No. 23-

IN THE

Supreme Court of the United States

KIMBERLY BRUCE, ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED, AKA KIMBERLY A. BRUCE, AKA KIMBERLY ANTRELL BRUCE,

Petitioner,

v.

CITIGROUP INC. AND CITIBANK, N.A.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a bankruptcy court has jurisdiction under Bankruptcy Rule 7023 to certify a national class of individuals, all of whom were subjected to the same conduct by the same defendant, that violates the statutory injunction of Bankruptcy Code § 524.

PARTIES TO THE PROCEEDING

Petitioner, who was Plaintiff-Appellee below, is Kimberly Bruce, on behalf of herself and all others similarly situated, AKA Kimberly A. Bruce, AKA Kimberly Antrell Bruce.

Respondents, both of which were Defendants-Appellants below, are Citigroup, Inc. and Citibank, N.A.

RELATED PROCEEDINGS

Belton et al. v. GE Capital Retail Bank et al., Nos. 19-648 (L), 19-655 (Con.), U.S. Court of Appeals for the Second Circuit. Opinion entered June 16. 2020.

Bruce et al. v. Citigroup Inc. et al, No. 14-cv-7525, U.S. District Court for the Southern District of New York. Memorandum Decision entered March 2, 2015.

Bruce v. Citibank et al., No. 22-1000, U.S. Court of Appeals for the Second Circuit. Judgment entered August 2, 2023.

Bruce v. Citibank et al., No. 7:14-ap-8224, U.S. Bankruptcy Court for the Southern District of New York. Bench Decision dated July 22, 2021.

Bruce v. Citigroup Inc. et al., No. 16-830, U.S. Court of Appeals for the Second Circuit. Order entered June 26, 2018.

Bruce v. Citigroup Inc. et al., No. 22-134, U.S. Court of Appeals for the Second Circuit. Certified Order entered May 4, 2022.

Bruce v. Citigroup Inc. et al., No. 7:15-cv-3311, U.S. District Court for the Southern District. Opinion and Order entered March 4, 2019.

Citigroup Inc., et al. v. Bruce, No. 15-19, U.S. Court of Appeals for the Second Circuit. Mandate issued April 7, 2015.

Citigroup Inc. et al. v. Bruce, No. 7:21-cv-7455, U.S. District Court for the Southern District of New York. Opinion and Order entered December 27, 2021.

In re: Kimberly Bruce, No. 7:13-bk-22088, U.S. Bankruptcy Court for the Southern District of New York. Order Granting Motion to Reopen Chapter 7 Case for Specified Purpose entered April 11, 2014.

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OPINIONS BELOW

The opinion of the Second Circuit directly at issue in this appeal is published as 75 F.4th 297 (2d Cir. 2023) and is reproduced at Appendix A, pages [1a]–[24a]. The bankruptcy court decision from which the Second Circuit appeal was taken is an unpublished excerpt from the hearing transcript of an adversary proceeding and is reproduced at Appendix B, pages [25a]–[76a].

JURISDICTION

The Second Circuit opinion reversing the order below denying Defendants' motion to dismiss the class certification allegations was entered on August 2, 2023. Petitioner Kimberly Bruce brings this Petition for Certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

In pertinent part, 11 U.S.C. § 105(a) provides that:

> 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.

In pertinent part, 11 U.S.C. § 524(a)(2) provides that:

> A discharge in a case under this title 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

In pertinent part, 11 U.S.C. § 727(a) provides that:

> The court shall grant the debtor a discharge, unless-

In pertinent part, Rule 7023 of the Federal Rules of Bankruptcy Procedure provides that:

> Rule 23 F.R.Civ.P. applies in adversary proceedings.

In pertinent part, 28 U.S.C. § 157 provides that:

> (a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.
>
> (b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection

> (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

In pertinent part, 28 U.S.C. § 1334(b) provides that:

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

INTRODUCTION

This Petition seeks review of the issue of whether a bankruptcy court, which, under Bankruptcy Rule 7023, has all the powers to entertain a class action as the district court, nonetheless lacks jurisdiction or power to certify a national class of debtors, all of whom have been subjected to the same conduct by the same defendant in violation of the statutory injunction embodied in Bankruptcy Code § 524. Although the Second Circuit assumed there was subject matter jurisdiction (Op. at 13, n. 5), it nonetheless held that the bankruptcy court lacked the power under a "longstanding equitable principle" (Op. at 15) to certify a national class because each member of the class received a standard discharge order from the bankruptcy judge presiding over that individual's case. As a result, each of the thousands of class members must return to each of the hundreds of bankruptcy judges that issued the discharge orders to obtain the same relief against the same defendant.

The Second Circuit's decision is clearly inconsistent with the First Circuit's decision in *Bessette v. Avco Financial Services, Inc.*, 230 F.3d 439 (1st Cir. 2000), which expressly held that a bankruptcy court has jurisdiction to entertain such a class. This Circuit split undermines the Constitutional requirement that there be "uniform laws on the subject of bankruptcies." Art. I., § 8 of the Constitution.

There is no provision in the Bankruptcy Code that prohibits a bankruptcy court from entertaining such a class. More importantly, congressional authorization of bankruptcy class actions in adversary proceedings is set forth — without limitation — in Bankruptcy Rule 7023: "Rule 23 F.R.Civ.P. applies in adversary proceedings." Federal Rules of Bankruptcy Procedure, Rule 7023. Moreover, this Court has admonished the lower courts that, where subject matter jurisdiction is present, as it indisputably is here, they should not abstain from exercising that jurisdiction except in very specific circumstances not applicable here.

Finally, the Second Circuit's refusal to allow a national class action arises from a court-created limitation that appears nowhere in the Bankruptcy Code. The lower court below, like many other courts, assumed that § 524 can only be enforced by contempt, but there is nothing in the section that mandates that. The fact that the section itself includes a statutory injunction prohibiting acts to collect discharged debts should not *limit* courts' remedial powers— but instead should expand them.

The discharge injunction is the central pillar of the entire bankruptcy system. Congress gave the courts broad power under § 105 to enforce that system. Nowhere

did Congress say that contempt was the sole remedy. Any other statutory provision in the Bankruptcy Code could be enforced through a class action. Ironically, for the most important provision protecting discharged debtors — the discharge injunction prohibiting acts to collect discharged debts — the class action remedy is now being denied by the Second Circuit's holding in this case.

STATEMENT OF THE CASE

This adversary proceeding was commenced in April 2014 in plaintiff's reopened bankruptcy proceeding. Plaintiff alleged that Citigroup, Inc. and Citibank, N.A. (collectively "Citibank") violated the discharge injunction of § 524 and her own individual discharge order by refusing to correct tradelines to show that plaintiff's debt at the major credit reporting agencies to show that the debt was discharged in bankruptcy. Instead, Citibank willfully continued to show her debt as "charged off."

Plaintiff alleged — and the Second Circuit sustained the allegation — that Citibank refused to correct the plaintiff's tradeline because it knew that a derogatory notation in the "current status" section" on a credit report, such as "charged off" or "past due" would have a severe deleterious effect on a consumer's ability to obtain credit. Further, Citibank knew that if it refused the consumer's request to correct and update the discharged debtor's credit reports to reflect the discharge, these consumers would pay off the debt, even though discharged, because discharged debtors needed a clean credit report to qualify for improved credit, jobs, apartments and mortgages.[1]

1. In her complaint, Ms. Bruce alleged that Citibank had a deliberate policy of refusing all consumers' requests to correct

Plaintiff sought to bring a class action on behalf of herself and thousands of others who were similarly affected by Citibank's refusal to correct tradelines upon receiving notices of discharge in bankruptcy. After various proceedings and appeals relating to the issue of arbitration, Citibank was given leave to refile a motion to dismiss, which was granted in part and denied in part from the bench on July 22, 2021, Appendix B hereto, and confirmed in an order on August 10, 2021. Citibank then moved for interlocutory appeal, which was granted by the district court on December 27, 2021. *Bruce v. Citibank*, 2021 WL 6111925 (S.D.N.Y. Dec. 27, 2021). The Second Circuit affirmed in part and reversed in part in a decision rendered on August 2, 2023. Appendix A hereto.

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their credit reports to reflect the discharge of their Citibank debts. Class actions — virtually identical to the *Citibank* class action — have been filed in bankruptcy courts against Chase Bank, Bank of America, Capital One, Wells Fargo, and GE Money Bank. In recent years, the aforesaid class action cases have been settled. Jessica Silver-Greenberg, *Bank of America and JPMorganChase Agree to Erase Debts From Credit Reports After Bankruptcies*, NEW YORK TIMES, May 15, 2015. Over a million class members have received corrected credit reports and the right to monetary damages as a result. Based on this experience, Citibank's opposition to the class action remedy would leave a large number of discharged debtors without relief since they lack the financial resources to sue Citibank to enforce the statutory injunction in bankruptcy court. *Haynes v. Chase Bank USA, N.A.,* No. 13-08370 RRD (Bankr. S.D.N.Y. Dec. 13, 2013); *Haniff v. Bank of America,* No. 14-08216 RRD (Bankr. S.D.N.Y. Mar. 31, 2014); *Anderson v. Capital One Bank,* No. 15-082342 RRD (Bankr. S.D.N.Y. July. 31, 2015); *Belton v. GE Capital Retail Bank*, No. 14-08223 RRD (Bankr. S.D.N.Y. Apr. 30, 2014); *Ajasa v. Wells Fargo Bank,* N.A., No. 18-01122 ESS (Bankr. S.D.N.Y. Nov. 8, 2018).

REASONS FOR GRANTING THE PETITION

I. THE DECISION IMPAIRS BANKRUPTCY COURTS' ABILITY TO GRANT CLASS-WIDE RELEF.

The Second Circuit acknowledged that the bankruptcy court had subject matter jurisdiction to entertain a national class, but nonetheless held that the bankruptcy court could not entertain such a class because it violated "longstanding equitable principles." The principle the Second Circuit relied upon is that, "generally," the court issuing an injunction should be the court ruling whether the parties subject to the injunction should be held in contempt. *Baker v. General Motors Corp.*, 522 U.S. 222, 236 (1998). Further, the Second Circuit held that it was inappropriate for one bankruptcy court to determine the penalty for violation of other judges' bankruptcy discharge orders. There are several reasons why this decision merits review.

First, the Second Circuit's decision is contrary to, and creates a circuit split with, the First Circuit's decision in *Bessette v. Avco Financial Services, Inc.*, 230 F.3d 439 (1st Cir. 2000), which held that bankruptcy courts have the power under § 105 of the Bankruptcy Code to certify a national class for violation of § 524.

Second, as the Second Circuit held, this case raises a "novel," "thorny" and "fundamental" question which this Court has never confronted, Op. at 12–13, over which there is a clear circuit split.

Third, this Court has admonished that, where subject matter jurisdiction exists, as it does here, federal courts have a "virtually unflagging obligation" to exercise it. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). A refusal to exercise subject matter jurisdiction has been described as a violation of the separation of powers, a usurpation of legislative authority and as "treason to the [C]onstitution." *Cohens v. State of Virginia*, 19 U.S. 264, 404 (1821). This Court has further expressly prohibited limiting the exercise of subject matter jurisdiction on prudential grounds. *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). The decision below is flatly inconsistent with these precedents.

Fourth, the "longstanding equitable principle" that the Second Circuit relies upon is not absolute and clearly has no application here, where there is a statutory injunction that is being enforced, not just individual orders, and where the individual discharge orders do not address or adjudicate any of the issues raised in this proceeding. They determine nothing more than the fact that the debtor has met the conditions for a discharge in bankruptcy.

While acknowledging that the discharge orders are issued on standard forms, the Second Circuit argued that the individual issuing judge should still determine the appropriate relief for violation of the discharge orders because "the appropriateness of civil contempt sanctions, and in what form, are considerations that can still benefit from the unique insight a bankruptcy court can gain in presiding over a proceeding." Op. at 20. This reasoning completely ignores the fact that the initial bankruptcy courts took absolutely no action, and heard no evidence,

with regard to the issue being adjudicated in the class action. By definition, no member of the class has had this issue addressed by the court that administered his or her bankruptcy.

The Second Circuit's reasoning also ignores the fact that the conduct that is the subject of the contempt is exactly the same in every case, so there are no unique circumstances that would require individual judicial attention. Indeed, the opposite is true; any court considering Citibank's conduct should take into account the class-wide policies it has adopted and should have before it the evidence that would show that Citibank's conduct is not a "one off" aberration, but the result of a deliberate policy. Further, any sanction should take into account the impact on the thousands of similarly-situated people and should provide commensurate relief to the entire class.

The Second Circuit also suggested that allowing a class action here would be a "major departure from the long tradition of equity practice" and that a Congressional departure from that long tradition "should not be lightly implied." *Id.* at 21. But the "major departure" is not giving effect to Rule 23, or the broad grant of equitable authority Congress gave to the bankruptcy courts through § 105 to effectuate the purposes of the Bankruptcy Code.

Fifth, as many lower courts have noted,[2] it makes no sense from a jurisprudential point of view to require thousands of individuals to bring actions before hundreds of judges addressing the exact same factual and legal

2. *See* note 2, *infra*.

issues, i.e., whether Citibank's refusal to correct tradelines constitutes a willful violation of the statutory injunction in § 524.

Sixth, the lack of a clear jurisprudential grounding to the lower court's decision is evidenced by its explicit refusal to address the related question of whether the bankruptcy court would have jurisdiction to issue a declaratory judgment holding that Defendants' conduct violated the statutory injunction embodied in § 524. The court studiously avoided addressing this issue, claiming that no request for declaratory relief was present, despite the fact that the first paragraph of the underlying complaint, as well as the request for relief, both expressly seek a declaration to that effect. A58, 75; Op. at 3. There is no logical reason embodied in the Second Circuit's decision that would explain why such declaratory relief would not be available, and if such declaratory relief is available, there is no logical reason why the bankruptcy court would not be able to award all necessary ancillary relief for violation of § 524.

Finally, in the course of denying class certification, the lower court, like the court in *Crocker v. Navient Solutions, LLC* (*In re Crocker*), 941 F.3d 206 (5th Cir. 2019) eviscerated Bankruptcy Rule 4004(f), which allows a former debtor to enforce her bankruptcy discharge in any bankruptcy court in the country. This negation of Rule 4004(f) would force a former debtor who has moved thousands of miles away from the place of bankruptcy to make a pilgrimage to the original bankruptcy court to obtain relief against a defendant who is violating the discharge injunction, even if the violation is occurring in their current place of residence. To reach this result, the

lower court draws on inferences from legislative history that evidences no such congressional intent. Indeed, the Second Circuit's tortured reading of Rule 4004(f) does obvious violence to the plain language of the rule. Op. at 21–22.

II. THERE IS A CLEAR SPLIT OF AUTHORITY WITH REGARD TO THIS ISSUE.

The Second Circuit's decision is flatly inconsistent with the First Circuit's decision in *Bessette v. Avco Financial Services, Inc.*, 230 F.3d 439 (1st Cir. 2000). In that case, the First Circuit noted that a bankruptcy court clearly had jurisdiction under the broad equitable powers of § 105 to provide relief to a class which uniformly suffered violations from the same defendant for the same conduct. Said the First Circuit:

> Appellant seeks enforcement of the statutory injunction set forth in § 524, not one individually crafted by the bankruptcy judge, in which that judge's insights and thought processes may be of particular significance. Thus, few of the practical reasons for confining contempt proceedings to the issuing tribunal apply here.

Bessette, 230 F.3d at 446. *Bessette*'s reasoning has been adopted by numerous lower courts.[3]

3. *See, e.g.*, *Anderson v. Credit One Bank* (*In re Anderson*), 641 B.R. 1, 15–20 (Bankr. S.D.N.Y. 2022); *Ajasa v. Wells Fargo Bank, N.A.* (*In re Ajasa)*, 627 B.R. 6, at *19–32 (Bankr. E.D.N.Y. 2021); *Golden v. Discover Bank* (*In re Golden*), 630 B.R. 896, 917–26 (Bankr. E.D.N.Y. 2021); *Haynes v. Chase Bank USA, N.A.* (*In re Haynes*), 2014 WL 3608891, at *6–9 (Bankr. S.D.N.Y.

The Second Circuit, however, noted its agreement with other courts that it asserts support its decision, even though neither of the cases expressly addressed the class certification issue as the grounds for the appeals. *See Crocker v. Navient Solutions, LLC* (*In re Crocker*), 941 F.3d 206 (5th Cir. 2019); *and Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958 (11th Cir. 2012). The wording in *Crocker* is pure *dicta* (941 F.3d at 217), although the *Crocker* court made sure to eviscerate Rule 4004(f) in the process. 941 F.3d at 213–15. The *Crocker* court left for the lower court the question of whether the court "has authority to enforce the injunctions arising from discharges entered by any bankruptcy court in the same judicial district." *Id.* at 217. The court failed to explain, however, how other judges in the same federal district could issue a contempt for violation of another bankruptcy judge's order, but could not do so with regard to an order issued by a bankruptcy judge in another district.

The holding in *Alderwoods* makes sense in light of the factual context in which it arose: tort actions by individuals harmed by the defendant debtor should be brought in the bankruptcy court that is administering defendant's bankruptcy. *Alderwoods* did not have the class action issue before it.

July 22, 2014); *Vick v. NCO Fin. Systems, Inc.*, No. 2:09-CV-114, 2010 WL 1330637, at *4 (E.D. Tex. March 15, 2010), *report and recommendation aff'd.*, 2010 WL 1328830 (E.D. Tex. March 30, 2010); *Cano v. GMAC Mortgage Corp.* (*In re Cano*), 410 B.R. 506, 543–55 (Bankr. S.D. Tex. 2009); *see also Rojas v. Citicorp Trust Bank FSB* (*In re Rojas*), Adv. No. 09-07003, 2009 WL 2496807, at *10 (Bankr. S.D. Tex. August 12, 2009).

To the extent that these cases imply lack of jurisdiction, they are clearly wrong. The bankruptcy court has jurisdiction pursuant to 28 U.S.C. § 1334(b). The enforcement of the discharge injunction embodied in § 524 is a core bankruptcy matter that arises under 11 U.S.C. § 727, 524 and 105. Once federal subject matter jurisdiction is proper in the district court as to a core bankruptcy matter arising under the Bankruptcy Code, subject matter jurisdiction is proper in the bankruptcy court to which the matter is referred under 28 U.S.C. § 157. While bankruptcy court jurisdiction is often founded on "related to" jurisdiction over the *in rem* debtor's estate, and only one court should administer that *in rem* estate, that is not the only basis for jurisdiction, nor is it the basis of subject matter jurisdiction here. *In re Haynes*, 2014 WL 3608891 at *6–7 (actions under 11 U.S.C. §§ 524 and 727 are concerned with prohibiting the collection of *in personam* debts and have nothing to do with the debtor's estate or *in rem* jurisdiction).

Thus, the question of whether a court should entertain a nationwide class, and thereby enforce the discharge orders of other courts, as well as the statutory injunction of § 524, is not a question of jurisdiction, but one of discretion considering comity among similar courts. *See In re Anderson*, 641 B.R. at 9, 15–19; *Baker v. General Motors Corp.*, 522 U.S. 222, 249 (1998) (Kennedy, J. concurring) (recognizing that the policy behind rules that limit enforcement of injunctions to the rendering court is based upon considerations of comity among coordinate courts); *Gray v. Petroseed Co., Inc.*, 985 F. Supp. 625, 632–34 (D.S.C. 1996) (holding that the question of whether contempt of a court order can be adjudicated by another court is a question of comity, not subject matter

jurisdiction). Since the issue is one of comity, the question of whether the court should exercise jurisdiction over a national class is clearly one of discretion, not jurisdiction. Therefore, the Second Circuit should have reviewed the court's refusal to deny the motion to dismiss the class allegations under an abuse of discretion standard.

III. THE SECOND CIRCUIT'S DECISION PERPETUATES A FUNDAMENTAL MISUNDERSTANDING OF THE PURPOSE OF THE INJUNCTIVE PROVISION OF § 524.

The underlying assumption of the Second Circuit's decision is that § 524 can only be enforced by contempt. While some courts have so held,[4] this Court has never addressed the issue. In *Taggart v. Lorenzen*, this Court did not hold that contempt was the only remedy for a violation of § 524 or the discharge order. Rather, this Court merely held that "[t]he question presented here concerns the criteria for determining when a court may hold a creditor in civil contempt for attempting to collect a debt that a discharge order has immunized from collection." 139 S. Ct. 1795, 1799 (2019). Thus, the sole issue before this Court in *Taggart* was the proper standard to apply *if* a court were to consider a contempt sanction for violation of a discharge order.

There is absolutely no basis in § 524 for limiting the bankruptcy courts' powers to contempt. Nor is there any other bankruptcy provision that so limits the bankruptcy

4. *See Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002); *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 421–23 (6th Cir. 2000).

courts. Indeed, the opposite is true: § 105 provides broad equitable powers to the bankruptcy courts to effectuate other provisions of the Code. *See Bessette*, 230 F.3d at 444–46. The fact that § 524 contains a statutory injunction certainly gives the bankruptcy court the power to hold the violator in contempt. But there is no reason to limit the court's power simply to contempt. Indeed, the history of § 524 reveals that the injunctive provision was placed in the statute to strengthen the power of the discharge, not to place any limitation on bankruptcy courts' powers. *See* Amicus Brief of Nat'l. Consumer Bankr. Rights Ctr. filed below, 2022 WL 17324214 (Nov. 23, 2022) at 11–14; Amicus Br. of Nat'l. Comm. Bankr. Rights Ctr. at 11–17, *Belton v. GE Capital Retail Bank* (*In re Belton*), 961 F.3d 612, 616 (2d Cir. 2020) (No. 19-0648), Dkt. No.114-2. Thus, the underlying premise of the Second Circuit's decision is false: because the bankruptcy court is not limited merely to holding the violator in contempt, the "longstanding equitable principle" that only contempt should be imposed by the court issuing the order, simply does not prevent any individual bankruptcy court from certifying a § 524 class.

IV. THE SECOND CIRCUIT'S DECISION WILL HAVE A DRAMATIC IMPACT ON BANKRUPTCIES.

The Second Circuit's decision clearly limits the ability of bankruptcy courts to effectuate discharge injunctions through class actions. Large corporations such as Citibank can act with impunity in violating the discharge orders of bankruptcy courts, knowing that most individual debtors do not have the wherewithal to hire counsel to seek enforcement of their individual discharge orders. *See* note 1, *supra*. In the unusual case where individual actions are brought, the penalty visited upon such defendants will be

insignificant when compared to the benefits they receive from routinely violating bankruptcy court discharge orders. Perhaps that is why the bankruptcy judges have so strongly rejected the arguments now adopted by the Second Circuit. *See* note 2, *supra*.

Requiring each victim of Citibank's actions to bring their own adversary proceeding is flatly inconsistent with the "chief purpose of the bankruptcy laws," which is "to serve a prompt and effectual resolution of bankruptcy cases." *Taggart*, 139 S. Ct. at 1803 (internal quotation omitted). Just as this Court rejected the idea of creditors having to file numerous adversary proceedings to ensure that a debt was not discharged before collection, so too here, this Court should reject the patently absurd result of forcing thousands of former debtors to litigate the exact same issue in individual proceedings. Such a result only adds "additional federal litigation, additional costs, and additional delays," all of which this Court sought to avoid in *Taggart*. *Id*.

Finally, the lower court's evisceration of Rule 4004(f) will severely restrict former debtors from obtaining quick and efficient redress for violations of their individual discharge orders. It makes no conceivable sense to require a former debtor to return to the original bankruptcy court to stop a creditor from collecting on a discharged debt. Any bankruptcy judge can, and should, resolve the issue pursuant to Rule 4004(f).

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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Dated: October 31, 2023

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED AUGUST 2, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 22-1000

KIMBERLY BRUCE,

DEBTOR AND PLAINTIFF ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED, AKA KIMBERLY A. BRUCE, AKA KIMBERLY ANTRELL BRUCE,

Plaintiff-Appellee,

v.

CITIGROUP INC. AND CITIBANK, N.A.,

Defendants-Appellants.[1]

April 18, 2023, Argued
August 2, 2023, Decided

Before: WESLEY, PARK, and ROBINSON, *Circuit Judges.*

1. The Clerk of the Court is directed to amend the official caption as set forth above.

Appendix A

WESLEY, *Circuit Judge*:

Unwelcome as insolvency may be, bankruptcy relief ultimately provides hope for the debtor that a new financial life awaits. The notion of a fresh start is at the Bankruptcy Code's core and is typically achieved through a discharge order, which, at a bankruptcy proceeding's conclusion, releases the debtor of pre-bankruptcy debts covered by the order, and acts as an injunction to bar creditors from further attempts to collect those debts. *See* 11 U.S.C. § 524(a)(2).

In this case, a putative nationwide class of former debtors, led by Kimberly Bruce, claim that Citi violated their respective discharge injunctions. They ask that Citi be held in contempt, and, in addition to contempt sanctions, ask for declaratory relief and restitutionary damages.

As an initial matter, we reject plaintiff's suggestion that she has asserted separate and distinct claims for declaratory relief and damages. For one, plaintiff's characterization of her complaint is in tension with the complaint itself, which asserts a single cause of action claiming that "[d]efendants have violated § 524(a)(2) and are in contempt of this Court." App'x 75. Furthermore, as Citi points out on reply, plaintiff has previously referred to this action as "a proceeding for contempt," *see* Brief of Plaintiffs-Appellees at 3, *In re Nyree Belton, Kimberly Bruce*, No. 19-648 (2d Cir. Nov. 11, 2019), ECF No. 105—as has this Court, *see In re Belton v. GE Cap. Retail Bank*, 961 F.3d 612, 616 (2d Cir. 2020) ("[T]he Debtors have pursued this remedy through a contempt proceeding.").

Accordingly, we consider only plaintiff's motion for contempt.

Relatedly, plaintiff's class-wide contempt proceeding hinges on a bankruptcy court's authority under the Code to hold a creditor in civil contempt for violating discharge orders entered by other bankruptcy courts across the country. The bankruptcy court declined to dismiss plaintiff's class-wide request that Citi be held in contempt and sanctioned. It concluded that its contempt power extends to the enforcement of other bankruptcy courts' discharge injunctions. We disagree that a bankruptcy court has the authority to hear and adjudicate a class-wide contempt proceeding. That leaves only plaintiff's individual claim against Citi.

Accordingly, the final question in this appeal is whether plaintiff's allegations that Citi should be held in contempt for violating her discharge order are sufficient to survive Citi's Rule 12(b)(6) threshold attack.[2] The bankruptcy court answered that question in the affirmative. We agree. Accordingly, we affirm in part and reverse in part, and remand for further proceedings consistent with this opinion.

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2. The sufficiency of a complaint in an adversary proceeding is evaluated under Federal Rule of Civil Procedure 12(b)(6). *See* Fed. R. Bankr. P. 7012(b).

Appendix A

BACKGROUND

I. Facts

This dispute began in 2009, when Kimberly Bruce, plaintiff in this action, stopped making payments on her Citi credit card account. Eventually, Citi informed credit reporting agencies that she had a balance due of $1124, which Citi "charged off"—that is, adjusted from a receivable to a loss in the bank's internal accounting books.

Years later, plaintiff voluntarily filed a Chapter 7 bankruptcy petition in which she listed Citi as a creditor. Her complaint alleges, without any dispute from Citi, that she provided Citi notice of her initial bankruptcy filing and her eventual discharge order, entered in May 2013. That order "released" plaintiff from "all dischargeable debts," App'x 29, and enjoined "any attempt to collect from the debtor a debt that has been discharged," *id.* at 30.

In September 2013, months after her fresh financial start, plaintiff accessed her credit report and discovered that it still listed her debt with Citi as "charged off," without any indication it had been discharged in bankruptcy. She notified Citi in December 2013 that its description of her Citi account status—also known as a "tradeline"—on her report was incorrect and requested that the bank remove the charge-off notation. Citi, she says, refused.

In March 2014, plaintiff successfully moved to reopen her Chapter 7 case and commenced an adversary proceeding seeking to hold Citi in contempt of her

bankruptcy discharge order. About two weeks after plaintiff moved to reopen, Citi finally contacted the credit reporting agencies and requested that they remove the charge-off notation on the tradeline referring to plaintiff's credit card account.

Plaintiff alleges that Citi's refusal to correct her credit report is part of a "willful policy of attempting to lay a trap for Plaintiff and other Class Members until the point that they need an accurate credit report, and they cannot obtain such a credit report without paying on a discharged debt." App'x 61. Citi lays this "trap" by "refusing the debtors' requests to remove 'charge offs' and other similar 'past due' notations . . . despite [Citi's] knowledge that such debts have in fact been discharged in bankruptcy." *Id.* at 69-70. "These notations adversely affect Plaintiff's and every Class Member's ability to obtain credit or employment and have the inherent coercive effect of inducing Plaintiff and all other Class Members to make payment on the debt." *Id.* at 68-69.

Plaintiff claims that Citi financially benefits from the policy: third-party debt collection agencies—such as Midland Funding LLC, which, prior to plaintiff's bankruptcy, purchased plaintiff's delinquent debt—will pay a higher price to Citi if they believe Citi will not update debtors' credit reports, thereby increasing the likelihood that, notwithstanding a discharge, confused debtors might nonetheless pay off their cards. In essence, plaintiff claims that Citi's post-bankruptcy discharge policy increases, in the eyes of the third-party debt collection agencies, the value of the delinquent debt at the front end, when the agencies purchase that debt.

Plaintiff also contends that although Citi sold plaintiff's debt, it maintains ties to it in other ways. For example, she alleges that Citi collects the discharged debt on behalf of the third-party debt collection agencies, and that credit reporting agencies will not permit those agencies (including Midland) to request changes in tradelines listed in the original creditor's name. She adds that Citi remained identified as the creditor in the tradeline, notwithstanding that it sold plaintiff's debt to Midland. Thus, she continues, Citi knows that unless it correctly reports the bankruptcy discharge's effect on the otherwise delinquent debt, the tradeline will remain in error.

Plaintiff alleges that by willfully failing to update credit reports, Citi is "in contempt of this Court," App'x 75, she "prays that the practices of [Citi] be declared to be in violation of the rights of Plaintiff and Class Members under the Bankruptcy Code and a contempt of the statutory injunction set forth in § 524(a)(2)," *id.* at 76, and she asks that the bankruptcy court "order that defendants be held in contempt of court," *id.* She also seeks to certify a nationwide class of former debtors on the ground that Citi similarly refused numerous post-discharge requests to correct erroneous tradelines.

II. Procedural History

This case has made its way to this Court once before. At its outset, Citi moved to compel arbitration based on its credit card agreement with plaintiff. Relying largely on our decision in *In re Anderson*, 884 F.3d 382 (2d Cir. 2018), this Court affirmed the district and bankruptcy

courts' denial of that motion, reiterating that contempt proceedings for violations of § 524(a)(2) are not arbitrable, and are instead subject to the bankruptcy court's exclusive enforcement. *See In re Belton*, 961 F.3d at 616-17 (citing *In re Anderson*, 884 F.3d at 389-92).

On remand, Citi moved to dismiss plaintiff's complaint, or in the alternative, to strike or dismiss her class allegations. The bankruptcy court, in the decision Citi now appeals, largely rejected the bank's request. Although it dismissed plaintiff's request for injunctive relief, it otherwise denied Citi's motion.[3]

The bankruptcy court purported to resolve two questions: first, whether plaintiff plausibly pleaded a discharge violation under Federal Rule of Civil Procedure 12(b)(6), and, second, whether one bankruptcy court has the authority to determine a creditor in contempt of a discharge order entered by another bankruptcy court.

With respect to the 12(b)(6) issue, the bankruptcy court concluded that plaintiff plausibly stated a claim for relief. It explained that while mere inaccurate credit reporting without some further act does not violate the discharge, plaintiff had sufficiently pleaded that Citi's refusal to correct her (and class members') tradeline(s) is pursuant to a willful policy of pressuring former debtors to pay off discharged debts. In measuring the adequacy

3. Regarding plaintiff's request for injunctive relief, the bankruptcy court held that because the discharge under § 524 acts as a statutory injunction against further efforts to collect on discharged debts, there was "already an injunction." App'x 188. Plaintiff does not challenge that ruling here.

of the complaint, the court employed the Supreme Court's decision in *Taggart v. Lorenzen*, in which the Supreme Court held that a bankruptcy court may hold a creditor in civil contempt when there is objectively "no fair ground of doubt" that the alleged violator's action did, in fact, violate the discharge. 139 S. Ct. 1795, 1799, 204 L. Ed. 2d 129 (2019).

The court then turned to the nationwide class issue and rejected Citi's motion to strike plaintiff's class allegations. Although it acknowledged that whether one bankruptcy court can enforce other bankruptcy courts' discharge orders "raise[s] a very close question," App'x 264, it grounded that authority in § 105 of the Bankruptcy Code, which provides that a bankruptcy court «may issue any order, process, or judgment that is necessary or appropriate to carry out" the Code. 11 U.S.C. § 105.

After the district court certified the bankruptcy court's order for direct appeal, App'x 291, this Court granted Citi's request for leave to appeal, *id.* at 293.

DISCUSSION[4]

This appeal principally concerns § 524(a)(2) of the Bankruptcy Code, which provides that a bankruptcy discharge:

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4. The denial of a motion to dismiss is reviewed *de novo*. *Rothstein v. Balboa Ins. Co.*, 794 F.3d 256, 261 (2d Cir. 2015). Additionally, as the parties agree, Citi's motion to strike or dismiss plaintiff's class allegations presents a pure question of law; the bankruptcy court's decision on that issue therefore constitutes a legal determination likewise meriting *de novo* review. *See In re Anderson*, 884 F.3d at 387.

> [O]perates 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.

11 U.S.C. § 524(a)(2). The section invokes an injunction that takes effect with the discharge order. Together the order and injunction aim to prevent debtors from being "pressured" to repay discharged debts. *In re Kalikow*, 602 F.3d 82, 96 (2d Cir. 2010) (internal quotation marks omitted). Like many parties aggrieved by the violation of an injunction outside of the bankruptcy context, aggrieved debtors have resorted to civil contempt proceedings to vindicate their rights under the discharge order. *See, e.g., In re Belton*, 961 F.3d at 616; *see also* 4 *Collier on Bankruptcy* ¶ 524.02[2][c] (2023).

In this case, however, plaintiff sets her sights broadly; she seeks relief on behalf of herself and a nationwide class, accusing Citi of uniformly flouting the discharge orders of similarly situated debtors across the country. Citi's abusive practices, according to her, are pervasive.

Plaintiff's careful, even novel, pleading strategy raises a threshold issue. The viability of her nationwide pursuit depends on the authority of one bankruptcy court to enforce the discharge orders and injunctions entered by other bankruptcy courts from across the country. It is a novel, broad vision of an injunction's enforcement mechanism, and raises thorny issues regarding one

bankruptcy court's ability to hold a party in civil contempt on behalf of other bankruptcy courts whose separate discharge orders are alleged to have been violated.

I. The Bankruptcy Code does not authorize a bankruptcy court to enforce another bankruptcy court's discharge injunction.

Plaintiff asks that the bankruptcy court entertain a nationwide class action contempt proceeding, comprised of the mirroring claims of other discharged debtors who, like plaintiff, requested to no avail that Citi correct their erroneous tradelines. Specifically, the putative class invites the bankruptcy court to enforce not just the discharge order it entered in plaintiff's case, but also those entered for similarly situated debtors by bankruptcy courts across the country.

The class-wide relief sought by plaintiff raises a fundamental question: does the Bankruptcy Code authorize one bankruptcy court to employ its contempt power on behalf of other bankruptcy courts in a nationwide class action to enforce those bankruptcy courts' discharge orders?[5]

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5. Plaintiff spends much of her brief defending the bankruptcy court's subject matter jurisdiction to adjudicate the nationwide class claims. But "[t]he nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy." *William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 19, 94 S. Ct. 2069, 40 L. Ed. 2d 620 (1974).

Neither this Court nor the Supreme Court has confronted the issue. However, decisions from both courts, as well as from the courts of appeals that have weighed in on the matter, help guide the way. In the end, as has long been the case outside of the bankruptcy context, a particular bankruptcy court's civil contempt authority does not extend beyond the enforcement of its own orders.

For example, although *Taggart* sets forth the "fair ground of doubt" standard governing a bankruptcy court's exercise of its civil contempt authority to enforce § 524(a)(2)'s discharge injunction—a matter somewhat adjacent to the nationwide class issue—the Supreme Court's analysis is instructive. The Court has explained that § 524(a)(2)'s injunction, along with the bankruptcy court's § 105 authority to issue any "order" or "judgment" that is "necessary or appropriate" to "carry out" other bankruptcy provisions, "bring with them the 'old soil' that has long governed how courts enforce injunctions." 139 S. Ct. at 1801. From there, the Court cautioned that although this "old soil" includes "civil contempt," the bankruptcy statutes "do not grant courts unlimited authority to hold creditors in civil contempt." *Id.* Instead, they incorporate "traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction," and, to pinpoint those standards, looked to "cases outside the bankruptcy context." *Id.*

Taggart therefore provides a framework for analyzing the limits of a bankruptcy court's civil contempt authority. Courts should understand that authority as coextensive with—not greater than—the civil contempt authority

wielded by courts outside of bankruptcy. In short, well-established equity practice regarding the judicial exercise of civil contempt authority guides any inquiry into what that authority looks like in the bankruptcy context.

Emerging from the "'old soil' that has long governed how courts enforce injunctions," *id.*, is the longstanding equitable principle that "civil contempt proceedings leave the offended judge *solely responsible* for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Int'l Union United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994) (emphasis added); *see also In re Debs*, 158 U.S. 564, 595, 15 S. Ct. 900, 39 L. Ed. 1092 (1895); *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985) ("Enforcement of an injunction through a contempt proceeding must occur in the issuing jurisdiction because contempt is an affront to the court issuing the order."); Fed. R. Civ. P. 4.1 Advisory Committee Notes to 1993 Amendment ("Contempt proceedings, whether civil or criminal, must be brought in the court that was allegedly defied by a contumacious act."); *cf. Klett v. Pim*, 965 F.2d 587, 591 (8th Cir. 1992) (explaining that the "plain meaning" of the contempt statute, 18 U.S.C. § 401, "prevents a federal court from imposing a sanction for contempt of another court's injunction"). This Court has long followed this equitable principle. *See, e.g., Stiller v. Hardman*, 324 F.2d 626, 628 (2d Cir. 1963) (denying enforcement of an injunction in a New York court that was issued by an Ohio court because "[v]iolation of an injunctive order is cognizable in the court which issued the injunction").

Plaintiff fails to offer a single example of one court exercising its civil contempt authority on behalf of another court's injunction.[6] Nor are we aware of any. As telling as that gap is, it's of no surprise. The civil contempt power is, at its core, uniquely personal to each court; by providing a mechanism to mandate compliance when a court is confronted with disobedience, it is a necessary corollary to a court's authority to issue binding orders. "Courts thus have embraced an inherent contempt authority . . . as a power necessary to the exercise of all others." *Bagwell*, 512 U.S. at 831 (internal quotation marks omitted); *see*

6. Indeed, plaintiff has failed to offer any compelling examples of one court enforcing injunctions entered by another court—even without resorting to its civil contempt authority. The cases she cites concern statutory grants of power which in specific, limited cases broaden a court's power to protect or provide relief from orders entered by other courts. *See, e.g., Smith v. Woosley*, 399 F.3d 428, 433-34 (2d Cir. 2005) (construing the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283); *Smith v. City of New York*, No. 12 Civ. 4851, 2014 U.S. Dist. LEXIS 166769, 2014 WL 6783194 (E.D.N.Y. Dec. 2, 2014) (analyzing Fed. R. Civ. P. 60(b)(6), which authorizes courts to provide relief from final judgments based on extraordinary circumstances). No doubt, Congress is free to pass laws which provide for departures from longstanding equity practice. Yet "a major departure from the long tradition of equity practice should not be lightly implied." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006). These cases hardly establish an across-the-board rule that one court may enforce another court's injunction. Accordingly, even if plaintiff's complaint is construed as asserting separate and distinct causes of action including, but not limited to, a claim for contempt—a characterization which, as explained above, we reject—it is far from clear that her quest for class-wide relief would be any less difficult.

also Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448, 454, 52 S. Ct. 238, 76 L. Ed. 389, 1932 Dec. Comm'r Pat. 564 (1932) ("[T]he proceeding for civil contempt for violation of the injunction should be treated as a part of the main cause."). Against this backdrop, plaintiff's theory of a free-wielding contempt authority, capable of exercise by one court on behalf of another court, would "present the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court, which possessed ample powers, itself to take care of its own dignity and punish the offender." *Ex parte Bradley*, 74 U.S. 364, 372, 19 L. Ed. 214 (1868); *see also Myers v. United States*, 264 U.S. 95, 104, 44 S. Ct. 272, 68 L. Ed. 577 (1924) ("By disobeying the order, plaintiffs . . . defied an authority which *that tribunal* was required to vindicate." (emphasis added)).

Further still, a court's broad authority to identify, prosecute, adjudicate, and sanction contumacious conduct makes for a "potent weapon," *Taggart*, 139 S. Ct. at 1801, which, in *Taggart*, undergirded the Supreme Court's conclusion that civil contempt should not be employed where there is a fair ground of doubt as to the wrongfulness of the defendant's conduct. Heeding the Supreme Court's cautionary approach, we decline to expand the availability of a bankruptcy court's civil contempt authority to any similarly aggrieved party, anywhere in the country, that comes before one court seeking relief from an alleged contemnor's comparable affront to a different court. Doing so could "wreak havoc on the federal courts to leave enforcement of the injunctive order of a bankruptcy court in one district to the interpretive whims of a bankruptcy

court in another district." *Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 970 (11th Cir. 2012).

Plaintiff's reasoning is also in tension with our repeated observation that "a bankruptcy court has 'unique expertise in interpreting its own injunctions and determining when they have been violated.'" *In re Gravel*, 6 F.4th 503, 513 (2d Cir. 2021) (quoting *In re Anderson*, 884 F.3d at 390-91); *see also In re Belton*, 961 F.3d at 617. She acknowledges as much, but contends that, unlike a judge-crafted, "bespoke" injunction, the generally uniform nature of § 524(a)(2)'s statutory injunction minimizes the unique insight courts normally have into their own injunctions. *See* Appellee Br. at 35-37.

As an initial matter, we rejected that line of argument in *Anderson*, and again in *Belton*. Specifically, the appellant in *Anderson* advocated for the arbitrability of discharge violation claims by arguing that because the discharge injunction under § 524(a)(2) arises from statute and is executed by a bankruptcy court on a standard form using boilerplate language, "the unique powers of the bankruptcy court are not implicated in any meaningful way." 884 F.3d at 391. We saw it differently, reasoning that "[n]either the statutory basis of the order nor its similarity—even uniformity—across bankruptcy cases alters the simple fact that the discharge injunction is an order issued by the bankruptcy court and that the bankruptcy court alone possess the power and unique expertise to enforce it." *Id.*

Similarly, upon Citi's request in *Belton* to reconsider our holding in *Anderson*, we reaffirmed the non-arbitrability of § 524(a)(2) discharge violations, explaining—at plaintiff's urging—that the "issuing court is uniquely positioned to assess" the various considerations at play in contempt proceedings. *In re Belton*, 961 F.3d at 617.

True, discharge orders, which might often be issued on standard forms,[7] trigger a statutory, rather than a judge-crafted, injunction. Yet, beyond the mere determination whether a discharge order has been violated, the appropriateness of civil contempt sanctions, and in what form, are considerations that can still benefit from the unique insight a bankruptcy court can gain in presiding over a proceeding. *Taggart* makes that much clear; the Court provided that "a party's record of continuing and persistent violations and persistent contumacy," on the one hand, and, on the other hand, "a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction." 139 S. Ct. at 1802 (internal citations and quotation marks omitted). Plainly, the bankruptcy court's familiarity with the matter remains important.

In any event, *Taggart* does not suggest that the statutory basis of the discharge injunction is of any significance in determining its manner of operation or how it might be enforced. To the contrary, the Supreme Court

7. Citi points out that the discharge order form utilized by the bankruptcy court below differed from the standard form available on the federal government's website. *See* Appellant Br. at 65 (*comparing* App'x 29 with Form B 18 [https://www.uscourts.gov/forms/bankruptcy-forms/discharge-debtor]).

made clear that "traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context," *id.*, and as explained above, a straightforward application of longstanding civil contempt principles suggests that only the issuing court may exercise its civil contempt powers to enforce its discharge order, and the injunction which springs from it.

At bottom, plaintiff seeks a bankruptcy-specific expansion of the civil contempt power beyond its longstanding limits at equity. Congress is capable of intervening to guide the exercise of a bankruptcy court's civil contempt power. But "a major departure from the long tradition of equity practice should not be lightly implied." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006); *see also Zuckerman v. Metro. Museum of Art*, 928 F.3d 186, 196 (2d Cir. 2019). Nothing in the Code suggests that Congress intended to displace well-established principles regarding the exercise of the civil contempt power.

Although the bankruptcy court grounded its authority in §§ 524 and 105, *Taggart* examined those provisions and concluded they incorporate traditional standards of equity practice, *see Taggart*, 139 S. Ct. at 1801, which, as provided above, includes the principle that a court cannot exercise its civil contempt authority to enforce another court's injunction. Moreover, as the Fifth Circuit explained in *Crocker*, the Bankruptcy Code, at one time, provided that an order of discharge could be registered in another district and "enforced in like manner" in the new district as in the issuing district. *See In re Crocker*, 941 F.3d 206, 213 (5th Cir. 2019) (quoting Pub. L. No. 91-467, § 3, 84. Stat. 990, 991). However, upon the adoption of the

Bankruptcy Code in 1978, that provision was revised to remove that language. *See id.* Current Federal Rule of Bankruptcy Procedure 4004(f) "guides registration but does not authorize 'like manner' enforcement as did its predecessor." *In re Crocker*, 941 F.3d at 214. We presume that Congress's removal of this language "entail[ed] a change in meaning." *See Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 418 (2d Cir. 2019) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 256 (2012)); *see also id.* ("Statutory history is . . . an accepted and uncontroversial tool in the interpretation of statutory texts." (citation omitted)). Plaintiff's version of a more robust civil contempt power may have once found, but no longer finds, support in the Code.[8]

In sum, there may be policy considerations that counsel in favor of a nationwide mechanism for a class of former debtors to enforce their respective discharge orders against a common creditor's systemic disruption of their new financial lives. Indeed, given the "fresh start" philosophy underlying the Code, establishing a broad enforcement mechanism for § 524, or expanding a bankruptcy court's civil contempt powers with respect to

8. The bankruptcy court minimized the significance of this statutory history, pointing to Rule 4004(f)'s language that "the order of discharge shall have the same effect as an order of the Court of the district where registered." App'x 266 (quoting Fed. R. Bankr. P. 4004(f)). Yet whether an injunction has force beyond where it was originally issued is a different question than the nature and availability of the means to enforce that injunction. Rule 4004(f) simply makes clear that, upon registration, a party's legal duty to comply with the injunction extends to the district of registration. It does not speak to how an aggrieved debtor might remedy violations that occur in the new district.

discharge orders, may likely be good policy. But courts must take statutes as they find them, and, as written, the Code leaves intact the longstanding equitable principles regarding the enforcement of injunctions. A bankruptcy court's civil contempt authority does not extend to other bankruptcy courts' discharge orders in a nationwide class action. The class-wide relief sought by plaintiff is therefore unavailable under the Bankruptcy Code.

II. Plaintiff has stated a claim for civil contempt under *Taggart*'s "fair ground of doubt" standard.

Only plaintiff's individual contempt claim remains. *Taggart* provides the yardstick to measure her claim: a bankruptcy court may hold a creditor in civil contempt for violation of the discharge order only if, as an objective matter, "there is no fair ground of doubt as to whether the order barred the creditor's conduct." 139 S. Ct. at 1799 (emphasis omitted).

That standard is satisfied here.[9] As provided above, plaintiff alleges that, post-bankruptcy, the credit report's

9. Seeking to chart a path to relief in the event that her contempt claim fails, plaintiff argues that *Taggart*'s "fair ground of doubt" standard "does not speak at all" to whether she (and her proposed fellow class members) are entitled to declaratory relief and damages. Appellee Br. at 24. That is an issue we need not decide given that plaintiff has cleared *Taggart*'s high bar; a successful contempt claim is necessarily accompanied by a determination that the creditor violated the discharge order, and opens the door to recovery of damages, including restitution. Whether and to what extent relief short of contempt sanctions is available in the case of a discharge violation for which a fair ground of doubt remains is a question for another day.

tradeline for her Citi credit card listed Citi as a creditor and incorrectly listed her balance as "charged off" instead of discharged in bankruptcy. App'x 62. She claims that she asked Citi to update the tradeline, but the bank refused. *Id.* at 63. That refusal, she continues, is part of a deliberate policy of coercing debtors to pay off discharged debts. Plaintiff explains that Citi is fully aware that its behavior is coercive because Citi mails "collection letters" to debtors before their bankruptcy filings "stating that 'charge offs' will ruin their ability to obtain credit and conversely promising to remove the 'charge off' if they pay the delinquent debt in full." *Id.* at 71. After the bankruptcy filing and discharge order, Citi "know[s] that the existence of such inaccurate information" in the credit reports will "damage . . . credit ratings," and that debtors will "often feel it necessary to pay off the debt despite [the] discharge in order to remove the inaccurate information from their credit reports." *Id.* at 70.

She also explains, in a nonconclusory fashion, the way Citi financially benefits from the practice: third-party debt collection agencies "are willing to pay more" for Citi's delinquent receivables given that, due to the confusion created by Citi's policy, the agencies "know they can collect on discharged debts." *Id.* at 64. Accepting these allegations as true, plaintiff has plausibly alleged that Citi employs a policy and practice of refusing to correct erroneous tradelines to coerce payment of discharged debts. In short, plaintiff plausibly alleges that Citi's refusal to correct her tradeline was objectively, and purposively, coercive. *See In re Pratt*, 462 F.3d 14, 19 (1st Cir. 2006).

Citi offers various arguments as to why plaintiff's allegations fall short. None persuade. Citi claims, for example, that § 524(a)(2) applies only to affirmative efforts to collect a discharged debt, but that plaintiff alleges, at best, that Citi merely failed to ask credit reporting agencies to update a tradeline on an account Citi had sold years earlier. *See* Appellant Br. at 33-34. Failing to act, the bank says, cannot amount to a discharge violation.

Faithfully read, the complaint describes a course of conduct by Citi which includes, but is not limited to, Citi's refusal to correct post-discharge tradeline errors. As detailed above, plaintiff explains (a) how and why the post-discharge "charged off" notation pressures former debtors; (b) how Citi takes advantage of, and financially benefits from that fear; and (c) how Citi's post-discharge control of the tradeline, despite selling the debt to third-party debt collection agencies, plays an important part in Citi's scheme.

Taken together, plaintiff plausibly claims that Citi's refusal to correct the tradeline at plaintiff's request was part of a systematic effort to pressure or coerce plaintiff (and similarly situated debtors) to pay off her (and their) discharged debt. Plaintiff pleads facts which, taken as true, establish an intentional course of conduct aimed at collecting discharged debts. In other words, although the "failure of a furnisher of credit information to take affirmative steps to update the information that it has reported on a consumer's account is not, standing alone, a violation of [§] 524(a)(2)," *In re Ho*, 624 B.R. 748, 755 (Bankr. E.D.N.Y. 2021), plaintiff's allegations are not so limited.

Consequently, there is no § 524 "affirmative act" deficiency here. An intentional and systematic refusal to update the credit report upon the debtor's request constitutes "an act to collect" under § 524(a)(2) where, objectively, it has the practical effect of improperly coercing the debtor into paying off a discharged debt. *See Roth v. Nationstar Mortg., LLC (In re Roth)*, 935 F.3d 1270, 1276 (11th Cir. 2019); *Venture Bank v. Lapides*, 800 F.3d 442, 448 (8th Cir. 2015); *In re Paul*, 534 F.3d 1303, 1308 (10th Cir. 2008); *In re Pratt*, 462 F.3d at 19. As provided above, the connection between Citi's course of conduct—including its refusal—and its objective, coercive effect on discharged debtors is obvious.

Citi also suggests that having sold plaintiff's debt to Midland pre-bankruptcy, it was no longer her creditor, and therefore is beyond § 524(a)(2)'s reach. Not true. As an initial matter, the bankruptcy court's discharge order explained that it "prohibits any attempt to collect from the debtor a debt that has been discharged." App'x 30. Although the order provided elsewhere that all "creditors" are enjoined from "engaging in any act to collect [] debts . . . of the debtor," *id.* at 29, it also made clear that its reach applied more broadly, that is, to all efforts to collect a discharged debt. *See also* 11 U.S.C. § 524(a)(2) (enjoining "an act to collect, recover, or offset any such debt" without specifying that only current creditors are enjoined).

Moreover, plaintiff alleges that despite the sale to Midland, Citi continued to appear as the sole creditor on the tradeline, and that, by collecting discharged debts and forwarding those payments to Midland, Citi acted as

Midland's agent and remained involved in the collection of discharged debt—and the value of that involvement generally was reflected in the premium Midland paid Citi for plaintiff's debt. App'x 71. Indeed, plaintiff alleges that under the terms of Citi and Midland's agreement, only Citi may "report the sold debts as sold or transferred" and "Midland will not be responsible for correcting or updating information on any debts listed in" Citi's name. *Id.* at 64. The complaint thus plausibly alleges that Citi is "fully aware that [its] deliberate failure to update a discharged debtor's . . . account coerces the debtor to pay said account." *Id.* at 71. We decline to impose a rule whereby creditors can avoid their obligations under a discharge order by covertly passing their debt off to third parties. Citi remained within § 524(a)(2)'s reach.[10]

Throughout its brief, Citi relies on this Court's decision in *In re Kalikow*, 602 F.3d 82 (2d Cir. 2010). That case makes clear that discharge orders are not so limitless to extend to debts incurred post discharge, or to third parties who have "no relation to the reorganization proceedings," *id.* at 95, no interest, either indirectly or indirectly, against the debtor, and who did nothing to pressure the debtor into paying a discharged debt. *Id.* at 95-96. That's not this case. Far from having no relation

10. Citi also seeks to draw on its obligations under the Fair Credit Reporting Act ("FCRA"), which, it argues, places the burden of substantively responding to bankruptcy-related credit reports requests on the credit reporting agencies, rather than the furnishers of that information. Citi's obligations under the FCRA are not determinative of its obligations under the Bankruptcy Code.

to the reorganization proceeding, plaintiff alleges that she listed her debt with Citi in her bankruptcy petition and provided Citi notice both of that fact, as well as of her eventual discharge. Plaintiff also explains how Citi maintains an interest against the debtor; she describes in detail the way Citi retains control over the tradeline, as well as why its policy of refusing to correct the tradeline is designed to coerce discharged debtors into paying off discharged debts.

At bottom, accepting her nonconclusory allegations as true and drawing reasonable inferences in her favor, plaintiff has plausibly alleged that Citi's refusal to correct her tradeline stems from a policy of coercing unwitting debtors to pay off discharged debts. There is no fair ground of doubt that, if true, Citi's conduct amounts to a violation of the discharge. *See Taggart*, 139 S. Ct at 1799. We therefore affirm the bankruptcy court's denial of Citi's motion to dismiss plaintiff's individual contempt claim.

CONCLUSION

Accordingly, we **AFFIRM IN PART and REVERSE IN PART** the bankruptcy court's order and **REMAND** for further proceedings consistent with this opinion.

APPENDIX B — EXCERPT OF TRANSCRIPT OPINION OF THE UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK, DATED JULY 22, 2021

[1]UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 13-22088-rdd

Chapter 7

Adv. Pro. No. 14-08224-rdd

IN RE:

KIMBERLY BRUCE,

Debtor.

KIMBERLY BRUCE,

Plaintiff,

v.

CITIGROUP, INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A.,

Defendants.

300 Quarropas Street
White Plains, NY 10601

Appendix B

Thursday, July 22, 2021
11:36 a.m.

SECOND AMENDED TRANSCRIPT OF ADVERSARY PROCEEDING *14-08224-rdd* BRUCE V. CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A., MOTION TO DISMISS ADVERSARY PROCEEDING OR IN THE ALTERNATIVE, STRIKE THE CLASS ALLEGATIONS AND NOTICE OF MOTION FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [47]; (CONTINUED)

BEFORE THE HONORABLE ROBERT D. DRAIN (VIA VIDEOCONFERENCE) UNITED STATES BANKRUPTCY COURT JUDGE

[2]ADVERSARY PROCEEDING 14-08224-rdd BRUCE V. CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A., SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STRIKE OR DISMISS NATIONWIDE CLASS ALLEGATIONS (RELATED DOCUMENT(S) 47) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [123];

Appendix B

ADVERSARY PROCEEDING *14-08224-rdd*
BRUCE V. CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A., MEMORANDUM OF LAW OF DEFENDANTS IN SUPPORT OF MOTION TO DISMISS, OR IN THE ALTERNATIVE, STRIKE THE CLASS ALLEGATIONS [REDACTED] (RELATED DOCUMENT(S) 47) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [48];

DECLARATION OF DEBORAH L. THOMPSON IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, STRIKE THE CLASS ALLEGATIONS (RELATED DOCUMENT(S) 47) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [50];

DECLARATION OF BENJAMIN R. NAGIN IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, STRIKE THE CLASS ALLEGATIONS (RELATED DOCUMENT(S) 47) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [49];

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AND CITIBANK (SOUTH DAKOTA), N.A.,
MEMORANDUM OF LAW/[UNREDACTED]
DEFENDANTS' MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO DISMISS, OR IN
THE ALTERNATIVE, STRIKE THE CLASS
ALLEGATIONS (RELATED DOCUMENT(S) 48)
FILED BY BENJAMIN R. NAGIN ON BEHALF
OF CITIGROUP INC., CITIBANK, N.A., AND
CITIBANK (SOUTH DAKOTA), N.A. [52];

DECLARATION/[AMENDED REDACTED]
DECLARATION OF DEBORAH L. THOMPSON
IN SUPPORT OF DEFENDANTS' MOTION TO
DISMISS OR, IN THE ALTERNATIVE, STRIKE
THE CLASS ALLEGATIONS (RELATED
DOCUMENT(S) 50) FILED BY BENJAMIN R.
NAGIN ON BEHALF OF CITIGROUP INC.,
CITIBANK, N.A., AND CITIBANK (SOUTH
DAKOTA), N.A. [53];

[3]ADVERSARY PROCEEDING 14-08224-rdd
BRUCE V. CITIGROUP INC., CITIBANK, N.A., AND
CITIBANK (SOUTH DAKOTA), N.A., OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS, OR
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ALLEGATIONS (RELATED DOCUMENT(S) 47)
FILED BY GEORGE CARPINELLO ON BEHALF
OF KIMBERLY BRUCE [69];

ADVERSARY PROCEEDING *14-08224-rdd*
BRUCE V. CITIGROUP INC., CITIBANK, N.A.,
AND CITIBANK (SOUTH DAKOTA), N.A.,

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MEMORANDUM OF LAW/DEFENDANTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, STRIKE THE CLASS ALLEGATIONS (RELATED DOCUMENT(S) 69, 52, 49, 53, 47) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP, INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [71];

DECLARATION OF BENJAMIN R. NAGIN IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, STRIKE THE CLASS ALLEGATIONS (RELATED DOCUMENT(S) 52, 49, 71, 53, 47) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [72];

ADVERSARY PROCEEDING *14-08224-rdd* BRUCE V. CITIGROUP INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A., MEMORANDUM OF LAW/DEFENDANTS' REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR STAY PENDING APPEAL OF ORDER DENYING MOTION TO COMPEL ARBITRATION (HEARING APRIL 1, 2015) (RELATED DOCUMENT(S) 46, 68, 45) FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP, INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [73];

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ADVERSARY PROCEEDING *14-08224-rdd*
BRUCE V. CITIGROUP INC., CITIBANK, N.A.,
AND CITIBANK (SOUTH DAKOTA), N.A.,
SUPPLEMENTAL MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS OR, IN
THE ALTERNATIVE, TO STRIKE OR DISMISS
NATIONWIDE CLASS ALLEGATIONS (RELATED
DOCUMENT(S) 47) FILED BY BENJAMIN R.
NAGIN ON BEHALF OF CITIGROUP, INC.,
CITIBANK, N.A., AND CITIBANK (SOUTH
DAKOTA), N.A. [123];

ADVERSARY PROCEEDING *14-08224-rdd*
BRUCE V. CITIGROUP INC., CITIBANK, N.A.,
AND CITIBANK (SOUTH DAKOTA), N.A.,
MEMORANDUM OF LAW IN OPPOSITION
TO CITIBANK'S SUPPLEMENTAL MOTION
TO DISMISS OR, IN THE ALTERNATIVE, TO
STRIKE OR DISMISS THE NATIONWIDE CLASS
ALLEGATIONS (DKT. NO. 123) (RELATED
DOCUMENT(S) 47) FILED BY GEORGE F.
CARPINELLO ON BEHALF OF KIMBERLY
BRUCE [126];

[4]ADVERSARY PROCEEDING 14-08224-rdd
BRUCE V. CITIGROUP INC., CITIBANK, N.A.,
AND CITIBANK (SOUTH DAKOTA), N.A.,
SUPPLEMENTAL MEMORANDUM OF LAW IN
FURTHER SUPPORT OF MOTION TO DISMISS
OR, IN THE ALTERNATIVE, TO STRIKE
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FILED BY BENJAMIN R. NAGIN ON BEHALF OF CITIGROUP, INC., CITIBANK, N.A., AND CITIBANK (SOUTH DAKOTA), N.A. [128];

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[94]THE COURT: Okay. Good afternoon again. This is Judge Drain, and we're back on the record in *In re Bruce* and *Bruce v. Citigroup, Inc., Citibank, N.A., and Citibank South Dakota, N.A.* on the defendants' motion to dismiss and, in the alternative -- or in addition their motion -- same motion seeks to strike the class allegations in the complaint.

The standard on a motion to dismiss is well understood to -- as it pertains both to a motion under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). After the Court has identified the elements of the cause or causes of action required to be pled, a two-pronged approach applies when considering a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) which is informed by the pleading standard set forth in *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009), and *Bell Atlantic v. Twombly,* 550 U.S. 544, 555 (2007). *See Pension Benefit Guaranty Corp. v. Morgan Stanley Investment Management, Inc.,* 712 F.3d 705, 717 (2d Cir. 2013).

First, while the Court must accept the complaint's factual allegations as true and draw all reasonable inferences in favor of the plaintiff, *Tellabs, Inc. v. Makor Issues & Rights, Limited,* 551 U.S. 308, 323 (2007) and *Nielsen v. Rabin,* 746 F.3d 58, 62 (2d Cir. 2004), the Court

"is not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal,* 556 U.S. at 678. Rather, "While legal conclusions can provide the framework of a complaint, they must [95]be supported by factual allegations." *Id.* at 679. And as, "a pleading that offers merely labels and conclusions or a formulaic recitation of a cause of action will not do." *Id.,* quoting *Twombly,* 550 U.S. at 555.

Secondly, while the Supreme Court has confirmed in the light of the notice pleading standard of Federal Rule of Civil Procedure 8 that a complaint does not need detailed factual allegations to survive a motion under Rule 12(b)(6), *see Twombly,* 550 U.S. at 555, *see also Erickson v. Pardus,* 551 U.S. 89, 93 (2007), the complaint's factual allegations must suffice to raise a right to relief above the speculative or conceivable level to state a claim that is "plausible on its face." *Twombly,* 550 U.S. at 570. This standard "is not akin to a 'probability requirement' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal,* 556 U.S. at 678.

Evaluating plausibility is "a context-specific task that requires a court to draw on its judicial experience and common sense, but where the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct the complaint has not alleged" -- I'm sorry, "the complaint has alleged but it has not shown that the pleader is entitled to relief." *Id.* at 679, quoting Federal Rule of Civil Procedure 8(a)(2), other internal citation omitted.

In sum, to determine a motion to dismiss, the Court [96] must first identify the elements of the applicable causes of action. *Id.* at 675.Next, it must identify the allegations not entitled to the assumption of truth because they are legal conclusions, not factual allegations. *Id.* at 678. And last, it must assess the factual allegations in the context of the elements of the claim to determine whether they plausibly suggest an entitlement to relief. *Id.* at 678 through 79.

Of course, ultimately, the determination is of the legal feasibility of the complaint's allegations, not the weight of the evidence that might be offered in its support, *Halebian v. Berv,* 644 F.3d 122, 130 (2d Cir. 2001), and *Global Network Communications, Inc. v. City of New York,* 458 F.3d 150, 155 (2d Cir. 2006).

Relatedly, under Federal Rule of Civil Procedure 8, a complaint need not set forth any particular statute or legal theory describing its claims. Rather, it must contain only sufficient factual references to show that the plaintiff may be entitled to some form of relief. *Townsend v. Benjamin Enterprises, Inc.,* 679 F.3d 41, 57 (2d Cir. 2012), *Tolle v. Carroll Touch, Inc.,* 977 F.2d 1129, 1134 (7th Cir. 1992), and *Newman v. Silver,* 713 F.2d 1415 (2d Cir. 1983).

Finally, the Court's consideration is limited to the facts stated on the face of the complaint and documents appended to it, incorporated in it by reference, or upon which the complaint solely relies and which are integral to it, as [97]well as matters of which judicial notice may be taken. *Roth v. Jennings,* 489 F.3d 599, 509, 510 (2d

Cir. 2007). Indeed, the Court need not accept as true a complaint's factual allegation that is clearly contradicted by a document incorporated into the complaint by reference. *Labajo v. Best Buy Stores, L.P.,* 478 F.2d 523, 528 (S.D.N.Y. 2007).

But one must be careful to distinguish between a document that contradicts a complaint's statement of what it contains and a document that contradicts a complaint's factual allegation only if the document is assumed to be true. Only the former warrants dismissal of the complaint, not the latter, because a motion to dismiss is not a vehicle for the Court to make factual findings. *Roth v. Jennings,* 489 F.3d 510-11. *See also Deutsche Bank Trust Company Americas v. Large Private Beneficial Owners* (*In re Tribune Co. Financial Conveyance Litigation)*, 946 F.3d 66, 75, Note 5 (2d Cir. 2009), where the court observed that no factual dispute as to the content or accuracy of dispositive documents established the relationship between transferor and its depository in connection with an LBO tender offer, as opposed to their legal significance. This is because the Court's ability to consider an extraneous document such as a public filing under securities laws in the context of a motion to dismiss does not extend to factual determinations such as the truth of the statements contained in it. *Id. See also United States v. Strock,* 92 F.3d 51, 63 (2d Cir. 2020), [98]and *DiFolco v. MSNBC Cable, L.L.C.,* 622 F.3d 104, 111 (2d Cir. 2010), where the court held:

> "Even if a document is integral to a complaint, it must be clear on the record that no dispute

> exists regarding the authenticity or accuracy of a document. It must also be clear that there exists no disputed issues of fact regarding the relevance of the document." Internal citations and quotations omitted.

The motion is premised on multiple grounds, two of which go to the plaintiffs' standing, which is a threshold issue with regard to any cause of action. The first I'll address -- I've already largely addressed during oral argument on this motion.

The defendants, movants, object to the plaintiff Ms. Bruce's standing to seek the injunctive relief sought in the complaint. The complaint itself is premised upon a legal theory and facts in support of it that the defendants have violated Ms. Bruce's discharge under section 524 of the Bankruptcy Code by refusing to correct the credit report or reports for Ms. Bruce to reflect her discharge in bankruptcy. The credit reports, which are referenced and incorporated in the complaint, either reflect a balance amount of zero dollars or, in one case, show a delinquency of over 120 days for a specific dollar amount.

[99]The complaint alleges that under the facts set forth in the complaint this inaccurate reporting by the defendants is part of a concerted scheme to coerce Ms. Bruce, and under the class action allegations of the complaint the class who falls also within that fact pattern, to pay their debts that would otherwise be discharged. The complaint asserts that before bankruptcy, while their debts were in default, the defendants have informed Ms.

Bruce and the other members of the class that if they don't pay their debts their credit reports will reflect that the debts are outstanding and harm their credit score and their credit rating and that therefore they need to pay their debts to avoid the harm the debt would cause.

It is asserted that although there are no further collection activities asserted than the refusal to correct the report, given that backdrop and the refusal, the report is clearly in its uncorrected form part of a scheme to coerce defendants to pay their debts. The complaint, based on that general premise, seeks various forms of relief, including a declaration that in fact the defendants are in violation of the discharge injunction set forth in section 524(a)(2) of the Bankruptcy Code and the courts' -- and the orders issued by the various courts that issued the discharge injunctions, including the order issued by me with respect to Ms. Bruce. The complaint also seeks damages for such violation including disgorgement of any debts paid by individual class members of [100]all funds received by defendants or any purchasers of defendants' debts on the debts that were discharged in bankruptcy, as well as other damages, and sanctions arising from the alleged violation of the discharge and the discharge orders.

Finally, the complaint seeks a permanent injunction be entered requiring defendants to immediately correct and update the credit reporting records of all class members by removing any negative notation such as charge-off, past due, late, or any other notations that indicate that the discharged accounts have a current status of being

still due and owing, and update all such records on a permanent basis.

It is that request for injunctive relief that the defendants seek to have dismissed on the ground of lack of Article III standing by Ms. Bruce. They do so on the uncontroverted basis that after the plaintiff requested such corrective action and after she filed a motion to reopen her Chapter 7 case in this Court to enforce the discharge when such corrective action was not taken by the defendants but before the complaint was filed, the complaint -- the defendants deleted Ms. Bruce's trade line, therefore, perhaps with a sledgehammer instead of a scalpel, showing that there was no debt by the fact that the trade line is now no longer showing at all.

The motion refers to -- primarily, although not [101] exclusively to -- recent Second Circuit cases for the proposition that now that the trade line is deleted there is no case or controversy with respect to the request for an injunction, i.e., that there is no remedy that the Court could grant to Ms. Bruce with respect to her request for injunctive relief in light of the deletion of the trade line. *See Berni v. Barilla S.p.A.,* 964 F.3d 141 (2d Cir. 2020), and *Nicosia v. Amazon.com, Inc.,* 834 F.3d 220 (2d Cir. 2016). Those cases do stand, as the movants have stated, for the proposition that where the court does not have any case or controversy before it, in that the prospective request for relief has already been dealt with, and there is no instance of imminent future harm, a plaintiff will not have standing to seek injunctive relief. *See also City of Los Angeles v. Lyons,* 461 U.S. 95, 111-12 (1983).

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The plaintiff disputes whether harm is imminent or not, stating that her trade line could be reopened, and, further, other prospective class members of this yet to be certified class could also at any moment at Citi -- at the movants' choosing no longer be protected by the actions that the movants agreed to with regard to credit reporting as part of obtaining a stay pending appeal and which they've stated, at least as far as their counsel knows, they will continue in place even though there is no longer a pending appeal with respect to this adversary proceeding.

[102]I believe I do not need to further investigate whether there is a lack of imminent future harm here with respect to either Ms. Bruce or the other plaintiffs -- prospective class action members, rather. (The latter in any event would be in all likelihood inappropriate unless the complaint were amended to include them as a named plaintiff and class representative in light of the holding in the *Barilla* case, which declined to find that a prospective harm to prospective class members would suffice for standing if then named plaintiffs did not have standing to obtain injunctive relief.)

The reason I say that I don't need to inquire into imminent and future harm here is that unlike in the cases that I've cited, there already *is* an injunction at issue here. In fact, it's a statutory injunction under section 524(a) of the Bankruptcy Code, namely the discharge, which is also memorialized by an injunction order, the form discharge order that the Court entered in Ms. Bruce's case and enters in every case where an individual debtor obtains a discharge in bankruptcy, whether it's a Chapter 7, Chapter

13, Chapter 11, or Chapter 12 case, and the similar orders with respect to all the prospective class action members.

Given that the complaint seeks a declaration as to whether in fact the defendants have violated that statutory injunction and the orders, there is no need for an additional [103]injunction. Either the Court will agree with the plaintiffs ultimately and grant the declaratory judgment, at which point the Court will enter an order to that effect which will further state that any violation of the injunction, that is, the 524 injunction, from the foregoing conduct will give rise to a coercive sanction and other relief, or the Court will disagree and find in favor of the defendants, in which case there would be no right to an injunction in any event.

So I conclude that this particular form of relief is one where the Court would not need to enter any further, or grant any further, relief. And, therefore, it's not a case and controversy with respect to the request for new injunctive relief on a permanent basis as requested in the complaint, and therefore that that cause of action should be dismissed on Article III standing grounds.

I think it should be clear, but I'll state it anyway, that this would not, of course, preclude a plaintiff from seeking a preliminary injunction pending the Court's determination of the declaratory judgment claim asserted in the complaint if, in fact, Citibank, Citibank South Dakota, or Citigroup changed its currently represented credit reporting for the putative class members or reinstated Ms. Bruce's credit line in a way that would

warrant preliminary injunctive relief pending a final determination. Nor does this ruling preclude the pursuit of damages as sought in the complaint or other [104] sanctions. Indeed, the standing -- I'm sorry, the motion's request to dismiss the injunction cause of action in the complaint was limited on standing grounds just to that cause of action, as is my ruling.

Although it has not been addressed at oral argument, the motion arguably raises Article III standing issues with respect to the complaint's allegations with regard to the other causes of action in the complaint, as well. And again, standing is a critical jurisdictional question that must be answered in the affirmative before one proceeds with a complaint. It has been addressed recently in a somewhat similar context by both the Second Circuit and the Supreme Court. See *TransUnion, L.L.C. v. Ramirez,* 141 S.Ct. 2190 (2021), and *Maddox v. Bank of New York Mellon Trust Company, N.A.,* 997 F.3d 436 (2d. Cir. 2021). In both of those cases the courts addressed an Article III standing argument with regard to a complaint that was premised upon disclosure of inaccurate information going to either property or the reputation and creditworthiness of an individual.

In *Ramirez,* the Supreme Court grappled with the Article III issue in the context of TransUnion's incorrectly listing over 6,000 class members as potential terrorists, drug traffickers, or serious criminals in so-called OFAC alerts to paying customers.

The Court noted that for there to be a case or [105] controversy under Article III of the Constitution, plaintiffs must have a personal stake in the case, in other words, standing. "To demonstrate their personal stake, plaintiffs must be able to sufficiently answer the question 'what's it to you?'" 141 S. Ct. at 2203.

To answer that question in a way sufficient to establishing standing, the plaintiff must show (1) that he suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was likely caused by the defendant, and (3) that the injury would likely be addressed by judicial relief. *Id.,* citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-561, 112 S.Ct. 2130 (1992). If the plaintiff does not claim to have suffered an injury that the defendant caused and that the Court can remedy, there's no case or controversy for the federal courts to resolve. *Id.*

In the *Ramirez* case, the Court distinguished between the injury pled with respect to 853 of the class members where it was clear, whether -- it was undisputed, that is, it was established that the inaccurate reports were actually disseminated to the public, in this case, the specific parties that bought the OFAC alerts. It did so because that mere fact was consistent with longstanding harms traditionally recognized as providing a basis for a lawsuit in American courts; namely, the reputational harm associated with the tort of defamation; *Id.* at 2208.

[106]However, with respect to the remaining class members, notwithstanding that there had been a jury

trial that found substantial liability to them as well, there was no showing of a concrete harm alleged recognized as providing the basis traditionally for a lawsuit in American courts. The Court held that the mere existence of a misleading OFAC alert that was simply in the credit file, the private file, was insufficient, quoting a decision from the D.C. Circuit: "If inaccurate information falls into a consumer credit file, does it make a sound?" *Id.* at 2209 (again, quoting *Owner-Operator Independent Drivers Association, Inc., v. The United States Department of Transportation,* 879 F.3d 339,344 (D.C. Cir. 2018)).

Based on the facts that it believed were not in dispute, the Court held that there was no more than that mere existence of misleading information to support a claim of standing and that that mere existence, without either disclosure -- which again was conceded not to have happened with regard to the remaining class members -- or a risk of future harm that was sufficiently imminent.

With regard to the latter point, the Court stated that such a risk of future harm would not occur "at least unless the exposure to the risk of future harm itself causes a separate concrete harm." *Id.* at page 2211.

The *Maddox* case, although it preceded *Ramirez* and, therefore, some of its language with regard to the risk of [107]future harm might be qualified by *Ramirez,* ultimately I believe reaches the same type of result. In that case, the plaintiffs seek to -- sought to enforce a New York statute that imposed a $1,500 penalty or fine on a mortgagee that did not timely file a satisfaction of mortgage. Citing

Spokeo and other decisions for the proposition that the plaintiffs did not have Article III standing because they had not alleged any specific damages flowing from the failure to file the satisfaction of mortgage, and therefore would not be entitled to collect the $1,500 fine, since that would've been simply a creation of a harm where they were not harmed, the Court ruled to the contrary, holding that the failure to file the corrective filing to reflect the satisfaction of the mortgage was, indeed, a concrete harm, since concrete harms are not limited to tangible injuries but may be intangible, such as reputational harms. And here the harm was reputational as to the nature of the mortgagor plaintiffs' interest in their property and, therefore, they had Article III standing. Similarly, there was a public statement that was incorrect that reflected the reputational harm and there was a failure to correct it. 997 F.3d at 454, but also at 445 through 448.

It is, of course, well recognized that the bankruptcy discharge is a fundamental, if not *the* fundamental, protection for debtors in bankruptcy like Ms. Bruce. It is not, either, a recent statutory creation under American jurisprudence. It [108]goes back to the first bankruptcy act in America, in the United States, the 1800 Bankruptcy Act, which included within it, for the specified individual debtors by category, a discharge. See *Bruce H. Mann Republic of Debtors, Harvard University Press* 2002 at page 223. But the statute that the -- I'm sorry -- the existence of the discharge as an injunction which can be enforced -- obviously, that's the whole point of the injunction -- by the individual who is protected by it goes back farther than that. See, England's Statute of 4 Anne,

adopted in 1705, and the Statute of 5 George, adopted in 1732. See generally the discussion in *In re Ball,* 257 B.R. 309, 314 (Bankr. D. Az. 2001), and generally, *Charles Jordan Tabb, The Historical Evolution of the Bankruptcy Discharge,* 65 American Bankruptcy Law Journal, 325 at 326 and throughout the entire article, frankly.

Courts have consistently enforced the discharge, not only by declaring whether conduct has violated the discharge, but also with damages and punitive damages. See, for example, *In re Haemmerle,* 529 B.R. 17; *In re Nicholas,* 457 B.R. 202 (Bankr. EDNY 2011); and *In re Szenes,* 515 B.R. 1 (Bankr. EDNY 2014). Each of those cases cites multiple cases from other jurisdictions to the same effect. Moreover, unless there was any doubt as to this, the Second Circuit has confirmed that bankruptcy courts have the power to enforce mild or relatively modest non-compensatory sanctions for civil contempt, [109] notwithstanding that they're not Article III courts. See *In re Sanchez,* 941 F.3d 625, 627-28 (2nd. Cir. 2019).

Moreover, returning again to the language from the Supreme Court's recent *Ramirez* decision, not only is the violation of a discharge injunction by allegedly improper credit reporting that, as alleged in the complaint, was designed to coerce payment of a discharged debt, something that would go to reputational harm and, therefore, confer Article III standing, the complaint also alleges the exposure to the risk of future harm which would cause a separate concrete harm in that the complaint alleges that -- in multiple places, in fact, the, and this is at paragraph 42:

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> "In the ordinary course of business, defendants' debtors who are enduring financial hardship fall behind on their payments on defendants' credit accounts. Prior to the filing of any personal bankruptcies, defendants, the collection agencies, or delinquent debt companies that purchased defendants' debt, act to collect these past-due debts by threatening in dunning letters to place a charge-off or similar past due notation on the debtor's credit reports. Said letters threaten to ruin the debtor's credit unless the pay the past-due debt. Defendants, their debt collectors, and delinquent debt companies that purchased defendants' debt also act to collect [110]these past-due debts by promising in dunning letters to remove the charge-off or other past-due notations on the debtor's credit reports to show that their past-due debts have been paid if their debts are paid."

The complaint goes on to state that, again, with that background, the defendants -- this is in paragraph 48 -- "defendants know that without correction by defendants, the trade line will not be changed [that is the trade line that shows the debt is past due and owing and does not reference the discharge, will not be changed] unless it is not the practice -- because it is not the practice of credit reporting agencies to make such changes if the debt has been transferred by the original creditor."

And then, in that context, the complaint alleges that the defendants have refused to correct the credit report to reflect the discharge, knowing that, it is reasonable for me to infer, from the complaint that there is a prospective additional future concrete harm hanging over the creditor -- the debtor with the discharge's head, in that when that creditor -- I'm sorry -- when that debtor -- excuse me -- needs an improved credit report, it cannot obtain one, at least based on the context, unless it pays the debt, since simply reporting the existence of the discharge to the reporting creditor did not suffice to change the credit report.

[111]I will note that even Judge Jacobs' dissent in the *Maddox* case states, "The only reason a risk of harm can suffice for Article III standing is if at some point in time, the plaintiff has had a sword above her heard, which by itself can be a real injury." 997 F.3d 435, 459.

So I conclude that the complaint does, in fact, assert a sufficient basis for Article III standing to survive the motion to dismiss as it applies to the declaratory judgment cause of action in the complaint and the complaint's request for damages and sanctions.

The motion is also premised on the ground that the complaint does not satisfy *Iqbal* and *Twombly* and the case law with regard to motions to dismiss under Rule 12(b)(6) insofar as it alleges a cause of action for a declaratory judgment that the conduct that I've previously described as set forth in the complaint is, in fact, a violation of the plaintiffs' discharge.

It does so on two grounds. The first has already been addressed at oral argument when the motion was originally made in 2014, which is that, according to the movants, because the defendants are not themselves creditors, and because they themselves have taken no act to coerce the plaintiff into paying a debt, they are not, for purposes of Rule 8, in violation of the plaintiff's discharge. They cite, in particular, *In re Kalikow,* 602 F.3d. 82 (2d. Cir. 2010) for [112]that proposition. But I conclude, having again reviewed that case after a roughly seven-year hiatus from the first time that I reviewed it, that the case is inapposite here.

First, the statute itself, that is section 524 of the Bankruptcy Code, is not limited to creditors. It, instead, states that section 524 -- in section 524(a)(2), "A discharge in the case under this title 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 debt as a personal liability of the debtor, whether or not discharge of such debt is waived," i.e., it is not limited just to creditors. The Second Circuit's reference in *Kalikow* to the fact that the defendants in that matter were not themselves creditors is not necessary to the ruling. And, in particular, that fact is highlighted by the Court having noted that no actual creditor picked up the challenge by the defendants and took steps to pressure payment, and that there was no pressure to make payment.

To the contrary, here, in the complaint it is alleged that, as I've stated, the defendants, fully aware, because

of their own conduct, of the effect of adverse negative credit reporting to induce payment of debt, transferred the debt in a way that maintained the credit-reporting obligation in the defendants, not in the transferee-holder of the debt, and that, with full knowledge of the bankruptcy discharge, they refused [113]to reflect the discharge on the credit reports for which, as I've noted according to the complaint, they had the responsibility for reporting publicly and continued to report publicly post-discharge.

It's also asserted that the defendants knew that the existence of such inaccurate information in the class members' credit reports and Ms. Bruce's credit report, would damage their credit ratings and their ability to obtain new credit, a lease, a mortgage, or employment, all of which may be essential to reestablishing their life after going through bankruptcy.

That's Paragraph 65 of the complaint.

The complaint alleges further that the reasonable belief that the plaintiff and the putative class members would fear the failure to correct the credit report as having an adverse effect on them, is, quote, "intentionally reinforced by the defendants themselves when class members contact defendants asking them to correct the erroneous credit information," in that they would not remove the information. See not only Paragraph 22 through 25 of the complaint, but also Paragraphs 65 through 67 of the complaint.

Under such circumstances, the courts, in my view, have uniformly held that a cause of action has been asserted. That case law is noted and summarized in *In Re DiBattista,* 615 B.R. 31, 42-43 (S.D.N.Y. 2020) and the cases cited therein. To be distinguished from the *DiBattista* case, which is in all [114]fours with the complaint in this case, including the nature of the credit reports, are cases where no concerted scheme and no refusal to correct was asserted. See, for example, *Church v. Accretive Health, Inc.* 2014 U.S. Dist. LEXIS 173-199 -- I'm sorry, excuse me, *Caldwell v. Redstone Federal Credit Union,* 2018 U.S. Dist. LEXIS 121524, at page 25-28 (N.D. Ala. July 20, 2018), and *In re Lohmeyer,* cited by the movants in their pleadings, as well as all of the other cases cited at pages 13 through 14 in defendants' supplemental memorandum of law in support of its motion to dismiss, which stand for the proposition that *mere* inaccurate credit reporting, without some further act, which can be simply the refusal in a context like this to correct, does not constitute a violation of the discharge.

So the motion's basis under *Twombly* and *Iqbal* with regard to the underlying cause of action, is denied.

In addition -- and this is also under *Twombly* and *Iqbal,* the motion asserts that the complaint should be dismissed in the light of the Supreme Court's case construing sections 524 and 105(a) of the Bankruptcy Code, and when a cause of action lies under it, *Taggart v. Lorenzen,* 139 S. Ct. 1795 (2019).

In that case, the Court needed to resolve a controversy or a split among the circuits -- as at least one circuit, the Ninth Circuit, required a subjective showing of an [115] understanding that one was acting in violation of the stay -- of the discharge, excuse me, i.e. akin to bad faith or willfulness.

On the other hand, other circuits had seemingly held that violation of the discharge would be found -- and damages might flow from it, merely basically on a strict liability basis, i.e. if one knew one was acting -- not that one was acting in violation of the discharge, but one acted consciously, and it turned out that that violated the discharge, one could be liable.

The Court in *Taggart* found that neither approach was correct, but that, rather, when courts use their inherent civil contempt power, including in the bankruptcy context, when invoked in conjunction with section 105(a) of the Bankruptcy Code and 524 of the Code, one should follow the general standard for civil contempt, which is generally an objective one, although the Court went on to note that, when imposing damages, the willfulness or bad faith of the alleged contemnor may come into play.

Instead of the two potential standards that other courts had followed, the Supreme Court in *Taggart* held that liability for breech of the discharge would lie where there was "no fair ground of doubt" or no ground -- "no fair ground for doubt," that the -- on an objective basis, that the alleged violator's action did, in fact, violate the discharge.

[116]It left it up -- the Supreme Court, that is, left it up to the lower courts to determine whether a particular instance would fall on either side of that standard.

Courts have since held, notwithstanding that a cause of action -- or course of action, excuse me, would violate the discharge, there would not be liability for it if the course of action at the time it was taken was one where there was a fair ground for doubt as to whether it would violate the discharge.

The defendants have pointed to two such instances post-*Taggart,* both of which, however, involved materially different fact patterns and legal issues. Both involve situations where a creditor sent a notice to a debtor that had received a discharge that could be construed as a dunning notice, but was in the context where the creditor had a lien on property that the debtor owed.

When a creditor has a lien, it can enforce that lien -- unless it's been separately avoided in the bankruptcy case -- notwithstanding the issuance of a discharge, because the lien is not affected by the injunction under section 524(a)(2), which applies to *personal* liabilities. This was laid out clearly in, for example, *Roth v. NationStar Mortgage, LLC, In re Roth,* 935 F.3d 1270 (11th Cir. 2019), and *In re Distefano* 611 B.R. 100 (W.D. Mich. 2019).

The case law with respect to that scenario was clearly mixed as to whether that constituted a violation of the [117] discharge. A lot depended on the wording of the notice as to clarity as to whether it applied only to the lien debt or

to the personal obligation. In that context, there clearly would be, on an objective basis, "a fair ground for doubt." And the only relief that would be warranted would be a declaration that the discharge applied to such activity, which would then make clear that if it continued or took place in the future, the party engaging that activity would be in violation of the discharge.

To the contrary, here, the case law is uniform that while inaccurate credit reporting standing alone is not enough to assert a violation of a discharge, if the allegation of inaccuracy is combined with allegations such as those in the complaint here that the defendants refused to correct the credit report, did not give a valid basis for doing so, and had clear knowledge of the pressure that would be imposed upon the former debtor because of that failure to correct, there would be a violation of the discharge.

The only case that even comes close to finding that the refusal to correct isn't a violation of the discharge, at least for purposes of pleading, is *In re Mogg,* 2007 WL 2608501 (Bankr. S.D. Ill. 2007). I will note, however, that in that case -- although there is a reference to a demand to correct, the opinion doesn't address the consequences of the failure to demand or see any allegation of a concerted effort to coerce [118]payment because of, or in the light of the failure to demand -- I'm sorry, the failure to correct.

The cases holding to the contrary, again, are legion -- at this point -- and although some of them stem from before 2007, many of them start in 2007, including numerous cases cited by the plaintiffs here, including *In re Haynes,*

In re Torres, In re McKenzie-Gilyard, and the like. And again, I defer to Judge Seibel's summary of the case law in *In re DiBattista,* as I did before.

The only real response by the movants to this what I believe is the overwhelming weight of the case law, that such conduct does violate the discharge, if of course proven to be true, is a -- or the apparently sole purchase and sale agreement between the defendants and -- or at least one of the defendants, Citibank South Dakota, N.A., and Midland Funding, LLC.

I will note that it is not conceded by the plaintiffs that this is the only agreement. There is a general incorporation of -- or reference to "purchase and sale agreements" with debt buyers in the complaint, but I believe that one cannot, under the case law that I'd cited at the beginning of this ruling, take this agreement as the only agreement between the defendants and a debt buyer.

I will note, also, that the agreement is intended to be kept confidential, and in fact was filed under seal in this [119]adversary proceeding. So it was a secret agreement. It is not, therefore, in any way, shape, or form, a proof that contradicts the allegations in the complaint that the defendant or defendants were the credit reporters, as opposed to the purchaser of the debt, or that the plaintiff had any notice of a disclaimer that the purchaser of the debt was responsible for correcting the credit reports, unlike the disclaimer in the *Roth* case.

Moreover, if one is to review the agreement and state that it would apply to the complaint, which is largely doubtful to me because I don't have a basis to believe that it was the only agreement, it provides in Section 6.3, the only section that expressly deals with credit reporting, only the following:

> "The bank [i.e. the seller, Citibank (South Dakota)] may promptly request that the major credit reporting agencies, including without limitation Equifax, Experian, and TransUnion, delete or mark the accounts on their records sold or transferred to buyer. The buyer may report its ownership of the accounts to credit reporting agencies, provided that the buyer agrees to comply with the Fair Credit Reporting Act (FCRA) and any other laws or regulations governing credit agency reporting."

The complaint alleges, and it appears from the credit reports that are incorporated into the complaint, that in fact [120]the buyer did *not* report its ownership or assume the responsibility for credit reporting, but rather the defendants did, continued to, after the sale.

6.5 of the agreement is substantially relied upon, or relied upon primarily by the movants for their contention that there was some fair ground for doubt by the movants that their actions, as detailed in the complaint, did not violate the discharge.

Appendix B

It provides, in relevant part:

> "It shall be buyer's obligation, either through a competent third-party vendor, e.g. Banco, Inc. or other process, to perform such reviews and scrubs of the accounts as necessary to determine if the account is involved in an open bankruptcy proceeding or has been discharged in bankruptcy (the 'post-sale scrub'). Buyer shall be solely responsible for any claims or liabilities arising from post-closing collection action or activity by buyer or buyer's agents, successors or assigns, with respect to an account involved in or discharged in a bankruptcy proceeding, whether the bankruptcy proceeding or the discharge occurred before or after closing.
>
> "Furthermore, buyer shall immediately cease any collection efforts upon receiving notice (whether from a cardholder, the bank, or a third party on [121]behalf of cardholder) that a cardholder has discharged the debt in bankruptcy, and shall not recommence collection activity until buyer has conducted a reasonable investigation into cardholder's claim and determined based upon reasonable evidence that the cardholder's claim is unfounded.
>
> "If buyer learns of an indicator, note, or flag that demonstrates that the cardholder claims to be an identity theft victim, then buyer shall promptly notify the bank, and the bank shall

> repurchase the account for the repurchase price."

This paragraph is belied, again, by the facts as asserted in the complaint, which I take as true, and the documents actually incorporated in and appended to the complaint, which are the credit reports, that notwithstanding defendant's knowledge of the bankruptcy case and the discharge, defendant continued to report the debt as not being discharged.

It did not, according to the complaint, respond by saying, oh, no, Midland Bank owns this, we don't report, we will stop reporting. Instead, it simply refused to correct. And of course, the buyer is not privy to this provision.

This provision may create a cause of action in some circumstances by the defendant against Midland, but I do not believe it creates a fair basis for doubt that, by continuing [122]to report inaccurately, and to refuse to correct, given the context that I've stated the complaint creates, that the defendants were violating the discharge.

Indeed, one could read this to the contrary, that notwithstanding this provision, defendant continued to report and did not in any way shift the burden onto the purchaser, at least as far as the plaintiff was concerned, i.e. did not tell the plaintiff that the purchaser has the obligation, nor did it cease to assume the obligation itself as a matter of the public record.

The movants assert, although I believe only in oral argument, that because one could read this paragraph potentially, as a factual matter, as stating that the bank had shifted potential liability for violation of the discharge onto the purchaser of the debt, thus there would be a fair ground for doubt that it itself was not violating the discharge by failing to correct the credit report and continuing to report the debt as not subject to the discharge. But again, as far the effect on the plaintiff is concerned, that allocation of responsibility was completely opaque. As far as the plaintiff was concerned, there was a clear risk that the failure to correct would only be rectified if the debt were paid. So what the bank may subjectively have thought, again, is not relevant under the *Taggart* standard. What is relevant is the coercive action of the bank.

[123]It is possible that the bank may show at trial that no damages flowed from this, and that only mild punitive damages would lie, if that, and that *would* look into the bank's potential subjective intent as noted by *Taggart,* but that possibility is not a basis for dismissing the complaint. In essence, it would state that a possible factual issue as to intent related to punitive damages or damages in the sense of actual damages controls over whether a cause of action exists at all, and I do not believe that is a correct application of *Taggart* or Rule 12(b)(6), which assumes the veracity of the complaint where the complaint actually pleads facts and not conclusory allegations, as this one has.

So I will deny that aspect of the motions *Twombly* and *Iqbal* assertions as well.

MR. NAGIN: Your Honor, I apologize for interrupting, but may I just ask a point of clarification with respect to one aspect of your ruling?

THE COURT: Sure, Mr. Nagin. That's fine.

MR. NAGIN: Sure. Thank you. I think Your Honor said that the allegations that -- in the complaint were that Citi continued to report? And I just -- for clarification, I don't think that that's the allegation. I think the allegation is that Citi reported in 2011, which is what's attached to the complaint, and then the plaintiff alleged that Citi, after it sold, you know, when the plaintiff went into bankruptcy several [124]years later, refused then to correct. I think that's the allegation rather than there was new reporting and Citi continued to report.

THE COURT: When I say continued to report, I mean left the report on it, as the reporting entity by Citi, Citi South Dakota, excuse me. It didn't -- the reporting on the credit report is not by Midland, and it continued on it notwithstanding the refusal.

MR. NAGIN: Thank you, Your Honor.

THE COURT: So, yeah, there's no -- there was no new entry, but that's what the complaint says. There was no new entry. It left it on as owing, notwithstanding notice of the bankruptcy discharge and the request to correct it.

There was one other aspect of the motion to dismiss on *Twombly* and *Iqbal* grounds that I frankly don't recall I

ruled on or not in 2014. There is what I believe is a wholly conclusory allegation as to credit reporting with regard to debts that were not sold. And I don't recall whether I dismissed that claim or not. I'm not even sure it is a part of the claim of the complaint, and I guess before I go on with the class action point, I want to ask the parties, and particularly Mr. Shaw and Mr. Juntikka, is the class that you're looking to cover here at this point those who are -- whose debts were sold?

MR. SHAW: We'd like it to be sold and unsold. I'd [125]have to --

THE COURT: Okay.

MR. SHAW: -- check the allegations again.

THE COURT: I just don't believe there is any allegation with regard to unsold debt. In any event, the plaintiff, the named plaintiff, only has sold debt. Right?

MR. SHAW: Correct.

THE COURT: So I think unless you have -- I think it would be dismissed as to her, and therefore, unless you have -- amend the complaint to have a named plaintiff that refers to sold debt, that had sold debt, that would fall into this fact pattern, that claim would not survive the motion to dismiss.

MR. JOYCE: I'm sorry, Your Honor. I think you misspoke -- I think you said "sold" rather than "unsold."

THE COURT: Unsold, yes.

MR. JOYCE: I just want to make sure you go back --

THE COURT: Right. I think unless you add a plaintiff, a new plaintiff who had unsold debt that falls into that fact pattern, I think that the complaint would not have a -- would not state a cause of action with respect to unsold debt, because all of the allegations here really do pertain to sold debt as far as the named plaintiff is concerned.

MR. JUNTIKKA: We'll definitely talk about it, Your Honor. We can always --

THE COURT: All right. So that is a –

[126]MR. JUNTIKKA: -- add one or two --

THE COURT: That aspect of the cause of action -- which I think I may have addressed in 2014; if I didn't, I'm going to address it now -- should be dismissed, and with leave, however, to file a motion to Rule 15 to amend the complaint.

MR. JUNTIKKA: Sure.

THE COURT: Now, I normally say within 30 days, but we're coming up on August, when a lot of people are away. Is 30 days sufficient time?

MR. JOYCE: I think 60 makes more sense, Your Honor.

THE COURT: Sixty?

MR. JOYCE: Yeah.

THE COURT: Okay. We'll make it 60 days then. And obviously, if such a complaint -- such a Rule 15 motion is not made, then that ruling would be final as to this complaint, or with prejudice that is. If it is made, then we'll have a hearing on it, unless the plaintiffs -- the defendants are persuaded the plaintiffs have actually under my ruling here stated a cause of action.

MR. JOYCE: Yeah, we'll take a look at it. If we -- I mean, if we brought in a case in the future with those people, I suppose we could, but we'll try to resolve it within 60 days.

THE COURT: Okay. I actually do want to know one other point, which was not addressed in oral argument, but I'll [127]address it here. There is an assertion that in the original motion that was filed years ago, that because of guidance on credit reporting by bank regulators, there would be a fair ground for doubt that whether this credit reporting was inaccurate.

First, again, I can only take judicial notice of that, not anything other than that, as a factual matter, of that guidance. But based on my review of the guidance, it does not go to the accuracy of the discharge and -- I'm sorry. To the accuracy of the credit reporting, and does not give a pass as to the violation of the discharge, which it doesn't address at all, and I believe I addressed that point quite thoroughly in the *In Re Haynes* decision, and I'm not going to address it further here. I apologize --

MR. NAGIN: Your Honor, may I just address that very briefly?

THE COURT: Well, if it's going to be oral argument, no, because you had your chance on that. If you think --

MR. NAGIN: That's fine, Your Honor.

THE COURT: -- I've said something wrong as to the guidance, and there's different guidance, then you can let me know, but other than that --

MR. NAGIN: Yeah, I -- the only thing -- I guess it was maybe a bit of the brackish waters between those two things. You -- I think you said, you know, what was the [128]purpose of signing it, and I think it just goes into the hopper of, you know, the factors and the considerations in the *Taggart* standard as to there being no objective or reasonable basis to think that the conduct might be lawful, and guidance that the banking -- relevant banking regulators do think that reporters had to report further after sale goes into that consideration. It was for that reason it was cited again.

THE COURT: All right. Well, I simply don't agree with that, I'm afraid. It doesn't -- the guidance is first, precatory; second, it doesn't say anything about the discharge; and third, it actually does not reflect either the -- a correct view of what the statement in the credit report means or -- and this is, in my view, even more important -- the defendants' view of what it means. And again I have asked these defendants as well as every other defendant who has made this assertion whether they would agree

that stating "zero balance," or "uncollectable," or any of the other terms which don't refer to a bankruptcy or a discharge that are referenced in the complaint's request --

MR. JOYCE: Well, charge --

THE COURT: -- for injunctive relief --

MR. JOYCE: -- charge off --

THE COURT: -- charge off, and, you know, the complaint's --

MR. JOYCE: -- or late, 90 days late.

[129]THE COURT: -- request for injunctive relief -- I'm just getting the complaint here. "Charge off," "past due," "late," "zero balance," et cetera, mean that the debt can be collected without the obligor's consent after the discharge. And the answer has always been we can't -- we won't agree to that.

So to me that's proof that there is no fair ground for doubt in this area. Although, frankly, I'm not sure I need absolute proof. I just need to find that the cause of action itself is sufficiently stated on that basis.

All right. Let me turn to the last aspect of the motion to dismiss here, which is by far the most difficult one to deal with as reflected by the oral argument on it. And I really do thank the parties for the detail with which they have addressed it. And that is the motion's request that I strike the complaint's request for class action relief.

Appendix B

The reason that I was late getting on the bench today was that I was reviewing Judge Stong's second opinion on this issue, which came out recently. I was, of course, aware of her *Ajasa* opinion, which the parties have dealt with, and that appears at 627 B.R. 6 (Bankr. E.D.N.Y. Apr. 7, 2021), *In re Ajasa.* But more recently, in fact, on July 19th, Judge Stong issued *In re Golden,* 2021 WL 3051896 (Bankr. E.D.N.Y. July 19, 2021), which also addressed the issue in great detail.

It is argued that I should strike the complainant's [130]class action cause of action now, although we're not anywhere close to certifying a class, on the basis that -- or rather not that one of the aspects of Rule 23 is not satisfied, but, rather, that under Federal Rule of Civil Procedure 12(f), the Court has the power only to rule on a claim that the discharge has been violated with respect to a plaintiff whose discharge order was issued by this Court, or at best a class of plaintiffs whose discharge orders were issued by courts in the Southern District of New York.

This was the same issue that was raised in the *Golden* and *Ajasa* cases, and I am persuaded by the *Golden* opinion that, although a court at this stage in the litigation, i.e. the motion to dismiss stage, should rarely, if ever, grant a motion to strike a class action claim or allegation in the complaint, this is a proper instance where I should consider that issue, given that it appears there's no further discovery that would need to be taken as to this fundamental question of the Court's power to consider, on a national class action basis, a claim or claims for violation of the discharge.

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There is absolutely no difference in the complaint with regard to the allegations pertaining to putative class action members whose orders were issued by courts of this district or by me or -- on the one hand, and putative class action plaintiffs or members whose orders were issued by judges in other districts. So there's a pure legal issue, I believe, [131]that should be addressed now, given Rule 23's directive to act promptly, where appropriate, with regard to class action claims or certification.

I also have very little to add to Judge Stong's analysis of this issue, the underlying issue that is, not the 12(f) issue, that she has set forth in the extensive and I believe well-reasoned opinions in *Ajasa* and *Golden.* So I will adopt those opinions, but will add the following remarks to them.

First, I appreciate deeply the statement in -- if I can get to it, *In re Belton,* 961 F.3d 612 (2d Cir. 2020) cert. denied, *GE Capital Retail Bank v. Belton,* 141 U.S. 1513 (2021), which was jointly briefed, that matter that is, by the parties to this litigation, even though it's under the name *Belton* (The *Bruce* defendants were also involved in the briefing of that matter), which statement cast considerable doubt, albeit that it is a short statement, on whether any bankruptcy judge other than the bankruptcy judge that issued the discharge order has the power to consider a claim for violation of a discharge.

I will note, however, that that statement is expressly dicta. In fact, the Court says that: "We are not doing more than that." But of course dicta from the Second Circuit is

very important. I also realize that *Belton*'s predecessor, *In re Anderson,* contained as one of the grounds for finding that a claim like this raised in a different class [132]action lawsuit, but based similarly on an assertion of coercive failure to correct a credit report, was that a bankruptcy court, like any court, has jurisdiction to interpret its own orders, and therefore the violation of that order is not properly decided in an arbitration notwithstanding the presence of an arbitration provision. See *Anderson v. Credit One Bank N.A. (In re Anderson),* 884 F.3d 382 (2d Cir. 2018).

On the other hand, *Anderson* also extensively analyzed the Supreme Court's case law construing exceptions to the applicability of the Federal Arbitration Act, and I believe a very fair reading of that decision shows that the Court was at least, if not more, moved by the important nature of the bankruptcy discharge and Congress's implicit determination that the bankruptcy courts enforce it. So I, like Judge Stong, am certainly paying very close attention to Second Circuit's rulings on this issue that are relied on by the movants, but I, like Judge Stong, agree with her that they do not require the striking of the class claims on this basis.

To that point, I would add the following, although some of this is in fact covered by Judge Stong's decisions.

The cases that have found a limitation on the Court's power to decide a nationwide class action with regard to a claim for violation of section 24 of the Bankruptcy Code do so under a couple of different theories.

One, I believe, is simply too limited by the statute, [133]namely a theory that the bankruptcy court's jurisdiction is limited to the estate before it, the res before it, and consequently wouldn't extend after the closing of the case to enforcing the discharge.

As the plaintiffs correctly point out, bankruptcy jurisdiction goes far beyond that, as set forth in 28 U.S.C. 1334(b), and would clearly include enforcing the discharge, which is of fundamental importance in bankruptcy cases.

The other group of cases I think are far more supportable, and in fact raise a very close question for me. They are best exemplified by the fairly recent decision of the Fifth Circuit in *Crocker v. Navient Solutions LLC (In re Crocker),* 941 F.3d 206 (5th Cir. 2019). That case, which dealt with again that potential violation of a discharge on a national class action basis, albeit with regard to attempts to collect a student loan, is quite closely reasoned in that in addition to stating the general proposition, which all federal courts, including this Court, understand, which is that when one issues an injunction one has generally the power to enforce it and almost always the sole power to enforce it, and certainly to interpret it, to some extent this is a legal fiction based upon the judge's familiarity with the order. And that's exemplified by the fact that there are injunctions that are issued, and then need to be enforced after the judge [134]retires, or dies, as I have done three or four times in the *Texaco* case, as did my predecessor, Judge Hardin, in enforcing his predecessor, and my indirect predecessor, who issued the injunction in *Texaco.*

Obviously, neither Judge Hardin nor I had any special insight different from any other bankruptcy judge into the *Texaco* discharge order. Nevertheless, we were the proper ones to enforce it. That type of analysis, though, that legal fiction, which has a -- obviously a deep-rooted basis, supports decisions like *Cox v. Zale Delaware Inc.*, 239 F.3d 910, 916, 917 (7th Cir. 2001), and *Alderwoods Group Inc. v. Garcia,*682 F.3d 958, 961 (11th Cir. 2012).

In the *Crocker* case, the Circuit delved more deeply into whether the Bankruptcy Code itself changes that analysis, and it went through an extensive review of the predecessor to the 1978 Bankruptcy Code, the Bankruptcy Act, and a provision in it which, coupled with then Bankruptcy Rule 4004(g), clearly suggested that other courts where the discharge is recorded *would* have the power to enforce it.

In part, the reason for delving into that past history, albeit not legislative history, its statutory provisions, was motivated by another well-reasoned opinion by the bankruptcy court, *In re Cano,* 410 B.R. 506 (Bankr. S.D. Tex. 2009).

The Court in *Crocker* concluded, however, that because [135]the applicable section in the Bankruptcy Act did not make its way into the 1978 Bankruptcy Code, and because other circuit cases, albeit with less analysis, had concluded that only the court that issued the discharge injunction order could preside over a violation of discharge claim, it would not permit a nationwide class action. It argued that Congress must have decided that doing

otherwise was inappropriate in that it did not recodify Section 32(g) of the Bankruptcy Act when it enacted the present Bankruptcy Code:

> Moreover, current Rule 4004(f), which reads:
>
> > "An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the Clerk of that district; when so registered, the order of discharge shall have the same effect as an order of the Court of the district where registered,"

was insufficient to preserve what had been in effect under the Bankruptcy Act, because it does not say, as the former rule said, "may be enforced in like manner." 941 F.3d 213.

That is true, but it does say, "it shall have the same effect as an order of the court of the district where registered." There's not really much reason to say that, given res judicata, other than to give that court where it is registered the power to enforce it, although I say that in some trepidation, in that I'm disagreeing with the *Crocker* case in [136]doing so.

The movants say, well, even if that is true, a Bankruptcy Rule, being only procedural, cannot subvert a substantive right, but it is not clear to me that a rule that deals with simply where a claim may be enforced is substantive as opposed to procedural. Indeed, it appears to me to have less effect on the underlying decision than

other Bankruptcy Rules where there is no corresponding specific provision of the Code that affect the merits of the case, such as the deadline in Rule 4004 and Rule 4007 to object to discharge, and the circumstances where that deadline can be extended.

In addition (and again, I'm building upon Judge Stong's opinions, so I'm not going to reiterate all of what she says in them, including with regard to the *Debs* case that she discusses at length in *Ajasa)*, the Bankruptcy Code was in fact also amended from the Bankruptcy Act, and quite significantly, in section 105(a) of the Code, which is discussed at length in the *Ajasa* and *Golden* opinions, and the *Haynes* opinion upon which they rely in large part.

I disagree with the movants, in that -- where they state, rather, that relying on Section 105(a) here would be assuming that Congress hid an elephant in a mole hole. The statute goes in some respects to the most important aspect of any new statute. It is headed "Power of Court." It lays out what the court exercising bankruptcy jurisdiction may do, and [137]it states that the court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." It does not distinguish between courts that issue orders, and courts that are carrying out the provisions of the title. It just says, "the court may...carry out the provisions of *this title*."

And as discussed in *Haynes, Ajasa,* and *Golden,* Congress very clearly meant this to be broader than the All Writs Act, and to cover, generally, actions that would

not be limited to or judicial activity that would be not limited as the All Writs Act is. It also appears clear to me that the plain meaning of 105(a) would make it apply here, as I think is recognized by the *Taggart* case, which references 105 as well as the inherent contempt power of the Court. After all, unlike a roving commission of equity, which the courts have long prohibited 105(a) to apply to, or to create -- most recently, in the Supreme Court in the *Law v. Siegel* case -- here there is a provision of this title, a specific one, 524(a)(2) that 105 can be used by the Court to "carry out."

I appreciate that there are many courts, although the *Crocker* Court is not one of them, that have held that there is no private cause of action under section 105(a) to enforce the discharge. See, for example, *In Re Forson,* 549 B.R. 866, (Bankr. S.D. Ohio, 2016), and the cases cited therein. But obviously there is a remedy for the breach of the discharge. [138]The Courts clearly recognize that, including the Supreme Court in *Taggart,* which cites 105 as well as 524 and the inherent contempt power of the court to do so.

So at some level, saying that there's a private cause of action or not is largely irrelevant to the merits, and that's particularly the case where it is clear, and there's no dispute here, in this case at least, that the same analysis would apply under the Court's inherent power, as under 105(a) to enforce section 524, namely the "no fair ground for doubt standard" laid out in *Taggart.* So the only real issue is which Court should apply that standard to what claims?

And I believe that Congress knew what it was doing in section 105(a), as referenced by the legislative history and in the plain language of the statute, and it did not limit the court that could decide that issue, the 524 issue that is, to the court that issued the injunction order. That is especially the case because this is a statutory injunction. The discharge order is a form. I don't believe any court -- certainly I haven't in the nearly 20 years I've been on the bench -- has ever modified it. I'm not sure we have the power to do that, but we just don't do it because it's an official form.

Moreover, we actually don't issue the order in the sense that we don't read it and sign it. It's issued as a mechanical matter by the Clerk's Office. If we issued these orders, that's all we would be doing. I mean, if we actually [139]read them each time. And that's why it's a form. It embodies 524.

Now, it may well be ultimately decided that none of that matters because historically judges who issue injunctions are the only ones normally who enforce them. But the vast majority of those cases aren't statutory injunctions. They don't have -- or they don't follow a simple form. They have some nuance to them. And again it appears to me that Congress -- both in enacting 105(a) and in making it clear in Bankruptcy Rule 7023 that the courts can preside over class actions -- contemplated, in appropriate circumstances where the class would, of course, be certified, that one judge could preside over a class claim for breach of a discharge.

Clearly, in this context, that type of result procedurally is entirely consistent with Rule 23. It's the purpose of Rule 23. You have a multitude of debtors who have just emerged from bankruptcy, who if they had to do it on an individual basis would have to pay the reopening fee, retain a lawyer, et cetera, and pursue, as evidenced here, plaintiffs with -- defendants with substantial resources and very capable counsel.

That is unlikely to be done effectively in a context outside of a class action, really for either side I think, and I say that for two reasons. One, I guess maybe the obvious one, which is that debtors generally are poor and don't have [140]the resources to pursue a claim, which frankly would be a claim ultimately just for declaratory relief and maybe punitive sanctions. Possibly for damages, but in many respects, just non-compensatory mild sanctions.

And that rationale is laid out well by Cara Bruce in The Debtor Class, 88 Tulane Law Review 21, particularly at Pages 71 through 74 (2013), where Professor Bruce in some good detail analyzes the cases that have restricted enforcing the injunction to the issuing court or district and criticizes them based on their not being consistent with other provisions of the Judicial Code and Bankruptcy Rules.

But there's another reason, too, which we discussed at length during oral argument, which is that to me, given the nature of these claims, it would appear that each side in a litigation decided by one judge for one debtor, or even a class of debtors within a district, would quite

likely be collateral estoppel in the future to those parties, whether they -- if they're the loser. And that's because again there's no nuance to the order. It's the same order, same fact pattern, et cetera, so why duplicate it? A fact that may be highlighted by -- as noted by Judge Stong, the settlements in several of these proceedings that were done on a nationwide class action basis, two more of which will be forthcoming soon, to my actual knowledge.

So I believe at a minimum the appellate courts should [141]hear that full rationale before they make a sweeping decision like this. It's important to look at the context of this particular case to decide whether the general rule should apply to it, and I believe when a court does that, it will see that there is a difference between this particular context and when the general rule applies, namely it's a form statutory injunction where one decision will in effect bind the parties nationwide, at least the losing party. And Congress apparently did deal with this in enacting section 105(a), which is not addressed by the *Crocker* decision, which otherwise again seems to me on the history quite persuasive. But that's an important extra fact that it did not consider it.

So I also will note that my decision, like Judge Stong's decision in the *Golden* decision, to decide this issue now, under Rule 12(f), is in part because of the unique nature of these issues. There's nothing that requires further discovery or development with respect to Rule 23. It all derives from this particular fact pattern and the dispute among the courts as to which judge can't rule on it as opposed to judges who can rule on it. Clearly, the judge

who issues the order can rule on it, and that's consistent with *Anderson,* the named plaintiff there was a plaintiff whose order I entered. But also I believe, again, and I'm repeating myself now and I apologize for that, *Anderson* also recognizes that the collective effect of this claim really does warrant [142]determination by one Court. Although frankly, in *Anderson,* we hadn't gotten to class certification yet.

So I will deny the request to strike or dismiss the nationwide class allegations on the limited basis that was asserted. Obviously, the plaintiffs will still have to satisfy the other requirements of Rule 23, but it's premature at this point, as recognized by the fact that the motion doesn't address them, to deal with those now.

So I will grant the motion in part, as I've said, and deny it otherwise. I'm granting it with prejudice with regard to the injunction issue, and without prejudice subject to the 60-day Rule 15 motion procedure otherwise. And I guess I'll ask the movants to draft the order. You don't need to formally settle it on Mr. Shaw and Mr. Juntikka, but you should run it by them before you email it to chambers so they can make sure it's consistent with my ruling. Obviously, CC them on the email to chambers as well. Hopefully, there won't be any disagreement, but of course if there is, the plaintiffs can send me a black-lined alternative version and I'll enter whatever I think is consistent with my order.

This has been a very long ruling, and I apologize for that. As I do with such rulings, I reserve the right

to go over the transcript with regard to the ruling and edit it, not only for typos or, you know, transposed citations or the like, but also if I think I've said something ungrammatically or [143]inartfully. If I do that, I will file it as a modified bench ruling. It won't be the transcript. It'll be a modified bench ruling, which is something in between a bench ruling and a full-fledged opinion. But I think, you know, it's important for the parties, who've been at this since 2014, to get a prompt ruling on the issue and an order so that we can then move on.

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