The relief described hereinbelow is SO ORDERED.

SIGNED this 22nd day of April, 2024.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

TERRY ANAYA and
SHEILA R. ANAYA,

Debtors.

Case No. 09-20471
Chapter 7

TERRY ANAYA and,
SHEILA R. ANAYA,

Plaintiffs,

v.

SHELLPOINT MORTGAGE SERVICING,

Defendant.

Adv. No. 23-6007

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN PART

In this adversary proceeding, plaintiffs Terry and Sheila Anaya request civil contempt sanctions against defendant Shellpoint Mortgage Servicing under 11 U.S.C. § 105(a) for violations of 11 U.S.C. § 524(a)(2)'s "discharge injunction."[1] Shellpoint now moves for summary judgment.[2] The Court will grant the motion in part: Shellpoint is entitled to summary judgment that the mortgage statements it sent to the Anayas in July and August 2020 did not violate § 524(a)(2). Shellpoint is also entitled to summary judgment on the Anayas' claimed damages. Although Shellpoint is not entitled to summary judgment on whether its March 2020 "welcome package," its April-June 2020 mortgage statements, or its credit reporting violated § 524(a)(2), it is unclear—given that Shellpoint *is* entitled to summary judgment on damages—whether there is anything left for the Court to do.

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[1] ECF 1. The Court interprets the Anayas' pleading in this way because a request for sanctions for violation of the discharge injunction is the Anayas' only potential claim not barred by res judicata. *Cf.* Order of Dismissal, ECF 24, *Anaya v. NewRez LLC d/b/a Shellpoint Mortgage Serv.*, Case No. 22-cv-2188-JAR-TJJ (D. Kan. Oct. 24, 2022) (dismissing Anayas' previous case under Rule 12(b)(6) after observing that "the Court does not have jurisdiction over any claim for violation of the bankruptcy discharge injunction"); *Williams v. Sprint/United Mgt. Co.*, No. 03-2200-JWL, 2006 WL 279041, at *1 n.1 (D. Kan. Feb. 3, 2006) ("[I]t is well settled that a dismissal for lack of subject matter jurisdiction is not an adjudication on the merits for purposes of res judicata.").

[2] ECF 46. Because Shellpoint filed its motion for summary judgment before the Court ruled on Shellpoint's previously-filed motion to dismiss (ECF 19), the Court will treat the prior motion as one for summary judgment and consider the two together. *Cf.* Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."); Fed. Rs. Bankr. P. 7012(b) & 7056 (providing that Fed. Rs. Civ. P. 12(b)-(d) and 56 apply in adversary proceedings).

I. Undisputed Facts

The Anayas filed for Chapter 7 bankruptcy on February 27, 2009, and received a discharge on June 4, 2009.[3] Their schedules identified Green Tree Financial, Shellpoint's predecessor-in-interest, as holding a $28,979.79 claim for a loan secured by their mobile home.[4] Although the Anayas were no longer personally liable on the loan after receiving a discharge, they continued to make payments on it (presumably to avoid foreclosure on the mobile home).

Shellpoint began servicing the Anayas' loan on March 1, 2020.[5] The third page of the "welcome package" Shellpoint sent to them on March 20, 2020, contained the following language (bolding in original; italics added):

> **Please read the following important notices as they may affect your rights.**
>
> NewRez LLC dba Shellpoint Mortgage Servicing is a debt collector. *This is an attempt to collect a debt and any information obtained will be used for that purpose. . . .*
>
> If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt: please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws . . . . However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharge din your bankruptcy.

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[3] *See* Case No. 09-20471-RDB-7, ECF 1 (petition), ECF 23 (discharge order).

[4] *See id.* ECF 1.

[5] Def.'s Stmt. Mat. Facts ¶ 1, ECF 49.

The second page of the mortgage statements Shellpoint sent to the Anayas on April 24, May 18, and June 18, 2020, contained nearly-identical language (bolding in original; italics added):

> **Important Notice**: NewRez LLC dba Shellpoint Mortgage Servicing is a debt collector. *This is an attempt to collect a debt and any information obtained will be used for that purpose. . . .*
>
> If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt: please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws . . . . However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy.[6]

The first page of the April, May, and June mortgage statements also contained a number of prominent references, mostly in a larger font and/or bold print, to the "Amount Due."[7]

In contrast, the mortgage statements Shellpoint sent to the Anayas on July 18 and August 18, 2020, referred to a "Payment Amount" (as opposed to an "Amount Due") and featured the following language in a box on the first page (bolding in original; italics added):

> **Bankruptcy Message**
>
> **Our records show that either you are a debtor in bankruptcy or you discharged personal liability for**

[6] Def.'s Ex. 1, Exs. B-D, ECF 49-1; *see* Def.'s Stmt. Mat. Facts ¶ 9, ECF 49 (quoting bankruptcy-disclaimer language).

[7] *See* Def.'s Ex. 1, Exs. B-D, ECF 49-1.

> **your mortgage loan in bankruptcy.**
>
> We are sending this statement to you for informational and compliance purposes only. *It is not an attempt to collect a debt against you.*
>
> If you want to stop receiving statements, write to us.[8]

The July and August mortgage statements also contained the following language on the second page (bolding in original; italics added):

> **Important Notice**: NewRez LLC dba Shellpoint Mortgage Servicing is a debt collector. *This is not an attempt to collect a debt due to your bankruptcy filing.*

A senior litigation case manager for Shellpoint stated in a sworn declaration: "[T]he loan was not coded as discharged in bankruptcy when servicing transferred to Shellpoint, [but] by July 2020 Shellpoint confirmed that the loan was discharged in bankruptcy and it has been coded as such at all times since then."[9]

Two excerpts from undated credit reports[10] show that on May 31 and November 5, 2020, Shellpoint reported the Anayas' loan as "90 - 119 Days Past Due" in the amount of $831, with March 2020 as the date of first delinquency. In a letter to Experian dated December 23, 2020, Mrs. Anaya asked Experian to correct the

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[8] *See* Def.'s Ex. 1, Exs. E-F (bolding in original), ECF 49-1; Def.'s Stmt. Mat. Facts ¶ 10, ECF 49.

[9] Def.'s Ex. 1 ¶ 6, ECF 49-1.

[10] *See* Pls.' Exs., ECF 54 at 3-4. Both excerpts contain a footer ending with "11192020," suggesting that the reports may have been generated on November 19, 2020.

report, pointing out that the debt at issue had been discharged in 2009.[11] Mr. Anaya sent similar requests to TransUnion and Equifax in undated letters.[12]

The Anayas were approved in August 2019 for a loan to purchase real property located at 24071 Wolcott Road in Kansas City, Kansas, but completed neither the loan nor the purchase.[13] When the Anayas applied for the same loan in October 2020, their application was denied due to a serious delinquency in their credit.[14]

Mrs. Anaya had a medical incident on April 19, 2022.[15]

II. Analysis

A. Contested matter versus adversary proceeding

"As an initial matter," Shellpoint argues,

> [T]his Court converted Debtors motion for damages to adversary proceeding, but 'there is no private right of action for violation of the discharge injunction. The matter should be brought as a motion for contempt in the main bankruptcy case rather than as an adversary proceeding. 11 U.S.C.A. §§ 105(a), 524.'[16]

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[11] *See* ECF 54 at 6.

[12] *See id.* at 5, 7.

[13] Def.'s Stmt. Mat. Facts ¶¶ 11-12, ECF 49.

[14] *Id.* ¶ 12.

[15] *Id.*¶ 14.

[16] Def.'s Mot. Dismiss 5 n.3, ECF 19 (purportedly quoting *In re Gray*, 586 B.R. 347 (Bankr. D. Kan. 2018) (Berger, J.)). Although Shellpoint's statements are correct from a legal perspective, the quoted language comes from a Westlaw headnote appended to *In re Gray*, not the decision itself. *Compare In re Gray*, 586 B.R. at 347 (West Headnote 2), *with id.* at 351 n.19.

However, the Anayas *did* file this action as a motion in their main bankruptcy case. *See In re Anaya*, Case No. 09-20471, ECF 40 ("Motion to Seek Damages"); *cf. In re C.W. Min. Co.*, 625 F.3d 1240, 1246-47 (10th Cir. 2010) ("holding that the Federal Rules of Bankruptcy Procedure "permit a party to seek an order of civil contempt by motion"). The Court converted that contested matter into an adversary proceeding—which a court has the power to do on its own motion, *see In re Wilborn*, 401 B.R. 872, 892-93 (Bankr. S.D. Tex. 2009) (collecting cases)—on *Shellpoint's* suggestion. *See In re Anaya*, Case No. 09-20471, ECF 51 (minute sheet for February 16, 2023 hearing). An adversary proceeding gives Shellpoint *more* procedural protections, not fewer of them. *Cf.* Fed. R. Civ. P. 9014(c) (providing that some, but not all, rules in Part VII automatically apply to a contested matter). And the Court would have—as it did in *In re Gray*—considered the Anayas' claims on the merits even if they had filed it as an adversary proceeding to begin with. *See In re Gray*, 586 B.R. at 351 n.19. The Court will therefore proceed to the merits of the Anayas' claims.

B. Fed. R. Civ. P. 36

Next, Shellpoint argues that the mortgage statements are the Anayas' only evidence that Shellpoint was attempting to collect a discharged debt.[17] Shellpoint reasons that (1) Shellpoint asked the Anayas to admit as much in a request for admissions, but (2) the Anayas never responded to Shellpoint's request, such that (3) the matter is therefore admitted, and conclusively established, under Fed. R.

[17] *See* ECF 49 at 5 (citing Def.'s Stmt. Mat. Facts ¶ 8).

Civ. P. 36.[18] However, Rule 36(b) provides that "[a] matter admitted under this rule is conclusively established *unless* the court, on motion, permits the admission to be withdrawn or amended." (Emphasis added.) And under binding Tenth Circuit precedent, a party's objection to summary judgment "can constitute a Rule 36(b) motion to withdraw . . . admissions." *In re Durability Inc.*, 212 F.3d 551, 556-57 (10th Cir. 2000) (citing *Bergemann v. United States*, 820 F.2d 1117, 1120-21 (10th Cir. 1987)).

Here, then, the Anayas' failure to respond to Shellpoint's request for admissions is deemed an admission under Rule 36(a)(3). But under *In re Durability*, the Anayas' objection (with exhibits) to summary judgment[19] constitutes a motion under Rule 36(b) to withdraw that admission. Therefore, even though the "better practice" would have been for the Anayas to file a motion under Rule 36(b), *see In re Durability*, 820 F.2d at 557, this Court must consider the Anayas' exhibits (i.e., the credit-report excerpts and letters to credit agencies described above) in determining whether Shellpoint is entitled to summary judgment. *See id.* (holding that bankruptcy court abused its discretion in refusing to consider evidence submitted by party who opposed summary judgment but had not filed Rule 36(b) motion); *cf. Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) ("A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.").

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[18] ECF 49 at 3 n.2. Fed. R. Civ. P. 36 applies to this adversary proceeding via Fed. R. Bankr. P. 7036.

[19] ECF 54.

C. Legal standards (summary judgment and discharge injunction)

A court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact[20] and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (applying here via Fed. R. Bankr. P. 7056). In applying this standard, the court must review the factual record and draw all reasonable inferences therefrom most favorably to the nonmovant. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). The movant bears the initial burden of making a prima facie demonstration of the absence of a genuine dispute of material fact and entitlement to judgment as a matter of law. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

A bankruptcy discharge operates as an injunction against any act to collect a discharged debt as a personal liability of the debtor. *See* 11 U.S.C. § 524(a)(2). This "discharge injunction" includes actions that, while not "acts to collect" *per se*, nevertheless "ha[ve] the practical, concrete effect of coercing payment of a discharged debt." *Paul v. Iglehart (In re Paul)*, 534 F.3d 1303, 1308 (10th Cir. 2008) (citing *Pratt v. Gen. Motors Acceptance Corp. (In re Pratt)*, 462 F.3d 14, 19 (1st Cir. 2006), and *In re Schlichtmann*, 375 B.R. 41, 95 (Bankr. D. Mass. 2007)).

[20] A dispute is "genuine" if there is sufficient evidence on each side so that a rational trier of fact could resolve it either way; a fact is "material" if under the substantive law it is essential to the proper disposition of the claim. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

Here, the parties agree that Shellpoint sent the welcome package and mortgage statements to the Anayas and reported the Anayas to credit agencies as delinquent on the loan. The issue is whether Shellpoint has demonstrated that as a matter of law, neither the correspondence nor the credit reporting violated § 524(a)(2)—i.e., that neither the correspondence nor the credit reporting was an act to collect, or had the practical effect of coercing payment of, the Anayas' discharged debt.

D. March-June 2020 correspondence

Shellpoint argues that none of its mortgage statements to the Anayas violated the discharge injunction because each statement contained some form of bankruptcy-disclaimer language, reasoning, "Courts have regularly found that, where a statement includes such language, it is not a post-discharge violation, but instead is a notice to the debtor to help them avoid foreclosure."[21] But unlike the correspondence at issue in the cases cited by Shellpoint (see note 21 *supra*), the welcome package and mortgage statements Shellpoint sent to the Anayas in March, April, May, and June 2020 each also provided: "*This is an attempt to collect a debt and any information obtained will be used for that purpose.*" (Emphasis added.) Moreover, Shellpoint's senior litigation manager stated that the Anayas' loan "was not coded as discharged in bankruptcy" prior to July 2020—suggesting that Shellpoint's pre-July 2020 correspondence with the Anayas was indistinguishable

[21] ECF 49 at 6 (citing *In re Mele*, 486 B.R. 546, 557 (Bankr. N.D. Ga. 2013); *Bates v. CitiMortgage, Inc. (In re Bates)*, 517 B.R. 395, 399 (Bankr. D.N.H. 2014); and *In re McConnie Navarro*, 563 B.R. 127 (Bankr. D.P.R. 2017)).

from its correspondence with ordinary mortgagors (from whom, one presumes, Shellpoint *was* attempting to collect debts). This suggestion is strengthened by the frequent references on Shellpoint's pre-July 2020 correspondence to the "Amount Due." *Cf. Lemieux v. Am.'s Serv. Co. (In re Lemieux)*, 520 B.R. 361, 366 (Bankr. D. Mass. 2014) (observing that word "due" "indicates an attempt to collect a debt"). While the pre-July 2020 correspondence also contained bankruptcy disclaimers, the Court must, at this stage, resolve the contradictory statements in each document ("This is an attempt to collect a debt" versus "This notice constitutes neither a demand for payment nor a notice of personal liability") in favor of the Anayas. Viewed in that light, Shellpoint's March 2020 welcome package and its April, May, and June 2020 mortgage statements could each constitute—to quote those documents—"an attempt to collect a debt" that is facially prohibited by § 524(a)(2). Shellpoint is therefore not entitled to summary judgment on the issue of whether its pre-July 2020 correspondence with the Anayas violated the discharge injunction.

E. <u>July-August 2020 correspondence</u>

In contrast to its pre-July 2020 correspondence, Shellpoint's July and August 2020 mortgage statements did *not* identify themselves as attempts to collect a debt. Rather, each contained a prominent statement on the first page: "We are sending this statement to you for informational and compliance purposes only. *It is not an attempt to collect a debt against you.*" (Emphasis added.) Nor did the July and August statements refer to any "Amount Due" from the Anayas. Instead, the July and August statements provided a "Payment Amount" and stated: "If you want to

stop receiving statements, write to us." The record contains no evidence, and the Anayas do not argue, that such correspondence would have the practical, concrete effect of coercing payment of the discharged debt. Shellpoint is therefore entitled to summary judgment that its July and August 2020 mortgage statements did not violate § 524(a)(2). *Cf. Roth v. Nationstar Mortgage, LLC (In re Roth)*, 935 F.3d 1270, 1276 (11th Cir. 2019) (holding that similar "Informational Statement" giving debtor option to make voluntary mortgage payments to avoid foreclosure did not violate § 524(a)(2)).

F. Credit reporting

Credit reporting *per se* is not an act to collect a debt. *See In re Mahoney*, 368 B.R. 579, 586 & n.3 (Bankr. W.D. Tex. 2007). Thus, the mere act of reporting a debt to a credit reporting agency, without more, does not violate § 524(a)(2). *See id.* at 589; *cf. In re Schlichtmann*, 375 B.R. at 97 ("[T]he discharge prohibits prepetition creditors only from collecting their prepetition debts. It is not [a] lifelong shield against other acts . . . ."). The issue here, then, is whether Shellpoint's credit reporting, viewed objectively, had the practical, concrete effect of coercing payment of the discharged debt.

Shellpoint cites four cases for the proposition that it did not. However, each is distinguishable. The first case, *In re Vogt*, 257 B.R. 65 (Bankr. D. Colo.), was decided eight years before—and implicitly overruled by—*In re Paul*. [22] The second,

[22] In *Vogt*, the defendant/creditor had continued to report a debt as due, owing, and assigned to collections five years after the plaintiffs/debtors received a discharge. 257 B.R. at 69. When the plaintiffs asked the defendant to correct their credit

Connor v. JP Morgan Chase Bank, N.A., No. 15 C 8601, 2016 WL 7201189, at *1 (N.D. Ill. Mar. 22, 2016), involved a credit report that had already been updated to reflect the bankruptcy discharge. In the third, *In re Giles*, 502 B.R. 892 (Bankr. N.D. Ga. 2013), there was "no evidence" that the creditor had ever "reported a past due payment or delinquency." 502 B.R. at 898. And the fourth, *In re Mahoney*, involved credit reporting "without any evidence of harassment, coercion, or some other linkage to show that the act is one likely to be effective as a debt collection device." 368 B.R. at 589.

There are two reasons why the "linkage" absent from *In re Mahoney* might be present in this case. First, negative credit reporting can violate the discharge injunction if the creditor offers to *remove* the negative information in exchange for payment of the discharged debt. *See In re Mahoney*, 368 B.R. at 585 n.1 (recognizing that in *In re Vogt* [see note 22 *supra*], "the creditor's *conditioning* its willingness to *change* its report on payment of the debt might be said to have violated the discharge").[23] While there is no evidence that Shellpoint made the Anayas a direct offer to that effect, Shellpoint did report the Anayas' debt as *currently* past due in

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report, the defendant agreed to do "only if the Plaintiffs paid the debt." *Id.* "The Plaintiffs paid this amount because they feared they would lose their home loan if they did not do so." *Id.* The bankruptcy court, which "[did] not consider the demand of the creditor for payment, as a condition to changing its credit report, as 'an act' to extract payment," held that the defendant's conduct did not violate § 524(a)(2). *Id.* at 71. However, under the standard articulated eight years later by the Tenth Circuit in *In re Paul*, the *Vogt* defendant's conduct—which clearly had the practical, concrete effect of coercing payment of a discharged debt, given that the plaintiffs paid it—*did* violate § 524(a)(2). Thus, *In re Paul* implicitly overrules *In re Vogt*.

[23] *In re Mahoney* also observed that *In re Vogt* "may have been mistaken" and "probably ought not be treated as good law." 368 B.R. at 585 n.1.

the amount of $831—suggesting that the negative report would be changed if the Anayas paid $831 of the discharged debt to Shellpoint. In other words, the credit reporting at issue here might have *implicitly* offered to change or remove the negative information in exchange for payment.

Second, objective coercion may be found where there is "[no] reason other than coercion for the creditor's action." *In re Paul*, 534 F.3d at 1309 (describing the First Circuit's reasoning in *In re Pratt*, 462 F.3d at 20); *id.* at 1312 (referring to *Pratt*'s "*raison d'être* gap"). Here, Shellpoint incorrectly reported the Anayas' loan as currently delinquent and past-due in November 2020—months after it had confirmed, in July 2020, that the debt had been discharged.[24] If Shellpoint had no reason other than coercion to do so (and the record contains no evidence that it did),[25] then Shellpoint's November 2020 reporting (and possibly its failure to correct the May 2020 report[26]) could have violated § 524(a)(2). Shellpoint is therefore not entitled to summary judgment as to whether its credit reporting violated the discharge injunction.

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[24] *See* Pls.' Exs., ECF 54; Def.'s Ex. 1 ¶ 6, ECF 49-1 ("[B]y July 2020 Shellpoint confirmed that the loan was discharged in bankruptcy . . . .").

[25] Shellpoint argues that Mr. Anaya's "refus[al] to make payments" caused the negative credit reporting. *See* Def.'s Mot. Summ. J. 7, ECF 49. However, such "refusal" is not a valid reason for Shellpoint's actions, given that the Anayas had received a discharge, were under no obligation to make payments, and therefore could not—by definition—have been delinquent or past-due in making payments.

[26] Although a creditor's failure to take affirmative steps to update information that was *correct* when reported would not, standing alone, violate the discharge injunction, *see Bruce v. Citigroup Inc.*, 75 F.4th 297, 307 (2d Cir. 2023), Shellpoint's May 2020 report of a current delinquency was incorrect *when made*.

G. Causation and damages

The Anayas' complaint seeks $350,000 for the October 2020 loan denial and $250,000 for Mrs. Anaya's medical issues.[27] Shellpoint's final argument is that there is no evidence of (1) any damages arising out of the loan denial or (2) any connection between Shellpoint's actions and Mrs. Anaya's medical issues.[28] By pointing out an absence of evidence, Shellpoint has satisfied its initial burden. *See Celotex*, 477 U.S. at 325. The burden thus shifts to the Anayas to "go beyond the pleadings," *Adler*, 144 F.3d at 671, and show that a genuine factual dispute as to damages exists. *See* Fed. R. Civ. P. 56(c). Because the Anayas neither point to, nor have they produced, any evidence in response, Shellpoint is entitled to summary judgment as to the Anayas' claimed damages.

H. Civil contempt

As previously stated, there is no private right of action for violations of § 524(a)(2). A bankruptcy court can enforce and remedy such violations by exercising its civil contempt powers under § 105(a).[29] *See Paul v. Iglehart (In re Paul)*, 534 F.3d 1303, 1306 (10th Cir. 2008). Civil contempt sanctions serve two

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[27] *See* ECF 1.

[28] ECF 49 at 8.

[29] A bankruptcy court may exercise its civil contempt powers only where there is no "fair ground of doubt" as to whether the discharge order barred the creditor's conduct—i.e., where there is "no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804 (2019); *id.* at 1801. The contempt thus arises out of the creditor's violation of the court's discharge order—not, technically speaking, for violation of § 524(a)(2) itself.

purposes: (1) to compel obedience with a court order and/or (2) to compensate parties for losses resulting from the contemnor's violation of a court order. *See Mountain Am. Credit Union v. Skinner (In re Skinner)*, 917 F.2d 444, 447 n.2 (10th Cir. 1990) (citation omitted). But here, compensation is no longer at issue; Shellpoint is entitled to summary judgment on damages. The only remaining issue—for purposes of civil contempt—is whether Shellpoint is currently obeying the Anayas' discharge order. In other words, even assuming Shellpoint's pre-July 2020 correspondence or its credit reporting violated § 524(a)(2), the issue would be whether Shellpoint is *currently* engaging in such conduct (by, say, sending similar correspondence or allowing the negative information to remain on the Anayas' credit report). If not, then there is likely nothing left for this Court to do.

III. Conclusion

Shellpoint's motion for summary judgment is hereby granted as to (1) its July and August 2020 mortgage statements and (2) the Anayas' claimed damages. Shellpoint's motion is hereby denied as to (1) its March 2020 "welcome package," (2) its April-June 2020 mortgage statements, and (3) the negative credit reporting. If the Anayas have evidence that Shellpoint is *currently* sending them documents identified as "attempts to collect a debt," or if the negative information reported by Shellpoint is still on their credit report, they shall notify the Court within 30 days of the date of this order, and the matter will be set for status conference. If not, the remainder of Shellpoint's motion for summary judgment will be granted.

IT IS SO ORDERED.

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