No. 25-1408

IN THE

Supreme Court of the United States

GOLDMAN SACHS BANK USA,
d/b/a Marcus by Goldman Sachs,

Petitioner,

v.

RHEA ANN BROWN AND GREGORY KEVIN MAZE,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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SUPPLEMENTAL BRIEF FOR RESPONDENTS

Pursuant to Rule 15.8, respondents file this supplemental brief to advise this Court of a significant development in the underlying litigation in the bankruptcy court. As respondents noted in their brief in opposition, that court recently held a hearing on Goldman's motion to dismiss. BIO 11. On September 10, the court granted the motion. ECF No. 62. It recognized that respondents plausibly alleged that Goldman willfully violated the automatic stay; indeed, it said that there can be "little debate" on that point. *Id.* at 6. But the court held that the complaint did not adequately allege that respondents suffered "actual damages." *Id.* at 7; *see id.* at 7-27. The court dismissed the adversary proceeding without prejudice and gave respondents 21 days to file an amended complaint. *Id.* at 27; *see* ECF No. 63 (order).

That development provides yet another reason to deny Goldman's petition. Respondents believe that they suffered injuries sufficient to support an award of damages and intend to file an amended complaint. But this Court should not grant certiorari to review lower-court decisions addressing a complaint that has now been dismissed on other grounds. Future litigation in this case will be based on an amended complaint that has not even been filed yet, and that would not be before this Court if it granted review.

The dismissal of respondents' original complaint also provides further reason to reject Goldman's attempt to present this case as one involving 11 U.S.C. § 362(k) alone. As respondents have explained, they sought relief under *both* Section 362(k) and 11 U.S.C. § 105(a). BIO 1, 8. That distinguishes this case from the Second Circuit decision in Goldman's purported circuit split and highlights the error in Goldman's position on the merits. BIO 12, 21-24. In an apparent effort to sidestep those problems, Goldman's reply brief repeatedly asserts that this case does not involve Section 105(a) because (on Goldman's telling) respondents' complaint invoked Section 105(a) only "as authority for ancillary injunctive relief." Reply Br. 10; *see id.* at 1, 4, 7, 9.

That new assertion is demonstrably wrong. Respondents' original complaint specifically invoked Section 105(a) in support of their request for "actual damages," and respondents sought sanctions and a finding of "contempt" for the stay violations described in the complaint. C.A. J.A. 27, 30. The Fourth Circuit thus correctly recognized that respondents sought relief "pursuant to § 362(k) *and § 105*." Pet. App. 4a (emphasis added). In light of Goldman's new assertion, however, respondents' forthcoming amended complaint will include explicit language making clear that they are invoking Section 105(a) as an independent basis for monetary relief. That removes any doubt that this case involves Section 105(a), not Section 362(k) alone.*

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* Goldman badly errs in asserting that a request for Section 105(a) relief must take the form of a "motion" rather than a complaint in an adversary proceeding. Reply Br. 9. As cases cited in the parties' briefs show, an adversary proceeding is an appropriate vehicle even when a party seeks *only* Section 105(a) relief. *See, e.g.*, *In re Anderson*, 884 F.3d 382, 390 (2d Cir.), cert. denied, 586 U.S. 823 (2018). Goldman's only support for its contrary assertion is a statement in *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Even within the Ninth Circuit, courts recognize that statement as "dictum" that rests on "dubious" reasoning. *In re Fagan*, 559 B.R. 718, 723-27 (Bankr. E.D. Cal. 2016) (explaining at length why the dictum in

CONCLUSION

For the foregoing reasons, and those set forth in respondents' brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 14, 2026

Barrientos was wrong). In the district where this case is pending, another bankruptcy judge has specifically rejected the *Barrientos* dictum "in light of the many decisions within [the Fourth] Circuit which have entered contempt judgments in the context of adversary proceedings." *In re Dotson*, 2013 WL 5652732, at *4 n.4 (Bankr. W.D. Va. Oct. 16, 2013). And courts routinely allow debtors to combine requests for relief under Section 105(a) and Section 362(k), as respondents have done here. *See* BIO 7.