UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	**CASE NO.**	**16-20790 (AMN)**
KRISTIN S. NORTON,		
DEBTOR.	**CHAPTER**	**7**
KRISTIN S. NORTON,	**ADV. PRO. NO.**	**19-02011 (JJT)**
PLAINTIFF		
V.	**RE: ECF NOS.**	**68, 69, 72, 89, 93 102, 111**
TOWN OF SOUTH WINDSOR, MATTHEW GALLIGAN, MORRIS BOREA, AND ROBBIE T. GERRICK,		
DEFENDANTS.		

POST-TRIAL MEMORANDUM OF DECISION[1]

I. INTRODUCTION

This matter involves a near decade long dispute between Kristin S. Norton ("Debtor" or "Plaintiff") and the Town of South Windsor (the "Town") regarding the Town's enforcement of its anti-blight ordinances. The dispute centers around the various measures taken by the Town to address the historical condition of the Plaintiff's now demolished residential home in South Windsor, Connecticut, where the Plaintiff was accused of running a junkyard/scrap business.[2] The Plaintiff initiated this Adversary Proceeding in her underlying Chapter 7 case on June 3, 2019, pursuant to 11 U.S.C. § 105 and 11 U.S.C. § 524, seeking relief for alleged violations of

[1] Any capitalized terms that are used throughout this Memorandum of Decision but that are not defined herein are intended to have the meanings set forth in this Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment.

[2] The home was badly damaged in a fire that took place in December of 2016, an occurrence which is central to this dispute and discussed in greater detail throughout this Memorandum of Decision.

the discharge injunction by the Town, its Town Manager, Matthew Galligan, and the attorneys representing the Town, Morris Borea and Robbie T. Gerrick (the "Co-Defendants," and collectively, with the Town, the "Defendants"), with respect to certain debts allegedly discharged in bankruptcy. In the one-count Operative Complaint (*see* Third Amended Complaint, ECF No. 68, the "Operative Complaint"), the Debtor seeks compensatory damages in the form of, *inter alia*, emotional distress damages and attorney's fees, as well as punitive damages and a referral to the District Court for criminal contempt proceedings for the actions taken by the Defendants in state and federal court as part of their effort to collect a discharged debt.[3] This Court has already addressed much of the substance of the Operative Complaint in its Memorandum of Decision on the Plaintiff's Motion for Summary Judgment (ECF No. 115). Therein, the Court found in favor of the Plaintiff on Count I of the Operative Complaint, concluding that the Town had violated the discharge injunction on multiple occasions by filing and pursuing a lien against the Plaintiff and her Property that was predicated on a discharged debt. While addressing a significant portion of the issues raised by the Operative Complaint, this Court, nonetheless, reserved for trial the issue of damages and causation.[4]

For the reasons stated herein, and as previously determined by the Court in its Memorandum of Decision on the Plaintiff's Motion for Summary Judgment, the Court hereby renders judgment in favor of the Plaintiff as to Count I, as set forth herein, and awards her $100,144.61 in attorney's fees and $20,000 in compensatory damages and such other equitable

[3] While the Operative Complaint identifies attorney's fees and emotional distress as the only particularized form of compensatory damages being sought, at trial, the Plaintiff argued for additional compensatory damages in the form of loss of use of insurance proceeds and loss of use of her home. According to the Parties' Joint Pretrial Memorandum, the Plaintiff seeks $279,000 for emotional distress damages, $198,000 for loss of use of her home, and attorney's fees incurred in all actions, totaling $155,144.61.

[4] While principally reserving the issue of damages for trial, the Court also reserved for trial the issues of joint liability among Co-Defendants and whether seeking to collect on a discharged debt from the Plaintiff's mortgage servicer (who held certain insurance proceeds) constituted a violation of the discharge injunction.

relief as set forth herein. With respect to the additional relief requested by the Plaintiff, the Court hereby DENIES her request for punitive damages, as well as her request for a referral to the District Court for criminal sanctions.

II. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and derives its authority to hear and determine this matter on reference from the District Court pursuant to 28 U.S.C. §§ 157(a) and (b)(1). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).[5] Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

III. BACKGROUND AND ADDITIONAL FINDINGS OF FACT[6]

a. Background

The Plaintiff is the owner of record of 460 Miller Road, South Windsor, Connecticut (the "Property"). Memorandum of Decision on Plaintiff's Motion for Summary Judgment, Findings of Fact, ¶ 1. The Plaintiff previously owned the Property jointly with her former husband until 2012 when it was awarded to her pursuant to their divorce decree. This was around the time that the Town first notified the Plaintiff about certain code violations on the Property. Also, in 2012, prior to any enforcement action taken by the Town, the Plaintiff's mortgage lender commenced a foreclosure action against the Property. In the years that followed the foreclosure action, the Plaintiff experienced severe financial distress and, as a result, began collecting and storing volumes of abandoned personal property on the Property that she collected from cleaning out

[5] The Parties, having fully been apprised of the pleadings and the relief requested therein, have acknowledged that all issues presently before the Court are core proceedings. In the event that a matter addressed by the Court in these proceedings is deemed to be non-core, the Court interprets their acknowledgement as providing the requisite consent for this Court to hear and determine related non-core proceedings pursuant to 28 U.S.C. § 157(c)(2).

[6] For the purpose of context, the Court hereby restates certain uncontested facts previously found in its Memorandum of Decision on the Plaintiff's Motion for Summary Judgment. While only certain findings from the Court's Memorandum of Decision are included herein to assist in readability, the entirety of those findings are hereby incorporated by reference.

foreclosed homes with the intent of selling those items at regional flea markets or to otherwise store them for other dispositions.

In 2014, the Debtor was formally deemed by the Town to be in violation of the Town's ordinances for blighted conditions at the Property, where she maintained a junk yard/scrap business. *Id.*, ¶ 3. As a result, the Town recorded its first blight lien against the Property that year (the "2014 Lien"). *Id.*, ¶ 4. While various attempts were allegedly made by the Plaintiff to remedy the situation, the Town believed that the violations on the Property persisted and ultimately rose to the level of a public health emergency.[7] Acting on that determination, in April of 2016, the Town began forcibly removing, without prior notice to the Plaintiff, the items from the Plaintiff's Property that it claimed constituted the ongoing blight/public health violation. *Id.*, ¶ 6. Roughly one month after the Town's remediation efforts, the Debtor filed for bankruptcy protection under Chapter 7 of the U.S. Bankruptcy Code. On August 17, 2016, the Plaintiff received her Order of Discharge from the Bankruptcy Court (*Nevins, J.*), thereby discharging the general unsecured claims held by the Town relating to its remediation efforts. *Id.*, ¶ 10. Despite the aforementioned discharge, on September 27, 2016, the Town, acting through Defendant Galligan, recorded a Certificate of Lien (the "2016 Lien") against the Property in the amount of $26,556.80 for the prepetition removal/remediation costs in violation of the discharge injunction. *Id.*, ¶ 11.

Over the next three years, the Town pursued both the 2014 Lien (which did *not* violate the discharge injunction) and the 2016 Lien (which *did* violate the discharge injunction), as well

[7] Photographs admitted at Trial show that portions of the Property were virtually impassable due the voluminous number of personalty strewn about the yard. Multiple air conditioning units, refrigerators, office furniture, outdoor furniture, garbage cans, and tubs and crates of various sizes were among some of the items discernable from these photographs. In addition to the myriad inventory of junk of all species, the Plaintiff collected a discarded x-ray machine in her backyard without any conception of its dangers.

as certain health code violations in state court in its effort to foreclose on the liens as well as obtain injunctive relief and damages. *See* Memorandum of Decision on Plaintiff's Motion for Summary Judgment (describing in detail the various actions that the Town initiated). During this same period, the Plaintiff also brought suit against the Town in the United States District Court, District of Connecticut, claiming that the Town violated her civil and constitutional rights by forcibly removing her personal property from her yard without prior notice (the "Civil Rights Action" or the "District Court Action"). Although the state court causes of action and the District Court Action were never joined, the Town also brought a Counter-Claim Action against the Plaintiff and a Third-Party Action against interest holders on the Plaintiff's Property in the District Court Action asserting subordination claims predicated on the 2014 Lien (again, without violating the discharge injunction) and the 2016 Lien (again, violating the discharge injunction). To add further complexity to the already complicated web of discord, in late 2016, a residential fire destroyed the Plaintiff's home and resulted in an extended state police arson investigation into the fire's origin, thereby causing the Plaintiff's homeowner's insurance proceeds to be held in suspense for a significant period. In 2019, all of the aforementioned matters relating to the 2016 Lien were brought to a conclusion by either judgment, withdrawal or dismissal.[8]

[8] On February 14, 2019, in State Action # 2, after a trial on the merits, the Superior Court ruled in favor of the Town and found that there had been a blighted situation on the Property and that zoning violations had occurred, and awarded the Town $125,000 in accrued fines and approximately $52,500 in attorney's legal fees and costs. Despite finding for the Town, the Superior Court also invalidated the 2014 Lien on account of the fact that it was improperly noticed. *Infra* Section III (c), ¶ 2 (regarding appellate history of State Action # 2). On May 21, 2019, the Town withdrew State Action # 1. Thereafter, on May 24, 2019, the Town filed releases on the land records for both the 2014 Lien and the 2016 Lien. On August 26, 2019, in the District Court Action, the Town withdrew its objection to the Plaintiff's motion to strike the Counter-Claim, thus leaving that motion unopposed. Also, on August 26, 2019, the Town stipulated to a dismissal of its Third-Party Complaint against the lender (the sole remaining party to that complaint). *See* Memorandum of Decision on Plaintiff's Motion for Summary Judgment.

b. Procedural History

Not long after the resolution of the aforementioned matters, in June 2019, the Plaintiff initiated this Adversary Proceeding in her underlying Chapter 7 case pursuant to 11 U.S.C. § 105 and 11 U.S.C. § 524. On the Plaintiff's Motion for Summary Judgment, this Court concluded that the Town had violated the discharge injunction on four distinct occasions with respect to the filing of, and the subsequent prosecution of the 2016 Lien. Specifically, the Court found that because the Town failed to record its interest against the Property on the land records prior to the Plaintiff's discharge, it could not proceed as it did by recording the lien on the land records and pursuing the various actions against the Plaintiff without violating the discharge injunction.

While the Court determined that the Town was liable for the various discharge violations in its Memorandum of Decision, it also noted that the Plaintiff failed to distinctly address whether the Defendants were jointly and severally liable or whether liability should be apportioned according to their particular acts or omissions.[9] In total, the Court expressly reserved for trial the issues of whether: (1) the record supports a finding of liability against Co-Defendants Galligan, Borea and Gerrick for their respective role in the various actions taken by the Town; (2) the Town's efforts through the Third-Party Action to collect fire insurance proceeds from the Plaintiff's mortgage servicer was an attempt to collect a discharged debt; and (3) the Plaintiff suffered cognizable damages caused by the various discharge violations.

A trial was held over the course of three days in December 2020 (the "Trial"), at which time the parties presented evidence and the Court heard testimony and arguments regarding the aforementioned issues. The Plaintiff's principal contention, however, was not simply that the Plaintiff suffered compensable damages as a result of the violations of the discharge injunction,

[9] In reserving these issues for trial, the Court directed the Plaintiff to address each Non-Principal Defendant's respective scope of employment, as well as who, if anyone, instructed them to act.

but rather, that the Town, through Town Manager Galligan, orchestrated a malicious campaign against the Plaintiff that was meant to demoralize and ultimately break her by pursuing a full-court press of enforcement actions regarding the beleaguered condition of the Property.

The Plaintiff argued that this was evidenced, not just by the various legal actions taken by the Town, but also other related actions taken by the Town, which, when taken together with the legal actions, represent bad faith prosecutions and justify not only compensatory damages, but also punitive damages and a referral to the District Court for criminal sanctions. Specifically, the Plaintiff argues that the conclusions drawn by the Town's fire marshal (suggesting that arson might have been the cause of the fire), the timing of the Town's notice of violation ordering immediate clean-up of the dilapidated residence in the aftermath of the fire (while the Plaintiff was still under order from the State Police not to disturb the Property), and the fact that the Town began pursuing a criminal complaint against the Plaintiff in the aftermath of the fire in October of 2017 for health code violations, evidence the Town's bad faith and retaliatory conduct.[10]

While the majority of the evidence offered at Trial by the respective parties related to the different theories of damages raised by the Plaintiff, a broader theme around the Plaintiff's contentions of bad faith emerged and connected the evidence. In particular, the parties presented additional evidence that related to the conduct of the Town in response to the fire at the Property; the corresponding arson investigation that followed; the Plaintiff's difficulties in obtaining her insurance proceeds from her insurance carrier and her mortgage servicer; the state of the Property at various times after the fire (prior to its demolition in late 2019/early 2020); and the subsequent enforcement actions taken by the Town for alleged public health violations. The

[10] The Plaintiff contends that much of the enforcement actions taken by the Town were done so in retaliation for the Civil Rights Action filed by the Plaintiff in the Connecticut District Court. This proposition conveniently ignores that the junkyard conditions persisted in various states until the residence was demolished in late 2019/early 2020.

Court also heard testimony from the Town Manager, Galligan, and former Town Attorney, Borea, regarding the measures taken individually and collectively to address the blight ordinance violations on the Plaintiff's Property, as well as from the Plaintiff on all manner of subjects relating to this action; chief among them being the damages she had allegedly suffered as a result of not being able to rebuild her home in a timely fashion. Upon the close of evidence and the conclusion of argument, the Court took the matter under advisement.

c. Additional Findings of Fact

In addition to the Background and Procedural History set forth herein, and those facts found in the Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment, the Court makes the following additional findings of fact:

Judicial Notice[11]

1. On appeal, the Second Circuit Court of Appeals remanded the Civil Rights Action brought by the Plaintiff to the Connecticut District Court with instructions to dismiss the case as to the sole remaining party, Matthew Galligan, on the grounds that Galligan was entitled to qualified immunity because a reasonably prudent person in the position of Town Manager could have found that cause existed to attempt to remediate the Property given its condition and the continued violations of Town ordinances.[12]

2. On appeal, the Connecticut Appellate Court remanded State Action # 2 to the trial court for further proceedings on the Town's claimed damages on account of the fact that the trial court improperly blended the criminal and civil rate for fines

[11] Both the Plaintiff and the Defendants requested that the Court take judicial notice of various matters pending or otherwise decided in sister courts that relate to the present matter. *See* ECF Nos. 218, 224 and 229. Accordingly, those decisions have been appropriately considered and weighed in this Court's deliberations.
[12] No appeal was taken from the ruling of the Second Circuit Court of Appeals.

assessed against the Plaintiff and because the trial court did not take into account the Plaintiff's defense of legal impossibility when determining the duration of the violations given that she was under order by the State Police not to disturb the Property during the arson investigation, which directly conflicted with the Town's orders to clean up the Property.[13]

The Fire and the Arson Investigation

3. On December 6, 2016, a fire broke out at the Plaintiff's residence and badly damaged portions of the structure, resulting in a total loss.

4. The Plaintiff stated that she thought the fire was started by a pellet stove, despite evidence indicating that the fire began on the exterior of the building.

5. At the time of the fire, the Plaintiff and her boyfriend made inconsistent statements when interviewed by investigators. When asked by investigators at the scene of the fire, the Plaintiff also failed to deny the possibility that her boyfriend, a convicted felon, may have started the fire.

6. Following the fire, and during the course of the investigation, the Plaintiff's boyfriend continued to be uncooperative with investigators.

7. On February 3, 2017, the Town's fire marshal informed the Plaintiff's insurance carrier that they "Have Concluded The Fire Is Arson."

8. The insurance adjuster's notes reflect that the Town's fire marshal believed the cause of the fire was arson because the origin of the fire was outside of the house. *See* Ex. P-3.

[13] The Town has appealed the Connecticut Appellate Court's decision to the Connecticut Supreme Court, which has, in turn, granted certiorari.

9. By April 19, 2017, the Plaintiff's insurance carrier ultimately determined that the cause of the fire was accidental, despite starting outside of the home, due to the improper installation and up-keep of the Plaintiff's pellet stove, which caused certain materials stored close to structure's exterior to ignite after sparks or embers emanated from the exhaust. *See* Ex. P-3.

10. The residence was ultimately demolished in late 2019/early 2020, approximately three years after the fire. During that period, the Property existed in varying states of disuse and disrepair.

The Town's Enforcement Efforts

11. Although the Town's April 2016 remediation of the Property required the work of eight individuals and spanned three days, a substantial amount of personal property remained on the Property.[14]

12. By correspondence dated October 11, 2016, Plaintiff put the Defendant Town on notice of her intent to bring suit for civil rights violations arising out of the April 2016 incident.

13. After the fire, much of the Plaintiff's personal property had been removed from the home and strewn across the exterior of the Property, thus adding to the personalty already present on the Property (a condition which ebbed and flowed in one form or another until late 2019/early 2020). *See* Ex. D-5.

14. Almost three months after the fire, on February 24, 2017, the Town Planning and Zoning Department issued a Notice of Violation alleging violations of the Town's

[14] According to Galligan, the personal property that remained on the Property was located behind a fenced in portion of the Property, which the Town assessed at the time as not posing an imminent environmental or public health concern.

anti-blight ordinance and demanding that the Plaintiff "[r]emove the debris and unregistered vehicles from the property and correct all damage to the building, including but not limited to the roof, exterior walls, windows and supporting structures, within fifteen days . . . ."[15]

15. The February 24, 2017 Notice of Violation provided the primary basis for State Action # 2. *See* Memorandum of Decision on Plaintiff's Motion for Summary Judgment.

16. Some months later, in August of 2017, the Town Health Department issued a Notice of Violation, ordering the Plaintiff to clean up the Property due to the "significant accumulation of garbage, rubbish, boxes, and other waste materials."

17. The Plaintiff failed to take any administrative appeals from the Town's enforcement actions taken in 2017 (*i.e.*, the February 24, 2017 Notice of Violation, the February 24, 2017 Cease-and-Desist letter and the August 2017 Notice of Violation).

18. By criminal complaint, dated October 24, 2017, the Town Health Department initiated an action in Connecticut Superior Court pursuant to the August 2017 Notice of Violation.

19. The criminal action brought in Connecticut Superior Court relating to the August 2017 Notice of Violation settled in December of 2017 due to the Plaintiff's subsequent compliance with the order.

[15] Also, on February 24, 2017, the Town issued a Cease-And-Desist letter regarding the storage of discarded or second-hand material on the Property.

20. On February 14, 2019, the Connecticut Superior Court, *Moukawsher, J.*, issued a Memorandum of Decision in which it entered judgment holding Plaintiff liable to the Town in the amount of $125,000.[16]

21. In April of 2019, garbage, rubbish, boxes, food waste, and other waste materials again began to accumulate on the Property, catching the attention of the Town Zoning Enforcement Officer.

22. By Notice of Violation, dated May 17, 2019, the Town Health Department, after observing that the Property was again in violation of the Town Health Code, ordered the Plaintiff to remove and properly dispose of all "garbage, rubbish, boxes, food waste, and other waste materials" on the Property.

23. After a hearing on August 27, 2019, at which the Plaintiff appeared and testified, the Connecticut Department of Public Health affirmed the May 17, 2019 Notice of Violation.

24. On March 5, 2020, based upon the Connecticut Department of Public Health's ruling affirming the Town's May 17, 2019 Notice of Violation, the Town initiated a new action in Connecticut Superior Court seeking fines of approximately $58,500 for the 234 days the property remained in violation.[17]

Insurance Proceeds

25. The Plaintiff's insurance policy lists the Plaintiff's mortgage servicer (Select Portfolio Servicing, Inc. or "Select") as the first named insured under the policy,

[16] On April 24, 2019, the Connecticut Superior Court also issued an Order granting the Town's application for attorney's fees and costs in the total amount of $52,713.18, bringing the total judgment against Plaintiff and in favor of the Town to $177,713.18.

[17] This suit is currently active in the Connecticut Superior Court. *See Luigi Satori, Director of Health, Town of South Windsor v. Kristin Norton A/K/A Kristin Lanata*, Superior Court, HHD-CV20-6125402-S.

not the Plaintiff. No evidence was adduced by the Plaintiff to demonstrate her contractual right to these insurance proceeds.

26. Proceeds from the insurance policy were tendered to Select, the Plaintiff, and Mr. Lanata (Plaintiff's ex-husband who remained a payee under the insurance policy despite no longer retaining an interest in the Property pursuant to the Plaintiff's divorce decree) after the fire at least as early as May 26, 2017, and the check was reissued on June 19, 2017 solely to Select and the Plaintiff upon the request of the Plaintiff. Ex. P-3; Ex. D-8.

27. During all relevant periods thereafter, said proceeds have been held in escrow by Select.

28. According to the Plaintiff, the insurance proceeds were withheld by the mortgage servicer due to the "violations" on the Property.

29. It is unclear from the record whether there were other defaults on the mortgage on the Property (*i.e.*, monthly payments, taxes and junior liens), which may have negatively influenced any turnover of proceeds by the mortgage servicer.

30. The Plaintiff did not make any effort to determine whether the "violations" referenced by Select related to the judgment entered against her in State Action # 2, the Connecticut Department of Public Health determination or otherwise.[18]

31. As of the Trial, even though the liens and the lis pendens had been released and the foreclosure actions withdrawn or dismissed, the insurance proceeds continue to be held in escrow by Select for reasons that are not clear to the Plaintiff or this Court.

[18] Similarly, the Plaintiff also testified that no one from Select had told her that the proceeds are being withheld due to the lis pendens on the Property.

Joint Liability Among Co-Defendants

32. Galligan served as Town Manager of the Town of South Windsor for 23 years and retired in 2019.

33. The Town Charter for the Town of South Windsor provides that the Town Manager is a chartered position, as is that of Town Attorney.

34. Under the Town Charter, the Town Planning and Zoning Department and the Town Health Department do not take direction from the Town Manager.

35. While Galligan was responsible for the hiring and firing of various department heads, he was not empowered to direct their enforcement related activities.

36. Galligan visited the Plaintiff's Property the day prior to the remediation and was present at the Property for a brief period the following day at the start of the remediation and was accompanied by local law enforcement officers.

37. Galligan, after being notified of the occurrence, also was present at the Property on the day of the fire.

38. As Town Manager, Galligan signed the 2016 Lien, which was subsequently submitted for recordation on September 27, 2016 by the prior town attorney, Keith Yagaloff. Ex. P-21.

39. In February of 2016, Defendant Borea was appointed Town Attorney for the Town of South Windsor.

40. Attorney Borea first became involved in matters relating to Plaintiff on behalf of the Town of South Windsor in October of 2016; prior to that time, all matters concerning the Property were presumptively handled by the outgoing Town Attorney. *Id*., ¶ 5.

41. Attorney Borea acted at the direction of the Town Council.

42. If individual departments within the Town required legal services, they would go directly to the Town Attorney and were not channeled through the Town Manager.

43. Attorney Borea was responsible for bringing the various legal actions discussed in this Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment.

44. Attorney Borea supervised and directed Attorney Gerrick's work in matters pertaining to the Plaintiff.

45. Attorney Gerrick was not operating in a decision-making capacity for the Town with respect to the actions taken against the Plaintiff nor did the evidence or arguments demonstrate any particular violation for which she was responsible.

46. On May 24, 2019, after the resolution of the various actions pertaining to the 2014 Lien and the 2016 Lien, Attorney Borea released the liens from land records. Ex. D-6.

47. Initially overlooked, in November 2020, the lis pendens was promptly removed from the land records after the release was requested by Plaintiff's counsel. Ex. D-7.

Damages

48. Although having previously sought medical treatment for emotional distress stemming from a non-related legal matter that took place over 20 years ago, the

Plaintiff did not seek medical treatment for emotional distress related to her discharge claims described herein.

49. The Plaintiff experienced many difficult life events and financial distress prior to, during and after the Town violated the discharge injunction, all of which could have given rise to emotional distress.[19]

50. Attorney Taiman, Plaintiff's counsel, submitted his time records and testified in support of the Plaintiff's claim for attorney's fees and expenses related to the vindication of the discharge injunction.

51. Attorney Taiman readily acknowledged at Trial that there were various infirmities with respect to his time keeping and billing practices, including: instances of double billing; billing work performed by counsel at a rate of $375 per hour that would normally have been done by his paralegal at $100 per hour; charging a much higher rate than he normally would for a client with no means; charging for services before he was formally retained and aggregating time for matters that should have been billed as distinct matters. These infirmities, while admitted, were not formally adjusted.

52. Prior to 2016, the Plaintiff worked primarily as a real estate agent and was generally familiar with zoning, blight and health laws as a result.

[19] In 2012, the Debtor divorced her then husband, which required a restraining order against him due to threating behavior; also in 2012, the Plaintiff's mortgage holder foreclosed on the Property (which remained pending until it was withdrawn by the lender in 2017); during all relevant periods, the Plaintiff has been unable to support herself solely through her chosen profession as a real estate agent; on multiple occasions during the relevant period, the Town found the Plaintiff in violation of its zoning, blight and public health ordinances, which resulted in enforcement actions against her, and after her residence was destroyed in a fire she was under investigation for arson.

53. The Plaintiff testified that if a third party saw the items on the Property described by Galligan at Trial, it would be objectively reasonable to be concerned about safety and zoning issues.

54. The Court concludes from Trial testimony and photographs of the Property during the pertinent period described herein that Plaintiff's Property objectively appeared to be maintained as a massive junkyard in a residential neighborhood.

Additional findings of subordinate and ancillary facts may be referenced as necessary throughout this Memorandum of Decision.

IV. DISCUSSION

a. Liability Among Co-Defendants Galligan, Borea and Gerrick

The Court first turns to the issue of joint liability among the Co-Defendants. On summary judgment, the Plaintiff attributed certain acts to the Co-Defendants, but failed to delineate or apportion liability with any degree of specificity, thus leaving the issue of any apportionment for Trial. The Plaintiff now argues that Galligan, as Town Manager, orchestrated the actions against the Plaintiff and should be held jointly and severally liable with the Town for all of the Plaintiff's damages. While not apportioning any particular percentage of liability to Borea and Gerrick, the Plaintiff also argues that the Court should find them liable for their failure to correct the cloud over title,[20] caused by the lis pendens that remained on the land records for approximately eighteen months after the actions were withdrawn (which the Plaintiff believes is one of the reasons why her insurance proceeds continue to be withheld).

[20] The Plaintiff advances this contention notwithstanding the fact that Conn. Gen. Stat. § 49-13 first requires that a demand be made on an interest holder regarding the removal of an improper lis pendens (followed by a 60-day compliance period) before § 49-13 can provide a possible basis for relief.

Central to the question of joint liability among the Co-Defendants is the fundamental principle of agency law that "an agent whose tortious conduct renders the principal liable is also liable for his own tortious acts." *In re Vazquez*, 221 B.R. 222, 231 (Bankr. N.D. Ill. 1998); *see also In re Lyubarsky*, 615 B.R. 924, 939 (Bankr. S.D. Fla. 2020) (*citing* the Restatement (Third) of Agency § 7.01 (2008)) ("An agent is subject to liability to a third party harmed by the agent's tortious conduct . . . an actor remains subject to liability although the actor acts as an agent or an employee."). Simply put, a creditor and its agent/attorney can be found jointly and severally liable for their violations of the discharge injunction under general principles of agency law. *In re Vazquez*, *supra,* 221 B.R. at 231; *see also In re Gray*, 567 B.R. 841, 846–47 (Bankr. W.D. Wash. 2017). Moreover, "[a] command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt." *Wilson v. United States*, 221 U.S. 361, 376 (1911); *see also CBS Broad. Inc. v. FilmOn.com, Inc.*, 814 F.3d 91, 100 (2d Cir. 2016).

At the outset, the Court notes that the question of joint liability pertaining to the Co-Defendants is separate and distinct from the Plaintiff's contention that the Co-Defendants conducted a malicious campaign in concert against the Plaintiff without a proper purpose (*i.e.*, in bad faith), which is an issue addressed by the Court later in its discussion on damages. The question that the Court must answer here is whether the Co-Defendants' actions, when viewed

independently or when taken in concert with the actions of others, can be said to have violated the discharge injunction (as previously articulated).[21]

While the evidence adduced at Trial suggests that Galligan possessed no direct authority to order the legal actions taken by Attorney Borea and the Town, the record is clear in one critical respect—Galligan, in his professional capacity, endorsed the 2016 Lien drafted by the prior town attorney, thus lending his, and the Town's, imprimatur to it. *See In re Vazquez*, *supra*, 221 B.R. at 231. Given the significance of that endorsement, which served the critical function of permitting the Town's enforcement machinery to be given legal effect, the Court does not view this act as being one of a de minimis nature. This is all the more so when one views the endorsement as part of a causal sequence of events that resulted in the first, and most glaring, violation of the discharge injunction, the filing of the 2016 Lien. As a result, the Court finds that Galligan, as an agent of the Town, shares responsibility for both the improvident and violative act of endorsing the 2016 Lien, as well as the resulting subsequent violations, which were a foreseeable consequence of that act. *See Shakman v. Democratic Org. of Cook Cty.*, 533 F.2d 344, 352 (7th Cir. 1976), *cert. denied sub nom*. *City of Chicago v. Shakman*, 429 U.S. 858 (1976) (holding that despite a lack of actual notice, a municipal employee can nonetheless be found liable for civil contempt).

With respect to Attorney Borea, it is not in dispute that he initiated and pursued the various violative legal actions against the Plaintiff on behalf of the Town. The fact that Attorney Borea undertook these actions in the name of the Town does not shield him from liability for those acts as an agent of the Town. As a result, Attorney Borea also shares the responsibility for

[21] As set forth in the Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment, the parties do not dispute whether an agency relationship existed between the Town and Town Manager Galligan or between the Town and Attorneys Borea and Gerrick.

the violations relating to the 2016 Lien. With respect to Attorney Gerrick, the evidence presented at Trial suggests that Attorney Gerrick acted solely at the direction of Attorney Borea and held no decision-making role with respect to the various litigations. No credible evidence or legal argument was presented at Trial to indicate otherwise. For this reason, the Court finds that the record is insufficient to support a finding of any joint or several liability as to Attorney Gerrick.

Because Galligan endorsed the 2016 Lien, which provided the basis for all subsequent violations of the discharge injunction, and because Attorney Borea brought the subsequent actions, the Court hereby concludes that they share liability with the Town and, therefore, are jointly and severely liable, as agents for the Town, for the liability previously delineated in the Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment.

b. Whether Seeking Insurance Proceeds Constitutes a Violation of the Discharge Injunction

Turning to the single remaining issue of liability, the Court considers whether certain acts undertaken by the Town relating to the Plaintiff's homeowner's insurance proceeds amounted to violations of the discharge injunction. Specifically, the Court considers whether the Town's efforts in the District Court Action against Select, amongst others, amounted to an attempt to collect a discharged debt from the Plaintiff in her personal capacity. *See* Third-Party Complaint, p. 10, ¶36 (Town seeking to subordinate interest holders in the Property to its municipal liens).

As previously stated by the Court in its Memorandum of Decision on the Plaintiff's Motion for Summary Judgment, civil contempt "may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019). "[Section] 524(e) [however] confines the debt that may be discharged to the 'debt of the debtor'—and not the obligations of third parties for that debt—[which] conforms to the basic fact that 'a discharge

in bankruptcy does not extinguish the debt itself but merely releases the debtor from personal liability. . . . The debt still exists, however, and can be collected from any other entity that may be liable.'" *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1082 (9th Cir. 2020). Moreover, "[o]wnership of an insurance policy does not necessarily entail ownership of the proceeds of the policy [and] . . . [p]arties may contract that someone other than the policy owner will receive the proceeds of the policy." *In re Suter*, 181 B.R. 116, 119 (Bankr. N.D. Ala. 1994) (concluding that the question of whether a secured party will be entitled to insurance proceeds as replacement for damaged collateral is a matter of contract and insurance law) (footnote omitted).

At Trial, the Plaintiff offered into evidence the relevant homeowner's insurance policy, which indicated that the first named insured under the policy was the Plaintiff's mortgage servicer, Select, and not the Plaintiff. No other evidence was offered with respect to this issue. Furthermore, what is clear from the Third-Party Complaint, is that it was a surcharge and/or priority dispute between the Town and the other interest holders in the Property. The Plaintiff conveniently ignores the fact that Conn. Gen. Stat. § 7-148ff(e) and § 49-73b give a municipal blight lien super-priority status with respect to other interest holders and encumbrances, as well as a lien on any insurance proceeds that result from damage to a covered property. *See* Plaintiff's Ex. 6, the Third-Party Complaint in the District Court Action. Because the Plaintiff is not entitled to the proceeds as the first payee under the policy, the Plaintiff has failed to prove that the Town's attempts at collecting on the insurance proceeds from Select were an attempt to collect a discharged debt from her in her personal capacity.

c. To What Extent Did the Plaintiff Suffer Damages

The Plaintiff now seeks compensatory and punitive damages, as well as a referral to the District Court for criminal sanction proceedings. With respect to compensatory damages, the

Plaintiff seeks damages in the form of emotional distress damages and attorney's fees, and although not identified in the Operative Complaint, the Plaintiff also seeks damages resulting from the loss of use of insurance proceeds and the loss of use of her home.

As this Court has stated previously, one of the fundamental principles of bankruptcy law is that a bankruptcy discharge enables the honest but unfortunate debtor to receive a fresh start, *see Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007), which is achieved principally through the § 524 discharge injunction protecting debtors from creditors' attempts to collect discharged debts after bankruptcy. Protection of the discharge injunction goes to the very core of bankruptcy relief, and it is reasonable to expect that it will be abided by. When a creditor violates the discharge injunction, the invasive conduct is impactful both on a debtor's life as well as on the bankruptcy process and sometimes in ways that are not easily discernable or measurable. As a result, bankruptcy courts have inherent powers to police their dockets and afford relief when appropriate, such as when confronted with violations of the automatic stay or discharge injunction violations. *See In re Sanchez*, 941 F.3d 625, 627 (2d Cir. 2019). "A bankruptcy court's contempt power derives from a court injunction and 11 U.S.C. § 105(a). An injunction is an equitable remedy, and § 105(a) authorizes issuance of any order that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]. Together, they bring with them the old soil that has long governed how courts enforce injunctions." *In re Gravel*, 6 F.4th 503 (2d Cir. 2021) (alteration in original) (internal quotation marks omitted). The "court has broad discretion to fashion an appropriate coercive remedy in a case of civil contempt, based on the nature of the harm and the probable effect of alternative sanctions." *N.A. Sales Co., Inc. v. Chapman Indus. Corp*., 736 F.2d 854, 857 (2d Cir. 1984) (*citing United States v. United Mine Workers*, 330 U.S. 258, 303–04 (1947)). "[T]he scope of a [] court's equitable powers to remedy past wrongs is

broad, for breadth and flexibility are inherent in equitable remedies." *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985) (*quoting Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971)).

In particular, in addition to formulating equitable remedies, bankruptcy courts can award three types of sanctions under their civil contempt power for a violation of the automatic stay or discharge injunction: (1) coercive sanctions to encourage compliance; (2) damages for monetary harm; and (3) in appropriate, generally egregious circumstances, relatively minor non-compensatory, or punitive sanctions. *In re Windstream Holdings, Inc.*, 627 B.R. 32, 47–48 (Bankr. S.D.N.Y. 2021) (collecting cases). "Compensation for the aggrieved party may include 'all expenses, including attorneys' fees.'" *In re Velo Holdings Inc.*, 500 B.R. 693, 700 (Bankr. S.D.N.Y. 2013); *see also Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 585 (5th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001); *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 827 (5th Cir. 1976) ("Compensatory civil contempt reimburses the injured party for the losses and expenses incurred because of his adversary's noncompliance."). Compensation for actual damages sustained may also include damages for emotional distress. *See Migis v. Pearle Vision, Inc*., 135 F.3d 1041, 1047 (5th Cir. 1998). However, "[w]here compensation is intended, [and] a fine is imposed . . . [s]uch [a] fine must of course be based upon evidence of complainant's actual loss . . . ." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947); *see also New York State Nat. Org. for Women v. Terry*, 886 F.2d 1339, 1353 (2d Cir. 1989), *cert. denied*, 495 U.S. 947 (1990) ("A sanction may, of course, be both coercive and compensatory. Yet, some proof of loss must be present to justify its compensatory aspects.").

i. Compensatory Damages

1. Attorney's Fees

The Plaintiff seeks compensatory damages in the form of attorney's fees and costs incurred as follows: (1) in bringing and defending the present Adversary Proceeding; (2) in defending against State Court Action # 1; (3) in defending the counterclaim filed by the Town in the District Court Action; and (4) in responding to the Third-Party Complaint filed by the Town in the District Court Action.

Ordinarily each party in a lawsuit bears its own attorney's fees unless there is express statutory authorization to the contrary. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 271 (1975). A well-established exception to this "American Rule," however, applies to contempt sanctions for violations of a court order, including the discharge injunction. *In re Cowan*, 2020 Bankr. LEXIS 3466, at *22 (Bankr. N.D. Ga. Dec. 10, 2020). Although "some courts have held that to award attorneys' fees, the movant must establish the respondent acted in bad faith or in a vexatious or oppressive manner . . . [u]ltimately, the burden rests on the court to craft an appropriate sanction balancing the importance of punishing willful violations of the discharge injunction, protecting the purposes of § 524(a)(2) . . . [while also] preventing motions for contempt from becoming a profit-making endeavor by awarding attorney's fees *carte blanche*." *In re Jackson*, No. 15-21233 (AMN), 2020 WL 718609, at *3 (collecting cases) (emphasis in original).

In determining the amount of a reasonable award of legal fees, "both [the Second Circuit] and the Supreme Court have held that the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—creates a 'presumptively reasonable fee.'" *Millea v. Metro-N. R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (*citing Arbor Hill Concerned*

Citizens Neighborhood Assoc. v. County of Albany, 522 F.3d 182, 183 (2d Cir. 2008)). In calculating an award of fees and costs, a court must first determine the reasonable hourly rate, that is, "what a reasonable, paying client would be willing to pay." *Arbor Hill, supra*, 522 F.3d at 184. The court must then multiply that rate by "the number of hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "[I]n exercising [the court's] considerable discretion," the amount may increase or be reduced in accordance with equitable considerations such as the *Johnson* factors.[22] *Arbor Hill, supra*, 522 F.3d at 190.

At Trial, Attorney Taiman submitted an itemized breakdown of his billing and testified in support of the work that he performed and what he thought was required in this Adversary Proceeding and related matters. According to Attorney Taiman's time sheets, the fees incurred by Plaintiff in the foreclosure actions, along with the fees incurred in this action totaled $155,144.61.

Both the evidence submitted and supporting testimony delineated the categories of legal tasks, preparations, and litigation that were encompassed in this representation. In reviewing Attorney Taiman's fees, however, the Court notes that despite his yeoman's effort, the amount substantially exceeds what might otherwise be customary, necessary and reasonable in the bankruptcy practice area for such prosecutions. Additionally, the Court notes that there were various infirmities afflicting Attorney Taiman's time keeping (which Attorney Taiman himself acknowledged at Trial). These include instances of double billing, billing for learning curve

[22] The twelve *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney's customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Arbor Hill, supra*, 522 F.3d at 187 (*citing Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974), *abrogated by Blanchard v. Bergeron*, 489 U.S. 87 (1989)).

activities, moving certain time entries from one matter related to the Plaintiff (for which he has not been paid) to this matter, seeking fees for time spent on this matter prior to being formally retained, and performing duties normally performed by his paralegal, but nonetheless charging $375 per hour for those services.

The Court notes that, as a practical means of evaluating a claim for reasonable legal fees and expenses in the present case, across-the-board cuts may be justifiable. *See Lilly v. City of New York*, 934 F.3d 222, 234 (2d Cir. 2019) (district courts have the legal authority and discretion to either reduce an attorney's hourly rate for time spent on clerical tasks or apply an across-the-board reduction to the hours billed or total fee award). For the reasons stated above, the Court applies a $55,000 discount to the aggregate fees and expenses sought by Attorney Taiman. After reviewing Attorney Taiman's testimony and time sheets, and based upon the Court's knowledge and experience on the bench as well as thirty-eight years of commercial litigation practice in Connecticut, the Court finds that the aggregate amount of fees requested, equitably adjusted to $100,144.61, is fair and reasonable and accords justice in the present case.

2. Specific Damages

Two additional types of compensatory damages were advanced by the Plaintiff at Trial that were not identified in her prayer for relief: (1) loss of use of insurance proceeds; and (2) loss of use of her home.[23] Specifically, the Plaintiff argues that the improper legal actions brought by the Town have caused Select to hold the insurance proceeds in suspense, which, in turn, has denied her the ability to rebuild her home, while also increasing her cost of living. As an initial matter, the Court precluded all computational evidence offered by the Plaintiff that pertained to

[23] Notwithstanding her mortgage lender's rights therein, the Plaintiff seeks an award of $397,529, which is equal to the amount of the insurance proceeds payable under the Plaintiff's insurance policy. According to the Post-Trial brief, the Plaintiff also seeks four years of increased living expenses, which she claims to be approximately $49,000 per year.

cost of living damages after granting the Town's motion in limine on account of the fact that the Plaintiff failed to disclose any claim for these damages during the discovery period in contravention of Fed. R. Civ. P. 26.[24]

With respect to the substance of the Plaintiff's claim, both claims require the same underlying assumption: that the insurance proceeds were withheld by Select because of the legal actions taken by the Town in pursuit of the 2016 Lien, and not some other reason, which caused a cloud over title.[25] According to the Plaintiff, insurance proceeds were withheld because of "violations" on the Property. When asked about which violations specifically were the ones that were holding up the release of the proceeds, the Plaintiff assumed, but did not know for certain, that the violations meant the 2014 Lien, the 2016 Lien and the accompanying legal actions taken by the Town. The Court also notes that, while the Plaintiff could have called a member of Select to testify specifically as to why the funds were being withheld, thus ruling out the possibility that some other reason was behind the withholding (such as mortgage defaults or other continuing Health Code violations on the Property), she did not, and instead relied only on her own subjective opinion as to why the proceeds were being withheld.[26] What's more, the record at Trial demonstrates that even once the liens and the lis pendens were withdrawn from the land records, the mortgage servicer still would not tender the payment to the Plaintiff.

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[24] As set forth in the Defendant's Motion in Limine, the Plaintiff failed to raise this as a basis for damages during the discovery period and only raised it for the first time in the Parties' Joint Pretrial Memorandum, thus implicating concerns of fundamental fairness and due process.

[25] While the Plaintiff also argued that the Fire Marshall's determination that the fire was arson was retaliation and resulted in the loss of use of insurance proceeds, the Court does not interpret those alleged acts as an attempt to collect a discharge debt or being in any way connected to the violations of the discharge injunction. If anything, this Court construes this line of argument as additional evidence of alleged bad faith, which the Court addresses in its discussion on punitive damages. That said, the Court notes that at Trial, the Plaintiff testified that given the circumstances, it was not unreasonable for law enforcement officers to investigate the fire for arson, thereby undermining the premises of her argument for retaliation.

[26] In light of the fact that the Plaintiff could have called various witnesses that had the position and authority to speak to these issues, and elected not to do so, the Court hereby draws a warranted negative inference in that any such testimony would have likely been unfavorable to the Plaintiff's contention that the actions that violated the discharge injunction were the proximate cause of Select's decision to continue to hold the proceeds in escrow.

As for the Plaintiff's contention that the Defendants' failure to release the lis pendens from the land records in a timely fashion caused Select to continue to hold the proceeds even after the actions were dismissed or withdrawn, the Court makes the following observation:

> In a foreclosure of a . . . lien . . . the lis pendens does not create an interest that is separate and distinct from the underlying interest being foreclosed. The sole purpose of the lis pendens in such an action is to give constructive notice to persons who may subsequently acquire an interest in the property, and cause them to be bound by the proceedings. Consequently, if the underlying . . . lien has been released, the continued presence of an unreleased lis pendens noticing a foreclosure of that encumbrance is inconsequential and does not impair marketability. In other words, in such circumstances, the lis pendens is not an encumbrance or burden on the record title of the subject property. Failure to release a lis pendens, which gives notice of the pendency of an action to foreclose a mortgage or lien, does not impair marketability if the underlying mortgage or lien has itself been released or if there has been a final judgment in the foreclosure action.

Ghent v. Meadowhaven Condo., Inc., 77 Conn. App. 276, 284–85 (2003) (alteration in original) (citations and internal quotation marks omitted) (because the subject properties were not encumbered by the notice of lis pendens, plaintiffs could not properly invoke the court's authority under § 49–13(c)); *see also Chicago Title Ins. Co. v. Accurate Title Searches, Inc.*, 173 Conn. App. 463, 473 n.9 (2017) (citing approvingly to *Ghent*).

Because issues still remain even after the 2016 Lien and corresponding lis pendens were removed from the land records, and because legitimate and material questions remain as to the reason for Select's failure to tender insurance proceeds to the Plaintiff (questions which were in the Plaintiff's control to have answered), the Court finds that the Plaintiff has failed to meet her burden[27] in establishing that the Town's actions in pursuit of the 2016 Lien were the proximate

[27] *Levin v. Tiber Holding Corp.*, 277 F.3d 243, 250 (2d Cir. 2002) ("[T]he party seeking to hold another in civil contempt bears the burden of proof" to establish the offense by clear and convincing evidence.); *see also Silva v. City of Bridgeport*, No. 3:01CV119 (DFM), 2006 WL 680460 (applying a clear and convincing standard).

cause[28] of Select's choice to withhold the insurance proceeds. Accordingly, the Court declines to award compensatory damages based upon these claims.

3. Emotional Distress

The Plaintiff also seeks compensatory damages for emotional distress suffered due to the various legal actions taken by the Town and that resulted from not being able to rebuild her home in a timely fashion. The Plaintiff claims damages in the amount of $279,000.[29]

Compensatory damages for mental anguish may be awarded where the complainant "suffers sleeplessness, anxiety, stress, marital problems, and humiliation, and does not *always* require that the plaintiff offer medical evidence or corroborating testimony in addition to her own testimony." *In re Reno*, 299 B.R. 823, 829 (Bankr. N.D. Tex. 2003) (emphasis added). However, "[i]n order to sustain a claim for emotional distress damages, a debtor must prove 'a close causal connection between the harm and the stay/discharge violation.'" *In re Haemmerle*, 529 B.R. 17, 30 (Bankr. E.D.N.Y. 2015) (*quoting In re McCool*, 446 B.R. 819, 824 (Bankr. N.D. Ohio 2010)). Moreover, in a case where confounding factors are present that might otherwise contribute to, or arguably be the actual source of emotional distress, it is incumbent on a claimant to provide compelling evidence that establishes a close causal connection between the harm alleged and the discharge violation.

At Trial, the Plaintiff testified that despite the fact that some of the stressors in her life were not of the Town's making, she nonetheless suffered an emotional toll as a result of these

[28] Black's Law Dictionary defines "proximate cause" as: "A cause that directly produces an event and without which the event would not have occurred." Black's Law Dictionary (11th ed. 2019). *But see CSX Transp., Inc. v. McBride*, 564 U.S. 685, 701 (2011) (noting a profound lack of consensus surrounding the concept of proximate cause.) ("the phrase "proximate cause" is shorthand for the policy-based judgment that not all factual causes contributing to an injury should be legally cognizable causes.").

[29] At Trial, the Plaintiff testified that she arrived at this figure by taking the amount she was being fined by the Town (on a daily basis) and multiplying it by the number of days between the commencement date of State Action #1 and #2 (October 30, 2017) and the date the lis pendens was released (November 19, 2020), which totaled 1117 days.

proceedings that has caused her to experience anxiety, sleeplessness and aggravation. In light of the events described herein, the Plaintiff's testimony, the fundamental principles underlying the fresh start, *see Marrama v. Citizens Bank*, *supra*, 549 U.S. 367; and the indisputable inference that these violations, standing alone, most certainly added some measure of emotional distress, aggravation and complexity to the Plaintiff's life, leads this Court, in the exercise of its equitable discretion, sense of proportionality and fundamental fairness, to find that those harms suffered are indeed compensable. *See In re Musto*, No. 8:19-BK-03452-RCT, 2021 WL 99343, at *4 (Bankr. M.D. Fla. 2021); *see also Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985).

Although the Plaintiff has failed to adequately establish that the $250 per day sanction had any close causal connection to the harm she suffered and failed to present medical evidence in further support of her claim, the Court notes that, under the circumstances, being forced to defend against the various actions that violated the discharge injunction, as well as having to invest significant time, effort and energy into bringing the present Adversary Proceeding, is objectively distressing and warrants an award of $5,000 for emotional distress for each of the four discharge violations previously described in the Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment. *See In re Rosa*, 313 B.R. 1, 7 (Bankr. D. Mass. 2004) ("Concern that one's home may be taken unjustly is not inconsequential, and even one sleepless night holding such a belief must seem an eternity.").

As stated earlier in this Memorandum of Decision, protection of the discharge injunction goes to the very core of bankruptcy relief, and it is reasonable to expect that it will be abided by. If not, it also reasonable to expect that vindication of that discharge order will be equitably or legally addressed by the Court. Here, consistent with the Court's prior finding of four distinct violations of the discharge injunction, the Court now finds that vindication of its Discharge

Order is appropriate to equitably address the harms suffered by the Plaintiff. Accordingly, pursuant to the equitable powers of this Court under 11 U.S.C. § 105, the Town, should it prevail in State Action #2, shall be restrained, enjoined and otherwise prohibited from the enforcement or collection of any civil fine assessed therein against Ms. Norton in excess of $50,000.

ii. Punitive Damages

In determining an award for punitive damages, a court is to consider "(1) the nature of the defendant's conduct; (2) the defendant's ability to pay; (3) the motives of the defendant; and (4) any provocation by the debtor." *In re B. Cohen & Sons Caterers, Inc*., 108 B.R. 482, 484 (E.D. Pa. 1989) (footnote omitted). "As a fifth factor, some courts have considered the defendant's level of sophistication." *In re Salov*, 510 B.R. 720, 734 (Bankr. S.D.N.Y. 2014).

Underlying much of the arguments advanced by the Plaintiff is the contention that the Town acted in bad faith. It is not lost on the Court that the various enforcement actions were multifaceted, and that some portions of those actions were intentional, objectively unreasonable and violative of the discharge injunction. This Court is also aware that it is possible that the Town could have had competing and legitimate motives for the actions taken against the Plaintiff under its police powers.[30]

That said, bad faith also implies a total absence of a proper purpose. To that end, it is noteworthy that both the Connecticut Superior Court and the Connecticut District Court found that the Plaintiff's yard historically resembled a junkyard and that the Second Circuit Court of Appeals concluded that a reasonably prudent person in the position of Town Manager could have found that cause existed to attempt to remediate the Property given its condition and the

[30] Although the Plaintiff called the Town Manager and the Town Attorney to testify, she did not call any other member of the Town to testify (*i.e*., the Town zoning enforcement officer, police chief, fire chief or public health officer) in order to provide support for her claim that the various enforcement actions taken against her were done in bad faith.

continued violations of Town ordinances. This Court hereby independently confirms those conclusions. What's more, the record here clearly demonstrates that many of the Plaintiff's troubles were simply self-inflicted by her long-term and inappropriate accumulation of junk and the lack of diligent and responsive remedial action or appeals.

Additionally, it is noteworthy that the Connecticut Department of Health concluded that the Plaintiff, even after intervening periods of compliance, seemingly could not maintain the Property in such a way that it did not violate the Town's Health Code. In light of these facts and because, on balance, legitimate cause existed for the Town to address the unacceptable condition of the Plaintiff's Property at various times over the years, and because many of the actions were arguably within the Town's authority to regulate as matters of public health, safety and welfare, this Court cannot say that the Town acted absent a proper purpose and, therefore, in bad faith. In this Court's opinion, the facts and circumstances here, on this record, simply do not warrant punitive sanctions. *See In re Egbarin*, No. 00-23132, 2007 WL 2990533, at *2 (Bankr. D. Conn. 2007) ("[A]bsent egregious conduct on the part of the creditor, punitive damages are rarely awarded in civil contempt actions for violation of the discharge injunction.").

Although the Court believes that punitive sanctions are not warranted, the Court notes that pursuant to Conn. Gen. Stat. § 52-139 and 11 U.S.C. § 553 that mutual debts may be setoff. As proceedings to finalize the Town's claims still pend and briefing on this issue remains wanting, the Court will reserve judgment on this issue for further proceedings.

iii. Referral to the District Court

Lastly, the Plaintiff requests that this Court make a referral to the United States District Court for criminal contempt proceedings.[31] As the Town points out, there is a scarcity of law on

[31] The Plaintiff, however, did not seek a referral to the United States Attorney's Office for prosecution of this matter.

the standards for referring findings of fact to the District Court for criminal contempt. *See* Town's Post-Trial Brief, ECF No. 203, p. 23 (*citing* the Bankruptcy Reform Act of 1978, which provided for some limited criminal contempt power); *see also In re Eisenberg*, 7 B.R. 683, 689−90 (Bankr. E.D.N.Y. 1980) (discussing limitations on contempt power). Under the current rules of procedure, Federal Rules of Bankruptcy Procedure 9020 and 9014 govern motions for contempt. The plain language of Rules 9020 and 9014 permits a party to seek an order of civil contempt by motion, but it does not speak to the issue of criminal contempt.

In that respect, courts are divided on whether a bankruptcy court possesses inherent or statutory powers (under 18 U.S.C. § 401 and 11 U.S.C. § 105) to hold criminal contempt proceedings. *Compare Matter of Hipp, Inc*., 895 F.2d 1503, 1510 (5th Cir. 1990), *with In re Ragar*, 3 F.3d 1174, 1178 (8th Cir. 1993). While the Second Circuit has not definitively addressed this issue, the Second Circuit has posited that there is at least a serious question as to whether a bankruptcy court has the authority, in the first instance, to punish criminal contempt. *United States v. Guariglia*, 962 F.2d 160, 163 (2d Cir. 1992) (instead holding "that *a district court* may, in the first instance, punish for criminal contempt a violation of an order of a bankruptcy court where the bankruptcy court is a 'unit' of the district court imposing the punishment." [emphasis added].). In light of the absence of Article III constitutional powers in this Court and the Defendants' entitlement to procedural protections, including a right to a jury trial, this Court will refrain from directly or finally addressing the claims for criminal contempt.

However, recognizing the Court's authority to hear non-core matters pursuant to 28 U.S.C. §§ 157(c)(1)–(2), to the extent appropriate, this Court makes the following recommended findings: the actions of the Defendants were not malicious, wanton or oppressive and were not undertaken in bad faith and, thus, do not warrant criminal contempt sanctions for egregious

conduct. *See In re Egbarin*, 286 B.R. 45, 48 (Bankr. D. Conn. 2002) (denying movant's request for certification to the district court for criminal contempt proceedings on account of the fact that the record did not warrant it). Moreover, the Court believes, and concludes in the exercise of its discretion, that the damages awarded herein are appropriate, proportional and sufficiently address and compensate the harm suffered by the Plaintiff, thus negating the need for any punitive sanctions in excess of what has been afforded here.

Although the present record does not justify a referral or certification to the District Court, the Court also notes that nothing prevents the Plaintiff from seeking a withdrawal of the reference pursuant to Fed. R. Bankr. P. 5011 and 28 U.S.C. § 157(d) ("The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown."). Accordingly, after much consideration with respect to the conduct alleged and demonstrated by the Plaintiff, and for the reasons already stated in this Memorandum of Decision, the Plaintiff's request for a referral to the United States District Court for criminal contempt proceedings is hereby DENIED.

V. CONCLUSION

For the reasons stated herein and in the Court's Memorandum of Decision on the Plaintiff's Motion for Summary Judgment, Partial Judgment shall enter in favor of the Plaintiff and against Defendants Town of South Windsor, Matthew Galligan and Morris Borea jointly and severally as to Count I of the Operative Complaint alleging violations of the discharge injunction arising from Defendants' endorsement, filing and pursuit of the 2016 Lien. The Plaintiff is awarded monetary damages for attorney's fees incurred in the reduced amount of $100,144.61 and $20,000 in compensatory damages. Additionally, pursuant to the equitable powers of this Court under 11 U.S.C. § 105, to the extent that the Town of South Windsor prevails in the civil

proceeding entitled *Town of South Windsor, et al v. Kristin Lanata aka Kristin Norton, et al*, HHD-CV17-6083374-S ("State Action #2"), it shall be restrained, enjoined and otherwise prohibited from the enforcement or collection of any civil fine assessed therein against Ms. Norton exceeding $50,000. With respect to the Town's request for setoff (which is predicated upon the judgment obtained in State Action # 2), given the ruling of the Connecticut Appellate Court and the continuing appellate proceedings related to State Action # 2, as well as the ostensible lack of adequate briefing on this issue, the Court refrains applying any setoff to the above award. The Court, however, will retain jurisdiction for the purpose of determining any claims of setoff that may be brought upon the conclusion of the state court appeals process.

The balance of the claims, request for punitive damages and related relief, including claims against Defendant Gerrick and the Plaintiff's request for a referral to the United States District Court, are hereby DENIED. With respect to any claim held by the Plaintiff pertaining to Pam Oliva, said claim has been withdrawn with prejudice on the Docket. *See* ECF No. 60. Further, the Court will retain jurisdiction for the purpose of any further determination on any further claims of setoff that may be brought upon the conclusion of the state court appeal process or other proceedings. A separate Judgment consistent with this Memorandum of Decision shall issue and be filed upon the Docket and served by the Clerk of Court upon the Parties.

IT IS SO ORDERED at Hartford, Connecticut this 20th day of September 2021.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut