UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re Clorie Carnegie, Debtor.	)	Case No. 14-80536
Clorie Carnegie, Plaintiff, v. Nationstar Mortgage, LLC d/b/a Mr. Cooper, Defendant.	)	Ad. Proc. No. 20-09001

MEMORANDUM OF OPINION

This adversary proceeding comes before the Court upon the motion to dismiss and supporting brief filed by Nationstar Mortgage, LLC d/b/a Mr. Cooper, pursuant to Federal Rule of Civil Procedure 12(b)(6), as made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012, for failure to state a claim upon which relief can be granted.

PROCEDURAL HISTORY

On November 22, 2019, Clorie Carnegie (the "Plaintiff") filed a motion to reopen her underlying bankruptcy case to file an adversary proceeding against Nationstar Mortgage, LLC d/b/a Mr. Cooper (the "Defendant"), for violations of the discharge injunction, confirmation order, and other Bankruptcy Code provisions. After a hearing on the matter, the Court granted the motion and reopened the bankruptcy case on December 13, 2019.

The Plaintiff filed the complaint to commence this adversary proceeding on January 15, 2020 (Docket No. 1, the "Complaint").[1] The Complaint asserts two claims for relief: (1) violations of the discharge injunction, and (2) violations of the automatic stay. The Plaintiff seeks actual damages, including emotional distress damages as well as reasonable attorneys' fees, costs, and expenses incurred in connection with filing the Complaint. The Plaintiff also requests the imposition of punitive sanctions against the Defendant, in an amount "sufficient to prevent [the Defendant] from continuing to engage in this conduct … and otherwise to deter such future conduct" from other parties (Docket No. 1, ¶ 114).

After a Court-provided extension of time, the Defendant filed an Answer on March 20, 2020, which included a motion to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012(b). On April 6, 2020, the Defendant filed a brief in support of its motion to dismiss (Docket No. 12, 13, collectively, the "Motion"). The Plaintiff filed a response to the Motion on May 25, 2020 (Docket No. 19, the "Response"), and the Court took the matter under advisement on July 16, 2020.

STANDARD OF REVIEW

Rule 12(b)(6) of the Federal Rules of Civil Procedure requires dismissal of a complaint if it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In evaluating a motion to dismiss, a court must "test the sufficiency of the complaint to see if it alleges a claim for which relief can be granted." *Dolgaleva v. Va. Beach City Pub. Sch.,* 364 F. App'x 820, 825 (4th Cir. 2010). A motion under Rule 12(b)(6) should be granted if the complaint does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Accordingly, the factual allegations must "be enough to raise a right to relief above the speculative level" and advance the plaintiff's claim "across

[1] Unless otherwise indicated, the record citations refer to Case No. 20-09001, rather than the underlying bankruptcy case, Case No. 14-80536.

the line from conceivable to plausible." *Id.* at 555, 570. As explained in *Ashcroft v. Iqbal,*

> A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

556 U.S. 662, 678 (2009) (internal quotations and citations omitted).

To determine plausibility, all well-pleaded facts set forth in the complaint are taken as true and viewed in a light most favorable to the plaintiff; however, "legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement" will not constitute well-pleaded facts necessary to withstand a motion to dismiss. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009). In other words, the "tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal,* 556 U.S. at 678. Assuming the complaint meets the plausibility standard, the plaintiff is not required "to also rebut other possible explanations for the conduct alleged." 2 MOORE'S FEDERAL PRACTICE § 12.34(1)(b) (2019). *See Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 484 (4th Cir. 2015) (holding that "a plaintiff need not demonstrate … that alternative explanations are less likely" to survive a motion to dismiss) (quoting *Twombly*, 550 U.S. at 570)). On the other hand, dismissal is proper under Rule 12(b)(6) "if the complaint lacks an allegation regarding an element necessary to obtain relief." 2 MOORE'S FEDERAL PRACTICE § 12.34(4)(a) (2019); *see also EEOC v. PBM Graphics*, 877 F. Supp. 2d 334, 343 (M.D.N.C. 2012) (finding a plaintiff must allege facts sufficient to state each element of his claim) (citing *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 764–65 (4th Cir. 2003)).

FACTUAL BACKGROUND AND ALLEGATIONS

For purposes of assessing the Defendant's Rule 12(b)(6) Motion, facts within the Complaint are accepted as true and construed in the light most favorable to the Plaintiff. *See Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009). The Court also takes judicial notice of pertinent docket entries and papers within this adversary proceeding and the underlying bankruptcy case. *See Anderson v. Fed. Deposit Ins. Corp.*, 918 F.2d 1139, 1141 n. 1 (4th Cir. 1990) (holding that a bankruptcy court may "properly take judicial notice of its own records"); *see also Brown v. Ocwen Loan Servicing, LLC*, No. 14-3454, 2015 WL 5008763, at *1 n. 3 (D. Md. Aug. 20, 2015), *aff'd*, 639 Fed. App'x. 200 (4th Cir. 2016) (taking judicial notice of docket entries in other cases for purposes of evaluating a Rule 12(b)(6) motion to dismiss).

On May 19, 2014, the Plaintiff filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code. At all relevant times, the Plaintiff was and remains the owner of record on real property located at 1104 Hazel Street, Durham, North Carolina (the "Property"). The Plaintiff listed the Property in Schedule A, with a purported fair market value of $34,408.00. When the Plaintiff filed her bankruptcy case, the Property was encumbered by a mortgage held by the Defendant, which the Plaintiff listed in Schedule D in the amount of $44,891.00 (Docket No. 1, ¶¶ 18, 19).

On May 22, 2014, the Plaintiff proposed a chapter 13 plan, in which the Defendant's claim was treated under 11 U.S.C. § 1322(b)(2) as secured only to the extent of the value of the Property with any remaining balance treated as unsecured (Case No. 14-80536, Docket No. 10, the "Plan"). The Defendant's claim was listed in the section of the Plan labeled as "STD – Secured Debts @ FMV," which the Plan reserves for "creditors [that] have partially secured and partially unsecured claims[,]" with "[t]he secured part of the claim [to] be paid in full over the life of the plan on a pro-rata basis with other secured claims." Pursuant to that proposed treatment, the chapter 13 trustee (the "Trustee") would distribute approximate monthly payments of $809.57 to the Defendant on its secured claim.

The Plan projected a 0% dividend to general unsecured, non-priority creditors, which would include the remaining unsecured balance of the Defendant's claim.[2] The Plaintiff served the proposed plan on the Defendant at an address the Defendant later listed within its proof of claim as the address for directing all payments.[3]

On July 16, 2014, the Trustee filed a Notice of Proposed Plan alerting creditors to the filing of the Plan and the deadline by which to file any objection, as well as providing a summary of the Plan through an attached proposed confirmation order (Case No. 14-80536, Docket No. 24). In the proposed confirmation order, the Defendant's claim was listed in Section D(2), labeled as "Partially Secured Claims – Real Property and Personal Property." The proposed confirmation order reflected that the Defendant had yet to file its proof of claim and, consequently, the Defendant's total claim amount was "unknown." The Trustee did, however, list the proposed amount of the Defendant's secured claim as $34,408.00, in accordance with the proposed treatment described in the Plan. The Court served the Trustee's notice on the Defendant at the preferred noticing address listed within the Defendant's proof of claim (Case No. 14-80536, Docket No. 25).

On the same day the Trustee filed the notice, July 16, 2014, the Defendant filed its proof of claim, asserting a claim of $47,336.50, secured by a mortgage on the Property, which the Defendant valued at $44,891.94. The Defendant did not, however, file any objection to the Debtor's Plan. Consequently, the Court entered an order on August 19, 2014, confirming the Plaintiff's Plan (Case No. 14-80536, Docket No. 26, the "Confirmation Order"). The Confirmation Order mirrored the Trustee's language regarding the treatment of the Defendant's claim, including the admonition that "[a]ny objection to value is required to be filed as a formal objection

[2] Neither the Defendant, nor any other creditor, was listed in the section of the Plan reserved for long-term secured debts, which called for the Trustee to distribute contractual monthly payments to a creditor through the life of the Plan, at the conclusion of which the Plaintiff would resume making direct payments on the remaining balance.

[3] The Plaintiff served the Defendant at 350 Highland Drive, Lewisville, Texas 75067. This address was later included by the Defendant in its proof of claim as the address for where all payments should be directed.

to valuation not later than 60 days from the date of the entry of this [Confirmation] Order." At no time, however, did the Defendant file an objection to the valuation of its claim or the Property (Docket No. 1, ¶ 28).

In the Defendant's proof of claim, the prepetition arrearage, or the amount necessary to cure the default as of the petition date, is described as three installment payments of $846.62, consisting of missing payments for March, April, and May of 2014 (Docket No. 1, ¶ 25). As of the petition date, the Defendant's payment history reflected the "Next Due" payment was March 2014 (Docket No. 1, ¶ 26). Plaintiffs allege that, after receiving the initial payments from the Trustee, the Defendant changed the "Next Due" date in their records to May 2014, which is consistent with the Defendant applying the Trustee's payments to the prepetition arrearage (Docket No. 1, ¶ 29).

The Plaintiff made all payments required under the confirmed Plan and received a discharge on June 18, 2019. The discharge order was served on the Defendant and its attorney (Docket No. 1, ¶¶ 33–35). On June 26, 2019, the Trustee filed a Final Report and Account, which stated that the Defendant's $34,158.00 secured claim was paid in full with interest (Docket No. 1, ¶ 37). A Notice of Filing of the Trustee's Final Report was docketed with the Court and served on Defendant and its attorney. The Defendant did not file an objection to the Final Report (Docket No. 1, ¶¶ 38–39).

The Defendant sent the Plaintiff an informational statement that was dated June 18, 2019, the same day the Plaintiff received her discharge, asserting the Plaintiff owed $25,978.53 on its mortgage as of July 1, 2019. The informational statement also informed the Plaintiff that the Defendant had "not received all of your mortgage payments due since you filed for bankruptcy" (Docket No. 1, ¶ 36). The Defendant sent the Plaintiff a second informational statement dated July 18, 2019, one month after discharge, claiming the interest-bearing principal balance on the Plaintiff's account was $29,063.79, including $1,793.61 in prepetition arrears. That second informational statement reiterated the Defendant's contention that it had not received all mortgage payments due since the Plaintiff filed her bankruptcy

(Docket No. 1, ¶ 43). The Defendant sent a third informational statement to the Plaintiff dated August 20, 2019, two months after discharge, asserting once more the existence of overdue payments and citing the same erroneous figures owed on the principal balance (Docket No. 1, ¶ 45).

On September 4 and September 6, 2019, the Plaintiff and her attorney's office separately reached out to the Defendant to challenge the contents of the informational statements sent to the Plaintiff, specifically the assertions of late payments and amounts allegedly still owed to the Defendant on its mortgage. Representatives of the Defendant, however, maintained the position that the mortgage was "nowhere close to being paid off," that $28,075.40 was still owed on the account, and that the Plaintiff would need to seek a court resolution of the issue (Docket No. 1, ¶¶ 46–47).

Despite the Plaintiff's communications with the Defendant's representatives, the Defendant sent the Plaintiff a letter, dated September 12, 2019, which included a "Payoff Breakdown" stating the Plaintiff owed $39,287.64 on her mortgage, which was $11,000.00 more than the amount the Defendant's representative informed the Plaintiff she owed on the account just eight days earlier (Docket No. 1, ¶¶ 48–49). In response, the Plaintiff's attorney sent a letter to the Defendant on September 20, 2019, informing the Defendant of the relevant bankruptcy information and demanding the Defendant record a satisfaction of its lien (Docket No. 1, ¶ 51). In a written response, dated October 9, 2019, the Defendant represented that it had authorized a "charge off of the account," but did not acknowledge receiving the principal and interest owed under the plan (Docket No. 1, ¶¶ 52–53).

Despite its stated intention to charge off the account, the Defendant sent the alleged debt to a third-party debt collector, Veripro Solutions ("Veripro"). In a letter dated October 19, 2019, Veripro told the Plaintiff the current lien balance on the loan was $38,810.17. Veripro informed the Plaintiff that, while she may have received a discharge of her personal liability, the bankruptcy did not discharge the obligation of the mortgage lien secured to the property (Docket No. 1, ¶¶ 54–55). The Plaintiff contacted the Defendant several times following the receipt of the

Veripro letter, but the Defendant consistently provided inaccurate information regarding the existence and amount of the alleged debt (Docket No. 1, ¶ 56).

As a result of the Defendant's actions, the Plaintiff alleges she suffered material injury and pecuniary loss (Docket No. 1, ¶¶ 58–59). Specifically, the Plaintiff asserts she has suffered from depression, insomnia, and anxiety (Docket No. 1, ¶¶ 61-63, 66, 69), as well as physical ailments such as headaches and chest pains (Docket No. 1, ¶¶ 64, 70–72). The Plaintiff alleges she has endured financial damages in the form of a reduced credit score and additional attorneys' fees (Docket No. 1, ¶¶ 60, 117). The Plaintiff also seeks punitive damages to deter future breaches of the discharge injunction and automatic stay by the Defendant and other similarly situated creditors (Docket No. 1, ¶ 113).

DISCUSSION

In the Complaint, the Plaintiff seeks damages for violations of both the discharge injunction and the automatic stay. Specifically, the Plaintiff alleges the Defendant willfully failed to credit payments it received in accordance with the Plan and Confirmation Order and continued its actions to collect on a prepetition debt that was fully paid and discharged, in violation of §§ 524, 524(i), and 362(a)(6) of the Bankruptcy Code.

The bankruptcy system affords debtors protection from creditors' collection efforts through two related, but sequentially separated provisions. The automatic stay under § 362(a) shields debtors for the duration of a bankruptcy case until entry of discharge or dismissal. *See* 11 U.S.C. § 362(c)(2). Once a discharge is entered, the automatic stay terminates, and a discharge injunction takes effect to prevent creditors' efforts to collect on debts that were discharged. A discharge in bankruptcy, "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 …" 11 U.S.C. § 524(a)(2). While a violation of the discharge injunction does not provide an express remedy akin to § 362(k) for violations of the automatic stay, § 105(a) allows a bankruptcy court to hold a creditor in civil contempt, and impose contempt sanctions, for violating the

discharge injunction. *See Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019); *see also Bradley v. Fina (In re Fina)*, 550 F. App'x 150, 154 (4th Cir. 2014).

1. The First Cause of Action: Violation of the Section 524 Discharge Injunction[4]

In the Complaint, the Plaintiff asks the Court to use its authority under § 105(a) to sanction the Defendant for violations of both § 524(a)(2) generally and, more specifically, § 524(i) (Docket No 1, ¶¶ 86, 116). While the Plaintiff asserts that sanctions are warranted under § 105(a) and § 524, the Plaintiff focuses particularly upon an alleged breach of § 524(i). The Plaintiff reiterated this dual-pronged request in the Response, arguing that the Defendant's willful failure to credit payments violated § 524(i) and that "its wrongful attempts to collect a discharged debt violated § 524 *as well*" (Docket No. 19, p. 34) (emphasis added).

While not raised by the Defendant in its Motion, the Court must consider whether the Plaintiff is entitled to relief under either or both of § 524(a)(2) and § 524(i). This Court has not considered, nor has it identified any decisions directly addressing the question of whether § 524(i) applies to short-term, partially secured claims under § 1322(b)(2), which are fully paid and discharged once the plan is completed. Accordingly, the Court must determine whether the Plaintiff is entitled to any relief under § 524(i) for breaches related to the Defendant's partially secured claim.

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[4] While the second of the Plaintiff's causes of action alleges violations of the automatic stay, the Plaintiff's first cause of action is labeled as a "Motion for Contempt and Sanctions for Violation of the Discharge Injunction." While some circuits have determined a contempt proceeding under § 105 to enforce the discharge injunction must be pursued as a contested matter, by motion in the underlying bankruptcy case, rather than in an adversary proceeding, *see Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1191 (9th Cir. 2011), the Fourth Circuit has not addressed the question and there are "many decisions within this Circuit which have entered contempt judgments in the context of adversary proceedings." *Dotson v. United Recovery Group (In re Dotson)*, Case No. 09-72188, Adv. No. 13-7027, 2013 WL 5652732, at *4 n. 4 (Bankr. W.D. Va. Oct. 16, 2013) (declining to apply *Barrientos* rationale to dismiss debtor's claim for violation of the discharge injunction); *see also Harlan v. Rosenberg & Assocs., LLC (In re Harlan)*, 402 B.R. 703 (Bankr. W.D. Va. 2009); *Gates v. Didonato (In re Gates)*, Case No. 04-12076, Adv. No. 04-1240, 2004 WL 3237345 (Bankr. E.D. Va. Oct. 20, 2004). Moreover, the Defendant has not raised the issue in the Motion and has specifically moved to dismiss all causes of action, including the alleged violation of the discharge injunction, under Bankruptcy Rule 7012, which, absent a specific order by the Court, is not expressly applicable to contested matters. Accordingly, the Court will interpret the Plaintiff's Motion to Impose Sanctions for Violation of the Discharge Injunction as an additional cause of action within the Complaint.

Even if the Plaintiff is not entitled to relief under § 524(i) within the context of this bankruptcy case and the Defendant's claim treatment, the Plaintiff may nevertheless sufficiently state a plausible claim for relief under the broader injunction created by § 524(a)(2). While the Plaintiff must provide "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2) and Fed. R. Bankr. P. 7008, the applicable rules "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014). "[P]rovided that the factual allegations underlying a claim are sufficient under the plausibility standard, omitting or misstating the legal theory for that claim is inconsequential to whether the pleading states a claim for relief under Rule 12(b)(6)." 2 MOORE'S FEDERAL PRACTICE § 12.34 (2020). Accordingly, if the Plaintiff plausibly pleads a claim under either of § 524(i) or § 524(a)(2), the first cause of action regarding an alleged breach of the discharge injunction will survive the Defendant's Motion.

a. *11 U.S.C. § 524(i) is Only Applicable to Long-Term Debts That are Not Discharged Under 11 U.S.C. §§ 1228, 1328*

Congress added § 524(i) to the Bankruptcy Code as part of the Bankruptcy Abuse Prevent and Consumer Protection Act of 2005, Pub. L. No. 109-8 § 302 ("BAPCPA"). It reads as follows:

> The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming a 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).

On its face, the language of § 524(i) creates a unique carve-out within the broader discharge injunction provisions of § 524. Prior to the addition of § 524(i) to the Bankruptcy Code, a discharge order served as a temporal bright line that delineated acts that violated either the automatic stay or the discharge injunction.

Section 524(i), however, allows for certain offending actions occurring prepetition — the willful failure to credit payments — to constitute a violation of the discharge injunction if the post-discharge act to collect caused material injury to a debtor. *See* 4 COLLIER ON BANKRUPTCY ¶ 524.08 (16th ed. 2020) ("Although section 524(a) previously was limited to violations of the discharge order, section 524(i) is not limited to acts occurring after discharge."). While a "discharge is necessary to give rise to the § 524(a)(2) discharge injunction, which in turn is a prerequisite to bringing a proceeding pursuant to § 524(i), … that [§ 524(i)] proceeding may relate to a creditor's conduct that occurred *prior* to the discharge." *Santander Consumer, USA, Inc. v. Houlik (In re Houlik)*, 481 B.R. 661, 672 (10th Cir. B.A.P. 2012) (emphasis added). In enacting § 524(i), Congress therefore created a narrow type of pre-discharge activity that could form the basis for a proceeding on a discharge injunction violation.

The question presented by the Complaint is whether a proceeding under § 524(i) is permissible where the alleged violations pertain to a short-term, partially secured debt that was fully paid and discharged upon completion of a chapter 13 plan. There is no controlling precedent or circuit court decisions on the subject and the Court has identified only one bankruptcy decision to date that contemplated the possibility of sanctions under § 524(i) in such circumstances. In *In re Alston*, 610 B.R. 551 (Bankr. D.S.C. 2019), the court awarded sanctions under § 105(a) for a creditor's wrongful retention of overpayments it received on a vehicle that was paid in full through a chapter 13 plan. While the *Alston* court awarded sanctions through its inherent authority under § 105(a) for violation of the terms of a chapter 13 plan, the Court, in dicta, remarked that "[i]t appears Debtors are also entitled to relief under § 524(i)" as "[t]he acceptance and retention of payments after the loan was paid in full was a misapplication of plan payments which resulted in a material injury to Debtors." *Id*. at 557 n. 7. However, the overwhelming majority of cases

considering § 524(i) involve long-term debts that are not discharged at the end of a plan.[5]

To the Court's understanding, this is a case of first impression as it appears no court has directly considered the question of whether § 524(i) applies to short-term secured debts that are paid in full and discharged through a chapter 13 plan. This Court, therefore, will address that question through interpretive analysis of § 524(i), employing the approach laid out by the United States Supreme Court in its four decisions interpreting BAPCPA provisions.[6] While the Supreme Court has not interpreted § 524(i), it has provided guidance through its efforts to interpret other portions of BAPCPA's "many poorly drafted provisions." Thomas F. Waldron & Neil M. Berman, *Principled Principles of Statutory Interpretation: A Judicial Perspective After Two Years of BAPCPA*, 81 AM. BANKR. L.J. 195, 196 (2007). As with other portions of BAPCPA, § 524(i) has been described as "internally inconsistent and not simple of interpretation." Keith M. Lundin, LUNDIN ON CHAPTER 13, § 162.2, at ¶ 3, LundinOnChapter13.com (last visited on Sept. 28, 2020). Therefore, the Court will utilize the interpretive tools embraced by the Supreme Court in interpreting the scope of § 524(i).

An analytical roadmap can be gleaned from the four cases in which the Supreme Court interpreted BAPCPA provisions, the steps of which can be summarized in order of application and significance: (1) text, (2) context, (3) effects, and (4) purpose. First, courts should consider the text of the statute itself and

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[5] *See e.g.*, *Santander Consumer, USA, Inc. v. Houlik (In re Houlik)*, 481 B.R. 661 (10th Cir. B.A.P. 2012); *Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682 (Bankr. M.D.N.C. 2020); *In re Ferris*, 611 B.R. 701 (Bankr. M.D. Fla. 2019); *Ridley v. M&T Bank (In re Ridley)*, 572 B.R. 352 (Bankr. E.D. Okla. 2017); *In re Franklin*, No. 09-13399, 2017 WL 3701214 (Bankr. D.N.H. Aug. 24, 2017); *Scott v. Caliber Home Loans, Inc. (In re Scott)*, Case No. 09-11123, Adv. No. 14-01040, 2015 WL 9986691 (Bankr. N.D. Okla. July 28, 2015); *Mattox v. Wells Fargo, NA (In re Mattox)*, Case No. 07-51925, Adv. No. 10-05041, 2011 WL 3626762 (Bankr. E.D. Ky. Aug. 17, 2011); *Galloway v. EMC Mortg. Corp. (In re Galloway)*, Case No. 05-13504, Adv. No. 09-01124, 2010 WL 364336 (Bankr. N.D. Miss. Jan. 29, 2010); *Myles v. Wells Fargo Bank, N.A. (In re Myles)*, 395 B.R. 599 (Bankr. M.D. La. 2008).

[6] *See Hall v. United States*, 566 U.S. 506 (2012); *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61 (2011); *Hamilton v. Lanning*, 560 U.S. 505 (2010); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010).

endeavor to discern a plain meaning using statutory and dictionary definitions. Second, courts should consider the BAPCPA provision's contextual features, particularly how it relates to other contemporaneously added BAPCPA provisions as well as how it fits within the broader statutory scheme of the Bankruptcy Code. Third, courts should consider whether competing interpretations of the BAPCPA provision would create absurdities or contradictions or whether an interpretation would render other provisions superfluous. Fourth, courts should be mindful of congressional purpose and whether a particular interpretation accords with Congress's intent in passing BAPCPA or the particular provision at issue.

This Court first considers the "language of the statute itself," *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011), as well as any statutory definitions or dictionary definitions, that may provide the plain meaning of § 524(i). *See Hall v. United States*, 566 U.S. 506, 511–12 (2012); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 236, 240 (2010); *Hamilton v. Lanning*, 560 U.S. 505, 513–14 (2010). The key phrase within § 524(i) is the "willful failure of a creditor to *credit payments* received under a plan." 11 U.S.C. § 524(i) (emphasis added). Unlike the phrase "make payments," which is included both in Code sections pre-dating BAPCPA as well as the recently added subchapter V provisions,[7] the term "credit payments" appears in no other section of the Bankruptcy Code and is not defined therein. The absence of the phrase "credit payments" from other sections of the Code is a telling sign of the term's significance and Congress's deliberate choice in utilizing it. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that

[7] *See, e.g.*, 11 U.S.C. § 1326(c) ("Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan."); 11 U.S.C. § 101(30) ("The term 'individual with regular income' means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title…"). Congress also used the phrase "make payments" in the provisions related to subchapter V, which were introduced through the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079 (2019), and are some of the most recent additions to the Code. *See, e.g.*, 11 U.S.C. § 1194(b) ("If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.").

Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Rodriguez v. United States*, 480 U.S. 522, 525 (1987). In enacting § 524(i), the Court presumes that Congress purposely used the language "credit payments" rather than other possible phrasing.

Crediting a payment is a fundamentally different action than simply "receiving" or "making" a payment. As reflected by the dictionaries in publication at the time of BAPCPA,[8] the definitions indicate that to credit a payment is to deduct a payment "from an amount due"—implying the continued existence of an amount owed after the payment is credited. The definition of "credit" within § 524(i), therefore, appears to be closely connected with the Bankruptcy Code's conception of a long-term debt under § 1322(b)(5), in which the last payment of a claim is due after the due date of the final payment under the plan. 8 COLLIER ON BANKRUPTCY ¶ 1322.09 (16th ed. 2020). The language of § 524(i) reflects that a secured creditor holding a long-term debt is required to correctly credit the payments according to the provisions within the plan, i.e. it must accurately deduct all payments it receives through the plan from the total amount owed on the debt that survives the bankruptcy. Upon close reading of the language of the statute itself, it appears unlikely that § 524(i) was enacted out of a concern for the manner in which holders of short-term secured debts credit payments received through a plan, given that their respective claims are fully paid upon plan completion and there is no "amount due" that continues beyond bankruptcy.

Turning to the second step in the analytical process, the Court will consider the "contextual features" of § 524(i) for interpretive guidance by viewing it within the context of any related provisions of BAPCPA and the Bankruptcy Code. *See Ransom,* 562 U.S. at 70; *Milavetz*, 559 U.S. at 235–38; *Hall*, 566 U.S. at 515–19.[9] As

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[8] *See, e.g.*, OXFORD ENGLISH REFERENCE DICTIONARY, 335 (revised 2nd ed. 2003) 335 (defining "credit" as to "enter on the credit side of an account"); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, 533 (2002) (defining "credit" to mean "a deduction from an amount otherwise due"); THE AMERICAN HERITAGE DICTIONARY 428 (4th ed. 2000) (defining "credit" to mean the "deduction of a payment made by a debtor from an amount due").

[9] Considering a given section within the wider context of the Bankruptcy Code is an analytical tool of the Supreme Court that long predates its application to BAPCPA provisions. *See Hartford*

a general principle, the Court must "interpret Congress's statutes as a harmonious whole rather than at war with one another." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619 (2018). As previously mentioned, the term "credit payments" only appears in § 524(i) and nowhere else in the Bankruptcy Code or Federal Rules of Bankruptcy Procedure. How the specific phrasing of § 524(i) fits within the greater context of § 524, and particularly with its sister provision added through BAPCPA, sheds further light on its meaning and purpose. Subparagraph (i) was not the only section added to § 524 through BAPCPA. Subparagraphs (j) and (k) were both concurrently added with § 524(i) and provide the context in which the provision was enacted.

Prior to BAPCPA, the provisions of § 524 did not provide a clear remedy for the failure of long-term creditors, whose debts would not be discharged, to credit payments pursuant to a confirmed plan, even though those pre-discharge actions potentially harmed debtors after discharge. 4 COLLIER ON BANKRUPTCY ¶ 524.08 (16th ed. 2020). There was a similar gap in § 524 that compelled courts to grapple with the propriety of post-discharge communications sent to debtors by creditors whose secured debts were not discharged in the bankruptcy case. *See Ramirez v. GMAC (In re Ramirez)*, 273 B.R. 620, 624 (Bankr. C.D. Cal. 2002). Subparagraphs (i) and (j), added in adjoining paragraphs, address these pre-BAPCPA gaps within § 524 regarding the scope and permissibility of a long-term secured creditor's pre- and post-discharge conduct. Subparagraph (j) is exclusively concerned with creditor actions regarding long-term mortgage debts.[10] It specifically addresses actions that

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Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000) (considering the statute's "contextual features"); *United Sav. Ass'n of Tex v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 371 (1988) ("Statutory construction … is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme…"). This contextual approach has also been relied upon by the Fourth Circuit Court of Appeals in interpreting BAPCPA provisions. *See Maharaj v. Stubbs & Perdue, P.A. (In re Maharaj)*, 681 F.3d 558, 569–70 (2012).

[10] (j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

(2) such act is in the ordinary course of business between the creditor and the debtor; and

mortgage creditors can take post-discharge while remaining in compliance with the discharge injunction, such as allowing mortgage creditors to continue to send statements in the ordinary course of business and collect payments made voluntarily by the debtor. 4 COLLIER ON BANKRUPTCY ¶ 524.09 (16th ed. 2020). Subparagraph (j) dictates what *post-discharge* conduct by certain long-term mortgage creditors will or will not violate the discharge injunction. A reading of § 524(i) as limited to long-term debts would complement subparagraph (j) by describing what *pre-discharge* conduct would also constitute a violation of the discharge injunction.[11] This interpretation of § 524(i) harmonizes that provision with its adjoining sister-provision in subparagraph (j), and is in keeping with the reasonable inference that Congress intended the two provisions to address pre-BAPCPA gaps in § 524 concerning the actions of long-term secured debtholders that were not discharged during a bankruptcy case.

In the third step, which is closely related to contextual examination of the provision, the Court considers whether one or more interpretations of § 524(i) would render language superfluous or create contradictions, either in the provision itself or with regard to other Bankruptcy Code provisions. *See, e.g., Hamilton v. Lanning*, 560 U.S. 505,526 (2010); *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 74 (2011); *Hall v. United States*, 566 U.S. 506, 517 (2012). Reading § 524(i) as applying to short-term, partially secured debts that are fully paid and discharged through a chapter 13 plan would render the general discharge injunction of § 524(a)(2) superfluous. Attempts to collect on a discharged debt were already

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(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

[11] The other companion provision added to § 524 through BAPCPA is subparagraph (k), which provides a clue as to the origination of the phrase "credit payments." While "credit payments" within § 524(i) represents the sole usage of the phrase within the Bankruptcy Code, the terminology could be found in the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., as well as its implementing regulation, known as Regulation Z, which is codified as 12 C.F.R. Part 226. *See, e.g.*, 12 C.F.R. § 226.10(a) ("A creditor shall credit a payment to the consumer's account as of the date of receipt."). Subparagraph (k) directly references the TILA and incorporates many of its terms. 4 COLLIER ON BANKRUPTCY ¶ 524.04[1] (16th ed. 2020). The use of "credit payments" within TILA and Regulation Z aligns with the common dictionary definitions available at the time of BAPCPA, in which the party crediting payments is deducting a given payment from a larger, continuing balance owed.

actionable under § 105 and § 524(a)(2) prior to BAPCPA and it would make little sense for Congress to provide an additional avenue of relief, with a different standard for determining liability,[12] under § 524(i) for debts that were already covered by existing provisions. *See Pompa v. Wells Fargo Home Mortg., Inc. (In re Pompa)*, Case No. 06-31759, Adv. No. 11-3651, 2012 WL 2571156, at *8 (Bankr. S.D. Tex. June 29, 2012) (finding that "a failure to credit plan payments on discharge debts would violate the discharge injunction regardless of whether § 524(i) were enacted.").[13]

Lastly, the Court considers congressional purpose in analyzing § 524(i). *See Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 64, 78 (2011); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231–32 (2010); *Hamilton v. Lanning*,

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[12] In 2019, the Supreme Court articulated a new standard for holding a party in contempt for violations of the discharge injunction under § 105(a) and § 524(a). *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019). *See infra* discussion at Part 1(b). Under the *Taggart* standard, a court "may hold a creditor in civil contempt for violating a discharge order where there is not a 'fair ground of doubt' as to whether the creditor's conduct might be lawful under the discharge order." *Id*. at 1804. This standard hinges on the creditor's understanding of whether the discharge order prohibited the actions taken post-discharge. The *Taggart* standard, particularly its focus on the creditor's understanding of the discharge order, cannot be applied to determining a creditor's liability under § 524(i) because the triggering act for imposing sanctions under that provision, the "willful failure to credit payments," occurs entirely before the discharge order is entered. *See In re* Ferris, 611 B.R. 701, 707 n. 3 (Bankr. M.D. Fla. 2019) (finding the *Taggart* standard did not apply to sanctions under § 524(i) "because the issue before the Court is not whether [the creditors] attempted to collect a discharged debt but whether they willfully failed to credit payments received under the Debtors' confirmed plan, and if so, whether such failure caused material injury to the Debtors."). If § 524(i) is read expansively to encompass short-term debts that were fully paid and discharged through a chapter 13 plan, the Court would be compelled to determine whether to sanction an offending creditor under two different standards. Plaintiff-debtors could avoid the need to satisfy the *Taggart* standard under § 105(a) and § 524(a) by pursuing sanctions under § 524(i). Moreover, if Congress had intended to create an alternate standard for conduct that was already prohibited under § 524(a), it likely it would have done so expressly.

[13] This reading of § 524(i), as applying to short-term debts that are discharged through the bankruptcy, would also run afoul of the harmonious-reading canon, which requires the provisions of a statute to be interpreted in a way that renders them compatible, not contradictory. *See In re Conrad*, 604 B.R. 163, 172 (Bankr. M.D. Pa. 2019) (citing *United States v. Bass*, 404 U.S. 336, 344 (1971)). *See also* Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 180 (2012). This interpretation would put § 524(i) in conflict with § 524(a) by employing two different standards for sanctioning the same acts and, consequently, render much of § 524(a)(2) superfluous. In contrast, reading § 524(i) as limited to long-term debts that are not discharged during a case would eliminate any conflict and would instead work in harmony with the pre-BAPCPA protections afforded by § 524(a) by encompassing pre-discharge actions that were not previously covered by the discharge injunction, *e.g.*, the willful failure to credit payments.

560 U.S. 505, 520–21 (2010).[14] In considering the purpose behind § 524(i), there is a clear consensus in the commentary and caselaw that the provision was added to address issues with long-term mortgage debts. One bankruptcy court found "§ 524(i) was intended to provide a remedy for failure to credit payments on debts not discharged under the plan," *In re Pompa*, 2012 WL 2571156 at *21, while another court determined that a long-term mortgage creditor's inaccurate crediting of payments and inflating of the account balance to be "exactly the type of conduct § 524(i) addresses." *Ridley v. M&T Bank (In re Ridley)*, 572 B.R. 352, 362 (Bankr. E.D. Okla. 2017). As summarized recently by the Bankruptcy Court for the Eastern District of Oklahoma:

> Where a creditor attempts to collect monies from a debtor after a discharge order has been entered for a *long-term debt that is not discharged* based upon its willful failure to properly credit payments received during the duration of the plan term, a discharge injunction violation occurs.

Christie v. Fort Gibson State Bank (In re Christie), 614 B.R. 726, 736 (Bankr. E.D. Okla. 2020) (emphasis added). The COLLIER treatise notes that § 524(i) "is a response to decisions in which courts questioned whether they had the ability to remedy a creditor's failure to credit payments properly." 4 COLLIER ON BANKRUPTCY ¶ 524.08 (16th ed. 2020) (citing *In re Rizzo-Cheverier*, 364 B.R. 532 (Bankr. S.D.N.Y. 2007)). In the case cited by COLLIER for this statement, the Bankruptcy Court for the Southern District of New York found a long-term mortgage creditor's alleged misapplication of payments during a chapter 13 case, resulting in an inflated account balance post-discharge, "does not fit neatly within the [pre-BAPCPA] prohibitions of the Bankruptcy Code." *In re Rizzo-Cheverier*, 364 B.R. at 537. While not stated explicitly within COLLIER, the implication is that Congress was concerned with the actions of long-term debtholders in enacting § 524(i) and

[14] The Court does not find the language of § 524(i) to be ambiguous and, therefore, does not resort to any consideration of legislative history. *See Milavetz*, 559 U.S. at 236 n. 3 (finding reliance on legislative history to be "unnecessary in light of the statute's unambiguous language," while still considering Congress's broader purpose in enacting BAPCPA). In any event, the legislative history would not provide any insight into the proper interpretation of § 524(i) as it is "scarce." *In re Collins*, No. 07-30454, 2007 WL 2116416, at *4 n. 5 (Bankr. E.D. Tenn. July 19, 2007).

not short-term debt holders, whose acts to collect after discharge were already actionable under § 524(a)(2).

A reading of § 524(i) that is limited in application to long-term debts clearly aligns with the plain text of the provision, is contextually consistent with the surrounding sections of § 524, including those contemporaneously added through BAPCPA, and most accords with Congressional purpose. The unique use of the phrase "credit payments," which is only found in § 524(i), implies that Congress deliberately chose that language. The plain meaning of "credit" as used by dictionaries of the time describes an act to deduct a payment from a continuing account balance, which implies § 524(i) is limited in application to long-term debts that are not discharged through a chapter 13 plan. This narrower reading is further supported by considering how § 524(i) fits with §§ 524(j) and (k), which were contemporaneously enacted as part of BAPCPA, as well as the manner in which § 524(a)(2) would be rendered superfluous through expanding § 524(i)'s protections to short-term debts that are discharged through a chapter 13 plan. Lastly, the commentary provided by bankruptcy courts and treatises indicates the overarching purpose and motivation behind enacting § 524(i) was to curtail the failures of long-term debt holders to accurately credit payments, actions that frequently resulted in inflated balances and foreclosure attempts after discharge.

Accordingly, the Court finds the application of § 524(i) to be limited to long-term debts that are not discharged through a chapter 13 plan. The Defendant's debt, which was a partially secured debt that was fully paid and discharged through the Plaintiff's Plan, is not encompassed by § 524(i). As a consequence, the Plaintiff has failed to plausibly plead a claim for relief under § 524(i).

b. *The Plaintiff Plausibly Pleaded a Claim for Relief Under 11 U.S.C. §§ 105(a) and 524(a)(2)*

While the Plaintiff is foreclosed from pursuing sanctions for violations under § 524(i) regarding a short-term secured debt that is fully paid and discharged through the plan, the Plaintiff has pleaded alternative relief through § 105(a) and § 524(a)(2). Although the Plaintiff's legal basis for sanctions under § 524(i) is

flawed, if the factual allegations set forth in the Complaint are sufficient to plausibly plead a claim for relief under § 105(a) and § 524(a)(2), the Plaintiff's "omitting or misstating the legal theory for that claim is inconsequential to whether the pleading" survives a Rule 12(b)(6) motion. 2 MOORE'S FEDERAL PRACTICE § 12.34 (2020).

The traditional remedy for a violation of the discharge injunction, which precedes the addition of § 524(i), lies in a contempt proceeding for a creditor's breach of one of the protective provisions described in § 524(a). Subparagraph (2) of that section provides that a discharge in bankruptcy "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…" 11 U.S.C. § 524(a)(2). Bankruptcy courts have authority to hold parties in civil contempt for violating an order of the court, including a discharge order, through § 105(a). *Bradley v. Fina (In re Fina)*, 550 Fed. App'x. 150, 154 (4th Cir. 2014).

The Supreme Court has clarified the parameters by which courts may impose contempt sanctions for violations of its orders. *See Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019); *accord Life Techs. Corp. v. Govindaraj*, 931 F.3d 259, 267–68 (4th Cir. 2019). As the *Taggart* Court described, a bankruptcy court should not resort to civil contempt sanctions "where there is a fair ground of doubt as to the wrongfulness of the defendant's conduct." *Id.* at 1801. Under the fair ground of doubt standard, "civil contempt … may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope." *Id.* at 1802. The fair ground of doubt standard "is generally an objective one[,]" but the subjective intent of a party is still relevant. *Id.* For example, "civil contempt sanctions may be warranted when a party acts in bad faith," and "[o]n the flip side of the coin, a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction." *Id.*

A party "must be able to discern from the language of a court's order the actions necessary to comply with the court's directive." *Life Techs. Corp. v.*

Govindaraj, 931 F.3d at 268. Within the context of a bankruptcy discharge order, the *Taggart* Court acknowledged that, "because discharge orders are written in general terms and operate against a complex statutory backdrop, there will often be at least some doubt as to the scope of such orders." *Id.* at 1803. A "typical discharge order entered by a bankruptcy court is not detailed[,]" but Congress "has carefully delineated which debts are exempt from discharge." *Id.* at 1802 (citing §§ 523(a)(1)-(19)). In evaluating the Defendant's actions under the fair ground of doubt standard, this Court must consider if the Defendant "violate[d] a discharge order based on an objectively unreasonable understanding of the discharge order *or the statutes that govern its scope*." *Id.* (emphasis added). In any final adjudication of the Plaintiff's cause of action for violation of the discharge injunction, the Court would need to determine whether the Defendant had an objectively unreasonable understanding of either or both the discharge order and the Code sections governing its scope.

As one bankruptcy court described, after *Taggart*, the elements that must be proven for a court to find a party in civil contempt are:

> (1) the party violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts; (2) the party did so with knowledge of the court's order; and (3) there is no fair ground of doubt as to whether the order barred the party's conduct — i.e., no objectively reasonable basis for concluding that the party's conduct might be lawful.

In re City of Detroit, 614 B.R. 255, 265 (Bankr. E.D. Mich. 2020).

The Plaintiff has plausibly pleaded a cause of action for violation of the discharge injunction of § 524(a)(2). The Plaintiff pleaded the first element by alleging that a discharge order was entered on June 18, 2019, which alerted the Defendant to the fact that its secured claim had been paid in full and its remaining unsecured debt discharged (Docket No. 1, ¶¶ 35, 43). The Plaintiff also pleaded the second element, first by alleging that the Defendant had knowledge of the Plan and the treatment of the Defendant's claim therein (Docket No. 1, ¶¶ 22, 98, 105), and then alleging that the Defendant had knowledge of the discharge order and acted in

contravention of that order (Docket No. 1, ¶¶ 35, 97, 102, 105). The Plaintiff also pleaded the third element, that there was no fair ground of doubt that the discharge order barred the Defendant's conduct. Plaintiff alleges Defendant knew or should have known its actions were prohibited by the discharge order (Docket No. 1, ¶ 104). Plaintiff also alleges that the Defendant continued in its offending conduct after being further informed of the parameters of the discharge order by the Plaintiff and her attorney (Docket No. 1 ¶¶ 46–47, 54–55). In short, the Plaintiff has plausibly pleaded the elements required for a cause of action under § 105(a) and § 524(a)(2).

The only basis Defendant cites for why its Motion should be granted as to Plaintiff's cause of action for violations of the discharge injunction is that, under *Taggart*, there "existed more than a fair ground of doubt as to whether Defendant's conduct was inconsistent with the discharge order" because that order "does not indicate that a secured debt has been satisfied or otherwise terminated" (Docket No. 13, pp. 4, 6).

Given the limited evidentiary record before the Court, the *Taggart* fair ground of doubt standard raised by the Defendant is an insufficient basis to grant a Rule 12(b)(6) motion to dismiss. In light of the allegations made in the Complaint, the Court must receive and consider evidence on the Defendant's belief as to the scope and applicability of the discharge order to its asserted debt. Only then can the Court determine whether the Defendant's belief was objectively reasonable for purposes of the *Taggart* fair ground of doubt standard.[15] Moreover, the Defendant's

[15] Recent cases imposing sanctions under the *Taggart* standard have done so through motions for contempt or at a later stage of an adversary proceeding. In those instances, courts were able to determine the objective reasonableness of a defendant's belief as to the scope of an order through the defendant's argued positions and/or submitted testimonial and documentary evidence. *See Ragone v. Pizza Pan Elyria, LLC (In re Ragone)*, Case No. 13-51335, Adv. No. 18-03070, 2020 WL 1672539, at *5, 9 (Bankr. N.D. Ohio Mar. 31, 2020) (imposing sanctions against defendant after a trial in the adversary proceeding, in which the court considered documentary evidence as well as the defendant's testimony); *In re Schwartz*, Case No. 12-37089, 2020 WL 3170591, at *6 (Bankr. S.D. Fla. June 12, 2020) (imposing sanctions after finding defendant attorney's arguments that he thought he was not doing anything wrong to be objectively unreasonable); *Aquavit Pharms. v. U-Bio Med, Inc.*, No. 19 Civ. 3351, 2019 WL 8756622, at *6 (Bankr. S.D.N.Y. Dec. 16, 2019) (imposing sanctions after finding the excuses offered by defendants as to their inability to understand the injunction to be "not credible").

subjective belief as to the scope of the discharge order may factor into any decision on imposing sanctions and in what amount. *Taggart*, 139 S. Ct. 1795, 1802 (2019).[16] For the purposes of a 12(b)(6) motion to dismiss, in which the Court accepts the allegations as true and draws all reasonable inferences in the Plaintiff's favor, the Plaintiff has met the plausibility standard in pleading that there is no fair ground of doubt that the Defendant understood the effect of the discharge order and continued to attempt collection on its discharged debt. *See Parente v. Fay Servicing, LLC*, No 1:19-cv-04138, 2020 WL 1182714, at *6 (N.D. Ill. Mar. 12, 2020). It is not necessary to determine at this stage whether the Defendant's alternative explanation for its actions, based on its belief as to the scope of the discharge order, is more probable or likely. *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 484 (4th Cir. 2015).

The Plaintiff has met her burden by plausibly pleading a cause of action under § 105(a) and § 524(a)(2) and, therefore, the Defendant's Motion must be denied as to this cause of action.

2. The Second Cause of Action: Violation of the Automatic Stay

The Plaintiff also seeks sanctions against the Defendant for violations of the automatic stay. The Plaintiff argues the Defendant has breached § 362(a)(6), which prohibits "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." Plaintiff seeks damages under § 362(k), which provides that "an individual injured by any willful violation of a stay … shall recover actual damages, including costs and attorneys' fees, and in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k).

For this cause of action, the Plaintiff incorporates the factual allegations that formed the basis for her claim under § 524(a)(2) and § 524(i). Specifically, the

[16] This finding does not completely foreclose the ability of a bankruptcy court to dismiss a proceeding under § 105(a) and § 524(a) at the pleading stage of litigation. For instance, it may be possible for a court to determine, from the pleadings and any attached exhibits, whether a defendant's communications were covered by the safe harbor provisions of § 524(j). *See, e.g.*, *In re Cantrell*, 605 B.R. 841 (Bankr. W.D. Mich. 2019) (denying motion for contempt where post-discharge communications of creditors were properly sent under § 524(j)).

Plaintiff alleges that the Defendant's failure to correctly credit payments received pursuant to the Plan and Confirmation Order, during the duration of the bankruptcy case, constitutes a violation of the automatic stay. In *Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682 (Bankr. M.D.N.C. 2020), this Court found, in line with the majority of courts to consider the issue,[17] that a failure to credit payments according to the terms of a confirmed plan may rise to the level of a willful violation of the stay.

While the Court has already determined that § 524(i) is only applicable to long-term debts that are not discharged under a chapter 13 plan, it need not decide whether violations of the automatic stay for failure to credit payments is similarly limited in its application. Even if the Defendant could be liable for the willful failure to credit payments occurring while the automatic stay was in place, the Plaintiff has not alleged the Defendant took any action to collect during the pendency of the stay.

The automatic stay terminates upon the earliest of (a) the close of the case, the (b) dismissal of the case, or (c) the grant or denial of the individual's discharge. 11 U.S.C. § 362(c)(2)(A)-(C). The Plaintiff received a discharge on June 18, 2019, at which point the automatic stay terminated (Docket No. 1, ¶ 34). The earliest offending communication from the Defendant that Plaintiff points to with particularity is dated June 18, 2019, the same date that the Court entered the discharge order. While the Plaintiff alleges that the Defendant "sent [her] an Informational Statement dated June 18, 2019," the Plaintiff only states the printed date on the letter and never alleges that the communication was actually sent or

[17] *See, e.g.*, *Szoke v. Chase Home Fin., Inc. (In re Szoke)*, Case No. 06-42182, Adv. No. 12-4048, 2012 Bankr. LEXIS 6299, at *17–18 (Bankr. N.D. Ohio Aug. 28, 2012); *Mattox v. Wells Fargo, NA (In re Mattox)*, Case No. 07-51925, Adv. No. 10-05041, 2011 WL 3626762, *1 (Bankr. E.D. Ky. Aug. 17, 2011); *Galloway v. EMC Mortg. Corp. (In re Galloway)*, Case No. 05-13504, Adv. No. 09-01124,2010 WL 364336, at *5 (Bankr. N.D. Miss. Jan. 29, 2010); *Myles v. Wells Fargo Bank, N.A. (In re Myles)*, 395 B.R. 599, 606 (Bankr. M.D. La. 2008); *but see Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriquez)*, 421 B.R. 356, 368–69 (Bankr. S.D. Tex. 2009) (finding misapplication of payments does not violate the automatic stay).

received during the pendency of the stay and before entry of the discharge (Docket No. 1, ¶ 36).

To sustain an action under § 362(k) for the willful failure to credit payments pursuant to a confirmed plan, the plaintiff must show an act to collect while the automatic stay was in effect. *Ridley v. M&T Bank (In re Ridley)*, 572 B.R. 352, 362 (Bankr. E.D. Okla. 2017) (finding no violation of stay where no evidence was presented regarding any communication from the creditor to the debtor prior to entry of discharge). Here, the Plaintiff has not plausibly pleaded the Defendant undertook any act to collect prior to the entry of discharge.

Accordingly, the Plaintiff has failed to plausibly plead a claim for relief under § 362(k) and the Defendant's Motion must be granted as to this cause of action.

CONCLUSION

For the reasons stated above, the Court will deny the Defendant's motion to dismiss the Plaintiff's claim for violation of the discharge injunction under § 105(a) and § 524(a)(2); but as to Plaintiff's claim for violations of the automatic stay under § 362(k), the Court will grant the Defendant's motion and dismiss the claim.

This memorandum constitutes the Court's findings of fact and conclusions of law. An order will be entered contemporaneously with the entry of, and in accordance with, this memorandum opinion.

September 29, 2020

Lena Mansori James
United States Bankruptcy Judge