Dated: March 08, 2021
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re CHANDRA LYNETTE BERRY, Debtor.	Case No. 11-28881-L Chapter 7
CHANDRA LYNETTE BERRY, Movant, v. SPECIALIZED LOAN SERVICING, LLC, BANK OF NEW YORK MELLON TRUST COMPANY, DITECH, and CORELOGIC CREDCO, Respondents.	Motion for Contempt and Sanctions [Dkt. No. 77] Motion to Dismiss/Withdraw [Dkt. No. 93] Notice of Written Argument [Dkt. No. 99]

ORDER DENYING MOTION TO HOLD SPECIALIZED LOAN SERVICING, LLC, BANK OF NEW YORK MELLON TRUST COMPANY, DITECH, and CORELOGIC CREDCO IN CONTEMPT AND FOR SANCTIONS FOR VIOLATIONS OF DEBTOR'S DISCHARGE INJUNCTION

BEFORE THE COURT are the Debtor's *Motion to Hold Specialized Loan Servicing, LLC, Bank of New York Mellon Trust Company, Ditech, and Corelogic Credco in Contempt and for Sanctions for Violations of Debtor's Discharge Injunction,* filed January 19, 2021 (the "Motion

for Sanctions") [Dkt. No. 77]; CoreLogic Credco's ("Credco") *Motion and Memorandum of Law in Support of Motion to Dismiss,* filed February 11, 2021 [Dkt. No. 93]; and the Debtor's *Notice to the Court of Debtor's Written [Oral] Argument for Good Cause Shown*, filed after oral argument on February 23, 2021, because the Debtor experienced technical difficulties on the day of argument. [Dkt. No. 99]. Responses were not filed by the other named Respondents, which is understandable because the Debtor did not obtain personal service upon them. The court heard oral argument for and against the Motion for Sanctions on February 18, 2021. Having heard the arguments of the Debtor and counsel for Credco, and reviewed the exhibits presented by the parties, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Debtor commenced her case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on August 30, 2011. [Dkt. No. 1]. At that time, the Debtor was represented by attorney Gene Bell.

Among her assets was a house located at 6215 Malloch Drive, Memphis, Tennessee (the "Property"). [Dkt. No. 1, Schedule A].

The Property was encumbered by two liens, the first scheduled at $263,000, serviced by American Servicing Center, and the second scheduled at $22,000, serviced by Greentree. [Dkt. No. 1, Schedule D].

According to the Declaration of the Debtor, the second lien represented a home equity line of credit (the "HELOC") originated by Corestar Financial ("Corestar"), then transferred to FBCS (not otherwise identified) in 2008, to GMAC (not otherwise identified) in 2009, and to Green Tree Servicing, LLC ("Green Tree") in 2009. [Dkt. No. 77, p. 16 of 36].

The HELOC was secured by a lien of a Deed of Trust executed by the Debtor in favor of Mid-South Title, trustee for lender Corestar Financial Group, LLC, on May 23, 2006. *Open End Deed of Trust,* recorded at Instrument Number 06103926, Shelby County Register of Deeds.

The *Discharge of Debtor* and *Final Decree* were entered December 14, 2011. [Dkt. Nos. 24 and 25].

The Property was conveyed to Respondent The Bank of New York Mellon Trust Company, National Association f/k/a The Bank of New York Trust Company, N.A., as successor to JPMorgan Chase Bank, as Trustee for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2004-KS9 Trustee BNY Mellon ("Bank of New York") by Trustee's Deed on May 13, 2015. *Trustee's Deed,* Instrument Number 15048488, Shelby County Register of Deeds.

The Debtor alleges that after foreclosure the Bank of New York became the owner of the HELOC Deed of Trust but no evidence of assignment of the HELOC Deed of Trust to the Bank of New York appears in the record except in the August 24, 2017 Demand Letter sent by Specialized Loan Servicing, LLC ("Specialized") to the Debtor described below. [Dkt. No. 77, p. 4 of 36, ¶¶ 10, 12].

Respondent Specialized sent the Debtor a **Notice of Servicing Transfer** dated August 14, 2017, which states in part:

> The servicing of your Home Equity Line of Credit has been transferred effective 07/31/2017. This means that after this date, a new servicer, will be collecting your mortgage loan payments from you. No other terms of your Note and Mortgage will change.
>
> Ditech Home Loans is now collecting your payments. Ditech Home Loans will stop accepting payments received from you after 07/30/2017.

> Specialized Loan Servicing, LLC will collect your payments going forward. Specialized Loan Servicing, LLC will start accepting payments received from you on 07/31/2017.
>
> **Send all payments due on or after 07/31/2017 to Specialized Loan Servicing, LLC at this address: [deleted].**

[Dkt. No. 77, p. 26 of 36].

Specialized sent the Debtor a second **Notice of Servicing Transfer** dated August 21, 2017. [Dkt. No. 77, p. 27 of 36]. Other than the date, the terms of the second notice appear to be identical to the first.

Specialized sent the Debtor a letter dated August 24, 2017, informing her that the "Current Creditor" for the HELOC was The Bank of New York Mellon Trust Company, N.A., successor indenture trustee to JPMorgan Chase Bank, N.A., as Indenture Trustee for Home Equity Loan Trust 2006-HSA5 (the "Demand Letter"). [Dkt. No. 77, pp. 28-31 of 36]. The letter states in pertinent part:

> The amount of the debt as of 08/02/2017 is $34,361.56. For informational purposes, this amount is comprised of the following: unpaid principal of $22,000.00, deferred principal of $0.00, uncollected interest of $12,361.56, escrow balance/advances of $0.00 and outstanding fees of $0.00. Please note that the amount of the debt does not include any fees or interest that may accrue after the date of this letter.

Included with the Demand Letter was an Automatic Payment Authorization Form, a RESPA Notice, and a page devoted to various payment options. Nowhere does the letter reveal that Specialized is a debt collector, and nowhere does it contain a bankruptcy disclaimer.

The Debtor sent Specialized a letter on August 28, 2017, which was received September 8, 2017 (the "Dispute Letter"). [Dkt. No. 77, p. 24 of 36]. It states in pertinent part:

> The above-referenced mortgage loan (Equity Line of Credit) is a bankruptcy discharged debt since December 14, 2011. In addition, the property was wrongfully FORECLOSED May 2015. The Bank of New York Mellon was never assigned nor transferred title or any interest in the above-referenced loan prior to the date of

> bankruptcy discharge through the present date. See the enclosed information. Why is this discharged debt still being transferred for servicing and on behalf of an entity that has no legal interest? Corestar Financial Group was the creditor for the above-referenced loan and third lien holder on the property. The second lien holder on the property was CitiFinancial, and it released its lien July 2015 following bankruptcy and foreclosure. ***Any attempt to collect the discharged debt and/or proceed with further action on behalf of The Bank of New York Mellon that is in fact not the current creditor of a nonexistent loan would constitute a violation of the bankruptcy code, and illegal act.***
>
> Additionally, please be advised and as you are aware the property title is currently in litigation as *Case Number: W2017-01213-COA-R3-CV.* Discontinue future correspondences regarding the discharged debt and contact legal counsel below if you have further questions.

Specialized sent the Debtor a letter dated October 20, 2017, which acknowledged receipt of the Dispute Letter "regarding bankruptcy and foreclosure for the above-referenced mortgage account." [Dkt. No. 77, p. 32 of 36]. Specialized's letter indicates that the matter is under review. This letter does reveal that Specialized is a debt collector and contains a lengthy bankruptcy disclaimer.

Specialized sent the Debtor a second letter in response to the Dispute Letter dated November 10, 2017. [Dkt. No. 77, p. 33 of 36]. This letter acknowledges that the debt was discharged on December 14, 2011, and indicates that as a result, the information contained in the letter is for informational purposes only. The letter continues with two seemingly contradictory paragraphs:

> Please be advised that your correspondence has been redirected to the appropriate department for further review. Once they have completed their review and if warranted the account will be updated accordingly and we will further respond to you under separate cover.
>
> We have researched your account and our records indicate that the loan transfer you describe in your dispute was not in error. We trust we have responded to your concerns. You have the right to request the documents relied on by SLS in reaching the determinations communicated in this letter by contacting us at the number below.

The letter states both that the matter is still under review and that it has been reviewed. It states that the loan transfer was not in error even though the debt had been discharged (which the letter acknowledges) and the Property securing it had been sold.

The Debtor declares that on November 17, 2017, Specialized, on behalf of Bank of New York, ordered an "Instant Merge" credit report through Credco without a permissible purpose and after being informed of her discharge in bankruptcy and the foreclosure of the Property. She alleges that this "hard pull" resulted in a lowering of her FICO score and denial of an American Express Gold credit card account in January 2018. [Dkt. No. 77, pp. 18, 34-36 of 36].

The Debtor sent "Credco/Specialized Loan" a letter dated July 7, 2018, indicating that she had received credit reports from the major credit bureaus on June 22, 2018. [Dkt. No. 77, p. 25 of 36]. The letter informs Credco/Specialized Loan that her report was pulled without her permission in violation of the Fair Credit Reporting Act. The letter asks that Credco/Specialized Loan "[p]lease investigate this matter and provide an explanation for your actions as soon as possible."

On August 27, 2018, the Debtor filed three separate suits against Specialized, Bank of New York, and Credco in the General Sessions Court of Shelby County, Tennessee, for violations of FCRA, 15 U.S.C. § 1681 *et seq.*, and other claims. These three suits were removed to the United States District Court for the Western District of Tennessee and consolidated as Case No. 18-cv-2721-SHL-dkv. [Dkt. No. 93, Exhibit 1, p. 1 of 20]. Chief Magistrate Judge Diane K. Vescovo recommended that Credco's Motion for Summary Judgment be granted by Report and Recommendation dated March 18, 2020. *Id.* The Report and Recommendation was adopted by District Judge Sheryl H. Lipman in *Berry v. Specialized Loan Servicing, LLC,* No. 18-cv-2721-SHL-dkv, 2020 WL 4698318 (W.D. Tenn. August 13, 2020).

The Debtor's *pro se* motion to reopen her bankruptcy case was granted by order entered January 8, 2021. [Dkt. No. 74].

The Debtor filed the Motion for Sanctions in this court on January 19, 2021. [Dkt. No. 77]. Her Certificate of Service indicates that she served the following on January 18, 2021:

Specialized Loan Servicing, LLC
8742 Lucent Blvd., Suite 300
Highland Ranch, CO 80129

CoreLogic Credco
P.O. Box 509124
San Diego, CA 92150

The Bank of New York Mellon Trust Company
3476 Stateview Blvd.
Fort Mill, SC 29715-7203

The Debtor alleges that Specialized violated the discharge injunction by (1) purchasing the servicing rights to the discharged HELOC for purposes of collection; (2) initiating communication with the Debtor in an attempt to collect the discharged debt; and (3) initiating a hard credit pull. [Dkt. No. 77, p. 6-7 of 36, ¶¶ 15, 20].

The Debtor alleges that Bank of New York violated the discharge injunction by (1) failing to release the Deed of Trust after foreclosure; and (2) selling the servicing rights to Specialized for collection activity. [Dkt. No. 77, pp. 19 of 36, ¶14].

The Debtor alleges that Credco violated the discharge injunction "when it sold and disseminated Debtor's credit report information to [Specialized] before certifying that [Specialized] had a permissible purpose." [Dkt. No. 77, p. 7 of 36, ¶ 20].

The Debtor makes no allegation concerning violation of the discharge injunction by Ditech. Rather, the Debtor alleges that Specialized and Bank of New York must have known about the

Debtor's bankruptcy because Ditech knew about the bankruptcy. [Dkt. No. 77, p. 3 of 36, ¶ 4]. The Debtor points to no specific portion of the record that supports this claim.

JURISDICTION, VENUE, AND AUTHORITY

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The discharge injunction arises under the Bankruptcy Code. 11 U.S.C. § 524(a)(2). Motions arising out of alleged violations of the discharge injunction are thus core proceedings. *See* 28 U.S.C. § 157(b)(1). The bankruptcy court has authority to enter a final order determining that a violation of the discharge injunction has occurred and imposing appropriate sanctions. *See* 11 U.S.C. § 105(a) and 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because this matter arises in a bankruptcy case pending in this district. *See* 28 U.S.C. §1409(a).

CONCLUSIONS OF LAW

Personal Jurisdiction

Before proceeding to consider the substance of the Debtor's arguments, the court must pause to consider whether Specialized, Bank of New York, and Ditech are properly before the court. None of these creditors filed proofs of claim in the bankruptcy case.[1] None of them has made an appearance in this case. Federal Rule of Bankruptcy Procedure 9020 states that Rule

[1] The Claims Register reflects only two proofs of claim filed, one by the Shelby County Trustee and the other by First Tennessee Bank.

9014 governs a motion for order of contempt. Rule 9014(b) specifies that service of motions initiating a contested matter shall be in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Rule 7004(b) permits service by first class mail but only when addressed as specified in that rule. Service upon a domestic or foreign corporation requires mailing a copy of the summons and complaint "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . ." Fed. R. Bankr. P. 7004(b)(3). Service or the waiver of service consistent with Rule 7004(b) "is effective to establish personal jurisdiction over the person of the defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code." Rule 7004(f). The converse is likewise true – the failure to obtain service or the waiver of service is not effective to establish personal jurisdiction. Rule 9014(a) requires that when relief is requested by motion, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Specialized, Bank of New York, and Ditech have not been served with the Motion for Contempt in accordance with the applicable Federal Rules of Bankruptcy Procedure. Therefore, they have not been afforded reasonable notice and an opportunity for hearing, and no relief may be granted the Debtor with respect to them.

Credco has filed a written response to the Motion for Contempt and did not object to the manner of service. It is properly before the court.

Legal Standards Applicable to the Discharge Injunction

Under section 524(a)(2) of the Bankruptcy Code, the discharge in bankruptcy "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 debt as a personal liability of the debtor, whether or not

discharge of such debt is waived." 11 U.S.C. § 524(a)(2). A safe harbor is provided at section 524(j), which provides:

> (j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—
> (1) such creditor retains a security interest in real property that is the principal residence of the debtor;
> (2) such act is in the ordinary course of business between the creditor and the debtor; and
> (3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

11 U.S.C. § 524(j).

The United States Supreme Court recently clarified the standard for holding a creditor in contempt for violating the discharge injunction: "[A] court may hold a creditor in civil contempt for violating a discharge order if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct." *Taggart v. Lorenzen,* 139 S. Ct. 1795, 1799 (2019) (emphasis in original). Put another way, "civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." *Id.* It is not enough to show that the creditor was aware of the discharge order and intended its actions that violated the order. *Orlandi v. Leavitt Family Ltd. Partnership (In re Orlandi),* 612 B.R. 372, 382 (B.A.P. 6th Cir 2020). The aggrieved debtor must show by clear and convincing evidence that the creditor had no objectively reasonable basis to conclude that its conduct might be lawful. *See, e.g., Glover v. Johnson,* 138 F.3d 229, 244 (6th Cir. 1998) ("In a civil contempt proceeding, the petitioner must prove by clear and convincing evidence that the respondent violated the court's prior order."); *In re Cantrell,* 605 B.R. 841, 853 (Bankr. W.D. Mich. 2019) (Debtor required to show violation of discharge injunction by clear and convincing evidence). In a civil contempt proceeding, three elements must be established: "(1) the alleged contemnor had knowledge of the order which he is said to have violated; (2) the alleged contemnor did in fact violate the order; and (3) the order violated must

have been specific and definite." *Hunter v. Magack (In re Magack),* 247 B.R. 406, 410 (Bankr. N.D. Ohio 1999) (citing *Glover,* 138 F.3d at 244)).

The Debtor has not Shown that Credco Violated the Discharge Injunction

The Debtor alleges that Credco violated the discharge injunction "when it sold and disseminated Debtor's credit report information to [Specialized] before certifying that [Specialized] had a permissible purpose." [Dkt. No. 77, p. 19 of 36, ¶ 16]. Unlike the other named Respondents, Credco is not a creditor or servicer but is a credit reseller of consumer credit information. [Dkt. No. 93, p.1; Dkt. No. 77, p. 7 of 36, ¶ 20]. Credco responds that the Motion for Contempt is an attempt to "repackage" the Debtor's FCRA claim, which has thus far failed, and thus should be denied.[2] [Dkt. No. 93, p. 1].

Section 542(a)(2) enjoins "an act, to collect, recover or offset any debt as a personal liability of the debtor." The Debtor has pointed to no case in which the provider of a credit report (as opposed to a requestor of a credit report) was found to have violated the discharge injunction. Chief Magistrate Judge Vescovo found that the credit pull resulted when Specialized requested a copy of the Debtor's credit report in order to confirm information contained in the Debtor's Dispute Letter. [Dkt. No. 93, Exhibit 1, pp. 3-4 of 20]. This is consistent with the credit report relied upon as an exhibit by the Debtor, which is dated November 17, 2017. [Dkt. No. 77, pp. 34-36]. This is the only credit report that appears in the record. Chief Magistrate Judge Vescovo also found that the Debtor "gave prior authorization, by virtue of her signing the HELOC agreement, to any Holder of that interest to 'make or have made credit inquiries' and no time limit was specified in the agreement." This finding was adopted by the district court. *Berry,* 2020 WL 4698318, at *7. The Debtor may not relitigate her FCRA claim in connection with the Motion for

[2] Credco actually asks that the Motion for Contempt be "dismissed" but motions, unlike complaints, are generally denied.

Contempt because there is no bankruptcy jurisdiction over that claim. *See, e.g., Frambes v. Nuvell National Auto Finance, LLC (In re Frambes),* 454 B.R. 437, 443 (Bankr. E.D. Ky, 2011) (No bankruptcy jurisdiction was present with respect to post-petition Fair Debt Collection Practices Act claim that did not arise under the Bankruptcy Code and was not property of the bankruptcy estate). The court expresses no opinion concerning whether Specialized should have requested a "soft" rather than a "hard" pull,[3] but does find that the Debtor has failed to show that there was *no fair ground of doubt* as to whether the discharge injunction barred Credco's response to Specialized's request for the Debtor's credit report.

CONCLUSION

For the foregoing reasons, the Motion for Contempt is **DENIED.** It is denied as to Specialized, Bank of New York, and Ditech without prejudice because the court has no personal jurisdiction over them. It is denied as to Credco with prejudice because the Debtor failed to demonstrate that Credco violated the discharge injunction.

cc: Debtor/Movant
Attorney for Debtor/Movant (if any)
Respondents
Attorney(s) for Respondents (if any)
Chapter 7 Trustee (if any)
United States Trustee

[3] The one bankruptcy opinion that discusses this issue concluded that creditor who made credit pulls in connection with the maintenance of existing accounts and applications for loan modifications "had an 'objectively reasonable basis' for thinking that those pulls 'might be lawful.'" *Ho v. JPMorgan Chase Bank, N.A. (In re Ho),* No. 10-77477-AST, Adv. No. 18-8091, 2021 WL 312549 at *5 (Bankr. E.D. N.Y. Jan. 22, 2021) (quoting *Taggart,* 139 S.Ct. at 1799).