



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 18, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 11-13184-MKN
	)	Chapter 7
WAYNE ALAN HADDAD and DEBRA	)	
ANN HADDAD,	)	
	)	Date: December 15, 2021
Debtors.	)	Time: 2:30 p.m.
	)	

**ORDER ON NEWREZ LLC dba SHELLPOINT MORTGAGE SERVICING’S MOTION TO COMPEL INDEPENDENT MEDICAL EVALUATION OF WAYNE HADDAD<sup>1</sup>**

On December 15, 2021, the court heard the Motion to Compel Independent Medical Evaluation of Wayne Haddad (“Second IME Motion”), brought by secured creditor NewRez LLC dba Shellpoint Mortgage Servicing in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On March 8, 2011, Wayne Alan Haddad and Debra Ann Haddad (“Debtors”) filed a voluntary Chapter 7 petition along with their schedules of assets and liabilities and statement of financial affairs. The case was assigned for administration to Chapter 7 panel trustee David Rosenberg.

On June 8, 2011, Debtors received their Chapter 7 discharge. (ECF No. 17).

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

1 On January 30, 2013, a final decree was entered and the Chapter 7 case was closed.  
2 (ECF No. 25).

3 On May 19, 2015, an order was entered reopening the case and retroactively annulling  
4 the automatic stay as of April 30, 2012, with respect to the real property located at 7527 Alamo  
5 Summit Drive, Las Vegas, Nevada 89129. (ECF No. 36).

6 On June 11, 2015, a final decree was entered re-closing the Chapter 7 case. (ECF No.  
7 39).

8 On April 8, 2021, an order was entered granting Debtors' ex parte request to reopen the  
9 Chapter 7 case. (ECF No. 42).

10 On April 12, 2021, Debtors filed a Motion for Sanctions Against Newrez LLC d/b/a  
11 Shellpoint Mortgage Servicing for Violation of Debtors' Discharge Injunction ("Sanctions  
12 Motion"). (ECF No. 44). The motion is accompanied by the Declaration of Wayne Alan  
13 Haddad ("First Wayne Declaration"). (ECF No. 45). The Sanctions Motion was noticed to be  
14 heard on May 12, 2021. (ECF No. 47).

15 On May 12, 2021, respondent Newrez LLC d/b/a Shellpoint Mortgage Servicing  
16 ("Shellpoint") filed an opposition ("Sanctions Opposition"). (ECF No. 56).

17 On May 19, 2021, Debtors filed a reply. (ECF No. 57).

18 On July 13, 2021, the parties filed a discovery plan requiring all discovery to close by  
19 January 11, 2022 ("Discovery Deadline"). (ECF No. 62).

20 On October 29, 2021, Shellpoint filed a Motion to Compel Independent Medical  
21 Evaluation ("First IME Motion") supported by the Declaration of Nicholas E. Belay, Esq.  
22 ("Belay Declaration"). (ECF Nos. 66 and 67). The motion seeks to compel Debra Haddad to  
23 attend an independent medical examination ("IME") pursuant to Civil Rule 35. Attached as  
24 Exhibits 3 and 4 are copies of the curriculum vitae of the psychiatrist and separate psychologist  
25 proposed to conduct the IME. The motion was noticed to be heard on December 1, 2021. (ECF  
26 No. 68).

1 On November 4, 2021, an order was entered approving a stipulation to extend the  
2 Discovery Deadline to April 11, 2022. (ECF No. 71). The hearing on the Sanctions Motion was  
3 continued to May 18, 2022.

4 On November 15, 2021, Shellpoint filed the instant Second IME Motion supported by  
5 another Belay Declaration. (ECF Nos. 73 and 74). The Second IME Motion seeks to compel  
6 Wayne Haddad to attend an IME. Attached as Exhibits 4 and 5 are copies of the curriculum  
7 vitae of the psychiatrist and separate psychologist proposed to conduct the IME. The motion was  
8 noticed to be heard on December 15, 2021. (ECF No. 75).<sup>2</sup>

9 On November 17, 2021, Debtors filed an opposition to the First IME Motion (“First IME  
10 Opposition”) along with a supporting Declaration of Debra Haddad (“Debra Declaration”).  
11 (ECF Nos. 77 and 78).

12 On November 24, 2021, Shellpoint filed a reply to the First IME Opposition. (ECF No.  
13 80). In its Reply, Shellpoint asserts that the examination of the psychiatrist will take about two  
14 hours while the examination of the psychologist will take about four hours. Additionally,  
15 Shellpoint specifies that the scope of the requested examination will address only an evaluation  
16 of: “(1) whether Ms. Haddad suffered her claimed ailments due to Shellpoint’s alleged conduct;  
17 and (2) whether Ms. Haddad’s alleged ailments will continue in the future.” Reply at 8:6-8.

18 On December 1, 2021, Debtors filed an opposition to the Second IME Motion (“Second  
19 IME Opposition”) along with a supporting Declaration of Wayne Haddad (“Second Wayne  
20 Declaration”). (ECF Nos. 82 and 83).

21 On December 8, 2021, Shellpoint filed a reply to the Second IME Opposition (“Reply”).  
22 (ECF No. 85). In its Reply, Shellpoint asserts that the examination of the psychiatrist will take  
23 about two hours while the examination of the psychologist will take about four hours.

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24 <sup>2</sup> On the same date, in a separate, individual Chapter 11 proceeding entitled Jose Jaime  
25 Vera and Prisila Mendez-Delgado, Case No. 14-13093-ABL, Shellpoint filed a similar IME  
26 Motion to conduct discovery in connection with a similar sanctions motion. The individual  
27 debtors in that case sought in excess of \$1 million in damages for their “stress and anguish”  
28 resulting from Shellpoint’s alleged violation of the discharge injunction. Shellpoint proposed to  
have the IME conducted by the same psychiatrist and psychologist identified in the Haddad  
proceeding. On December 8, 2021, Shellpoint’s motion was granted without opposition and the  
court permitted the examination to proceed.

1 Additionally, Shellpoint specifies that the scope of the requested examination will address only  
2 an evaluation of: “(1) whether Mr. Haddad suffers his claimed stress-related symptoms due to  
3 Shellpoint’s alleged conduct; and (2) whether Mr. Haddad’s alleged symptoms will continue in  
4 the future.” Reply at 8:3-5.

5 **DISCUSSION**

6 The prayer of the Sanctions Motion seeks to hold Shellpoint in civil contempt for  
7 allegedly violating the discharge injunction. See Sanctions Motion at 13:14-15. As a remedy for  
8 civil contempt, Debtors also seek an “award of damages and attorneys fees and costs to the  
9 Debtors” as well as “such other and further relief as is just and proper.” Id. at 13:16-17  
10 (emphasis added). In support of that remedy, Debtors allege, *inter alia*, that:

11 Over the years, the Debtors have suffered significant stress and anguish  
12 due to the regular and constant harassment from Shellpoint regarding the  
13 Property. Ms. Haddad has experienced difficulty sleeping and an increase  
14 in migraine headaches. She has also suffered from abnormal heart  
15 function due to the ongoing stress. In December 2016, the Debtors  
16 purchased their new home in Tualatin, Oregon. The Debtors believed that  
17 once the filing of the bankruptcy case was completed, they would no  
18 longer be harassed. However, the Debtors were defendants in the State  
19 Court Litigation, and now continue to receive letters from Shellpoint  
20 stating that an amount is still owing.

21 Sanctions Motion at ¶ 42 (emphasis added).

22 In support of the Sanctions Motion, Wayne Haddad attests, *inter alia*, that:

- 23 • Although my wife and I received our Discharge in 2011, we have continued  
24 to receive harassing letters, and experience significant difficulties financially  
25 from the affects of Shellpoint’s failure to transfer the Property from my wife  
26 and I.
- 27 • Over the year, my wife and I have suffered significant stress and anguish due  
28 to the regular and constant harassment from Shellpoint regarding the  
Property. My wife has experienced difficulty sleeping and an increase in  
migraine headaches. She has also suffered from abnormal heart function due  
to the ongoing stress. In December 2016 my wife and I purchased our new  
home in Tualatin, Oregon. My wife and I believed that once the filing of the  
bankruptcy case was completed and we received our Discharge, we would  
no longer be harassed, and would have a fresh start. However, we continue  
to receive letters from Shellpoint stating that an amount is still owing.

1 See First Wayne Declaration at ¶¶15 and 16 (emphasis added).<sup>3</sup>

2 In opposition to the First IME Motion, Debra Haddad attests, *inter alia*, that:

- 3
- 4 • I have not alleged a cause of action for intentional or negligent infliction of emotional distress. I do not allege that I have suffered a specific or diagnosable mental or psychiatric injury or disorder.
  - 5 • I do not intend to present expert testimony to support my claim of emotional distress. My husband and I have alleged an ongoing pattern of regular harassment by Shellpoint, which has not yet ceased, has caused us significant stress and anguish which has caused us significant stress and anguish which has caused me to experience difficulty sleeping, increased migraine headaches, requiring medication for treatment, anxiety, chest pain and shortness of breath.
  - 6 • I have presented medical records for the sole purpose of demonstrating that my symptoms of emotional distress (difficulty sleeping, migraine headaches, anxiety, chest pains, shortness of breath) were not linked by my medical providers to any diagnosable physical or mental condition.<sup>4</sup>
  - 7 • While my symptoms are continuing, that is because harassment by Shellpoint has not stopped since we filed our papers with the Court seeking the Court's assistance i[n] ending Shellpoint's harassment. They have sent letters to us on June 7, 2021, August 21, 2021, September 24, 2021 and October 14, 2021.
  - 8 • I believe that if Shellpoint's harassment stops that my symptoms that have manifested in connection with my emotional distress will improve over time.
  - 9 • Other than the symptoms associated with the emotional distress that I experience from Shellpoint's ongoing harassment, I believe that I am in good mental and physical health.
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19 See Debra Declaration at ¶¶ 3, 4, 5, 6, 7, and 8 (emphasis added).

20 In opposition to the Second IME Motion, Wayne Haddad attests, *inter alia*, that:

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- 22 • I have not alleged a cause of action for intentional or negligent infliction of emotional distress.
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24 <sup>3</sup> Paragraph 42 of the Sanctions Motion essentially mimics Paragraph 16 of the First Wayne Declaration.

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26 <sup>4</sup> It is not clear what medical records have been produced. It is not clear whether any privileges have been asserted in connection with such records. It is not clear whether any privileges have been waived. Those types of concerns, if any, must be raised separately by the parties. See, e.g., Vanessa Bryant v. County of Los Angeles, Case No. CV-20-09582-JFW-E (C.D. Cal. Nov. 15, 2021), Civil Minutes on Defendant County of Los Angeles' Motion to Compel Production of Documents.

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- 1 • I do not allege that I have suffered a specific or diagnosable mental or psychiatric injury or disorder.
- 2 • I do not intend to present expert testimony to support my claim of emotional distress.
- 3 • My wife and I have alleged an ongoing pattern of regular harassment by Shellpoint, which has not yet ceased, has caused me to experience difficulty
- 4 sleeping and unnecessary stress.
- 5 • While my symptoms are continuing, that is because the harassment by Shellpoint has not stopped since we filed our papers with the Court seeking
- 6 the Court's assistance i[n] ending Shellpoint's harassment. They have sent letters to us on June 7, 2021, August 21, 2021, September 24, 2021 and
- 7 October 14, 2021.
- 8 • I believe that if Shellpoint's harassment stops that my symptoms that any symptoms that have manifested in connection with my emotional distress
- 9 will improve over time.
- 10 • Other than the symptoms associated with the emotional distress that I experience from Shellpoint's ongoing harassment, I believe that I am in
- 11 good mental and physical health.

12 See Second Wayne Declaration at ¶¶ 3, 4, 5, 6, 7, 8, and 9 (emphasis added).

13 In response to the Sanctions Motion, Shellpoint denies that it violated the discharge  
14 injunction by engaging in conduct that would support a finding of civil contempt under the  
15 standards articulated in Taggart v. Lorenzen, 139 S.Ct. 1795 (2019) (requiring a finding that the  
16 creditor did not have an objectively reasonable basis for concluding that its conduct might be  
17 lawful). See Sanctions Opposition at 3:21 to 9:18. Moreover, Shellpoint expressly disputes  
18 whether the Debtors can establish a "causal connection between th[e] significant harm and the  
19 violation." Sanctions Opposition at 11:17-19, citing Dawson v. Washington Mutual Bank, F.A.  
20 (In re Dawson), 390 F.3d 1139, 1148 (9th Cir. 2004) (emphasis added).

21 By their Sanctions Motion, Debtors do not seek merely a declaration that Shellpoint  
22 violated the discharge injunction. Shellpoint disputes even that proposition. If there is an  
23 ongoing violation, Debtors surely would seek an order to enforce the discharge injunction in  
24 some fashion. Typically, injunctions are enforced by holding the offending party in contempt of  
25 the court's authority and imposing a criminal or civil sanction. Criminal contempt sanctions  
26 typically are designed to punish the offender through incarceration or fines or both. Civil  
27 contempt sanctions typically are designed to coerce the offender to comply, or compensate for  
28 the injury caused by the conduct, rather than to punish the offender. Because punitive sanctions

1 for violation of the discharge injunction are not available from bankruptcy courts in this circuit,  
2 see generally Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192-93 (9th Cir. 2003),  
3 Debtors pray for an “award of damages and attorneys fees and costs” to compensate for the  
4 alleged violation rather than to punish Shellpoint for its alleged conduct. In other words, Debtors  
5 are asking the court to find that Shellpoint violated the discharge injunction and to remedy that  
6 violation by awarding monetary damages.

7 As a civil remedy for misconduct, damages can be awarded for both economic and non-  
8 economic injuries. Economic damages typically are capable of specific proof of monetary loss,  
9 e.g., lost wages, repair costs of injured property, etc. Non-economic damages typically are not  
10 subject to specific proof of monetary loss, e.g., pain and suffering, loss of enjoyment of life, etc.  
11 Emotional distress is but a type of injury for which non-economic damages may be awarded.<sup>5</sup>  
12 Because individuals experience such non-economic injuries differently, they are allowed to  
13 testify as to their subjective, individual experiences in order for the trier of fact to determine an  
14 appropriate monetary award.<sup>6</sup> Injured individuals also are allowed, but not required, to offer  
15 corroborating testimony and evidence. Because such subjective evidence is permitted, the  
16 alleged wrongdoer also is permitted to challenge the credibility of such direct testimony as well  
17 as the corroborating testimony and evidence.<sup>7</sup>

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19 <sup>5</sup> As previously mentioned, Wayne Haddad attests that he has not alleged a cause of  
20 action for intentional or negligent infliction of emotional distress. That observation was repeated  
21 at the hearing on the IME Motion. The observation is immaterial, however, because it conflates  
22 the form of the remedy and the underlying basis for the remedy. Emotional distress damages are  
23 commonly sought by individuals injured through conduct that is not based on the law of torts.  
24 See, e.g., America’s Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard), 438 B.R. 313,  
25 321-23 (D. Nev. 2010) (affirming emotional distress damages based on automatic stay violation).  
26 Thus, the absence of a tort cause of action for emotional distress is irrelevant.

27 <sup>6</sup> See, e.g., In re Kim Michele Vanamann, 561 B.R. 106, 127-28 & n.42 (Bankr. D. Nev.  
28 2016); In re Erik and Renee Sundquist, 566 B.R. 563, 589-90 (Bankr. E.D. Cal. 2017).

29 <sup>7</sup> Occasionally, the corroborating evidence is provided at trial by the alleged wrongdoer  
rather than the debtor seeking emotional distress damages. See, e.g., In re Sundquist, 566 B.R. at  
590 & n.58 (responding bank’s own exhibits included the personal journal entries depicting the  
individual debtor’s emotional state and physical manifestations).

1 In this instance, Debtors seek an award of damages and do not specify whether such  
2 damages are economic, non-economic, or both. In their Sanctions Motion, they allege non-  
3 economic damages were sustained in the form of “significant stress and anguish” due to the  
4 conduct of Shellpoint. In support of the Sanctions Motion, however, Wayne Haddad attests that  
5 due to the conduct of Shellpoint the Debtors have experienced “significant difficulties  
6 financially” as well as “significant stress and anguish.” In opposition to the First IME Motion,  
7 Debra Haddad attests that the conduct of Shellpoint has caused the Debtors “significant stress  
8 and anguish” which further caused her to experience various physical manifestations. In  
9 opposition to the Second IME Motion, Wayne Haddad attests that the conduct of Shellpoint has  
10 caused him to experience “unnecessary stress.”

11 The Sanctions Motion is a contested matter under Bankruptcy Rule 9014(a). Various  
12 civil discovery rules, including Bankruptcy Rule 7035, apply under Bankruptcy Rule 9014(c).  
13 Bankruptcy Rule 7035 incorporates Civil Rule 35. Under Civil Rule 35(a)(1), the court may  
14 order a party whose mental or physical condition is in controversy to submit to an examination  
15 by a suitably licensed or certified examiner. See generally Charles Alan Wright and Arthur M.  
16 Miller, FEDERAL PRACTICE & PROCEDURE: CIVIL, § 2234.1 (3rd ed. 2021). Under Civil Rule  
17 35(a)(2), the request for such an examination must be made on a showing of “good cause” and  
18 on proper notice. Id., citing, e.g., Schlagenhauf v. Holder, 379 U.S. 104 (1964). The request is  
19 permissive and is subject to the court’s discretion. Additionally, the request must specify the  
20 time, place, manner, conditions, and scope of the examination, as well as the person or persons  
21 who will perform the examination. Under Civil Rule 35(b), various conditions are prescribed for  
22 the provision of any copy of the report prepared by the examiner.

23 In this instance, Debtors apparently have chosen to seek both economic and non-  
24 economic damages. They were not required to do so. Debtors have placed their mental  
25 conditions in controversy, however, by alleging and attesting that Shellpoint’s alleged conduct  
26 was and perhaps still is the actual cause of their “significant stress and anguish.”<sup>8</sup> As previously

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27 <sup>8</sup> Debtors do not dispute the qualifications of the proposed psychiatrist and psychologist.  
28 Debtors do attempt to minimize the controversy by characterizing their damages as merely a  
“garden variety” plea of anguish and stress. They allege, however, that Shellpoint continues to



1 mentioned, Shellpoint specifically contests that its alleged conduct is the actual cause or perhaps  
2 the proximate cause of the alleged injury. There is no indication in the record that the Debtors  
3 have withdrawn their request for an award of non-economic damages. As a result, their mental  
4 conditions remain in controversy.

5 Under these circumstances, the court concludes that good cause exists to permit the  
6 medical examination of Wayne Haddad requested by Shellpoint as specified in this order.

7 **IT IS THEREFORE ORDERED** that the Motion to Compel Independent Medical  
8 Evaluation of Wayne Haddad brought by secured creditor NewRez LLC dba Shellpoint  
9 Mortgage Servicing, Docket No. 73, be, and the same hereby is, **GRANTED**.

10 **IT IS FURTHER ORDERED** that the counsel for Shellpoint and the Debtors shall  
11 prepare and submit an agreed order setting forth the date, time and place for the examinations to  
12 be conducted by the psychiatrist and psychologist identified in the subject motion. The  
13 examination of the psychiatrist must be completed within two hours and the examination of the  
14 psychologist must be completed within four hours. The examination is limited to an evaluation  
15 of: (1) whether Wayne Alan Haddad suffers his claimed stress-related symptoms due to  
16 Shellpoint's alleged conduct; and (2) whether Wayne Alan Haddad's alleged symptoms will  
17 continue in the future. Copies of any written report must be made available, subject to all  
18 applicable privileges, in accordance with Federal Rule of Civil Procedure 35(b). The agreed  
19 order must include the foregoing limitations and requirements, and shall be submitted to the  
20 court no later than 14 calendar days from the date of entry of the instant order.  
21

22 Copies sent via BNC to all parties  
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25 \_\_\_\_\_  
26 violate the discharge injunction and that their symptoms will not stop until Shellpoint stops.  
27 Debtors attest that they will not present expert testimony, but such testimony is not even required  
28 to determine the amount of a non-economic damage award and more likely would be material to  
the issue of causation. Debtors do not attest that they will limit the amount of any requested  
damage award. While Debtors may be entitled to request the type and amount of damages that  
they can prove, Shellpoint likewise is entitled to try to disprove any damages that the Debtors  
request. It goes both ways.

1 Copies sent via BNC to:  
2 WAYNE A. HADDAD  
3 DEBRA A. HADDAD  
4 10427 HICKORY BARK ROAD  
5 LAS VEGAS, NV 89135

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