



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 17, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 21-12657-MKN
	)	Chapter 7
ROLANDO RAMIL JALLORES GO	)	
aka ROLANDO RAMIL J. GO and	)	
CHERRY ANN MACAISA TIJAM	)	
aka CHERRY A.M. TIJAM	)	Date: November 15, 2022
aka CHERRY M. TIJAM,	)	Time: 9:30 a.m.
	)	
Debtors.	)	

**MEMORANDUM DECISION AFTER TRIAL<sup>1</sup>**

On November 15, 2022, a trial regarding damages was conducted on the above-captioned Debtors’ Motion for Contempt for Violation of the Discharge Injunction 11 U.S.C. §524(a)(2) (“Contempt Motion”).<sup>2</sup> The appearances of counsel were noted on the record.

<sup>1</sup> In this Memorandum Decision, 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. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure. All references to “Local Rule” are to the Bankruptcy Local Rules of Practice for the District of Nevada. All references to “Civil Rule” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

<sup>2</sup> The Contempt Motion was filed on December 10, 2021, accompanied by a declaration and eleven documents. (ECF No. 29). Opposition was filed on January 4, 2022, accompanied by a declaration and two documents. (ECF No. 37). A reply was filed on January 5, 2022, accompanied by one document. (ECF No. 38). The Contempt Motion was heard on January 12, 2022, and taken under submission.

1 After conclusion of the trial, simultaneous post-trial briefs were filed and closing  
2 arguments were presented on December 27, 2022. Thereafter, the matter was taken under  
3 submission.

4 This Memorandum Decision constitutes the court’s findings of fact and conclusions of  
5 law pursuant to Bankruptcy Rule 7052 and Civil Rule 52.

6 **BACKGROUND<sup>3</sup>**

7 On June 29, 2022, an initial order was entered on the Contempt Motion finding 21<sup>st</sup>  
8 Century Mortgage Corporation (“21<sup>st</sup> Century”) to be in civil contempt (“Contempt Order”).  
9 (ECF No. 41). The court found 21<sup>st</sup> Century in violation of the Chapter 7 discharge received on  
10 August 24, 2021, by joint debtors Rolando Ramil Jallores Go (“Rolando”) and Cherry Ann  
11 Macaissa Tijam (“Cherry”).<sup>4</sup> The order required a further evidentiary hearing on the Contempt  
12 Motion to address any appropriate damages and attorney’s fees.<sup>5</sup>

13 On August 30, 2022, an order was entered scheduling a trial on damages to be held on  
14 November 15, 2022 (“Scheduling Order”). (ECF No. 47). The Scheduling Order directed that  
15 the Alternate Direct Testimony (“ADT”) procedure under Local Rule 9017 would be followed.<sup>6</sup>  
16

17  
18 <sup>3</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
19 docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir.  
20 1980). See also In re Blas, 614 B.R. 334, 339 n.27 (Bankr. D. Alaska 2019); Bank of Am., N.A.  
21 v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D.  
22 Cal. 2015) (“The Court may consider the records in this case, the underlying bankruptcy case  
23 and public records.”).

24 <sup>4</sup> Rolando and Cherry may be referred to jointly as “Debtors.”

25 <sup>5</sup> 21<sup>st</sup> Century financed the Debtors’ purchase of a manufactured home (“Residence”) in  
26 which they reside along with Cherry’s mother.

27 <sup>6</sup> The ADT procedure set forth in Local Rule 9017 applies at trials and evidentiary  
28 hearings. Except for hostile or adverse witnesses, Local Rule 9017 requires counsel to prepare  
and submit written declarations or affidavits of the direct testimony of each witness called to  
present the case in chief. Copies of such declarations or affidavits must be provided to opposing  
counsel in advance of trial, and the declarant or affiant who provides direct testimony must be  
available for cross-examination. A party is not required to cross-examine an opposing party’s  
witness.

1 On September 2, 2022, 21<sup>st</sup> Century filed copies of notices for depositions to be taken of  
2 Cherry and Rolando on September 19 and September 20, 2022, respectively. (ECF Nos. 49 and  
3 50).

4 On October 26, 2022, Debtors filed ADT declarations signed under penalty of perjury by  
5 Rolando (“Rolando ADT Declaration”) and Cherry (“Cherry ADT Declaration”). (ECF Nos. 51  
6 and 52).

7 On November 4, 2022, Debtors filed their list of witnesses and exhibits. (ECF No. 54).

8 On November 4, 2022, 21<sup>st</sup> Century filed a trial brief (“21<sup>st</sup> Trial Brief”) along with  
9 separate lists of witnesses and exhibits. (ECF Nos. 55, 56, and 57).

10 On November 7, 2022, 21<sup>st</sup> Century filed an amended witness list. (ECF No. 59).

11 On November 15, 2022, trial was conducted remotely through the Zoom platform. All  
12 witnesses appeared by video. At the conclusion of the trial, the evidentiary record closed, and  
13 counsel were directed to file post-trial closing briefs no later than December 20, 2022, with  
14 closing arguments to follow.

15 On December 20, 2022, 21<sup>st</sup> Century filed its post-trial brief (“Lender’s Closing Brief”).  
16 (ECF No. 66).

17 On December 20, 2022, Debtors filed their post-trial brief (“Debtors’ Closing Brief”).  
18 (ECF No. 67).

19 On December 27, 2022, closing argument was presented by counsel for the Debtors and  
20 counsel for 21<sup>st</sup> Century.

### 21 **APPLICABLE LEGAL STANDARDS**

22 The Contempt Order determined 21<sup>st</sup> Century to be in civil contempt. That order is  
23 incorporated in this Memorandum Decision by reference. The instant memorandum addresses  
24 the damages, if any, that are appropriate. In this instance, Debtors seek damages to compensate  
25 for the emotional distress caused by 21<sup>st</sup> Century’s violation of the discharge injunction. Debtors  
26 separately seek an award of attorney’s fees and costs incurred in pursuing the Contempt Motion.  
27 The trial conducted in this matter addressed only the compensatory damages sought by the  
28

1 Debtors; the attorney’s fees and costs sought by the Debtors will be the subject of a separate  
2 request.

3 **THE EVIDENTIARY RECORD**

4 At the trial, eight exhibits were admitted into evidence. Only two witnesses were called  
5 to testify: Rolando and Cherry. Both were cross-examined concerning the direct testimony set  
6 forth in their ADT declarations.

7 **A. The Exhibits.**

8 Debtors’ Exhibits 1, 2, 3, 4, 5, and 6 were admitted into evidence by stipulation.<sup>7</sup>  
9 21<sup>st</sup> Century’s Exhibits A and B also were admitted into evidence.<sup>8</sup>

10 Debtors’ Exhibit 1 are copies of monthly mortgage statements,<sup>9</sup> account histories, and  
11 notices sent by 21<sup>st</sup> Century<sup>10</sup> as well as correspondence exchanged between 21<sup>st</sup> Century and the  
12 Debtors,<sup>11</sup> after the Chapter 7 discharge had been entered on August 24, 2021<sup>12</sup> (collectively,

---

13 <sup>7</sup> Many of the documents included in Debtors’ Exhibit 1 previously were attached as  
14 exhibits to the Contempt Motion and reply. See note 2, supra. Those exhibits were discussed  
15 throughout the prior Contempt Order.

16 <sup>8</sup> Both exhibits offered by 21<sup>st</sup> Century at trial are duplicates of the similarly marked  
17 documents that 21<sup>st</sup> Century attached to its original opposition to the Contempt Motion. See note  
18 2, supra.

19 <sup>9</sup> All of the monthly mortgage statements are addressed to Rolando rather than Cherry.

20 <sup>10</sup> One of those notices is a common document sent by certified mail to both Debtors on  
21 September 15, 2021, entitled Non-Monetary Notice of Default (“Non-Monetary Default  
22 Notice”). That notice stated, “Due to you Bankruptcy filing, you are now in default.” (Emphasis  
23 added.) Language in an agreement that declares a default based on a particular event, e.g., a  
24 party’s commencement of bankruptcy proceedings, generally is referred to as an “ipso facto”  
25 clause.

26 <sup>11</sup> Included in Exhibit 1 is a copy of a letter from 21<sup>st</sup> Century’s legal department dated  
27 October 26, 2021, sent to the Debtors by Federal Express, acknowledging receipt of the October  
28 payment, advising that the Debtors are in non-monetary default, and transmitting a check drawn  
on 21<sup>st</sup> Century’s bank attempting to return the payment (“October 26 Letter”).

<sup>12</sup> Also included in Exhibit 1 are copies of a common letter dated November 4, 2021, sent  
by certified mail to Rolando and to Cherry, from attorney Terence N. Cushing (“Attorney  
Cushing”) on behalf of 21<sup>st</sup> Century (“November 4 Letter”). In pertinent part, the letter states:  
“Please take notice that 21<sup>st</sup> Mortgage Corporation has informed us of their intention to refer

1 “Written Communications”).<sup>13</sup> Exhibit 2 is a copy of Rolando’s letter to 21<sup>st</sup> Century dated  
 2 October 27, 2021 (“October 27 Letter”).<sup>14</sup> Exhibit 3 is an email dated November 23, 2021, from  
 3 Rolando to Arizona attorney Terry Cushing who had contacted Debtors on behalf of 21<sup>st</sup> Century  
 4 and to which email is attached numerous bank statements dated between July 2021 and  
 5 November 2021 (“November Email”). Exhibit 4 is a certificate of insurance reflecting property  
 6 and casualty insurance coverage for the Residence in place from July 13, 2022 through July 13,  
 7 2023 (“Certificate of Insurance”). Exhibit 5 is a copy of the Rolando ADT Declaration. Exhibit  
 8 6 is a copy of the Cherry ADT Declaration.

9 21<sup>st</sup> Century’s Exhibit A is a copy of the Consumer Loan Note, Security Agreement and  
 10 Disclosure Statement signed by both Debtors and 21<sup>st</sup> Century (“Secured Note”).<sup>15</sup> Exhibit B is  
 11 a copy of a Manufactured Home Title Information dated February 19, 2021 (“Certificate of  
 12 Title”).<sup>16</sup>

13 \_\_\_\_\_  
 14 your file to our office in order to take appropriate and necessary action to foreclose its lien  
 15 against the property or repossess the collateral.” (Emphasis added.)

16 <sup>13</sup> Also included in Exhibit 1 is a copy of a letter dated June 24, 2022, from 21<sup>st</sup> Century to  
 17 the Debtors’ prior bankruptcy counsel, Xenophon Peters (“June 2022 Letter”). In that letter, 21<sup>st</sup>  
 18 Century advises attorney Peters that homeowner’s insurance premiums are no longer being paid  
 by 21<sup>st</sup> Century because it had determined the Debtors to be in default.

19 <sup>14</sup> The October 27 Letter to 21<sup>st</sup> Century’s legal department states in pertinent part: “We  
 20 filed for bankruptcy due to the unforeseen circumstances with our financials because Cherry is  
 21 diagnosed with End Stage Renal Disease, currently on dialysis 3 x week and waiting for kidney  
 22 transplant. I, Rolando resigned on my job because I don’t want to risk my wife’s health due to  
 23 this pandemic. We cannot afford to loose our home since at this time Cherry is currently needing  
 24 wheelchair for her mobility and we have built a ramp for her easy access. This is exactly the size  
 25 of the house that Cherry can mobilize without any difficulty. We prioritized our remaining funds  
 to make sure we pay our loan on time. We never cash out nor intended to cash out the 2 returned  
checks from 21<sup>st</sup> Mortgage Corporation ( #05239032 and #05250150). When we received your  
 letter I (Rolando) observed Cherry to be very stressed out. With this pandemic situation an  
 additional stress for us is too much to deal with.” (Emphasis added.)

26 <sup>15</sup> The Secured Note reflects a cash purchase price of \$69,255 for the manufactured  
 27 home, a \$7,000 cash down payment, and a finance amount of \$62,918.

28 <sup>16</sup> 21<sup>st</sup> Century also submitted as Exhibits C and D copies of the deposition transcripts,  
 respectively, of Cherry and Rolando. Those transcripts were not admitted into evidence, but

1 **B. The Witnesses**

2 Both the Cherry ADT Declaration and the Rolando ADT Declaration were admitted into  
3 evidence. 21<sup>st</sup> Century elected to cross-examine both witnesses, beginning with Cherry.

4 **1. Cherry Ann Macaisa Tijam (Cherry)**

5 Cherry testified on direct that she is 53 years old and is diagnosed with end stage renal  
6 disease that will require a kidney transplant. She undergoes dialysis three times a week and has  
7 long-term disability insurance. She testified that she and her husband take many over-the-  
8 counter medications and avoid medications that may create dependency issues. Cherry uses a  
9 wheelchair, and Rolando obtained a specially designed ramp to access the manufactured home  
10 that serves as their Residence. She attests that every payment has been made since the Residence  
11 was purchased in February 2020. Cherry testified that despite making every payment, she  
12 received a letter from 21<sup>st</sup> Century by certified mail on September 15, 2021, giving notice that  
13 the Debtors were in non-monetary default and that 21<sup>st</sup> Century would move forward to  
14 repossess the Residence. She also testified that she received another letter by certified mail on  
15 November 4, 2021, from a law firm expressing 21<sup>st</sup> Century's intention to foreclose its lien  
16 against the property or repossess the Residence. Cherry testified that Rolando also received the  
17 September 15 and November 4 letters by certified mail. She attested that as a result of these  
18 actions by 21<sup>st</sup> Century, she and Rolando have suffered additional stress and lack of sleep.  
19 Cherry states that her family is in the Philippines and she has no one to take care of her if  
20 something happens to Rolando. She testified that she is now afraid of losing her Residence.

21 On cross-examination, Cherry testified she became stressed out because of the  
22 correspondence from 21<sup>st</sup> Century. She confirmed she was diagnosed with end-stage renal  
23 failure prior to her bankruptcy filing, explaining the diagnosis was made in 2019. Cherry  
24 explains that prior to her bankruptcy case, she was being treated for hypertension, but it was  
25 well-controlled. Cherry further testified she is on a medication for high blood pressure recently  
26 due to the stress from this case. She explains that being in the medical field, she understands her

27 \_\_\_\_\_  
28 without prejudice to allowing the transcripts to be used for impeachment during the cross-  
examination of each witness.

1 diagnosis, and it doesn't dampen her spirit to "live a full life." Cherry testified that if counsel is  
2 suggesting her diagnosis is causing what's going on, that is only partly true. Cherry mentioned  
3 the different things she has tried to help her sleep at night and how she wants to avoid medication  
4 which could worsen her kidneys. Cherry also testified she has been taking care of her 78-year-  
5 old mother, who now lives with them. They have no children. She explained it is hard for her to  
6 get around, and she tries to watch her diet. Cherry testified that even though she has been on  
7 dialysis since 2019, everything was going "okay," until now.

8 In response to being asked when she first started taking her blood pressure medication,  
9 Cherry explained she was told initially the medication was to help her kidneys, not necessarily  
10 her blood pressure, but it is just called blood pressure medication. Cherry confirmed she  
11 believes she began taking the medication in 2019. Cherry was unsure exactly when she was  
12 diagnosed with diabetes thirty years ago, but she testified she has been taking all her  
13 medications, including her insulin, since 2019. Cherry testified she was being treated for her  
14 medical conditions before she filed for bankruptcy and before she received the correspondence  
15 from 21<sup>st</sup> Century. Cherry confirmed that prior to the filing of the bankruptcy, she had taken an  
16 expensive, experimental medication from a nephrologist to address her renal failure. Cherry  
17 explained the difficult process of waiting for a kidney transplant, which began when she started  
18 dialysis. She recently learned that she was "dropped" off the transplant list. Cherry testified  
19 waiting for a kidney donor is not what is stressing her out and it does not "dampen her spirit."

20 On cross-examination, Cherry also testified she was not suffering from stress or anxiety  
21 prior to purchasing the Residence. She testified that the manufactured home was purchased in  
22 2020 to reduce the stress of getting around in their prior rental, which did not have wheelchair  
23 access. Cherry testified her husband built a ramp for the Residence, allowing her wheelchair  
24 access, and the bathroom design in the Residence allows her to be independent since it includes a  
25 walk-in shower. Cherry stated that if counsel's question is whether she was depressed prior to  
26 this case, she does not believe so. Cherry explained that prior to the bankruptcy filing, she did  
27 not experience sleeplessness because her husband sheltered her from what led to them filing for  
28 bankruptcy. Cherry explained the only problem she really had to deal with during bankruptcy

1 was having to surrender her car, but she does not drive anymore. Cherry was asked about her  
2 husband quitting his job to care for her despite her mother living with them, and Cherry testified  
3 her mother is much older and Cherry needed help getting to her dialysis appointments. Cherry  
4 testified multiple times that she has been stressed just recently. Cherry explained that since she  
5 works in healthcare as a nurse, she has a better understanding of her medical conditions, so these  
6 conditions do not stress her out; instead, Cherry testified what has been stressful is whether she  
7 will have a home, and if not, what will happen to her, her husband, and her mother who lives  
8 with them.

9 Cherry testified on cross-examination with respect to the correspondence from 21<sup>st</sup>  
10 Century and the three choices she and her husband were given regarding the Residence. Her  
11 understanding was that they paid the mortgage and the checks were returned, and she and her  
12 husband were in default and they were being evicted. Cherry testified she opened one letter from  
13 21<sup>st</sup> Century. Cherry clarified the correspondence stated they were in default, not specifically  
14 that they were being evicted, but Cherry understands “default” means eviction. Cherry testified  
15 she never asked anyone what “reaffirmation” meant because she trusted her husband when he  
16 told her he would take care of things. Cherry testified she did not speak to her bankruptcy  
17 attorney after she read the letter from 21<sup>st</sup> Century, but maybe her husband did.

18 On cross-examination, Cherry also was questioned about taking melatonin for her  
19 sleeplessness. She testified that she did ask her doctor if taking melatonin over the counter was  
20 okay to take with her medical conditions.

21 On redirect examination, Cherry testified that recently she has been taking more  
22 medication for her blood pressure. Cherry further testified she does not remember when her  
23 blood pressure went up, but she believes the stress of knowing she might lose her home is why  
24 her blood pressure increased. Cherry testified she discovered about last month that she was  
25 taken off the transplant list but that this is not what has caused her stress since she only just  
26 found out this information. Cherry confirmed again that the Residence is specially setup with a  
27 ramp for her wheelchair, and that most homes do not have a ramp. Cherry testified she could not  
28 recall when her mother moved in with her, and she is trying to keep what is going on with the



1 Residence from her mother. Cherry confirmed that prior to filing for bankruptcy, she did not  
2 have sleeplessness, and her sleeplessness started when the possibility of losing her home began.  
3 Cherry testified that as a nurse, it is not being sick that stresses her out, but rather it is the  
4 possibility of losing her home.

5 On recross-examination, Cherry testified her blood pressure went up before 2022,  
6 probably around September or December of 2021, and that it all “started” when she “received  
7 that letter.” Cherry explained that she takes the blood pressure pills whenever her blood pressure  
8 is really high. Cherry testified again that this did not start when she found out she was removed  
9 from the kidney donor list, since she just found out about that recently. Cherry testified she was  
10 taking blood pressure and diabetic medications prior to filing for bankruptcy.

11 **2. Rolando Ramil Jallores Go (Rolando)**

12 Rolando testified on direct that he is 46 years old and that the bankruptcy discharge was  
13 received on August 24, 2021. He attests that he specially designed a ramp at the Residence for  
14 Cherry to use with her wheelchair. He testified that he has timely made every monthly payment  
15 for the Residence.

16 Rolando testified on direct that he received a mortgage statement from 21<sup>st</sup> Century dated  
17 September 10, 2021, which indicated that he was current on monthly payments. However, after  
18 sending a check for the payment required by that statement, 21<sup>st</sup> Century cashed his check and  
19 then sent its own check in the same amount to return the payment. Rolando attested that he then  
20 received a letter from 21<sup>st</sup> Century by certified mail on September 15, 2021, giving notice that  
21 the Debtors were in non-monetary default and that 21<sup>st</sup> Century would move forward to  
22 repossess the Residence. The letter was signed by someone in the legal department for 21<sup>st</sup>  
23 Century.

24 Rolando further testified that he made the monthly payment required for October 2021,  
25 but that 21<sup>st</sup> Century sent a mortgage statement dated October 11, 2021, representing that the  
26 Debtors were behind on the September payment and charging a late fee. He testified that 21<sup>st</sup>  
27 Century then sent him the October 26 Letter by certified mail, returning the payment amount and  
28 again stating that the Debtors were in default. Rolando testified that he responded with the

1 October 27 Letter to 21<sup>st</sup> Century, explaining, *inter alia*, Cherry's health situation and that 21<sup>st</sup>  
2 Century's checks to return the payments previously received were not being cashed. Rolando  
3 testified that after he sent the October 27 Letter addressed to 21<sup>st</sup> Century's legal department, he  
4 received the November 4 Letter by certified mail from Attorney Cushing expressing 21<sup>st</sup>  
5 Century's intention to foreclose its lien against the property or repossess the Residence. Rolando  
6 testified that Cherry also received the September 15 letter as well as the November 4 Letter by  
7 certified mail.

8 Rolando further testified on direct that after he made the November payment, he received  
9 another certified letter from 21<sup>st</sup> Century's legal department dated November 16, 2021, that  
10 returned the November payment and again referred to the prior notice of default. He testified  
11 that he called the signatory to the letter at the telephone number listed at the end of the letter.  
12 After exchanging voicemail messages with Attorney Cushing, Rolando attested that he spoke  
13 with 21<sup>st</sup> Century's counsel on November 23, 2021. Rolando attested that he informed Attorney  
14 Cushing that he had not cashed any of the checks sent by 21<sup>st</sup> Century and that counsel requested  
15 proof of the Debtors' timely monthly payments. Rolando attested that he emailed such proof by  
16 attachments to an email to Attorney Cushing sent on November 23, 2021.

17 Rolando also testified on direct that he called Attorney Cushing on November 29 and  
18 December 1, but was informed that Attorney Cushing was unavailable. He states that he called  
19 Attorney Cushing's office a second time on December 1 whereupon he was transferred to  
20 Attorney Cushing's paralegal. Rolando attests that the paralegal informed him of 21<sup>st</sup> Century's  
21 acknowledgement of his payments, of 21<sup>st</sup> Century's return of the payments because of the  
22 Debtor's refusal to reaffirm the loan obligation, and of 21<sup>st</sup> Century's intention to foreclose on  
23 the Residence. Rolando testified on direct that the conversation with 21<sup>st</sup> Century's legal counsel  
24 made him "so mad and scared because they were going to foreclose on my home" and that "I  
25 was confused and didn't know what to do..."

26 Rolando additionally testified on direct that 21<sup>st</sup> Century sent him a mortgage statement  
27 as well as an account history dated December 10, 2021, asserting that he was three months  
28 behind on payments and that late fees were being charged. Additionally, another letter from 21<sup>st</sup>

1 Century's legal department was received, dated December 21, 2021, returning the November  
2 payment and again giving notice of default.

3 Rolando also testified that after the Contempt Motion was filed on December 10, 2021,  
4 he continued to receive monthly mortgage statements from 21<sup>st</sup> Century that were incorrect.  
5 Rolando attested that incorrect mortgage statements and account history letters were received  
6 from 21<sup>st</sup> Century, dated January 10, 2022, February 10, 2022, March 10, 2022, and April 11,  
7 2022.

8 Rolando testified on direct that 21<sup>st</sup> Century sent his bankruptcy counsel another letter  
9 dated June 24, 2022, specifying 21<sup>st</sup> Century did not pay for the Debtors' insurance renewal on  
10 the Residence because 21<sup>st</sup> Century had determined the Debtors to be in default. Rolando  
11 testified that, as a result, he spent \$540.00 to directly purchase the required insurance on the  
12 Residence.

13 Rolando further testified on direct that incorrect mortgage statements and account history  
14 letters were received from 21<sup>st</sup> Century, dated August 10, 2022, September 12, 2022, and  
15 October 10, 2022. He testified that he made the October payment. Rolando attested that when  
16 his deposition was taken in September 2022, he tried to give 21<sup>st</sup> Century's counsel all of the  
17 checks sent by 21<sup>st</sup> Century that were intended to return the funds that 21<sup>st</sup> Century received from  
18 the Debtors.

19 Rolando testified that he tries not to worry about Cherry because she is dealing with her  
20 own health issues, including the need for a kidney transplant. The prospect of losing the  
21 Residence to foreclosure has caused Rolando to lose sleep, and he started taking an over the  
22 counter antihistamine to sleep. Rolando attested that the additional stress caused by 21<sup>st</sup>  
23 Century's actions is unhelpful in dealing with his hypertension and high cholesterol.

24 On cross-examination, Rolando was questioned regarding the October 2021, November  
25 2021, December 2021, January 2022, March 2022, April 2022, August 2022, and October 2022  
26 mortgage statements. He confirmed that each statement included a "Bankruptcy Message" that  
27 acknowledged, *inter alia*, that he was in a bankruptcy or had discharged his personal liability for  
28 the debt. Rolando testified that he did not write to 21<sup>st</sup> Century asking it to stop sending him

1 letters. Rolando further testified the monthly mortgage statements are the same as the ones he  
2 received prior to filing for bankruptcy. He stated he did not ever ask 21<sup>st</sup> Century to stop sending  
3 him an account history with respect to the debt owed for the Residence. Rolando explained the  
4 mortgage statements are “incorrect” because he sent his payments monthly and there should not  
5 be any late fees. He testified on cross-examination that he has never stopped sending payments.  
6 Rolando further testified he never cashed the checks 21<sup>st</sup> Century sent him because 21<sup>st</sup> Century  
7 “has the money.” Rolando explained he believes 21<sup>st</sup> Century still has his payments, and that is  
8 why he has not cashed the checks 21<sup>st</sup> Century has sent him.

9 Rolando also testified on cross-examination that he believes he signed his mobile home  
10 security agreement with 21<sup>st</sup> Century at the end of February of 2020. He stated that at the time  
11 he signed the security agreement with 21<sup>st</sup> Century in February 2020, he was unaware of the  
12 pandemic, and that he learned about the pandemic in March 2020 after moving into the  
13 Residence. Rolando explained that he stopped working because he did not want to expose  
14 Cherry during the pandemic and the Debtors were unsure of how potential exposure to the virus  
15 could affect her kidneys. He also testified on cross-examination that Cherry was on insurance  
16 disability and her checks were sufficient to cover the mortgage and the mobile home property  
17 space rental. Rolando testified Cherry’s disability check was sufficient to cover his other  
18 expenses. He also stated on cross-examination that the Debtors’ property in the Philippines was  
19 surrendered to the bank since they could not afford to pay it. Roland testified that he and his  
20 wife do not have sufficient funds to move back to the Philippines.

21 Rolando confirmed on cross-examination that Cherry was diagnosed with end-stage renal  
22 failure prior to bankruptcy. He confirmed he was being treated for high blood pressure, high  
23 cholesterol, and anxiety issues prior to filing for bankruptcy. Rolando explained that he was  
24 taking Benadryl for sleeplessness, but he did not have sleeplessness prior to filing for  
25 bankruptcy. He testified he was already stressed out prior to filing for bankruptcy. Rolando  
26 explained a lot of things were causing him stress, but that he and his wife do not deserve to have  
27 more added stress. He explained that as a hospice nurse, he is familiar with the stress that  
28 medical conditions cause and that he tried to be strong for his wife. Rolando testified that he

1 feels like this situation with 21<sup>st</sup> Century is “not right” since he made payments and then  
2 suddenly saw “default” on the letters from 21<sup>st</sup> Century.

3 Rolando confirmed on cross-examination that he contacted the law firm that was  
4 handling his bankruptcy case when he received the first letter of correspondence from 21<sup>st</sup>  
5 Century in September 2021. He testified that he believes “reaffirmation” means just to “sign it or  
6 something.” Rolando further testified he did not understand what it means to not reaffirm the  
7 debt. He explained that he does not exactly remember what happened between him and his  
8 bankruptcy attorney when he called them after receiving the first letter from 21<sup>st</sup> Century.  
9 Rolando testified he did not agree to reaffirm the debt. Rolando further testified he does not  
10 know exactly or quite remember what the plan was for his bankruptcy attorney with respect to  
11 contacting 21<sup>st</sup> Century after receiving the first letter from 21<sup>st</sup> Century. He testified on cross-  
12 examination that he remembers consulting with Christopher Burke, his counsel who filed the  
13 Contempt Motion, after receiving the first letter.

14 Rolando testified on cross-examination that he called “the insurance” and he was  
15 transferred to someone who explained that since he was in default, he could not continue the  
16 insurance paid through escrow. He testified that he purchased his own insurance, which is about  
17 \$500.00 “something” a year. Rolando further testified he does not remember what he was  
18 paying to 21<sup>st</sup> Century for insurance since it was a part of the escrow. On cross-examination,  
19 Rolando reviewed the monthly mortgage statements at the direction of 21<sup>st</sup> Century’s counsel,  
20 and he was unsure on whether he is paying less for insurance than what he was paying through  
21 escrow.

22 Rolando was asked on cross-examination what he believes he and Cherry are owed as  
23 actual damages for their emotional distress. He explained that he does not know if the stress has  
24 shortened his wife’s life or how it has affected her. He attested that there is no monetary value  
25 you can put on his wife. Rolando testified he is upset and feels harassed by the letters he was  
26 sent despite him making payments. He testified that as of today he thinks he could ask for more  
27  
28

1 but is satisfied with whatever the court thinks is right and best because he does not want other  
2 people to go through this same thing.<sup>17</sup>

3 On redirect examination, Rolando testified that the monthly mortgage statements sent by  
4 21<sup>st</sup> Century show a payment amount due and include payment coupons. He explained he  
5 normally pays his mortgage through online banking. Rolando further testified that the amounts  
6 due in the earliest mortgage statement are less than the amounts due in the latest statement. He  
7 testified again on redirect, however, that he has never missed a payment on his mortgage. After  
8 reviewing each of the mortgage statements received from 21<sup>st</sup> Century, Rolando testified that  
9 they show that all of his payments cleared his bank and that he has been making the monthly  
10 payments.

11 Rolando explained on redirect examination that he wants to keep his home and he wants  
12 to keep receiving the mortgage statements every month for his records. He testified 21<sup>st</sup>  
13 Century's mortgage statement for December 2021 includes in the "Recent Account History" an  
14 indication that the amounts owed for October 2021 and November 2021 were "unpaid."  
15 Rolando confirmed on redirect examination, however, that his timely payments for those months  
16 were sent back to him through checks written by 21<sup>st</sup> Century. He estimates that he received  
17 three or four checks from 21<sup>st</sup> Century. While reviewing attachments to his November Email to  
18 Attorney Cushing, Rolando reiterated on redirect that his monthly payments to 21<sup>st</sup> Century from  
19 July to November 2021 had cleared his bank. He testified again on redirect that he offered the  
20 checks back to 21<sup>st</sup> Century during his deposition and he was told by opposing counsel someone  
21 would reach out to him, but that no one from 21<sup>st</sup> Century or its counsel contacted him. Rolando  
22 attested that because he never cashed the checks from 21<sup>st</sup> Century, then 21<sup>st</sup> Century still has his  
23 money and that he is current on his mortgage payments.

24 On redirect examination, Rolando testified that 21<sup>st</sup> Century's mortgage statement dated  
25 October 11, 2021, is incorrect because it reflects a reversal of the timely payment made on  
26 October 4, 2011, and also includes a late fee. He testified that the October 11, 2021 mortgage

---

27 <sup>17</sup> 21<sup>st</sup> Century took Rolando's deposition on September 20, 2022. During that  
28 deposition, Rolando apparently testified that damages in the total amount of \$125,000 would be  
appropriate for the discharge violation. See 21<sup>st</sup> Trial Brief at 13:17 to 2:2.

1 statement as well as others included in the Written Communications cause him anxiety and  
2 additional worries that he tries to keep from his wife. Rolando also testified on redirect  
3 examination that the 21<sup>st</sup> Century's account history dated October 10, 2022, creates additional  
4 stress because it reflects an incorrect amount required to bring the loan current as well as  
5 amounts incorrectly identified as unpaid. He also confirmed on redirect examination that he was  
6 upset and frustrated when being informed through the June 2022 Letter that 21<sup>st</sup> Century was no  
7 longer paying the insurance on the Residence. Rolando testified that he paid for insurance  
8 coverage directly as reflected by the Certificate of Insurance. He testified on redirect  
9 examination that until 21<sup>st</sup> Century started trying to return his monthly payments, he was not  
10 taking an antihistamine for his sleeplessness.

11 On recross-examination, Rolando testified that he does not remember receiving any  
12 letters from 21<sup>st</sup> Century regarding insurance coverage other than the June 2022 Letter sent to his  
13 bankruptcy attorney. He testified that he would have given any such letters to his attorney.  
14 Rolando confirmed again that he was told he needed to get his own insurance for the Residence.  
15 Rolando confirmed on recross-examination that he does not specifically remember if he is  
16 paying less for insurance now compared to his prior insurance through escrow. Rolando testified  
17 on recross-examination that he was informed that someone would contact him about the checks  
18 received from 21<sup>st</sup> Century. He acknowledged that the information may not be represented in the  
19 deposition transcript.

## 20 DISCUSSION

21 Sanctions for civil contempt are designed to compensate the party injured by the proven  
22 misconduct and to coerce compliance with a legal obligation. The court previously concluded  
23 that 21<sup>st</sup> Century had no objectively reasonable basis under its own documents to conclude that it  
24 could accelerate the subject loan obligation and foreclose on the Residence.

25 Compensatory damages can include pecuniary losses sustained as well as non-pecuniary  
26 damages in the form of emotional distress suffered from the violation of a discharge injunction.  
27 See In re Vanamann, 561 B.R. 106, 122 (Bankr. D. Nev. 2016); In re Martinez, 561 B.R. 132,  
28 158 (Bankr. D. Nev. 2016); see also In re Vibbard, 2022 WL 4241288, at \*5 (Bankr. D. Or. Sep.

1 13, 2022). Daily life can be stressful and going through the bankruptcy process itself has  
2 inherent anxiety and pressures. See America’s Servicing Co. v. Schwartz-Tallard, 438 B.R. 313,  
3 321-22 (D. Nev. 2020). After a discharge is entered, however, the debtor is entitled to a fresh  
4 start without fear of enforcement of personal liability for prebankruptcy debts. As one court has  
5 observed:

6 One of the benefits an individual receives from a discharge is peace of mind.  
7 The individual need no longer be concerned that a discharged debt will be  
8 enforced against him or her. When a creditor disregards the discharge and  
9 attempts to collect a debt, it is certainly within the realm of possibility that  
the debtor will be harmed emotionally. When such occurs, the harm may be  
remedied.

10 In re Nordlund, 494 B.R. 507, 523 (Bankr. E.D. Cal. 2011) (emphasis added). To recover for  
11 emotional distress, the individual must suffer a significant harm, must clearly establish the  
12 significant harm, and must establish a causal connection to the conduct. See Dawson v.  
13 Washington Mutual Bank (In re Dawson), 390 F.3d 1139, 1149-50 (9th Cir. 2004); Ocwen Loan  
14 Servicing v. Marino (In re Marino), 577 B.R. 772, 787 (B.A.P. 9th Cir. 2017); In re Ugarte, 2022  
15 WL 18715958, at \*1 (Bankr. D. Ariz. May 11, 2022). Significant harm may be evidenced when  
16 a responding party’s conduct is extreme and outrageous, including where the party knows “the  
17 plaintiff had a special susceptibility to emotional distress.” See, e.g., In re Nordlund, 494 B.R. at  
18 524 (mortgage lender that continued mailing of collection letters after discharge and after filing  
19 of sanctions motion created cumulative emotional strain on both debtors).

20 Non-compensatory coercive damages also can be awarded for civil contempt, but only  
21 mild non-compensatory fines may be imposed. See Knupfer v. Lindblade (In re Dyer), 322 F.3d  
22 1178, 1193 (9th Cir. 2003).

23 Damages for civil contempt also includes the attorney’s fees and costs incurred in  
24 addressing a violation of the discharge injunction. See generally Walls v. Wells Fargo Bank,  
25 N.A., 276 F.3d 502, 507 (9th Cir. 2002); Larson v. Shelton (In re Shelton), 2021 WL 4864191, at  
26 \*4 (C.D. Cal. Oct. 18, 2021) (“[C]ompensatory civil contempt allows an aggrieved debtor to  
27 obtain compensatory damages, attorneys fees, and the offending creditor’s compliance with the  
28 discharge injunction.”).



1           **1. Compensatory Damages for Contempt.**

2           On its face, the pecuniary injuries suffered by the Debtors appears to be the \$540.00 paid  
3 directly by Rolando for the insurance coverage that 21<sup>st</sup> Century did not pay. But for 21<sup>st</sup>  
4 Century's improvident conclusion that the Debtors were in default, that insurance payment  
5 would not have been made by the Debtors. Debtors offer no evidence of other possible  
6 pecuniary losses, however, such as the payment of filing fees for the Contempt Motion, travel  
7 expenses to counsel's office, medical bills from professional diagnosis or treatment, receipts for  
8 prescribed and over-the-counter medications, or similar payments.<sup>18</sup>

9           The non-pecuniary injuries suffered by the Debtors are related, but different for Cherry  
10 and different for Rolando. Both attest that they suffered additional stress and anxiety from 21<sup>st</sup>  
11 Century's actions after the discharge<sup>19</sup> was entered. 21<sup>st</sup> Century does not dispute that it knew of  
12 the Debtors' discharge under Chapter 7 nor that it intentionally sent the mortgage statements,  
13 account histories, and notices as part of the process of enforcing the Secured Note. 21<sup>st</sup>  
14 Century's actions had different effects on each of the Debtors.

15                   **A. Cherry's Emotional Distress.**

16           Cherry's medical condition is not disputed. She was diagnosed with End Stage Renal  
17 Disease in 2019 and needs a kidney transplant. Cherry uses a wheelchair and the Residence is  
18 designed for her needs, including modifications of a bathroom. Rolando designed a ramp for her  
19 to enter the home. The ramp apparently is necessary because she needs to undergo dialysis three  
20 times each week. Cherry takes insulin for her diabetes and has taken experimental medication  
21 for her renal failure. She apparently takes additional medication for high blood pressure.

22           It is not disputed that the Debtors purchased the Residence in February 2020 through a  
23 secured loan in favor of 21<sup>st</sup> Century. It is not disputed that many of Cherry's medical conditions

---

24  
25           <sup>18</sup> Debtors did make a \$7,000 down payment to purchase the Residence, but 21<sup>st</sup> Century  
26 has not completed a foreclosure.

27           <sup>19</sup> When their discharge was entered on August 24, 2021, Debtors had scheduled four  
28 secured and forty-nine unsecured debts in the total amount of \$305,666.58. (ECF No. 20). Prior  
to the entry of the discharge, the Chapter 7 trustee assigned to the case had reported that there  
were no assets available for distribution to creditors. (ECF No. 17).

1 existed before the purchase of the Residence and before the Debtors filed their voluntary Chapter  
2 7 petition in May 2021. It is not disputed that the Debtors received their Chapter 7 discharge on  
3 August 24, 2021. It is not disputed that 21<sup>st</sup> Century knew of the discharge and thereafter sent  
4 the monthly mortgage statements, account histories and correspondence contained in the Written  
5 Communications. It is not disputed that Rolando, rather than Cherry, was primarily involved in  
6 managing the Debtors' payments to 21<sup>st</sup> Century and had direct communication with 21<sup>st</sup>  
7 Century's legal representatives. Other than Cherry's testimony on direct and cross-examination,  
8 as well as the testimony of Rolando, no evidence of her resulting emotional distress has been  
9 offered by 21<sup>st</sup> Century in the form of testimony from treating physicians, psychologists, or other  
10 medical professionals, nor through medical records or other percipient witnesses. Likewise, no  
11 evidence to impeach her testimony was offered or admitted in the form of correspondence,  
12 emails, text messages, social media postings, or the like.<sup>20</sup>

13 Although the direct testimony of any witness through a written declaration typically is  
14 sterile, live cross-examination of the same witness before the finder of fact provides the latter  
15 with perhaps the only means of assessing credibility. Indeed, for that very reason, entry of  
16 summary judgment based on written materials is rarely appropriate where witness credibility,  
17 including a witness's intentions or motives, is at issue.<sup>21</sup> In the instant matter, the court observed  
18 Cherry's live testimony both on cross-examination and redirect examination. Although the  
19 testimony was overlapping and repetitive, the court finds her testimony to be credible.

---

20  
21 <sup>20</sup> Cherry was deposed by 21<sup>st</sup> Century on September 19, 2022, and impeachment using  
22 the deposition transcript was permitted.

23 <sup>21</sup> A party bearing the ultimate burden of proof, e.g., a plaintiff or moving party, faces  
24 different consequences on summary judgment compared to trial. A plaintiff or moving party  
25 who submits affidavits or declarations that are insufficient to demonstrate that there are no  
26 genuine disputes of material fact risks denial of summary judgment, and the matter proceeds to  
27 trial. The same plaintiff or moving party who submits affidavits or declarations at trial that are  
28 insufficient on their face to meet the burden of proof on all material issues, however, risks entry  
of an adverse final judgment on partial findings. In other words, the utmost care should be taken  
by the party bearing the burden of proof in preparing alternate direct testimony declarations for a  
trial or final evidentiary hearing.

1 Based on her testimony, the court finds that Cherry suffered significant additional  
2 emotional distress that was caused by 21<sup>st</sup> Century's violation of the discharge injunction. That  
3 violation occurred due to circumstances created entirely by 21<sup>st</sup> Century's unwarranted reliance  
4 on its own loan documents. The violation occurred after the Debtors already obtained their  
5 Chapter 7 discharge and caused anxiety and pressures that were not part of the bankruptcy  
6 process. Indeed, neither Cherry nor Rolando suggest or seek damages for any stress or anxiety  
7 that existed before they received their Chapter 7 discharge.

8 After the discharge was entered, however, 21<sup>st</sup> Century's actions threatened Cherry with  
9 the loss of the family Residence and the displacement of her husband, her mother, and herself at  
10 a time when neither of the Debtors was employed. Moreover, due to her medical condition,  
11 Cherry was unable to return to work. 21<sup>st</sup> Century was made aware of the Debtors' specific  
12 situation and Cherry's particular medical condition. Her particular susceptibility to emotional  
13 distress suggests that 21<sup>st</sup> Century's conduct was outrageous. At the time of trial, 21<sup>st</sup> Century  
14 apparently still took the legal position that it could foreclose on the Residence despite its  
15 inability to satisfy the conditions required by the agreement it created. That 21<sup>st</sup> Century's  
16 actions deprived Cherry of the peace of mind afforded by a bankruptcy discharge and continues  
17 to deny her of that fundamental bankruptcy protection, is significant.

18 Having considered the evidence presented, the court concludes that actual damages in the  
19 amount of \$45,000 should be awarded to Cherry for the emotional distress caused by 21<sup>st</sup>  
20 Century's violation of the discharge injunction. This amount is based on the cumulative effect of  
21 21<sup>st</sup> Century's actions, which takes into account, *inter alia*: (1) the credibility of Cherry's  
22 testimony, (2) her ongoing medical condition and susceptibility, (3) 21<sup>st</sup> Century's knowledge of  
23 Cherry's medical condition, (4) the absence of any evidence from 21<sup>st</sup> Century suggesting that it  
24 has even considered whether the language of its Secured Note is consistent with the provisions of  
25 the Bankruptcy Code, and (5) the deterrent effect of significant compensatory damages.

#### 26 **B. Rolando's Emotional Distress.**

27 Rolando has been treated for high blood pressure, high cholesterol, and anxiety beginning  
28 prior to the filing of the bankruptcy but does not have a medical condition as serious as Cherry.

1 He believes that 21<sup>st</sup> Century's conduct after the discharge was entered caused significant  
2 anguish and additional stress to himself as well as his wife. There is no dispute that in 2020,  
3 Rolando quit his job as a hospice nurse to take care of his wife and to avoid exposing her to the  
4 pandemic virus. There is no dispute that he modified the manufactured home to accommodate  
5 Cherry's special needs, including the addition of a wheelchair ramp and a walk-in shower. There  
6 is no dispute that Rolando had primary responsibility to maintain payments on the Residence and  
7 that he directly corresponded with or directly spoke with representatives of 21<sup>st</sup> Century to  
8 address the latter's actions after the discharge was entered.

9 It is uncontested that after 21<sup>st</sup> Century sent the October 26 Letter attempting to return  
10 Rolando's payment, Rolando responded with the October 27 Letter informing 21<sup>st</sup> Century's  
11 legal department of Cherry's medical condition. It is uncontested that after the October 27 Letter  
12 was sent by Rolando, 21<sup>st</sup> Century responded through its legal counsel with the November 4  
13 Letter advising the Debtors of only three options: (1) vacating their home, (2) paying off the full  
14 remaining balance of the loan, or (3) reopening the Chapter 7 to file a reaffirmation agreement.  
15 It is uncontested that 21<sup>st</sup> Century sent another letter to the Debtors on November 16, 2021,  
16 attempting to return Rolando's timely November payment. It is uncontested that Rolando spoke  
17 with Attorney Cushing on November 23 and provided proof of timely payments. It is  
18 uncontested that Rolando attempted to follow up with Attorney Cushing on November 29 and  
19 was informed that Attorney Cushing was unavailable. It is uncontested that Rolando finally  
20 spoke with Attorney Cushing's paralegal on December 1 who advised him that 21<sup>st</sup> Century had  
21 received his monthly payments, that 21<sup>st</sup> Century was attempting to return the payments due to  
22 the Debtors' failure to reaffirm the loan obligation, and that 21<sup>st</sup> Century still intended to  
23 foreclose on the Residence.<sup>22</sup> Rolando testified that the conversation with 21<sup>st</sup> Century's counsel  
24 left him so mad and scared that his home would be foreclosed, and that he was confused and did  
25 not know what to do because he had made all of the payments.

---

26  
27 <sup>22</sup> No witnesses were called by 21<sup>st</sup> Century to contest or otherwise dispute Rolando's  
28 testimony as to any of these events nor of the sequence of the communications with 21<sup>st</sup> Century.

1 It is uncontested that after Rolando spoke with Attorney Cushing's paralegal on  
2 December 1, he continued to receive the mortgage statements, account histories and other  
3 documents from 21<sup>st</sup> Century. It is uncontested that those documents also included another letter  
4 from 21<sup>st</sup> Century's legal department, dated December 21, 2021, sent by Federal Express  
5 certified mail, which was identical to the content of the November 4 Letter. It also is  
6 uncontested that even though Rolando continued to make timely monthly payments, several of  
7 the monthly mortgage statements after September 10, 2021, reflect that 21<sup>st</sup> Century would  
8 unilaterally reverse the payments received for the prior month, and then would charge a late  
9 fee.<sup>23</sup> It also is uncontested that Rolando was required to directly obtain insurance for the  
10 Residence after receiving the June 2022 Letter advising that 21<sup>st</sup> Century would no longer pay  
11 the annual premium charged by a hazard insurance provider identified in the Secured Note as  
12 "21<sup>st</sup> Insurance."

13 Other than Rolando's testimony on direct and cross-examination, as well as the testimony  
14 of Cherry, no evidence of his resulting emotional distress has been offered by 21<sup>st</sup> Century in the  
15 form of testimony from treating physicians, psychologists, or other medical professionals, nor  
16 through medical records or other percipient witnesses. Likewise, no evidence to impeach his  
17 testimony was offered or admitted in the form of correspondence, emails, text messages, social  
18 media postings, or the like.<sup>24</sup> Like the testimony of Cherry, the court observed Rolando's live  
19 testimony both on cross-examination and redirect examination. Although Rolando's testimony  
20 also was overlapping and repetitive, the court also finds his testimony to be credible.

21 Based on his testimony, the court finds that Rolando suffered significant additional  
22 emotional distress that was caused by 21<sup>st</sup> Century's violation of the discharge injunction. That  
23 violation occurred due to circumstances created entirely by 21<sup>st</sup> Century's unwarranted reliance  
24 on the language of its own Secured Note. The violation occurred after the Debtors already

---

25 <sup>23</sup> The mortgage statements dated February 10, 2022, March 10, 2022, April 11, 2022,  
26 and August 10, 2022, do not reflect a late fee. Those statements reflect timely receipt of  
27 customer payments for the prior month but also include a figure for a "Past Unpaid Amount."

28 <sup>24</sup> Rolando was deposed by 21<sup>st</sup> Century on September 19, 2022, and impeachment using  
the deposition transcript was permitted.

1 obtained their Chapter 7 discharge and caused anxiety and pressures that were not part of the  
2 bankruptcy process. 21<sup>st</sup> Century was made aware of the Debtors' specific situation and  
3 Cherry's particular medical condition. 21<sup>st</sup> Century's actions threatened Rolando with the loss of  
4 a home that was specifically chosen and modified to accommodate the needs of his wife.  
5 Rolando had primary responsibility for paying the outstanding loan. Due to Cherry's medical  
6 condition and possible exposure to the pandemic virus, Rolando had resigned from his  
7 employment as a hospice nurse and was unable to return to work. The actions taken by 21<sup>st</sup>  
8 Century threatened the displacement of Rolando's wife, his mother-in-law, and himself at a time  
9 when neither of the Debtors was employed. Rolando and Cherry had spent \$7,000 as a down  
10 payment on the Residence and could not afford to return to the Philippines. The possibility of  
11 homelessness was real to Rolando as well as to Cherry.

12 Even after Rolando informed 21<sup>st</sup> Century of the Debtors' circumstances, 21<sup>st</sup> Century  
13 proceeded with its efforts to collect on the Secured Note. At the time of trial on damages, 21<sup>st</sup>  
14 Century apparently still takes the legal position that it can foreclose on the Residence despite its  
15 inability to satisfy the conditions required by the Secured Note it created. 21<sup>st</sup> Century continues  
16 to send monthly mortgage statements to Rolando that include a Past Unpaid Amount when 21<sup>st</sup>  
17 Century still has the Debtors' prior payments and there are no missed payments.<sup>25</sup> That 21<sup>st</sup>  
18 Century's actions deprived Rolando of the peace of mind afforded by a bankruptcy discharge and  
19 continues to deny him of that fundamental bankruptcy protection is significant.

20 Having considered the evidence presented, the court concludes that actual damages in the  
21 amount of \$40,000 should be awarded to Rolando for the emotional distress caused by 21<sup>st</sup>  
22 Century's violation of the discharge injunction. This amount is based on the cumulative effect of  
23 21<sup>st</sup> Century's actions, which takes into account, *inter alia*: (1) the credibility of Rolando's  
24 testimony, (2) the seriousness of his wife's medical condition, (3) the language contained in the  
25 mortgage statements received by Rolando, (4) the absence of any evidence from 21<sup>st</sup> Century  
26 suggesting that it has even considered whether the language of its Secured Note is consistent  
27

---

28 <sup>25</sup> A detailed discussion of the monthly mortgage payments that were sent to Rolando is  
set forth below.

1 with the provisions of the Bankruptcy Code, and (5) the deterrent effect of significant  
2 compensatory damages.

3 **2. Non-Compensatory Damages.**

4 Civil contempt sanctions may include non-compensatory fines rather than punitive  
5 damages, and the fines are limited to a mild amount. Because such civil contempt fines are, by  
6 definition, not intended to compensate the party injured by a discharge violation, they must have  
7 a purpose of coercing compliance with the discharge injunction. In considering whether a  
8 coercive fine is appropriate, the court has examined in detail the documentary evidence in the  
9 record.

10 The initial Contempt Order was entered on June 29, 2022. The exhibits attached to the  
11 Contempt Motion included various monthly mortgage statements sent by 21<sup>st</sup> Century, the last of  
12 which was dated December 10, 2021. Those mortgage statements previously were discussed by  
13 the court. See Contempt Order at 4:8 to 8:4. The Written Communications admitted at trial  
14 include additional mortgage statements dated between January 10, 2022 and October 10, 2022,  
15 but the statements for May, June, July and September 2022 are missing. The January 20, 2022  
16 mortgage statement reflects that on December 17, 2021, 21<sup>st</sup> Century “reversed” the December  
17 payment received from the Debtors in the amount of \$653.25 and then charged a late fee of  
18 \$26.53 on December 20, 2022. Additionally, the statement reflects that 21<sup>st</sup> Century received a  
19 payment of \$653.25 on January 4, 2022, and also charged legal fees of \$1,250 and \$100 on  
20 December 22, 2021.<sup>26</sup> The statement also shows a Past Unpaid Amount of \$2,592.59, in addition  
21 to the late fees and legal fees charged by 21<sup>st</sup> Century. The February 10, 2022 mortgage  
22 statement reflects that 21<sup>st</sup> Century received the Debtors’ payment of \$653.25 on February 4,  
23 2022, but that there was no “reversal” of the February payment or the January payment. The  
24 statement also shows a Past Unpaid Amount of \$4,069.12. No explanation is given for that  
25 figure, but the amount is equal to four monthly payments (\$2,613), four late charges (\$106.12),  
26 and the attorney’s fees (\$1,350) that appeared in the prior mortgage statement.

27  
28 <sup>26</sup> It is unclear whether 21<sup>st</sup> Century incurred legal fees in response to the Debtors’  
motion to reopen the Chapter 7 proceeding on December 3, 2021, in order to file the Contempt  
Motion. None of the prior monthly mortgage statements included a charge for legal fees.

1 The March 10, 2022 mortgage statement reflects that 21<sup>st</sup> Century received the Debtors'  
2 payment of \$653.25 on March 4, 2022, but that 21<sup>st</sup> Century did not “reverse” the payment. Like  
3 the statement for the prior month, it also shows the same Past Unpaid Amount of \$4,069.12.  
4 Because the Debtors’ payments had generated an escrow surplus, the required monthly payment  
5 was reduced by 21<sup>st</sup> Century from \$653.25 to \$582.21, i.e., a reduction of \$71.04. The April 11,  
6 2022 mortgage statement reflects 21<sup>st</sup> Century’s receipt of \$653.25 on April 4, 2022, and no  
7 “reversal” of the payment. Unlike the prior month, it also shows a reduction of the Past Unpaid  
8 Amount to \$3,995.08, apparently reflecting a decrease of \$71.04 for the escrow surplus but no  
9 reduction of the prior attorney’s fees and late fees charged by 21<sup>st</sup> Century.

10 The August 10, 2022 mortgage statement shows that 21<sup>st</sup> Century received and did not  
11 reverse the Debtors’ payment of \$653.25 that occurred on August 4, 2022. The statement shows  
12 a reduction of the Past Unpaid Amount to \$3,713.92, which may reflect a decrease due to the  
13 escrow surplus during the intervening months. The Past Unpaid Amount figure does not reflect a  
14 reduction for the attorney’s fees and late fees previously charged. The October 10, 2022  
15 mortgage statement reflects the Debtors’ payment of \$653.25 on October 4, 2022 and that 21<sup>st</sup>  
16 Century did not “reverse” the payment. The statement also showed a reduction of the Past  
17 Unpaid Amount of \$2,918.59, which does not reflect a reduction for the prior attorney’s fees and  
18 late charges. Except for the September 10, 2021 mortgage statement, all of the mortgage  
19 statements sent to the Debtors include a Past Unpaid Amount even though the Debtors have  
20 never missed a payment.

21 21<sup>st</sup> Century offered no testimony or evidence at trial to explain the entries in its monthly  
22 mortgage statements, and it was not required to do so. All of the statements reflect, however,  
23 that the Debtors have been making the full amount of their monthly payments even after the  
24 monthly amount was reduced by 21<sup>st</sup> Century in March 2022 to reflect the escrow surplus. The  
25 monthly statements also reflect that 21<sup>st</sup> Century negotiated all of the checks received from the  
26 Debtors and attempted to return the payments received in September, October, November, and  
27 December 2021. 21<sup>st</sup> Century offered no evidence that any of the checks sent to the Debtors  
28 were negotiated and no evidence that the 21<sup>st</sup> Century’s bank ever cleared any of the checks. 21<sup>st</sup>



1 Century offered no evidence that the funds received from the Debtors have ever left its account.  
2 In other words, 21<sup>st</sup> Century has always had all of the required monthly payments from the  
3 Debtors, and those funds remain in 21<sup>st</sup> Century's accounts. As a result, Debtors have never  
4 been in monetary default.

5 21<sup>st</sup> Century's mortgage statements further reflect that 21<sup>st</sup> Century timely received the  
6 Debtors' payments for September, October, November, and December 2021, deposited those  
7 payments in its own accounts, and still had the Debtors' funds when it charged the late fees. The  
8 statements also reflect that 21<sup>st</sup> Century incurred legal expenses of \$1,350 apparently to address  
9 its errors in servicing the Secured Note, charged those expenses to the Debtors, and continues to  
10 include those expenses in the Past Unpaid Amount figure appearing in all of its subsequent  
11 mortgage statements.

12 Because the Debtors have never been in monetary default, 21<sup>st</sup> Century relied on the ipso  
13 facto provision of the Secured Note to accelerate the amount owed based solely on the Debtors'  
14 commencement of their bankruptcy proceeding on May 24, 2021. In other words, 21<sup>st</sup> Century  
15 relied on the Debtors' bankruptcy filing to pursue foreclosure based on a non-monetary default  
16 because it could not do so based on a non-existent monetary default. Moreover, 21<sup>st</sup> Century  
17 could not charge late fees if there was no monetary default: only by "reversal" of the Debtors'  
18 timely payments could 21<sup>st</sup> Century impose a late fee. 21<sup>st</sup> Century unilaterally did so for the  
19 September, October, November and December 2021 payments, charged late fees for each of  
20 those months, and apparently continues to include such late charges in the Past Unpaid Amount  
21 figures in its subsequent monthly mortgage statements.

22 The Non-Monetary Default Notice was sent to the Debtors on September 15, 2021, more  
23 than three weeks after the Debtors had already received their Chapter 7 discharge. See Contempt  
24 Order at 4:17 to 5:3; 9:14-15. Because 21<sup>st</sup> Century did not provide the Debtors with an  
25 opportunity to cure the very default it asserted, the court concluded that 21<sup>st</sup> Century is  
26 attempting to enforce the Secured Note as a personal liability of the Debtors. Id. at 13:1-23.  
27 Despite the entry of the Contempt Order on June 29, 2022, it appears from the August 10, 2022  
28 and October 10, 2022 mortgage statements that 21<sup>st</sup> Century continues to seek recovery of the

1 balance of the Secured Note, as well as attorney's fees and late charges to which it was never  
2 entitled. It is not surprising that 21<sup>st</sup> Century's actions have caused anger, confusion and  
3 additional stress to the Debtors.

4 Unfortunately, the record at trial reflects that 21<sup>st</sup> Century continues its attempt to  
5 accelerate the Secured Note when it has not complied with the conditions applicable to issuing a  
6 required notice of default. 21<sup>st</sup> Century apparently continues to send the Debtors monthly billing  
7 statements setting forth an incorrect Past Unpaid Amount based on its past improper reversals of  
8 timely payments. This practice continues to violate the discharge injunction. Under these  
9 circumstances, a modest fine of \$1,000 per week will be imposed in any final order to ensure that  
10 21<sup>st</sup> Century ceases treating the Debtors' prior timely payments as an ongoing Past Unpaid  
11 Amount. A final order in this matter will include a provision permitting 21<sup>st</sup> Century to purge  
12 itself of the fine by ceasing the continuing charges.

### 13 **3. Award of Attorney's Fees and Costs.**

14 The court having determined that the Debtors are entitled to compensatory and non-  
15 compensatory damages for civil contempt, will authorize the Debtors' counsel to recover  
16 attorney's fees and costs. Appropriate deadlines will be set for such counsel to submit a  
17 declaration and billing statement setting forth the amounts requested, and for 21<sup>st</sup> Century to  
18 submit objections, if any, to the fees and costs sought by counsel. A deadline to respond to any  
19 objections also will be set. A hearing will be set on the fee request only if required by the court.

### 20 **CONCLUSION**

21 Based on the foregoing, the amount of \$540 will be awarded as pecuniary damages in  
22 favor of the Debtors, the amount of \$45,000 will be awarded as non-pecuniary damages in favor  
23 of Cherry Ann Macaisa Tijam, and the amount of \$40,000 will be awarded as non-pecuniary  
24 damages in favor of Rolando Ramil Jallores Go. The amount of \$1,000 per week will be  
25 awarded as a coercive sanction, subject to appropriate purge. The amount of attorney's fees and  
26 costs in favor of the Debtors shall be determined separately. An interim order will be entered  
27 concurrently with this Memorandum Decision setting forth the deadlines to determine the award  
28

1 of attorney's fees and costs. A final order will be entered on the Contempt Motion after  
2 determination of the attorney's fees and costs.

3  
4 Copies sent via CM/ECF ELECTRONIC FILING

5 Copies sent via BNC to:  
6 ROLANDO RAMIL JALLORES GO  
7 CHERRY ANN MACAISA TIJAM  
8 6223 E. SAHARA AVENUE, SPACE 122  
9 LAS VEGAS, NV 89142

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
###