankruptcy and continued to secure all sums due. *E.g., In re Brawders*, *supra*; *In re Bisch*, *supra*. Accordingly, even if Creditors miscredited post-petition funds to amounts due pre-petition or vice versa, the total amount due on the Loan was unchanged and Debtors were not injured. The fungibility of money makes it immaterial which portion of the debt is paid, so long as the miscredit does not change the amount due. *See, e.g., In re Harrison*, AP Case. No. 22-07001, 2023 WL 5254342, at *2 (Bankr. D. Kan. Aug. 14, 2023) (noting debtors were not damaged by alleged misapplication of

payments because "[n]o additional charges were made to Debtor's account; there were no late fees, no service fees, and no additional interest charges").

In a conclusory fashion, Debtors claimed that Creditors' alleged miscrediting of payments caused them to incur an additional $2,181.81 in fees and costs, pointing to a November 20, 2020 reinstatement quote. (3-ER-556-557; 5-ER-897.) However, that was a conclusory allegation rebutted by the exhibits Debtors attached, which show the amounts were charged after the bankruptcy was closed. (5-ER-842-853.) *See also Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (court may consider exhibits to a complaint in ruling on a 12(b)(6) motion).

Debtors' absence of material injury resulting from any purported failure to credit payments as required by the plan is a further reason Debtors did not and cannot state a claim for violation of Section 524(i).

III. This Court Should Affirm the Bankruptcy Court's Dismissal on the Alternative Ground that Creditors Did Not Violate the Discharge Injunction Because they had an Objectively Reasonable Basis for Their Conduct

Even if this Court concludes that the BAP decision was fully correct, this Court should affirm dismissal of the Debtors' SAC on the alternative ground that Debtors did not violate the discharge injunction, as a matter of law, given the law was unclear and Creditors had an objectively reasonable basis for their conduct. The Bankruptcy Court's decision may be affirmed on any ground supported by the record, even if not relied on by the Bankruptcy Court. *See M & T Bank v. SFR Invs.*

Pool 1, LLC, 963 F.3d 854, 857 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2566 (2021); *Fowler v. Guerin*, 899 F.3d 1112, 1118 (9th Cir. 2018); *Cigna Property and Cas. Ins. Co. v. Polaris Pictures Corp.*, 159 F.3d 412, 418-19 (9th Cir. 1998). Here, where the Bankruptcy Court determined that Creditors' conduct did not constitute a violation of the discharge injunction as a matter of law, this Court should affirm the dismissal on the grounds that the law is too unsettled to impose liability for a violation pursuant to the Court's contempt power under Section 105(a).

In *Taggart*, the U.S. Supreme Court clarified that use of the contempt power of the Court requires more than simply a showing that Creditors violated a statute. Rather –

> a court may hold a creditor in civil contempt for violating a discharge order [only] 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 (italics original).

In other words, contempt is not available unless "there was no 'objectively reasonable basis' for the [creditor] to believe that its actions did not violate the discharge." *In re Albert-Sheridan*, 658 B.R. 516, 540 (9th Cir. BAP 2024), *appeal dismissed sub nom. In re Albert*, 2025 WL 1452555 (9th Cir. May 21, 2025) (quoting *Taggart,* 139 S. Ct. at 1801.) *See also In re Scheer,* No. 24-2099, 2025 WL 2049051, at *1 (9th Cir. July 22, 2025) (affirming dismissal of adversary complaint for

discharge injunction violation; quoting *Taggart*, 587 U.S. at 557 that a creditor may be held in contempt of a discharge order "under § 524(a)(2) if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct" (emphasis in original)).

Indeed, following remand from the U.S. Supreme Court, this Court explicitly noted the *Taggart* court's refinement to the willfulness standard, and considered "whether the Creditors [before the Court] had some – indeed *any* – objectively reasonable basis for concluding that [the Debtor] might have 'returned to the fray' and that their motion for post-petition attorney's fees *might have* been lawful." *Lorenzen v. Taggart (In re Taggart)*, 980 F.3d 1340, 1348 (9th Cir. 2020) (citing *Taggart*, 139 S. Ct. at 1799) (emphasis in original)). *See also In re Albert-Sheridan*, 658 B.R. at 541 (noting creditor "did violate the discharge injunction . . . but did so with an objectively reasonable basis . . . [and therefore] was not liable for contempt damages). Here, given that *In re Brawders* and the other authority cited above at pages 39-41 were good law holding that Creditors' lien rode through bankruptcy unaffected, it was not objectively unreasonable for Creditors to believe that their lien continued to secure all sums due, regardless of Debtors receiving a discharge.

The Bankruptcy Court declined to hold Creditors in contempt, finding Debtors did not and could not state a claim. While this Court should overrule the BAP and affirm the Bankruptcy Court on those grounds, it may also overrule the BAP and

affirm the Bankruptcy Court on the grounds that Creditors' understanding of its lien securing all sums due was not objectively unreasonable.

IV. The BAP Erred Both by Addressing Emotional Distress Damages and in Its Conclusion that Such Damages are Available

A. The BAP Violated the Party Presentation Principle by Addressing the Unraised Issue

In their appeal to the BAP, Debtors did not present the unavailability of emotional distress damages as an issue on appeal, nor brief it. *Cf. Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (waiver); *Detrich v. Ryan*, 740 F.3d 1237, 1267 (9th Cir. 2013) (en banc) (same). Based on Debtors' failure to raise the issue, Creditors did not address the appropriateness of the Bankruptcy Court's ruling either. Nonetheless, the BAP reversed the Bankruptcy Court and published an opinion stating that emotional distress damages are an available contempt remedy.

Under the party presentation principle, the parties frame the issues, and the courts act as neutral arbiters of the matters the parties present. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). Courts "'do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties.'" *Id*. at 376 (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in denial of reh'g en banc) (alterations in original)). Where an appellate court departs from the issues presented by the parties, it abuses

its discretion. *See id*., at 374-380. "No extraordinary circumstances justified the panel's takeover of the appeal." *Id*., at 379. However, that is what happened here, with Debtors not appealing or raising the unavailability of emotional distress damages ruling, and the BAP not having the assistance of briefing by any party. The BAP went beyond its mandate and overturned an issue not appealed, without notice to the parties. *Cf. United States v. Yates*, 16 F.4th 256, 270–71 (9th Cir. 2021) (The party presentation rule "reflects our limited role as neutral arbiters of legal contentions presented to us, and it avoids the potential for prejudice to parties who might otherwise find themselves losing a case on the basis of an argument to which they had no chance to respond."); *National Aeronautics and Space Admin. v. Nelson*, 562 U.S. 134, 147 fn.10 (2011). For that reason alone, the BAP decision should be vacated.

B. The BAP Erred in Holding Emotional Distress Damages are an Available Contempt Remedy

Even if the BAP had cause to visit the issue of whether emotional distress damages were available, it reached the wrong conclusion and erroneously reversed the Bankruptcy Court's conclusion that emotional distress damages are not available for a violation of the discharge injunction under Section 105. The Supreme Court's decision in *Taggart v. Lorenzen*, 587 U.S. 554 (2019) reined in civil contempt, and held that a bankruptcy court's use of civil contempt, though statutorily authorized under 11 U.S.C. § 105, was constrained by "the 'old soil' that has long governed

how courts enforce injunctions." *See Taggart*, 587 U.S. at 560. The Court specifically drew a distinction between remedies afforded by statute (specifically 11 U.S.C. § 362) and those of contempt, and rejected the analogy and attempt to treat contempt the same way a violation of Section 362 is treated. *See Taggart*, 587 U.S. at 564-65.

Recognizing the Supreme Court had eschewed equating contempt remedies with automatic stay violation remedies, the Bankruptcy Court properly distinguished the pre-*Taggart* cases of *Ocwen Loan Servicing, LLC v. Marino (In re Marino)*, 577 B.R. 772 (9th Cir. BAP 2017) and *In re Nordlund*, 494 B.R. 507 (Bankr. E.D. Cal. 2011), both of which had reasoned that emotional distress damages were an available contempt remedy because emotional distress damages were an available stay violation remedy. (2-ER-177-182.) Unlike Section 362, there is no private right of action for violation of the discharge injunction; it may only be enforced through contempt. (2-ER-182 (citing *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 510 (9th Cir. 2002); *In re Costa*, 172 B.R. 954, 965-66 (Bankr. E.D. Cal. 1994); *Brown v. Transworld Systems, Inc.*, 73 F.4th 1030, 1038 (9th Cir. 2023)).) Available remedies are thus properly limited to civil contempt remedies. Looking to the "old soil" of contempt remedies as *Taggart* instructs, the Bankruptcy Court correctly determined that contempt had traditionally been limited to pecuniary damages that compensated a party for the violation, but emotional distress constituted an

unavailable, nonpecuniary damage. (2-ER-182-189[2].) Accordingly, the Bankruptcy Court correctly held that emotional distress damages were not an available contempt remedy post-*Taggart*. (2-ER-189.)

The BAP, on the other hand, relied on *In re Marino* and *In re Nordlund* because *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, that is an unduly narrow reading of *Taggart*, whose central holding was that, in exercising their contempt power, bankruptcy courts are bound by traditional contempt principles that are narrower than, not co-extensive with, Congressionally-provided statutory remedies. *See Taggart*, 587 U.S. 560-65.

The BAP exceeded the scope of the appeal in addressing the availability of emotional distress damages, and the BAP's ruling exceeds the express limits imposed by *Taggart*. For both reasons, the BAP's opinion should be vacated.

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[2] The Bankruptcy Court examined and relied on a plethora of authority including: *Bohac v. Department of Agriculture*, 239 F.3d 1334 (Fed. Cir. 2001); *Cummings v. Premier Rehab Keller*, P.L.L.C., 596 U.S. 212 (2022); *Federal Aviation Administration v. Cooper*, 566 U.S. 284 (2012); *United States v. Alvarez*, 567 U.S. 709 (2012); *Rouse v. United States Department of State*, 567 F.3d 408 (9th Cir. 2009); *Farrens v. Meridian Oil, Inc.*, 852 F.2d 1289, 1988 WL 79482 (9th Cir. July 19, 1988); *Hovey v. Elliott, et al.*, 167 U.S. 409 (1897); *Gompers v. Buck's Stove & Range Company*, 221 U.S. 418 (1911); *McBride v. Coleman*, 955 F.2d 571 (8th Cir. 1992), *cert. denied*, 506 U.S. 819 (1992); *Burd v. Walters (In re Walters)*, 868 F.2d 665 (4th Cir. 1989); *Weitzman v. Stein*, 98 F.3d 717 (2d Cir. 1996); *United States v. Harchar*, 331 B.R. 720 (N.D. Ohio 2005).

CONCLUSION

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

Dated: October 9, 2025

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STATEMENT OF RELATED CASES

The undersigned certifies that the following are known related cases and appeals:

1. *In re Melanio L. Valdellon and Ellen C. Valdellon*, E.D. Cal. Bankr. Case No. 14-22555-B, the underlying bankruptcy.
2. *Melanio L. Valdellon and Ellen C. Valdellon v. Wells Fargo Bank, N.A.; PHH; IMPAC CMB Trust Series 2005-6; Wells Fargo Bank, N.A., as Trustee of the IMPAC CMB Trust Series 2005-6*, E.D. Cal. Bankr. Adversary No. 21-02008, the appealed-from adversary proceeding.
3. *Melanio L. Valdellon and Ellen C. Valdellon v. Wells Fargo Bank, N.A.; PHH Mortgage Corporation; IMPAC CMB Trust Series 2005-6; Wells Fargo Bank, N.A., as Trustee of the IMPAC CMB Trust Series 2005-6*, 9th Circuit Bankruptcy Appellate Panel Case No. EC-24-1086-GCB, the appealed-from BAP decision.
4. *Melanio L. Valdellon and Ellen C. Valdellon v. Wells Fargo Bank, N.A.; PHH; IMPAC CMB Trust Series 2005-6; Wells Fargo Bank, N.A., as Trustee of the IMPAC CMB Trust Series 2005-6*, Ninth Circuit BAP Case No. ED-21-1193, a prior appeal subsequently transferred to the District Court (#6 below).
5. *Melanio L. Valdellon and Ellen C. Valdellon v. Wells Fargo Bank, N.A.; PHH; IMPAC CMB Trust Series 2005-6; Wells Fargo Bank, N.A., as*

Trustee of the IMPAC CMB Trust Series 2005-6, Ninth Circuit BAP Case No. ED-21-1194, a prior appeal subsequently transferred to the District Court (#7 below).

6. *Melanio L. Valdellon and Ellen C. Valdellon v. Wells Fargo Bank, N.A.; PHH; IMPAC CMB Trust Series 2005-6; Wells Fargo Bank, N.A., as Trustee of the IMPAC CMB Trust Series 2005-6*, E.D. Cal. Case No. 2:21-cv-01802, Debtors' appeal following denial of their motion to hold Creditors in contempt.

7. *Melanio L. Valdellon and Ellen C. Valdellon v. Wells Fargo Bank, N.A.; PHH; IMPAC CMB Trust Series 2005-6; Wells Fargo Bank, N.A., as Trustee of the IMPAC CMB Trust Series 2005-6*, E.D. Cal. Case No. 2:21-cv-01840, debtors' appeal following the first dismissal of their adversary proceeding.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because:

   [X] This response contains 11,657 words, including footnotes but excluding disclosures, tables, and title page, which is less than the 13,000 words permitted.

2. This response complies with the typeface and the type style requirements of Fed. R. App. P. 32(a)(5) because:

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Dated: October 9, 2025

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