The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.

Dated: September 25 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 04-30407
	)	
Randy L. Laws	)	Chapter 7
Kathy A. Laws,	)	
	)	Adv. Pro. No. 06-3121
Debtors.	)	
	)	Hon. Mary Ann Whipple
Randy L. Laws	)	
Kathy A. Laws,	)	
Plaintiffs,	)	
v.	)	
	)	
First National Bank of Marin,	)	
	)	
Defendant.		

MEMORANDUM OF DECISION AND ORDER

RE MOTION TO DISMISS AND AMENDMENT OF COMPLAINT

First National Bank of Marin ("Defendant") is before this court on its Motion to Dismiss [Doc #4] this adversary proceeding. Defendant contends that the complaint should be dismissed for failure to state

a claim under Fed. R. Civ. P. 12(b)(6), applicable to this proceeding through Fed. R. Bankr. P. 7012(b). After reviewing the motion, the supporting memoranda and the opposing memorandum filed by Randy L. Laws and Cathy A. Laws[1] ("Plaintiffs"), the court will grant the motion in part, hold the motion in abeyance in part and allow Plaintiffs leave to amend the complaint, absent which the Motion to Dismiss will be granted.

Plaintiffs are the Debtors in underlying Chapter 7 Case 04-30407 in this court. They filed the complaint in this adversary proceeding on February 16, 2006. [Doc #1]. No answer has been filed and no discovery has occurred. The court has jurisdiction over Plaintiffs' underlying Chapter 7 case and this adversary proceeding pursuant to 28 U.S.C. § 1334(b) and the general order of reference entered in this district. *See* 28 U.S.C. § 157(a). Proceedings relating to the automatic stay, the bankruptcy discharge and the adjustment of the debtor-creditor relationship are core proceedings that this court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(G),(J) and (O).

The complaint is a mixture of factual allegations appropriate to a complaint [¶¶ 1, 2, 3 and 4] and mostly speaking legal argument [¶¶ 5, 6, 7] generally inappropriate to a complaint under the basic rules of pleading set forth in Fed. R. Bankr P. 7008 and Fed. R. Civ. P. 8.[2] There are five exhibits attached to the complaint. They become part of the complaint for pleading purposes under Fed. R. Bankr. P. 7010 and Fed. R. Civ. P. 10(c).

The court discerns the following factual allegations from the complaint and the attached exhibits: Plaintiffs filed a voluntary petition for relief in the underlying Chapter 7 Case No. 04-30407 on January 26, 2004. Plaintiffs scheduled Defendant as an unsecured creditor owed $1,080.00 on their Schedule F. [Ex. A]. Defendant was given notice of the commencement of the case and of the automatic stay by notice mailed on January 29, 2004, to a post office box in Los Angeles, California. [Exs. B and D]. Defendant did not object to the dischargeability of Plaintiffs' debt to it and Plaintiffs received their Chapter 7 discharge on May 17, 2004. [Complaint ¶2, Ex. C]. Defendant was notified of the discharge at the same P.O. Box in Los

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[1]The caption in this opinion is the same as Plaintiffs have styled the caption in their adversary complaint. However, the spelling of the name of Debtor/Plaintiff Kathy Laws as shown by their petition and the underlying Chapter 7 case docket is "Cathy" with a "C." The court does not know which is correct. It is up to Plaintiffs to sort out the correct spelling in a procedurally appropriate manner.

[2]No motion to strike under Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12(f) has been filed.

Angeles. [Ex. C]. Plaintiffs aver that Defendant has continued to report a balance due on Plaintiffs' credit report, and that it continues to do so to this day. [¶ 4]. Page 7, only, of a document of unidentified source and origin and other content, but which is referred to in the Complaint as a credit report, is attached as Exhibit E and incorporated into the pleading averments in support of this allegation. The only date on the document is "Date Received: 02/01/05." The entry for First National Bank of Marin shows a date under "Rptd" of 10/04. Under two columns captioned Present Status, one Balance Owing and one Amount Past Due, the number 961 appears. However, the entry for Defendant also reflects "Purchased by Another Lender Charge Off." [Ex. E]. The contact information for Defendant on the document is a post office box number in Las Vegas, Nevada. Buried amidst the inappropriate speaking legal argument, Plaintiffs allege that the continued reporting of this debt as a liability of Plaintiffs is an effort to continue collection of the debt notwithstanding the discharge. [Complaint, ¶ 7, last sentence].

The demand for judgment in the complaint as required by Fed. R. Bankr. P. 7008 and Fed. R. Civ. P. 8(a) refers by name to the automatic stay [*see also* Complaint ¶8, last sentence] and alleged violation thereof as well as by Bankruptcy Code section number 11 U.S.C. §§ 524 and 727. The ad damnum clause seeks an injunction, and unspecified compensatory damages, punitive damages, and legal fees.

The standard for granting a motion to dismiss at the pleading stage is hard to meet. The case law is replete with references to such motions as disfavored and rarely granted. *See, e.g*, *Sosa v. Coleman*, 646 F.2d 991, 993 (5th Cir. 1981). As one court put it, the threshold of sufficiency to which a complaint is held at the motion to dismiss stage is "exceedingly low." *United States v. Baxter Int'l, Inc.*, 345 F.3d 866, 881 (11th Cir. 2003). For Defendant to prevail on its Motion to Dismiss under Rule 12(b)(6), it must "appear beyond doubt that the Plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), *see also Crane & Shovel Sales Corp. v. Bucyrus-Erie Co.*, 854 F.2d 802, 807 (6th Cir. 1988). When considering a motion to dismiss, the court is bound to view the record in a light most favorable to the plaintiffs and assume as true any facts presented by the plaintiffs. *Murphy v. Sofamor Danek Group, Inc. (In re Sofamor Danek Group, Inc.),* 123 F.3d 394, 400 (6th Cir. 1997).

Although they are not separately denominated as such, Plaintiffs' factual allegations arguably attempt two causes of action for relief against Defendant. The first is a claim for willful and malicious

violation of the automatic stay actionable under 11 U.S.C. § 362(h).[3] The court agrees with Defendant that Plaintiffs have not demonstrated that they have any cause of action for willful violation of the automatic stay. The entire factual predicate for the complaint is a document dated February 1, 2005, showing a "RPTD" date of October 2004. However, by operation of law under 11 U.S.C. § 362(c)(2)(C), the automatic stay terminated upon the entry of Plaintiffs' discharge on May 21, 2004. No act occurring after that date could violate the automatic stay because it was no longer in effect. *See Pertuso v. Ford Motor Co.*, 233 F.3d 417, 425 (6th Cir. 2000). There is thus no set of circumstances upon which the document attached to the complaint and an act of reporting in October 2004 would entitle Plaintiffs to relief under § 362(h). Defendant's motion is well-taken insofar as Plaintiffs seek relief under § 362(h).

Congress statutorily terminated the automatic stay through § 362(c)(2) because the Chapter 7 discharge replaces the temporary automatic stay on a permanent basis. The automatic stay and the discharge cover two different time periods. *Id.* A Chapter 7 bankruptcy discharge "discharges the debtor from all debts that arose before the date of the order for relief under this chapter ... ." 11 U.S.C. § 727(b). In order to effectuate the "fresh start" intended by the grant of a discharge in bankruptcy, Congress provided that a discharge "operates as an injunction against ... an act, to collect, recover or offset any such debt [discharged under section 727] as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 U.S.C. § 524(a)(2). In this case, Plaintiffs claim that Defendant's continued reporting of their account after their Chapter 7 discharge with a balance of $961 is an effort to continue to collect the debt in violation of the discharge injunction. Plaintiffs correctly point out that in the Sixth Circuit there is no statutory private right of action for damages under 11 U.S.C. § 524 or 11 U.S.C. § 105 for violation of the discharge injunction. *Pertuso,* 233 F.3d at 421-23. However, violation of the discharge injunction does expose a creditor to potential contempt of court. *Id.*; *Cox v. Zale Del., Inc.*, 239 F.3d 910, 916 (7th Cir. 2001). "A creditor who undertakes to collect a discharged debt from a debtor violates the discharge injunction and is in contempt

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[3] Section 362(h) and other parts of the Bankruptcy Code were amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA" or "the Act"), effective October 17, 2005. However, Plaintiffs' Chapter 7 bankruptcy case was filed before the effective date of the Act. Therefore, all references to and applications of the Bankruptcy Code in this opinion are to the pre-BAPCPA version of the Code. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Title XV, § 1501(b)(1) (stating that, unless otherwise provided, the amendments do not apply to cases commenced under Title 11 before the effective date of the Act).

of the court that issued the discharge order." *Fonner v. Overdorf (In re Fonner)*, 262 B.R. 350, 358 (Bankr. W.D. Pa. 2001).[4] If the contempt is established, the injured party may be able to recover damages as a sanction for the contempt. *Chambers v. Greenpoint Credit (In re Chambers)*, 324 B.R. 326, 329 (Bankr. N.D. Ohio 2005).

In asking for dismissal of this claim at the pleading stage, Defendant overstates the law involving the interplay between credit reporting and violation of the discharge injunction. There are not many cases involving these issues; those that exist are also generally distinguishable based on their procedural posture. Defendant argues that several cases stand for the proposition that mere reporting of a discharged debt as a liability of a debtor cannot amount to a violation of the discharge injunction without further action by the creditor. The court disagrees as an initial matter that the cited cases stand for that proposition, and to the extent they do, the court disagrees with them. In so arguing, Defendant may also be mixing up liability and lack of justiciability due to absence of injury, which is addressed below.

The case upon which Defendant relies most heavily is a decision rendered by another judge of this court. *Irby v. Fashion Bug, (In re Irby),* 337 B.R. 293, 295 (Bankr. N.D. Ohio 2005). Contrary to Defendant's argument, *Irby* acknowledges that there are certain situations in which reporting a debt can be considered an act sufficient to violate the discharge injunction, "if the act of reporting a debt was undertaken for the specific purpose of coercing the debtor into paying the debt, a violation of the discharge

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[4]The distinction between a private statutory right of action and civil contempt is more than just nomenclature. "The primary purpose of a civil contempt order is to compel obedience to a court order and compensate for injuries caused by noncompliance." *McMahan & Co. v. Po Folks, Inc.*, 206 F.3d 627, 634 (6th Cir. 2000)(quoting *TWM Manuf. Co. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983). The party alleging contempt has the burden of establishing contempt by clear and convincing evidence, *Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 729 (6th Cir. 1996), not just by a preponderance of the evidence as is routine in civil matters. The sanctions for contempt are intended to be either compensatory, based on evidence of actual loss, *United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391 (6th Cir. 1991), or coercive through payments to the court to abate violation of the order, *id.* at 1400. Punitive damages as requested in the ad damnum clause in this case, and as expressly authorized for violations of the automatic stay under § 362(h), are not compensatory in nature and raise the issue whether criminal sanctions are sought to punish the alleged contemnor. The weight of authority is that bankruptcy courts lack authority to punish and impose sanctions for criminal contempt. *See Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192-1195 (9th Cir. 2003); *but see In re Perviz*, 302 B.R. 357, 373 (Bankr. N.D. Ohio 2003). Lastly, the imposition of sanctions for civil contempt is within the sound discretion of the bankruptcy court and reviewed for abuse of discretion. *Musslewhite v. O'Quinn (In re Musslewhite)*, 270 B.R. 72, 78 (S.D. Tex. 2000).

injunction could be established." *Id.* While *Irby* held that there was not a violation of the discharge injunction in that case, the key reasoning applicable to the current case is the possibility that simply reporting a debt may be a violation of the discharge injunction depending on the purpose and circumstances of the report. The decision in *Irby* was rendered in the context of default judgment where plaintiffs were put to their proofs, fell back on the complaint and were to be found lacking by the court. Notably the post-discharge document attached to the complaint in this case does show a debt to Defendant with a Balance Due and Amount Past Due of [$]961. It does in fact suggest to a reviewer that Plaintiffs have personal liability for the debt with a "balance owing" of [$]961, at a time when they no longer had any personal liability to Defendant due to their discharge more than five months earlier. If Plaintiffs can prove that Defendant inaccurately reported the status of the debt in October 2004 as a current liability of Plaintiffs' as shown on the February 1, 2005, document for the purpose of coercing payment by Plaintiffs notwithstanding the discharge, which would essentially amount to lying in passive wait, then in this court's view a violation of the discharge injunction will have occurred without other overt collection action such as letters or harassing telephone calls. Defendant's motive in making a credit notation is material. *See In re Singley*, 233 B.R. 170, 174 (Bankr. S.D. Ga. 1999)(automatic stay violation case in which court denied summary judgment finding that "even if it is true that Movant's report to the credit bureau contains truthful information that is a matter of public record, such a report, if made with the intent to harass or coerce a debtor and/or co-debtor into paying a pre-petition debt, could violate the automatic stays...." [sic]). Plaintiffs do make the bare allegation that the report was made in order to collect the debt. [Complaint, ¶7, last sentence]. Simply put, additional overt collection actions do not have to be pleaded or necessarily proven in order for Plaintiffs to prevail on a theory of contempt of court. The standard for pleading under Fed. R. Civ. P. 8 is simple notice pleading. The complaint puts Defendant on notice of a cognizable claim for contempt due to violation of the discharge injunction by an action intended to collect a discharged debt and the court cannot find based on the allegations therein and existing non-binding precedent that Plaintiffs can prove no set of facts that would entitle them to relief.

Another of the cases cited by Defendant is *Lover v. Rossman and Co. (In re Lover)*, 2005 Bankr. LEXIS 2729 (Bankr. N.D. Ohio September 29, 2005). *Lover* is distinguishable based on its procedural posture. The case was dismissed by the court upon a properly supported motion for summary judgment filed by the creditor defendant affirmatively showing that it had requested all major credit reporting agencies to delete Plaintiff's account, factually negating contemptuous motive. The motion for summary judgment was

unopposed.

Defendant also relies on *Gordon v. Summit Bank (In re Gordon)*, 2000 Bankr. LEXIS 596 (Bankr. E.D. Pa., June 1, 2000), which involved a judgment in favor of the defendant bank after trial. The evidence at trial showed that the party making the problematic report was not the defendant bank, but an entity called Chex System not even a party to the lawsuit. More significantly to the instant case, however, before trial in *Gordon* the court had denied defendant's Rule 12(b)(6) motion to dismiss on the pleadings because "we were not prepared to rule that there was an insuperable bar' to the Debtor's claim as a matter of law..." Noting the dearth of case law on these issues, which persists to this day, the court relied on *In re Sommersdorf*, 139 B.R. 700, 701 (Bankr. S.D. Ohio 1992) (citing *In re Spaulding,* 116 Bankr. 567, 570 (Bankr. S.D. Ohio 1990)), in denying the motion to dismiss. The issue in *Sommersdorf* was whether a violation of the automatic stay had occurred. The court noted in that context that a notation of debt on a credit report "[is] just the type of creditor shenanigans intended to be prohibited by the automatic stay."

In *In re Goodfellow*, 298 B.R. 358 (Bankr. N.D. Iowa 2003), upon which Defendant also relies for dismissal on the pleadings, the court ruled against defendant after an evidentiary hearing at which it failed to appear. In addition to continued credit reporting, plaintiff proved numerous contacts by creditor Discover Financial Services in an effort to collect a debt both pre-discharge and post-discharge. Although additional conduct beyond credit reporting was sufficient to establish creditor liability in *Goodfellow*, that case does not stand for the legal proposition advanced by Defendant that both credit reporting and additional collection efforts are necessary predicates to a violation of the discharge injunction.

On the other hand, in a case not cited by Defendant, albeit unreported, the court in *Smith v. American General Finance, Inc.,* Bankr. No. 00-02375, 2005 Bankr. LEXIS 2481, at *6, 2005 WL 3447645, at *2 (Bankr. N. D. Iowa Dec. 12, 2005), observed in the same procedural context as in this case that "[as] there is some precedent for the finding of a violation of the discharge injunction from a credit report notation made with the intent to collect a debt ... [t]he Motion to Dismiss must be denied."

The federal district court in *Carriere v. Proponent Fed. Credit Union,* 2004 U.S. Dist. LEXIS 14095, * 22--*23, 2004 WL 1638250 (W.D. La. July 12, 2004), also denied a motion to dismiss on the pleadings a claim for violation of the discharge injunction involving credit reporting. In refusing to dismiss plaintiff's bankruptcy claims, the court noted that there is not even a requirement "that plaintiff plead that the credit furnisher intended to collect a debt when it filed an adverse report." *Id.* Plaintiffs have so averred in this case. [Complaint, ¶7, last sentence].

In addition to its legal arguments, Defendant also asserts that facts outside of the record justify dismissal at this stage of the case. Facts asserted in Defendant's legal memoranda include that Defendant did timely update its credit reporting to accurately reflect the status of the debt; that there was correspondence between Debtors' lawyer and Defendant in January, 2006; that Defendant twice updated the reporting of the account to show accurately that it was a charged off bankruptcy account with a zero balance; and that Defendant made no other attempts to collect the debt from Plaintiffs. At this stage of the case, these "facts" are simply unsupported argument by Defendant. While they may ultimately constitute a complete defense on the merits and a basis for summary judgment, facts outside the complaint and its attachments cannot be considered by the court in the procedural context of a Rule 12(b)(6) motion to dismiss for failure to state a claim at the pleading stage. The court is limited to considering the pleading in issue, documents attached to the pleading and matters of which the court may take judicial notice. *Lovelace v. Software Spectrum, Inc.,* 78 F.3d 1015, 1017-18 (5th Cir. 1996)*; Greenberg v. Life Ins. Co. of Va.*, 177 F.3d 507, 514-15 (6th Cir.1999). Matters outside the pleading may not be considered unless the court gives the parties notice and treats the motion as a motion for summary judgment under Rule 56, which the court declines to do here because none of Defendant's factual averments are supported by admissible evidentiary material, such as affidavits, comporting with the standards of Fed. R. Civ. P. 56. Fed. R. Bankr. P. 7012; Fed. R. Civ. P. 12(b).

Defendant's final argument is that Plaintiffs have not been damaged. The court agrees that Plaintiffs' complaint is deficient on this point. As Plaintiffs are limited to a cause of action for civil contempt of the discharge injunction, there are two kinds of civil fines that the court may impose. *In re Sherelle M. Walker*, 257 B.R. 493, 498 (Bankr. N.D. Ohio 2001). One kind is intended to compensate for damages caused by the contemnor's noncompliance and must be based on evidence of actual loss. *Id.* "The second kind of fine is 'payable to the court, but the contemnor can avoid paying the 'fine' by performing the act required by the court's order'.'" *Id.* (quoting *United Sates v. Bayshore Assocs., Inc.*, 934 F.2d 1391 (6th Cir. 1991)(quoting *Roe v. Operation Rescue*, 919 F.2d 857, 868 (3d Cir. 1990)).

The ad damnum clause demands damages, which the court liberally interprets as seeking the first type of compensatory fine that might be awarded as sanctions for contempt. Plaintiffs do not request that

the court impose the second type of fine, which would be payable only to the court.[5] But the complaint does not show any facts alleging any injury to Plaintiffs, let alone an injury supporting a compensatory fine for contempt payable to Plaintiffs. Rather than pleading facts setting forth an injury supporting a compensatory fine, Paragraphs 5 through 7 of the complaint cite the New York Times and a website, and make arguments about hypothetical general damage that might arise from credit reporting in contempt of the discharge injunction. These speaking legal arguments are not facts showing that Plaintiffs have suffered or will suffer any injury, and there are no such facts anywhere in the complaint. While the court must view the record in a light most favorable to Plaintiffs and assume as true any facts presented by the Plaintiffs, the court is not required to accept as true unwarranted legal conclusions or unwarranted factual inferences. *Sofamor Danek Group, Inc.,* 123 F.3d at 400 (quoting *Morgan's v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987)).

The issue of injury to Plaintiffs reaches beyond basic Rule 8 and Rule 12 pleading concerns about whether they have stated a claim for relief to the justiciability of the complaint. A plaintiff must satisfy both constitutional and prudential standing requirements. *See Community First Bank v. Nat'l Credit Union Admin.*, 41 F.3d 1050, 1053 (6th Cir. 1994). Standing is a "qualifying hurdle that plaintiffs must satisfy even if raised *sua sponte* by the court," *id.,* because Article III of the United States Constitution limits the jurisdiction of federal courts to actual cases and controversies, U.S. Const. art. III, § 2, cl.1.

> To satisfy Article III's standing requirement, a plaintiff must have some actual or threatened injury due to the alleged illegal conduct of the defendant; the injury must be "fairly traceable" to the challenged action; and there must be a substantial likelihood that the relief requested will redress or prevent the plaintiff's injury. *See Valley Forge*, 454 U.S. at 472, 102 S.Ct. 752, 70 L.Ed.2d 700. Hence, the "irreducible minimum" constitutional requirements for standing are proof of injury in fact, causation, and redressability. *See id.*

[5] The complaint is captioned "Complaint for Injunctive Relief and Monetary Damages and Punitive Damages." The unnumbered introductory paragraph asks for injunctive relief, as does the prayer for relief. As explained above, there is already a statutory injunction in place under 11 U.S.C. § 524(a). The only cause of action properly set forth is whether Defendant may be held liable for contempt for alleged violation of that statutory injunction. The court will not enter another injunction enjoining violations of the existing injunction, which is permanent. And Plaintiffs have not sought imposition of a coercive fine to be paid to the court in the event any continuing reporting that they can prove is not remedied. Thus the request for injunctive relief as a remedy is redundant and immaterial surplusage that does not create redressability and resolve the standing problem due to no pleading of an injury in fact to Plaintiffs that occurred before they commenced this adversary proceeding or threatened injury.

> A plaintiff bears the burden of demonstrating standing and must plead its components with specificity. *See id.*
>
> In addition to the constitutional requirements, a plaintiff must also satisfy three three prudential standing restrictions. First, a plaintiff must "assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (citations omitted). Second, a plaintiff's claim must be more than a "generalized grievance" that is pervasively shared by a large class of citizens. *See Valley Forge*, 454 U.S. at 474-75, 102 S.Ct. 752, 70 L.Ed.2d 700. Third, in statutory cases, the plaintiff's claim must fall within the "zone of interests" regulated by the statute in question. *See id.* These additional restrictions enforce the principle that, "as a prudential matter, the plaintiff must be a proper proponent, and the action a proper vehicle, to vindicate the rights asserted."

Coal Operators and Associates, Inc. v. Babbitt, 291 F.3d 912, 916 (6th Cir. 2002)(quoting *Coyne v. American Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999)).

Although not stated in such terms in its memoranda, Defendant's arguments about lack of any injury to Plaintiffs being asserted in the complaint raise standing issues. Plaintiffs' complaint satisfies prudential standing requirements as described by the Sixth Circuit in *Babbitt*, but its lack of any allegations of actual injury to them raises a standing issue of constitutional dimensions under Article III. Plaintiffs must allege an injury in fact or a real and immediate threatened injury to them that may be redressed by the relief they have requested, which is generously interpreted by the court as compensatory sanctions payable to Plaintiffs for contempt from Defendant's violation of the discharge injunction. So far they have not done so. Their hypothetical discussions about the general importance and impact of credit reports do not set forth any actual or threatened injury to them that may be redressed through an award by the court of compensatory sanctions payable to them. Plaintiffs do not allege, for example, that they applied before the commencement of the adversary proceeding for any loans or extensions of credit or employment opportunities or housing opportunities –all examples of situations where credit reports might be accessed and used --that were denied because of the information from Defendant appearing on the February 1, 2005, document. "It is clearly established that '[a]llegations of possible future injury do not satisfy the requirements of Art. III. A threatened injury must be certainly impending to constitute injury in fact.'" *Rosen v. Tennessee Comm'r of Finance and Admin.*, 288 F.3d 918, 929 (6th Cir. 2002) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). It is Plaintiffs' burden to demonstrate standing and to "plead its components with specificity." *Babbitt* , 291 F.3d at 916.

Although Plaintiffs' complaint for contempt due to violation of the discharge injunction is defective

due to the lack of allegations of injury in fact sufficient to establish their constitutional standing to proceed based on the relief they have requested, the court cannot find at this point that they can neither allege nor prove any set of facts that will entitle them to compensatory sanctions for contempt. The court will grant Plaintiffs leave to amend their complaint to plead facts demonstrating injury in fact to them that occurred before they filed their adversary proceeding against Defendant or immediately threatened injury. If the complaint is amended, Defendant shall respond by either answering the amended complaint or renewing its motion to dismiss on the basis of lack of injury and standing. If no amended complaint is filed, the court will grant the pending motion to dismiss. If the motion to dismiss is renewed, Plaintiffs shall be granted leave to respond, after which the court will decide whether Plaintiffs have sufficiently alleged injury in fact to establish standing and survive dismissal on the pleadings.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Defendant's Motion to Dismiss [Doc. #4] is GRANTED in part, only insofar as Plaintiffs' purported claim for violation of the automatic stay under 11 U.S.C. § 362(h) is hereby dismissed, with the balance of the motion held in abeyance to further order of the court as set forth below; and

IT IS FURTHER ORDERED that Plaintiffs are granted twenty one (21) days from the date of this order to file an amended complaint alleging, with specificity, facts demonstrating their standing in this adversary proceeding. Defendant shall either file an answer or renew its motion to dismiss within fourteen (14) days after the amended complaint is filed. If the motion to dismiss is renewed, Plaintiffs must file any brief in opposition on or before fourteen (14) days after the renewed motion is filed. Plaintiffs' failure to file an amended complaint as provided in this order will result in the court's dismissal of the case by the final granting of Defendant's pending Motion to Dismiss [Doc. #4] without further notice or opportunity for a hearing. If an amended complaint and an answer to same are filed, the court will deny the balance of the pending motion to dismiss, without prejudice, and set a schedule for discovery, further motion practice and a further pretrial conference.