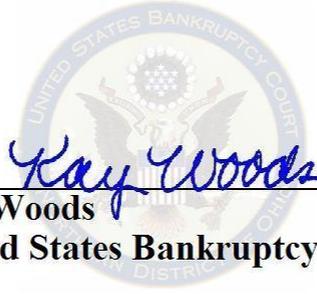


IT IS SO ORDERED.



Dated: April 12, 2010  
02:35:51 PM

Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA D. VILLWOCK,  
  
Debtor.

CASE NUMBER 07-40796

\* \* \* \* \*

VIRGINIA D. VILLWOCK,  
  
Plaintiff,

ADVERSARY NUMBER 09-04319

v.

CITI RESIDENTIAL LENDING,  
*et al.*,

HONORABLE KAY WOODS

Defendants.

\*\*\*\*\*  
MEMORANDUM OPINION REGARDING MOTIONS TO DISMISS FILED BY AMERICAN  
HOME MORTGAGE SERVICING, INC. AND CITI RESIDENTIAL LENDING  
\*\*\*\*\*

This cause is before the Court on: (i) Defendant American Home Mortgage Servicing, Inc.'s Motion to Dismiss Adversary Complaint ("AHMS's Motion") (Doc. # 24), filed by American Home Mortgage

Servicing, Inc. ("AHMS") on February 16, 2010; and (ii) Defendant Citi Residential Lending's Motion to Dismiss the Plaintiff's Complaint or, in the Alternative, for a More Definite Statement ("Citi Residential's Motion") (Doc. # 25), filed by Citi Residential Lending ("Citi Residential") on February 18, 2010. On March 15, 2010, Plaintiff Virginia D. Villwock filed Plaintiff's Memorandum in Opposition to Defendant American Home Mortgage Servicing, Inc.'s Motion to Dismiss Adversary Complaint ("Response to AHMS") (Doc. # 39) and Plaintiff's Memorandum in Opposition to Defendant Citi Residential's Motion to Dismiss Adversary Complaint or Motion for More Definite Statement ("Response to Citi Residential") (Doc. # 40).

For the reasons set forth below, this Court will: (i) grant Defendants' motions to dismiss Plaintiff's Second, Third, and Fifth Claims;<sup>1</sup> (ii) grant, in part, and deny, in part, Defendants' motions to dismiss Plaintiff's Sixth Claim;<sup>2</sup> (iii) deny Defendants' motions to dismiss Plaintiff's First Claim;<sup>3</sup> and (iv) grant Citi Residential's motion for a more definite statement with respect to Plaintiff's First and Sixth Claims.

This Court has jurisdiction over Plaintiff's Core Claims<sup>4</sup> pursuant to 28 U.S.C. § 1334 and the general order of reference

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<sup>1</sup>As defined *infra* at 6.

<sup>2</sup>As defined *infra* at 6.

<sup>3</sup>As defined *infra* at 6.

<sup>4</sup>As defined *infra* at 6.

(General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. Resolution of Plaintiff's Core Claims are core proceedings pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

## I. PROCEDURAL AND FACTUAL BACKGROUND

### A. Bankruptcy Case.

On April 11, 2007, Plaintiff filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code, which was denominated Case No. 07-40796 ("Main Case"). On May 11, 2007, AMC Mortgage Services, Inc. as loan servicer for Secured Creditor Deutsche [sic] Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pas-Through [sic] Certificates, Series 2002-D Under the pooling and Servicing Agreement dated as of December 1, 2002 ("Deutsche Bank") filed Claim No. 2. Deutsche Bank asserted a secured claim against Plaintiff's real estate in the amount of \$86,223.14, of which \$8,336.15 represented "arrearage and other charges at time case filed." (Main Case, Claim 2 at 1 (emphasis in original).)

On September 17, 2007, Plaintiff filed Modified Chapter 13 Plan ("Plan") (Main Case, Doc. # 22). The Plan included "Mortgage and Real Estate Tax Arrearages" owed to "Deutsche Bank National Trust Co." in the amount of \$8,336.15 ("Mortgage Arrearage"). (Main Case, Plan art. 3A.) The Mortgage Arrearage was to be paid in full

through the Plan by the Chapter 13 Trustee. (*Id.*) The Plan further proposed that Plaintiff "pay all post-petition mortgage payments and real estate taxes as those payments ordinarily come due beginning with the first payment due after the filing of the case." (*Id.*) On September 28, 2007, the Court entered Order Confirming Amended Plan ("Confirmation Order") (Main Case, Doc. # 24).

On May 23, 2008, AMC Mortgage Services, Inc. ("AMC") filed Transfer of Claim Other than for Security (Main Case, Doc. # 25), giving notice that Claim 2 was transferred to "Citi Residential Lending, Inc. as a loan servicer for the secured creditor Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Ameriquest Mortgage Securities Inc."

Deutsche Bank never filed a motion for relief from stay during the pendency of Plaintiff's chapter 13 case or otherwise filed any pleading indicating Debtor was not current in her post-petition mortgage payments. On December 17, 2008, Michael A. Gallo, Standing Chapter 13 Trustee, filed Notice of Completion of Plan Payments and Request for Discharge ("Notice of Plan Completion") (Main Case, Doc. # 27). On January 9, 2009, the Court entered Discharge of Debtor after Completion of Chapter 13 Plan ("Discharge Order") (Main Case, Doc. # 33), which granted Plaintiff a discharge pursuant to 11 U.S.C. § 1328(a). Plaintiff's bankruptcy case was subsequently closed on February 13, 2009 (Main Case, Doc. # 37).

On October 9, 2009, Plaintiff filed Motion to Reopen Case (Main Case, Doc. # 38) in order to pursue possible discharge violations

against Citi Residential and other creditors. On October 20, 2009, the Court entered Order Granting Motion to Reopen Case (Main Case, Doc. # 39), which granted Plaintiff thirty days to file the appropriate pleadings to pursue possible discharge violations.

**B. Home Mortgage Loan.**

Prior to filing her bankruptcy petition, on September 23, 2002, Plaintiff obtained a loan from Ameriquest Mortgage Company in the amount of \$81,000.00, as evidenced by a Fixed Rate Note. (Main Case, Claim 2 at 4-5.) To secure payment of the Note, Plaintiff executed a Mortgage, which granted Ameriquest Mortgage Company a lien on Plaintiff's residence located at 9043 Howland Springs Road, Warren, Ohio (Note and Mortgage collectively, "Mortgage"). (*Id.* at 6-21.) The Mortgage was serviced by Ameriquest Loan Servicing through December 31, 2004. (*Id.* at 22.) As of January 1, 2005, AMC began to service the Mortgage. (*Id.*) On November 29, 2006, Ameriquest Mortgage Company assigned the Mortgage to Deutsche Bank. (*Id.* at 23-24.) AMC continued to service the Mortgage through September 30, 2007. (Citi Residential's Mot. ¶¶ 7-8.) Citi Residential serviced the Mortgage from October 1, 2007, through February 10, 2009. (*Id.* ¶¶ 8-9.) As of February 11, 2009, AHMS began to service the Mortgage. (*Id.* ¶ 9; AHMS's Mot. to Dismiss at 3.)

**C. Adversary Proceeding.**

Plaintiff filed Complaint Seeking Damages in Core and Non-Core Adversary Proceeding for Violation of the Discharge Injunction and

Federal Law (Doc. # 1) on November 18, 2009. Plaintiff alleges that, by assessing and collecting improper charges during the pendency of her bankruptcy case, Defendants violated: (i) the discharge injunction in 11 U.S.C. § 524 ("First Claim") (Compl. at 10-11); (ii) the Fair Debt Collection Practices Act ("FDCPA") ("Second Claim") (*Id.* at 11-12); (iii) the Consumer Sales Practices Act ("CSPA") ("Third Claim") (*Id.* at 12-14); (iv) the Real Estate Settlement Procedures Act ("RESPA") ("Fourth Claim") (*Id.* at 14); (v) Federal Rule of Bankruptcy Procedure 2016(a) and 11 U.S.C. § 105(a) ("Fifth Claim") (*Id.* at 15); and (vi) this Court's Confirmation Order and Discharge Order ("Sixth Claim"). (*Id.* at 15-16.) Plaintiff prays for relief in the form of: (i) actual damages; (ii) statutory damages; (iii) punitive damages; (iv) legal fees and expenses; and (v) such other and further relief as the Court may deem just and proper. (*Id.* at 16.)

AHMS<sup>5</sup> moves to dismiss the instant adversary proceeding on the grounds that: (i) this Court lacks subject matter jurisdiction over Plaintiff's Second, Third, and Fourth Claims (collectively, "Non-Core Claims"); and (ii) Plaintiff's First, Fifth, and Sixth Claims (collectively, "Core Claims") fail to state a claim upon

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<sup>5</sup>On April 1, 2010, AHMS filed Defendant American Home Mortgage Servicing, Inc.'s Motion for Leave to File a Reply in Support of its Motion to Dismiss (Doc. 24) *Instantly* ("Motion for Leave") (Doc. # 43). This Court's Adversary Case Management Initial Order ("Case Management Order") (Doc. # 4) expressly states, "Absent prior leave of the Court, no reply or further pleading will be permitted." (Case Mgt. Order ¶ 6B (emphasis added).) Although AHMS styles its motion as one seeking leave, it fails in that regard. In the first paragraph AHMS requests leave to file a reply brief, but the remainder of the Motion for Leave is the reply brief itself. AHMS clearly did not obtain prior leave of the Court before filing Document 43. As a consequence, this Court disregards the Motion for Leave and, to the extent necessary, denies AHMS the leave it requests.

which relief can be granted. (*See generally* AHMS's Mot.)

AHMS contends Plaintiff's Non-Core Claims must be dismissed for lack of subject matter jurisdiction because they are not core proceedings under 28 U.S.C. § 157 and are not "related to" Plaintiff's bankruptcy case. (*Id.* at 5-7.) AHMS asserts Plaintiff's bankruptcy estate was fully administered prior to the occurrence of the actions alleged in the Non-Core Claims; therefore, adjudication of those claims cannot have any effect on the bankruptcy estate. (*Id.* at 6-7.) Accordingly, AHMS contends this Court does not have subject matter jurisdiction over the Non-Core Claims. (*Id.*)

AHMS next contends the Core Claims must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because they fail to state a claim upon which relief can be granted. (*Id.* at 7-8.) AHMS asserts the Core Claims do not state a claim against AHMS because "AHMS took over servicing from Citi [Residential] on February 11, 2009, after the termination of the Bankruptcy."<sup>6</sup> (*Id.* at 8.) AHMS also asserts the First Claim - *i.e.*, violations of the discharge injunction - must be dismissed because: (i) the actions alleged in the First Claim occurred pre-discharge; and (ii) the Mortgage debt was not discharged in Plaintiff's bankruptcy case. (*Id.* at 8-9.) In addition, AHMS posits there is no private cause of action for

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<sup>6</sup>Although the Discharge Order was entered on January 9, 2009 - prior to when AHMS began servicing the Mortgage on February 11, 2009 - Plaintiff's bankruptcy case was not closed until the Court entered Final Decree (Main Case, Doc. # 37) on February 13, 2009.

violation of the discharge injunction under §§ 524 and/or 105. (*Id.* at 9-10.) AHMS argues the Fifth Claim - *i.e.*, violations of Rule 2016(a) and § 105(a) - must be dismissed because there is no private cause of action for violation of Rule 2016, even in conjunction with § 105. (*Id.* at 10-11.) Finally, AHMS alleges the Sixth Claim - *i.e.*, violations of the Confirmation and Discharge Orders - must be dismissed because: (i) the Confirmation Order did not impose any obligations upon AHMS; and (ii) the Mortgage debt was not discharged. (*Id.* at 11-14.)

Citi Residential moves to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted or, in the alternative, for a more definite statement by Plaintiff. (See generally Citi Residential's Mot.) Citi Residential states, "Plaintiff's Complaint does not identify the manner in which Citi Residential allegedly violated the Plaintiff's bankruptcy discharge, the Bankruptcy Code, the Bankruptcy Rules, this Court's Orders, the FDCPA, the CSPA or the RESPA." (*Id.* ¶ 3.) As a result, Citi Residential asks the Court to either dismiss the Complaint or order Plaintiff to file an amended complaint stating with specificity the actions of Citi Residential that serve as the basis for the Complaint. (*Id.*)

Citi Residential asserts Plaintiff's First Claim - *i.e.*, assessing and collecting charges in violation of the discharge injunction - fails to state a claim because:

If the undescribed [sic] "charges" were indeed legitimate, then they were properly charged and there was

no violation of the discharge injunction. On the other hand, if the "charges" were not appropriate under the contractual agreement and state law, then they would not be discharged debt but rather no debt at all.

(*Id.* ¶ 4.) With respect to Plaintiff's Second, Third, Fourth, Fifth, and Sixth Claims, Citi Residential "adopts and incorporates" the arguments in AHMS's Motion. (*Id.* ¶ 5.)

In her Response to AHMS, Plaintiff reiterates the Defendants' alleged conduct that serves as the basis for her Complaint. However, Plaintiff also states she "is unable to decipher at this point the extent of culpability of both Defendants as the bankruptcy was discharged right at the time of the transfer of the servicing. . . . Only full discovery of the application of the payments on the life of loan history is going to exhibit what really occurred." (Resp. to AHMS at 2, 7.)

In addition, Plaintiff "withdrew" her Fourth Claim and admits that resolution of her Second and Third Claims - *i.e.*, violations of the FDCPA and CSPA - are not core proceedings. (*Id.* at 4-5.) However, Plaintiff contends this Court can exercise "related to" subject matter jurisdiction over the Second and Third Claims because those claims are a result of Defendants' illegal attempts to collect and assess fees that arose during her bankruptcy case, which were subsequently discharged. (*Id.* at 5.) Plaintiff asserts these fees affect her rights and liabilities as a debtor; therefore, the Second and Third Claims are related to her bankruptcy case. (*Id.*)

In response to Defendants' motions to dismiss her Core Claims, Plaintiff asserts the Core Claims are valid causes of action because

"while the mortgage debt may not be discharged, fees assessed without Court approval are not collectable [sic] and [are] subject to the discharge injunction." (*Id.* at 6.) Plaintiff also rebuts AHMS's contention that the Core Claims do not apply to AHMS, stating:

To allow [AHMS] to avoid liability because they [sic] received the servicing of the loan after the bankruptcy discharge, would allow servicers to charge fees in violation of the confirmation order and rule 2016(a) and then simply transfer the rights to another servicer to avoid liability. With knowledge of the Bankruptcy and the discharge, [AHMS] has the burden to insure that the underlying bankruptcy orders were properly followed and that any charges are proper. Otherwise, [AHMS] bears the risk of collecting charges in violation of the bankruptcy code and cannot hide behind the actions of the previous servicer.

(*Id.* at 7.) Finally, Plaintiff asserts her Sixth Claim - *i.e.*, violations of the Confirmation and Discharge Orders - is a valid cause of action because the Court "may hold [Defendants] in contempt of court and award Ms. Villwock damages despite the lack of a private right of action." (*Id.* (citing *Motichko v. Premium Asset Recovery Corp. (In re Motichko)*, 395 B.R. 25, 29 (Bankr. N.D. Ohio 2008).)

In her Response to Citi Residential, Plaintiff incorporates her Response to AHMS and states she is willing to amend the Complaint in response to Citi Residential's Motion. (Resp. to Citi Residential at 1-2.)

## II. STANDARDS FOR REVIEW AND ANALYSES

**A. Subject Matter Jurisdiction.**

**1. Standard for Review.**

Federal Rule of Civil Procedure 12(h)(3), made applicable to the instant adversary proceeding by Federal Rule of Bankruptcy Procedure 7012(b), requires a court to dismiss a complaint for lack of subject matter jurisdiction. FED. R. CIV. P. 12 (West 2010); FED. R. BANKR. P. 7012 (West 2010). A court's lack of subject matter jurisdiction "may be raised at any time, by any party, or even *sua sponte* by the court itself." *Superior Bank, FSB v. Boyd (In re Lewis)*, 398 F.3d 735, 739 (6th Cir. 2005). When a defendant challenges a court's subject matter jurisdiction, the plaintiff has the burden of proving jurisdiction exists. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986). A court generally may not rule on the merits of a case without first determining it has subject matter jurisdiction. *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007). The parties themselves cannot consent to subject matter jurisdiction, "nor can it be waived." *Alongi v. Ford Motor Co.*, 386 F.3d 716, 728 (6th Cir. 2004). Therefore, "if jurisdiction is lacking, dismissal is mandatory." *Campanella v. Commerce Exch. Bank*, 137 F.3d 885, 890 (6th Cir. 1998).

28 U.S.C. § 1334 gives the district court "original and exclusive jurisdiction of all cases under title 11" and "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

28 U.S.C. § 1334(a) and (b) (West 2010) (emphasis added). 28 U.S.C. § 157(a) gives the district court the authority to refer this jurisdiction to the bankruptcy court. 28 U.S.C. § 157 (West 2010). The United States District Court for the Northern District of Ohio referred jurisdiction to the bankruptcy courts of this district in General Order No. 84, entered July 16, 1984.

A court need not distinguish between proceedings "arising under," "arising in," or "related to" a case under title 11 because "[t]hese references operate conjunctively to define the scope of jurisdiction. Therefore, for purposes of determining section 1334(b) jurisdiction, it is necessary only to determine whether a matter is at least 'related to' the bankruptcy." *Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1141 (6th Cir. 1991) (internal citations omitted). A proceeding is "related to" a bankruptcy case if:

the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy[, in other words,] if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

*Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers (In re Dow Corning Corp.)*, 86 F.3d 482, 489 (6th Cir. 1996) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

"Bankruptcy jurisdiction will exist so long as it is possible that a proceeding may impact on 'the debtor's rights, liabilities, options, or freedom of action' or the 'handling and administration

of the bankrupt estate.'" *Id.* at 491 (quoting *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991)) (emphasis added).

Following confirmation of a plan of reorganization, bankruptcy jurisdiction exists if "'there is a close nexus to the bankruptcy plan or proceeding . . . .'" *Thickstun Bros. Equip. Co. v. Encompass Servs. Corp. (In re Thickstun Bros. Equip. Co.)*, 344 B.R. 515, 521 (B.A.P. 6th Cir. 2006) (quoting *In re Resorts Int'l, Inc.*, 372 F.3d 154, 166-67 (3d Cir. 2004)). It is widely acknowledged that "bankruptcy courts retain jurisdiction to interpret and enforce confirmed plans of reorganization." *Id.* at 522. Thus, bankruptcy courts typically have jurisdiction to hear "'[m]atters that affect the interpretation, implementation, consummation, execution, or administration of the confirmed plan . . . .'" *Id.* at 521 (quoting *In re Resorts Int'l, Inc.*, 372 F.3d at 167).

## **2. Analysis.**

Defendants assert this Court lacks subject matter jurisdiction over Plaintiff's Non-Core Claims - *i.e.*, violations of the FDCPA and CSPA - because those claims are not related to Plaintiff's bankruptcy case.<sup>7</sup> Defendants note the conduct alleged in the Non-Core Claims occurred after Plaintiff's bankruptcy estate was fully administered and her bankruptcy case closed. (AHMS's Mot. at 7). As a result, Defendants contend disposition of the Non-Core Claims

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<sup>7</sup>The Court will not address Defendants' alleged violations of RESPA, as Plaintiff "withdrew" her Fourth Claim. (Resp. to AHMS at 5.)

cannot have any conceivable effect on Plaintiff's bankruptcy estate.  
(AHMS's Mot. at 6-7.)

In *Stewart v. Henry (In re Stewart)*, 62 Fed. Appx. 610 (6th Cir. 2003), the Sixth Circuit Court of Appeals held claims accruing after the commencement of a bankruptcy case are not related to a debtor's bankruptcy case. Discussing a legal malpractice claim in the chapter 7 context, the court of appeals stated:

The malpractice claim itself does not constitute property of the estate. Under 11 U.S.C. § 541(a)(1), the estate comprises all legal or equitable interests of the debtor in property "as of the commencement of the case." The [debtors'] malpractice cause of action did not accrue until after they filed for bankruptcy, and is therefore not an interest in property as of the commencement of the case. . . . [T]herefore, this action is not related to the bankruptcy because the action cannot conceivably impact any property of the estate, or any right, liability, option or freedom of action of the [debtors] as the debtors in the Chapter 7 proceeding, or the handling and administration of the bankruptcy estate.

Another approach to determining whether an action is "related to" a bankruptcy proceeding is to determine whether the action would benefit the debtor and not the estate; if so, then the action would not be related to the bankruptcy case. 1 *Collier on Bankruptcy* P 3.01[4][c][v], 3-30 (15th Ed. Revised 1997). A suit brought on a cause of action which arose after the commencement of the bankruptcy case and therefore was not property of the estate would benefit the debtor, but not the estate. *Id.* . . . This suit benefits the [debtors] and not the estate, and it is therefore not related to the bankruptcy case.

*Id.* at 614 (emphasis in original).

In *Schramm v. TMS Mortgage, Inc. (In re Schramm)*, 2006 Bankr. LEXIS 4470 (Bankr. N.D. Ohio 2006), the chapter 13 debtors brought an adversary action against the servicer of their home mortgage loan for, *inter alia*, violations of the FDCPA. *Id.* at \*1, \*6. The

debtors alleged the mortgage servicer invoiced them for "advances or attorney outsourcing fees" after the debtors had completed their chapter 13 plan and received a discharge, and that such fees were disallowed by the chapter 13 plan. *Id.* at \*4-5. The mortgage servicer urged dismissal of the FDCPA claim because the bankruptcy court lacked related to subject matter jurisdiction. *Id.* at \*7. The Bankruptcy Court for the Northern District of Ohio dismissed the debtors' FDCPA claim, stating:

[T]he FDCPA claim does not come within the court's related to jurisdiction. Any recovery under that claim will go to the debtors, not to the estate, so it will not have an impact on estate administration. Additionally, the FDCPA claim is not a matter that affects the interpretation, implementation, consummation, execution, or administration of the debtors' confirmed plan. It is, instead, an independent cause of action.

*Id.* at \*11; see also *Darrah v. Franklin Credit (In re Darrah)*, 337 B.R. 313, 317 (Bankr. N.D. Ohio 2005) ("Suits that are not property of the estate would, of course, fall outside [related to jurisdiction] because, although a debtor's rights and liabilities would be at stake as required under the first part of the *In re Dow Corning Corp.*, test, its handling could, by definition, have no conceivable impact on the administration of the estate as required under the latter part.")

In the instant case, the basis for Plaintiff's Non-Core Claims is Defendants' assessment and collection of charges "during the pendency of her Chapter 13 . . . ." (Compl. ¶ 43; see also Resp. to AHMS at 2.) Because the Non-Core claims arose after the commencement of Plaintiff's bankruptcy case, those claims are not

property of the estate pursuant to 11 U.S.C. § 541(a)(1). See 11 U.S.C. § 541 (West 2010). Any recovery Plaintiff may receive in connection with her Non-Core Claims will not become property of her bankruptcy estate. As a result, resolution of those claims can have no conceivable effect on Plaintiff's bankruptcy estate, which is required for this Court to exercise related to subject matter jurisdiction. Accordingly, Plaintiff's Second and Third Claims will be dismissed without prejudice.

**B. Failure to State a Claim.**

**1. Standard for Review.**

Federal Rule of Civil Procedure 8(a)(2), made applicable to the instant adversary proceeding by Federal Rule of Bankruptcy Procedure 7008(a), requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8 (West 2010); FED. R. BANKR. P. 7008 (West 2010). The complaint does not have to contain "detailed factual allegations," but it must contain more than mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "The complaint need not specify all the particularities of the claim, and if the complaint is merely vague or ambiguous, a motion under FED. R. CIV. P. 12(e) for a more definite statement is the proper avenue rather than under FED. R. CIV. P. 12(b)(6)." *Aldridge v. United States*, 282 F. Supp. 2d 802, 803 (W.D. Tenn. 2003) (citing

5A WRIGHT, MILLER & KANE, FEDERAL PRACTICE & PROCEDURE § 1356 (West 1990)).

Federal Rule of Civil Procedure 12(b)(6), made applicable to the instant adversary proceeding by Federal Rule of Bankruptcy Procedure 7012(b), provides that a claim can be dismissed if it fails "to state a claim upon which relief can be granted." FED. R. CIV. P. 12 (West 2010); FED. R. BANKR. P. 7012 (West 2010). Accordingly, a complaint will be dismissed if it fails to allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949.

When determining whether a claim alleges enough facts to state a claim upon which relief can be granted, the court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); *see also Twombly*, 550 U.S. at 555. However, the court need not accept as true legal conclusions or unwarranted factual inferences. *Iqbal*, 129 S. Ct. at 1949-50; *Directv, Inc.*, 487 F.3d at 476.

## **2. Analyses.**

### **i. Fifth Claim.**

Plaintiff's Fifth Claim is based on Defendants' alleged post-petition assessment of late charges, inspection fees, and legal fees

without court approval, which Plaintiff asserts is a violation of Rule 2016(a) and § 105(a). (Compl. ¶ 69.) Defendants assert the Fifth Claim must be dismissed because Rule 2016(a) does not create a private cause of action, even in conjunction with § 105(a). (AHMS's Mot. at 10-11.)

Standing alone, § 105(a) does not impose any statutory duties on the parties to a bankruptcy case. Section 105(a) states:

(a) 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.

11 U.S.C. § 105 (West 2010). It is not possible for Defendants to have committed "violations of the provisions of Sections [sic] 105(a) of Title 11," as Plaintiff alleges. (Compl. ¶ 69.) Therefore, Plaintiff's Fifth Claim, to the extent it alleges violations of § 105(a), will be dismissed for failure to state a claim.

Rule 2016(a) imposes certain duties on persons or entities seeking compensation from the bankruptcy estate, but it does not expressly create a private remedy for violations of its provisions. Rule 2016(a) states, in pertinent part:

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. . . . The requirements of this subdivision shall apply to an application for compensation for

services rendered by an attorney or accountant even though the application is filed by a creditor or other entity.

FED. R. BANKR. P. 2016 (West 2010). Plaintiff appears to contend the Court, through § 105(a), has the authority to assess damages and legal fees against Defendants for their alleged violations of Rule 2016(a). (See Compl. ¶ 69-70.)

When a federal statute does not expressly include a private cause of action, “[t]he most important inquiry . . . is whether Congress intended to create the private remedy sought by the plaintiffs.” *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 421 (6th Cir. 2000) (citing *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575 (1979)). “[T]he recognition of a private right of action requires affirmative evidence of congressional intent in the language and purpose of the statute or in its legislative history.” *Id.* (citing *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 623 (6th Cir. 2000)). In *Pertuso*, the Sixth Circuit Court of Appeals stated: “‘We do not read § 105 as conferring on courts such broad remedial powers. The ‘provisions of this title [language in § 105(a)]’ simply denote[s] a set of remedies fixed by Congress. A court cannot legislate to add to [it].’” *Id.* at 423 (quoting *Kelvin v. Avon Printing Co. (In re Kelvin Publ’g, Inc.)*, 1995 WL 734481, \*4 (6th Cir. 1995) (unpublished)). As a result, the court of appeals concluded § 105 cannot be read in conjunction with other provisions of the Bankruptcy Code to create a private cause of action not expressly set forth elsewhere in the Code. *Id.*

In *Yancey v. Citifinancial, Inc. (In re Yancey)*, 301 B.R. 861 (Bankr. W.D. Tenn. 2003), the Bankruptcy Court for the Western District of Tennessee considered precisely the issue before this court - *i.e.*, whether § 105(a) in conjunction with Rule 2016 creates a private cause of action. Relying on *Pertuso* and its interpretation of Supreme Court precedent, the bankruptcy court found no evidence "of congressional intent in the combination of the Rule and Code section relied upon . . . for a private remedy." *Id.* at 866. The court noted, "A private cause of action is a substantive right, not a procedural one, and, under the *Pertuso* authority, § 105(a) cannot, standing alone, create a private right of action." *Id.* at 868. "No provision for a private remedy under Rule 2016 is found, and it would be extreme bootstrapping for the Court to say that § 105 creates a remedy for a rule violation." *Id.*

This Court finds the *Yancey* court's analysis persuasive. Rule 2016(a) does not contain a private cause of action, and § 105(a) cannot create a private cause of action that does not exist elsewhere within the Bankruptcy Code. Therefore, Plaintiff's Fifth Claim will be dismissed for failure to state a claim.

**ii. First Claim.**

AHMS argues Plaintiff's First Claim - *i.e.*, violations of the discharge injunction pursuant to § 524<sup>8</sup> - should be dismissed for

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<sup>8</sup>Section 524 states, in pertinent part:

(a) A discharge in a case under this title-

\* \* \*

failure to state a claim because: (i) the Mortgage was excepted from discharge pursuant to 11 U.S.C. § 1328(a)(1); and (ii) there is no private cause of action for discharge injunction violations, even in conjunction with § 105. (AHMS's Mot. at 8-10.) AHMS also asserts the conduct alleged in the First Claim did not violate the discharge injunction because it occurred pre-discharge. (*Id.* at 8-9.) Citi Residential, on the other hand, asserts the First Claim should be dismissed for failure to state a claim because the alleged charges and fees serving as the basis for the First Claim were either: (i) lawful and, thus, properly charged; or (ii) improper pursuant to the terms of the Mortgage and state law and, thus, not subject to the discharge because they do not constitute valid debt. (Citi Residential's Mot. ¶ 4.)

The basis for Plaintiff's First Claim is "Defendants [sic] practice of assessing and collecting charges during the pendency of her Chapter 13 causing her to still be behind after the proof of claim [was] paid off . . . ." (Compl. ¶ 43.) In her Response to AHMS, Plaintiff clarifies that Defendants "attempted to collect fees that should have been satisfied and discharged through the bankruptcy." (Resp. to AHMS at 6.) Plaintiff contends that, "while the mortgage debt may not be discharged, fees assessed without Court

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(2) 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;

\* \* \*

11 U.S.C. § 524 (West 2010).

approval are not collectable [sic] and [are] subject to the discharge injunction." (*Id.*)

In *Eddins v. GMAC Mortgage Co. (In re Eddins)*, 2008 Bankr. LEXIS 2907 (Bankr. N.D. Miss. 2008), the debtors' chapter 13 plan provided for the debtors to cure their mortgage arrearage through the plan and make regular monthly mortgage payments pursuant to 11 U.S.C. § 1322(b)(5). *Id.* at \*2. After the mortgage arrearage was paid through the plan, the bankruptcy court entered an order determining the debtors' mortgage was current and all defaults had been cured. A discharge order was entered and the debtors' bankruptcy case was closed. *Id.* After successfully moving to reopen their bankruptcy case, the debtors filed an adversary complaint against the mortgage company, alleging, *inter alia*, violations of the discharge injunction. *Id.* at \*2-3. According to the debtors, the mortgage company assessed and collected fees, post-discharge, which were neither owed nor approved by the bankruptcy court. *Id.* at \*3-4. The mortgage company moved to dismiss for failure to state a claim, asserting the mortgage debt came within § 1322(b)(5) and, thus, was excepted from discharge pursuant to § 1328(a)(1).<sup>9</sup> *Id.* at \*5.

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<sup>9</sup>Section 1322(b)(5) states:

(b) Subject to subsections (a) and (c) of this section, the plan may—

\* \* \*

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

The *Eddins* court concluded the debtors stated a valid claim for violations of the discharge injunction because:

While [the mortgage company's] reading of [§ 1328(a)(1)] is literally correct, it fails to capture the statute's purpose which is to except from discharge those long-term debt obligations that would obviously remain owing after the completion of the Chapter 13 plan. This exception does not allow a creditor holding a long-term debt to surreptitiously assess improper charges prior to the discharge and then to collect these charges with impunity once the discharge is granted. . . . Clearly, if there are legitimate charges which should have survived the [debtors'] Chapter 13 discharge, there will be no violation of the §524(a)(2) discharge injunction. However, if these charges should have been included as a part of the discharge, but were inappropriately omitted or concealed, and collection activities were undertaken subsequent to the discharge, then an actionable violation might exist.

*Id.* at \*5-6 (emphasis added); see also *Moffitt v. America's Servicing Co. (In re Moffitt)*, 408 B.R. 249, 260-61 (Bankr. E.D. Ark. 2009) ("[W]hile long-term debts provided for under § 1322(b)(5) are not discharged, a debt for undisclosed fees and charges incurred (but not paid) during the bankruptcy case may be subject to a debtor's discharge.") (emphasis in original).

In the instant proceeding, AHMS correctly notes Plaintiff's Mortgage was provided for under § 1322(b)(5) and, thus, excepted

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11 U.S.C. § 1322 (West 2010).

Section 1328(a)(1) states, in pertinent part:

(a) [T]he court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5);

11 U.S.C. § 1328 (West 2010).

from discharge. However, Plaintiff's Mortgage Arrearage was paid in full through the Plan. (Main Case, Plan art. 3A; Notice of Plan Completion at 1.) Therefore, post-discharge attempts to collect any amount of the Mortgage Arrearage would violate the discharge injunction. To the extent Plaintiff alleges the discharge injunction was violated because Defendants attempted to collect the pre-petition, discharged Mortgage Arrearage (including any post-petition addition of unlawful charges so that the Mortgage Arrearage increased and, thus, was not paid in full at the time Plaintiff exited from bankruptcy), Plaintiff has pled sufficient facts to withstand a motion to dismiss her First Claim. AHMS's motion to dismiss the First Claim will be denied to the extent it asserts AHMS could not have violated the discharge injunction because Plaintiff's Mortgage was not discharged.

AHMS also contends the First Claim must be dismissed because § 524 does not include a private cause of action for violating the discharge injunction, as determined by the Sixth Circuit Court of Appeals in *Pertuso*. (AHMS's Mot. at 9-10 (citing *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 422-23 (6th Cir. 2000).) However, in *Motichko v. Premium Asset Recovery Corp. (In re Motichko)*, 395 B.R. 25 (Bankr. N.D. Ohio 2008), this Court addressed precisely the issue raised by AHMS and denied the defendant's motion to dismiss for failure to state a claim. *Id.* at 33. This Court stated:

Although no private right of action exists within [§ 524], the Sixth Circuit Court of Appeals and a majority of other circuits have held violations of § 524 are punishable by sanctions for contempt of court.

*Pertuso*, 233 F.3d at 421-23. "In the Sixth Circuit there is no statutory private right of action for damages under 11 U.S.C. § 524 . . . . However, violation of the discharge injunction does expose a creditor to potential contempt of court. . . . If the contempt is established, the injured party may be able to recover damages as a sanction for the contempt." *Lohmeyer v. Alvin's Jewelers (In re Lohmeyer)*, 365 B.R. 746, 749-50 (Bankr. N.D. Ohio 2007) (internal citations omitted).

The mere fact that Debtors request damages in addition to sanctions does not convert their suit into a private action.

*Id.* at 29-30.

Much like the debtors' complaint in *Motichko*, Plaintiff's First Claim can properly be characterized as a contempt action. Plaintiff states in her Complaint:

43. Defendants [sic] practice of assessing and collecting charges during the pendency of her Chapter 13 causing her to still be behind after the proof of claim is paid off is in violation of the discharge injunction entered in Plaintiff's bankruptcy case pursuant to 11 U.S.C. § 524, and constitute [sic] willful contempt of bankruptcy court orders.

\* \* \*

46. In order to protect debtors who have secured a full discharge under Chapter 13, this Court must impose sanctions against the Defendant [sic] for their misconduct in this case.

(Compl. ¶¶ 43, 46.) Plaintiff's request for relief expressly asks the Court to sanction Defendants for contempt. As stated by this Court in *Motichko*, "[t]o dismiss on procedural grounds alone would be to elevate form over substance." *Motichko*, 395 B.R. at 33. Accordingly, because Plaintiff has sufficiently pled a contempt action in the First Claim, AHMS's motion to dismiss the First Claim will be denied to the extent it is based upon the lack of a private

cause of action.

AHMS next asserts the Core Claims, including Plaintiff's First Claim, should be dismissed with respect to AHMS because Plaintiff "never alleged that AHMS serviced her [Mortgage] during the Bankruptcy." (AHMS's Mot. at 8.) The Court finds no merit to AHMS's argument. As stated by the Bankruptcy Court for the Southern District of Ohio in *Gunter v. Kevin O'Brien & Assocs. (In re Gunter)*, 389 B.R. 67 (Bankr. S.D. Ohio 2008):

[C]ourts have held debt collectors liable for violating the discharge injunction where they cavalierly disregard evidence that the debt assigned or referred to it may have been discharged. . . . Otherwise, the creditor and the collector could whipsaw the debtor, with the creditor denying liability on the basis that it had not itself taken any action against the debtor and the debt collector denying liability on the ground that it had no knowledge of the discharge.

*Id.* at 73-74 (internal citations omitted). Thus, the contention that AHMS did not service Plaintiff's Mortgage during her bankruptcy case is irrelevant to AHMS's potential liability for violation of the discharge injunction. Accordingly, AHMS's motion to dismiss Plaintiff's First Claim will be denied in its entirety.

Finally, Citi Residential moves to dismiss the First Claim because the charges at issue were either: (i) legitimate and, thus, properly charged; or (ii) inappropriate pursuant to the terms of the Mortgage and state law and, thus, not subject to discharge because they were not truly debt. (Citi Residential's Mot. ¶ 4.) The Court finds no merit in this argument. As discussed above, the Mortgage Arrearage was paid in full through the Plan and, therefore,

discharged. Consequently, post-discharge attempts to collect charges included in (or that should have been included in) the Mortgage Arrearage would violate the discharge injunction, even if such charges were legitimate.

Citi Residential's suggestion that it can attempt to collect unauthorized and/or unlawful charges following the discharge because such charges are "no debt at all" (*Id.*) frustrates Plaintiff's ability to obtain a "fresh start."<sup>10</sup> See *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" (citation omitted)). Even if the charges at issue were improper and, thus, not truly a debt owed by Plaintiff, the assessment of those charges may itself be an attempt "to collect, recover or offset" the discharged Mortgage Arrearage. See 11 U.S.C. § 524 (a)(2) (West 2010). Because the imposition of charges on discharged debt is an act to collect the discharged debt, Citi Residential's motion to dismiss the First Claim will be denied.

In conclusion, both AHMS and Citi Residential's Motions to Dismiss will be denied with respect to the First Claim. Plaintiff has pled sufficient facts to state a contempt action against Defendants for violations of the discharge injunction.

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<sup>10</sup>Citi Residential apparently believes that it can attempt to collect unlawful charges with impunity. To the extent Citi Residential argues Plaintiff has no recourse for Citi Residential's collection of "non-debt," this Court will not countenance such argument.

iii. Sixth Claim.

Defendants move to dismiss the Sixth Claim - *i.e.*, violations of this Court's Confirmation Order and Discharge Order - because: (i) Plaintiff's Mortgage was not discharged; and (ii) the Confirmation Order did not impose any obligations upon Defendants. (AHMS's Mot. at 11-14.) AHMS also contends it could not have violated the Confirmation and/or Discharge Orders because it did not service Plaintiff's Mortgage during her bankruptcy case. (*Id.* at 8.)

Plaintiff's Sixth Claim states:

[T]he conduct of the Defendants in failing to credit payments and charging and assigning improper fees and expenses to [the Mortgage] "before" such fees were approved by this Court and in an amount "in excess" of the fees and expenses actually approved by this Court constitutes actions in contempt and in violation of the [Confirmation Order] and [Discharge Order].

(Compl. ¶ 72.) As explained above, although Plaintiff's Mortgage was not discharged, the Mortgage Arrearage was discharged. (See *supra* at 22-24.) As a consequence, Defendants' contention that the Mortgage was not discharged does not preclude liability for violations of the Discharge Order. Accordingly, Plaintiff has pled a plausible claim for violations of the Discharge Order, and Defendants' motions to dismiss the Sixth Claim will be denied to the extent they contend otherwise.

With respect to AHMS's argument that it could not have violated the Discharge Order because it did not service Plaintiff's Mortgage during her bankruptcy case, the Court adopts its analysis concerning

AHMS's alleged violations of the discharge injunction. The fact that AHMS did not service the Mortgage until Plaintiff's bankruptcy was closed or nearly closed does not defeat AHMS's potential liability. (See *supra* at 26.)

Defendants argue they could not have violated the Confirmation Order because it did not impose any obligations upon them, even if the terms of the Plan were incorporated therein. (AHMS'S Mot. at 12-14.) Defendants correctly note the only identifiable obligations in the Confirmation Order and/or Plan are imposed upon either the Plaintiff or the Chapter 13 Trustee. (*Id.*) The Confirmation Order merely: (i) determines that the Plan complies with the provisions of the Bankruptcy Code; (ii) states that the Plan is confirmed; (iii) orders Plaintiff to make monthly payments to the Chapter 13 Trustee in accordance with the Plan; and (iv) authorizes compensation for Plaintiff's counsel. (Confirmation Order at 1-2). Even when the facts are construed in the light most favorable to Plaintiff, the Confirmation Order does not impose any duties upon Defendants. Accordingly, Plaintiff's Sixth Claim will be dismissed for failure to state a claim to the extent it alleges Defendants violated this Court's Confirmation Order.

In conclusion, Defendants' motions to dismiss the Sixth Claim will be: (i) denied, with respect to alleged violations of the Discharge Order; and (ii) granted, with respect to alleged violations of the Confirmation Order.

**C. Motion for a More Definite Statement.**

**1. Standard for Review.**

A party may bring a motion for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e), made applicable to the instant adversary proceeding by Federal Rule of Bankruptcy Procedure 7012(b), when a pleading "is so vague or ambiguous that the party cannot reasonably prepare a response." FED. R. CIV. P. 12 (West 2010); FED. R. BANKR. P. 7012 (West 2010). To satisfy the liberal pleading requirements of the federal rules, "a claimant need only give the defendant 'fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *Fed. Ins. Co. v. Webne*, 513 F. Supp. 2d 921, 924 (N.D. Ohio 2007) (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005)). Furthermore, motions for more definite statements are generally disfavored and should not be used as substitutes for discovery. *Schwable v. Coates*, 2005 U.S. Dist. LEXIS 38419, \*2 (N.D. Ohio 2005). A motion for a more definite statement "'is designed to strike at unintelligibility rather than simple want of detail [and] must be denied where the subject complaint is not so vague or ambiguous as to make it unreasonable to use pretrial devices to fill any possible gaps in detail.'" *Id.* (quoting *Scarborough v. R-Way Furniture Co.*, 105 F.R.D. 90, 91 (E.D. Wis. 1985)).

**2. Analysis.**

As an alternative to dismissal, Citi Residential asks the Court to require Plaintiff to amend the Complaint, "setting forth with

specificity and with sufficient dates the Plaintiff's Claims against Citi Residential." (Citi Residential's Mot. ¶ 16.) Citi Residential contends the Complaint is ambiguous "because it fails to specifically identify which defendant committed which acts that support the Plaintiff's Claims and the relief requested in the Complaint." (*Id.* ¶ 20.) Citi Residential asks the Court to order Plaintiff to identify with specificity: (i) which defendant allegedly committed which acts; (ii) the amounts of the allegedly improper charges serving as the bases for the Complaint; and (iii) the dates upon which such charges were assessed or collected. (*Id.* ¶ 21.) Citi Residential asserts it cannot reasonably be expected to respond to the Complaint "[u]nless the aforementioned deficiencies are corrected through a more definitive statement by the Plaintiff . . . ." (*Id.* ¶ 22.)

In response to Citi Residential's motion for a more definite statement, Plaintiff states she "is willing to Amend [sic] the complaint to address the issues raised by [Citi Residential]." (Resp. to Citi Residential at 2.) However, in her Response to AHMS, Plaintiff argues she "is unable to decipher at this point the extent of culpability of both Defendants as the bankruptcy was discharged right at the time of the transfer of the servicing." (Resp. to AHMS at 2.) Plaintiff states, "Only full discovery of the application of the payments on the life of loan history is going to exhibit what really occurred." (*Id.* at 7.)

To the extent Plaintiff's Second, Third, Fourth, and Fifth

Claims will be dismissed, Citi Residential's motion for a more definite statement is moot. Similarly, the requested relief is moot with respect to the Sixth Claim's allegations regarding the Confirmation Order. Thus, the Court need only address the First Claim, which asks the Court to find Defendants in contempt for violating the discharge injunction, and the remainder of the Sixth Claim, which asks the Court to find Defendants in contempt for violating the Discharge Order.

Citi Residential's motion for a more definite statement is well-taken. Although Plaintiff's First Claim can be characterized as a contempt action, it is vague and ambiguous. The First Claim, which is entitled "Willful Violation of Discharge Injunction" (Compl. at 10.), states:

43. Defendants [sic] practice of assessing and collecting charges during the pendency of her Chapter 13 causing her to still be behind after the proof of claim is paid off is in violation of the discharge injunction entered in Plaintiff's bankruptcy case pursuant to 11 U.S.C. § 524, and constitute [sic] willful contempt of bankruptcy court orders.

44. The conduct of the Defendants in this case has substantially frustrated the discharge order entered by this court . . . .

\* \* \*

46. In order to protect debtors who have secured a full discharge under Chapter 13, this Court must impose sanctions against the Defendant [sic] for their misconduct in this case.

(*Id.* ¶¶ 43-44, 46 (emphasis added).) On its face, the First Claim asks the Court to find Defendants in contempt for violating both the discharge injunction and the Discharge Order. Moreover, Plaintiff's

Sixth Claim, which is entitled "Contempt of Court Orders" (*Id.* at 15.), states Defendants' alleged conduct "constitutes actions in contempt and in violation of . . . the order of discharge ordered on 01/09/2009." (*Id.* ¶ 72 (emphasis added).) In contrast, Plaintiff states in her Response to AHMS:

Ms. Villwock received a discharge, [Defendants] received notice of that discharge, [Defendants] intended to try to collect in violation of the injunction, and Ms. Villwock was harmed as a result of [Defendants'] violation; therefore, this Court may hold [Defendants] in contempt of court and award Ms. Villwock damages despite the lack of a private right of action. *In re Motichko*, 395 B.R. 25, 29 (N.D.OH 2008) [sic]. Ms. Villwock, in her Sixth Count of her Complaint, respectfully requested that this Court do just that . . . .

(Resp. to AHMS at 7 (emphasis added).)

Thus, it appears Plaintiff's First and Sixth Claims may be duplicative, because they seek, *inter alia*, the Court's imposition of sanctions for violations of the Discharge Order. Therefore, Plaintiff will be required to amend her Complaint (to the extent it has not been dismissed) to clarify precisely what relief is being sought in the First and Sixth Claims and the basis for such relief. Furthermore, to the extent Plaintiff can do so prior to discovery, she will be required to specify: (i) the improper charges; (ii) when the improper charges were imposed; and (iii) which Defendant imposed the improper charges.

In conclusion, Citi Residential's motion for a more definite statement will be granted with respect to Plaintiff's First and Sixth Claims.

### III. CONCLUSION

Plaintiff's Second and Third Claims arose after the commencement of her bankruptcy case. As a consequence, those claims are not property of the bankruptcy estate and any recovery relating thereto will benefit the Plaintiff individually, rather than the bankruptcy estate. Because the Second and Third Claims do not impact the bankruptcy estate or its administration, this Court does not have "related to" subject matter jurisdiction over those claims. Defendants' Motions to Dismiss will be granted with respect to the Second and Third Claims.

Rule 2016(a) does not include a private cause of action, and § 105(a) does not impose any duties upon parties to a bankruptcy case. Furthermore, § 105(a) cannot, standing alone, create a private cause of action not expressly found in the Bankruptcy Code. As a result, Plaintiff's Fifth Claim, which is premised upon Rule 2016(a) and/or § 105(a), fails to state a claim upon which relief can be granted. Accordingly, Defendants' Motions to Dismiss will be granted with respect to the Fifth Claim.

This Court's Confirmation Order did not impose obligations upon Defendants. Therefore, Defendants could not have violated the Confirmation Order as Plaintiff alleges. To the extent Plaintiff's Sixth Claim seeks relief for violations of the Confirmation Order, it will be dismissed for failure to state a claim.

Plaintiff's First Claim, when viewed in the light most favorable to Plaintiff, properly pleads a cause of action for

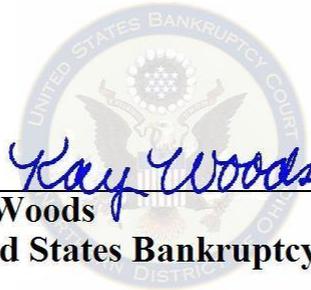
contempt for violations of the discharge injunction. While Plaintiff's long-term Mortgage debt was excepted from discharge pursuant to §§ 1322(b)(5) and 1328(a)(1), her Mortgage Arrearage was discharged through her Plan. Any action to collect the Mortgage Arrearage is prohibited by § 524. In addition, the fact that AHMS did not begin servicing Plaintiff's Mortgage until after or near the close of her bankruptcy case is irrelevant to AHMS's potential liability. Accordingly, Defendants' motions to dismiss the First Claim will be denied.

Finally, Plaintiff's First Claim and Sixth Claim (to the extent not dismissed) are ambiguous. It is not clear what conduct of Defendants supports these claims. Although Plaintiff cannot be expected to be fully apprised of Defendants' conduct prior to discovery, Plaintiff is directed to state with as much specificity as possible the actions of each Defendant which she alleges violated the discharge injunction and/or Discharge Order. Accordingly, Citi Residential's motion for a more definite statement will be granted with respect to the First Claim and the portion of the Sixth Claim that has not been dismissed.

An appropriate order will follow.

# # #

IT IS SO ORDERED.



Dated: April 12, 2010  
02:35:51 PM

Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA D. VILLWOCK,  
  
Debtor.

CASE NUMBER 07-40796

\* \* \* \* \*

VIRGINIA D. VILLWOCK,  
  
Plaintiff,

ADVERSARY NUMBER 09-04319

v.

CITI RESIDENTIAL LENDING,  
*et al.*,

HONORABLE KAY WOODS

Defendants.

\*\*\*\*\*  
ORDER: (i) GRANTING, IN PART, AND DENYING, IN PART, DEFENDANTS'  
MOTIONS TO DISMISS; AND (ii) GRANTING PLAINTIFF FOURTEEN (14)  
DAYS TO FILE AN AMENDED COMPLAINT  
\*\*\*\*\*

This cause is before the Court on: (i) Defendant American Home  
Mortgage Servicing, Inc.'s Motion to Dismiss Adversary Complaint

(Doc. # 24), filed by American Home Mortgage Servicing, Inc. ("AHMS") on February 16, 2010; and (ii) Defendant Citi Residential Lending's Motion to Dismiss the Plaintiff's Complaint or, in the Alternative, for a More Definite Statement (Doc. # 25), filed by Citi Residential Lending ("Citi Residential") on February 18, 2010. On March 15, 2010, Plaintiff Virginia D. Villwock filed Plaintiff's Memorandum in Opposition to Defendant American Home Mortgage Servicing, Inc.'s Motion to Dismiss Adversary Complaint (Doc. # 39) and Plaintiff's Memorandum in Opposition to Defendant Citi Residential's Motion to Dismiss Adversary Complaint or Motion for More Definite Statement (Doc. # 40).

For the reasons set forth in this Court's Memorandum Opinion Regarding Motions to Dismiss Filed by American Home Mortgage Servicing, Inc. and Citi Residential Lending entered on this date:

- (i) Defendants' Motions to Dismiss are granted with respect to Plaintiff's Second, Third, and Fifth Claims;
- (ii) Defendants' Motions to Dismiss are granted, in part, and denied, in part, with respect to Plaintiff's Sixth Claim;
- (iii) Defendants' Motions to Dismiss are granted with respect to Plaintiff's Fourth Claim based on Plaintiff's "withdrawal" of such claim;
- (iv) Defendants' Motions to Dismiss are denied with respect to Plaintiff's First Claim;

(v) Citi Residential's motion for a more definite statement is granted with respect to Plaintiff's First Claim and the portion of Plaintiff's Sixth Claim that has not been dismissed; and

(vi) Plaintiff is granted fourteen (14) days to file an amended complaint that: (a) amends Plaintiff's First Claim; (b) amends the portion of Plaintiff's Sixth Claim that has not been dismissed; and (c) clarifies which Defendant is allegedly liable under each claim of such amended complaint.

**IT IS SO ORDERED.**

# # #